



ALBANIAN
CHAMBER OF ADVOCACY



**LUARASI UNIVERSITY
LAW FACULTY**

INTERNATIONAL SCIENTIFIC CONFERENCE

**“JUSTICE, SECURITY AND HUMAN RIGHTS”
(ICJSHR-LFUL 2025)
Tirana & Online**

- BOOK OF PROCEEDINGS -



PROCEEDINGS OF THE INTERNATIONAL SCIENTIFIC
CONFERENCE
“JUSTICE, SECURITY AND HUMAN RIGHTS”
(ICJSHR-LFUL 2025)
Tirana & Online

© Luarasi University, Faculty of Law & Authors All rights reserved.

Botimet KUMI

Tirana, 2025

INTERNATIONAL SCIENTIFIC CONFERENCE

“JUSTICE, SECURITY AND HUMAN RIGHTS”

(ICJSHR-LFUL 2025)

Tirana & Online

- BOOK OF PROCEEDINGS -

International Scientific Committee of the Conference

Prof. Dr. Maksim Haxhia
Prof. Dr. Skënder Kaçupi
Prof. Dr. Dorina Hoxha
Prof. Dr. Ilirjan Mandro
Prof. Dr. Snežana Štetić
Assoc. Prof. Dr. Admir Belishta
Assoc. Prof. Dr. Mentor Lecaj
Assoc. Prof. Dr. Egzone Osmanaj
Assoc. Prof. Dr. Besard Belegu
Assoc. Prof. Dr. Artan Fejzullahu
Assoc. Prof. Dr. Žaklina Spalević
Assoc. Prof. Dr. Erjon Muharremaj
Dr. Jean-Christophe Gay
Dr. Vladica Ristić
Dr. Marija Maksin
Dr. Violeta Babić

Organizing Committee of the Conference

Assoc. Prof. Dr. Luan Veliqoti
Assoc. Prof. Dr. Denard Veshi
Dr. Lorenc Stojani
Dr. Blerina Shkurti
Dr. Dael Dervishi
Dr. Katrin Treska
Dr. Ermira Tafani
Dr. Blendi Himçi
Dr. Erinda Ahmetaj
PhD(c) Ganimete Ismajli
PhD(c) Folitjona Puravelli
PhD(c) Anisia Mandro
MSc. Katarina Bjelić
MSc. Geron Kamberi

TABLE OF CONTENTS

Reflections on special complicity <i>Florjan Kalaja</i>	13
Use of electronic evidence and the standards of the European Court of Human Rights <i>Adnan Xholi</i>	59
Preliminary session, seen from the perspective of innovations and problems <i>Admir Belishta; Klea Biquku</i>	77
Treatment of victims in criminal cases related to adult/minor trafficking: between legal standards and judicial reality <i>Manjola Kajana</i>	95
Procedural guarantees in the seizure and sequestration of computer data from the cellular device <i>Ylli Pjetërnika; Enisa Shahini</i>	117
Historical and criminal aspects of vigilantism in Albania <i>Engjëll Likmeta; Klei Kaçupi</i>	140
Surveillance and private recordings <i>Eliora Elezi; Ardian Elezi</i>	161
Terrorism and violent extremism: legal measures and their effectiveness <i>Blendi Himçi; Regis Topurja; Orjona Shermadhi; Xhoana Agolli</i>	177
Organised crime and the challenges of criminal justice in Albania <i>Genci Gjonçaj</i>	196

The termination of security measures in criminal proceedings: a necessity for the protection of fundamental freedoms <i>Gledis Nano; Endi Kalemaj; Ervis Çela</i>	220
International and Albanian standards on the right to information of victims of crime <i>Eda Gjoka; Ermira Manelli</i>	233
The evolving threat of technology-facilitated violence in Albania: policies, protections and prevention <i>Anisia Mandro</i>	248
The challenges of the International Criminal Court as a cornerstone of building a more just, peaceful and democratic world <i>Erinda Ahmetaj</i>	263
Challenges of public safety and criminal investigation in the digital age <i>Hasan Shkëmbi</i>	273
Transnational customs crimes and export control of dual-use goods: legal and institutional challenges in the framework of international security <i>Admir Abrija</i>	301
The challenge of criminal law in ensuring a safe digital environment <i>Gloria Lleshanaku; Ermira Tafani; Arbër Gjeta</i>	311
Child soldiers in international criminal law – the historical context and the need for global cooperation <i>Irena Staka</i>	327
The judiciary’s confrontation with complex financial crimes: challenges in detecting, investigating, and adjudicating sophisticated money laundering schemes <i>Renis Sheshi; Kevin Treska</i>	340

Financial crimes and money laundering <i>Anisa Pali</i>	363
The European “Barnahus” model of child-friendly justice <i>Maend Kullaj</i>	379
Criminal justice for minors <i>Krist Manxharaj</i>	394
Child protection in the metaverse: legal challenges and prevention of virtual crimes <i>Iris Shehaj</i>	410
Albania and the challenge of violent extremism: analysis of the measures taken over the years <i>Arjola Cana</i>	425
Albania: an importing, exporting, or transit country for terrorism? <i>Taulant Sula; Mareglen Tomori</i>	445
Protecting and guaranteeing human rights in the age of artificial intelligence and criminal justice challenges <i>Eljona Ruçi</i>	457
Restorative justice for juveniles in conflict with the law <i>Albjona Kajusha; Daniela Ndoj</i>	475
Evaluating the effectiveness of international legal frameworks in combating money laundering: a case study of Wachovia Bank <i>Kristian Nela; Artemis Azizaj</i>	486
Cybercrime – the role of national and international legal mechanisms in addressing digital threats <i>Dhurata Saraçi</i>	497

Legal regulation of mass tourism: case study on balancing economic benefits, sustainable growth and the preservation of local culture and heritage <i>Jean-Christophe Gay; Katarina Bjelić</i>	510
Effectiveness of legal mechanisms against religious discrimination in Serbia <i>Dijana Savić Božić</i>	526
Intelligence activities, international law and the protection of human rights <i>Erjon Hitaj; Ilir Kanaj</i>	545
The pandemic's influence on the right to freedom of assembly and organization in Albania <i>Ermonela Ruspi</i>	562
Freedom of expression in the digital age: challenges, limitations, and the balance of rights <i>Erinda Ballanca</i>	579
Prevention of conflict of interest in the justice system in Albania. Balancing legal constraints in relation to human rights <i>Fjorida Ballauri</i>	594
The legal framework in Albania and the practices of some countries regarding fiscal and criminal amnesty <i>Naim Tota; Jura Çitozi</i>	610
Security studies and the strategic culture-oriented elite as a necessity for strengthening national security and advancing national development <i>Ardian Elezi</i>	625
Comparative administrative law in South-Eastern Europe and the European Union <i>Dael Dervishi; Fatmir Latifi</i>	654

Challenges of European integration of local government ten years after the administrative-territorial reform <i>Vera Shtjefni</i>	664
External pressures, internal realities: the 2016 Albanian judicial reform and the multifaceted impact of international organizations on rule of law development <i>Nertil Bërdufi; Jetnor Kasmi</i>	685
From legal guarantees to local realities: assessing transparency and administrative rights at local level in Albania <i>Diamanta Vito; Megi Marku</i>	711
The principle of legal certainty – “The myth of Sisyphus” in our state of law <i>Bernina Kondi</i>	727
Liability arising from services <i>Nertila Ndregjoni</i>	750
The use of artificial intelligence in mediation <i>Ingrida Behri Mustafa</i> <i>Lira Spiro</i>	773
The role of public administration in the management and control of European funds <i>Jona Gashi</i>	785
Recent changes in the legal framework in public procurement and the use of the e-procurement system <i>Rezelina Uka</i>	808
Analysis of legal and institutional framework of foreign students’ enrolment in Albanian HEI: how competitive is the internationalization sector on this issue and what are the challenges ahead? <i>Agim Alia; Geron Kamberi</i>	818

Environmental security as a contemporary perspective of national security <i>Kejsi Rizo</i>	857
Misuse of public resources during the electoral period <i>Dhimitër Zguro</i>	880
Constitutional justice and the protection of the right to a healthy environment as a fundamental right <i>Esmeralda Metko; Subian Dalani</i>	917
Workplace accident damages under Albanian legislation: types of employer liability and challenges in judicial practice <i>Enton Dhimitri</i>	927
The importance of personal data protection and privacy in the digital age: challenges and perspectives for the future <i>Blerina Masha (Shkurti); Ketj Gerbi</i>	971
Significance of cybersecurity in the modern digital era <i>Folijtjona Puravelli; Anni Dasho Sharko</i>	983
Harmonization of intellectual property law in North Macedonia and Kosovo with the EU <i>acquis</i> : challenges and progress <i>Adnan Jashari; Egzone Osmanaj</i>	1002
Inheritance as a mode of acquiring ownership <i>Artur Gaxha</i>	1016
Transportation contract and its characteristics <i>Neritan Cena</i>	1024
Adoption and protection of children's rights: an analysis of European standards <i>Zhaklinë Meçani</i>	1034

Approachment of Albanian trade legislation to EU standards and the impact of European funding on the development of Albanian enterprises <i>Klaudia Reka; Ornela Nikolli</i>	1048
Consumer protection in contracts at a distance in the insurance market <i>Saimir Muçmataj; Borana Kalemi</i>	1064
Systemic violations of the right to property in Albania: analyzing the case law of the European Court of Human Rights and pathways for reform <i>Kejsi Ziu</i>	1081
The concept of maintenance obligation and its regulation according to Albanian legislation <i>Evanthi Suli; Irgena Dokollari</i>	1101
Protection of personal data and the legal challenges of privacy <i>Bleona Tahiri; Andeta Qefa; Marsida Haxhiu</i>	1117
Cross-jurisdictional evidence challenges in international arbitration: due process risks and enforcement under the new york convention <i>Nikolin Muçaj</i>	1131

REFLECTIONS ON SPECIAL COMPLICITY

Florjan Kalaja¹

Abstract

Special complicity is one of the most important issues of criminal law. The article aims to address several issues of practical and theoretical importance of this institution of criminal law. Among the issues addressed is the punishment in special organization, the overlaps of the field of criminal offenses of the armed gangs with the criminal organization, the lack of the coherence in the proportionality of the punishments of these special complicity formations, the problems of the development of judicial practice in the individualization of special forms of complicity beyond the structured criminal groups and external accomplices between special and ordinary complicity. This article aims to present a critical analysis for each of these issues and to conclude with a respective conclusion. One of the goals that this article has is also to provide the respective legal propositions for the development of criminal law in this area, considering that recently there has also been an official initiative to draft a new Criminal Code. The article is not exhaustive of all the problems that exist on the issues addressed, as the author has written repeatedly about them². In this regard,

1. The author serves as a judge at the Special Court of Appeal for Corruption and Organized Crime.

2. See Florjan Kalaja, “Constitutional Dilemmas III”, Chapter III “Constitutional dilemma on criminal punishment in special complicity” and Chapter XV “Constitutional dilemma on fixed penalties in the Criminal Code”, Enja Printing House Publications, Tirana, 2023. See also the dissenting opinion of the judge in Decision No. 16, dated 20.03.2023, of the Special Court of Appeal for Corruption and Organized Crime.

See also Decision No. 33, Basic Register, dated 17.12.2021, of the Special Court of Appeal for Corruption and Organized Crime, “On the suspension of the adjudication of the case and its referral to the Constitutional Court”.

the article presents an analysis of previously untreated issues.

Keywords: *Special complicity; the punishment in special complicity; criminal organization; terrorist organization; the organization for drug trafficking; armed gang; structured criminal group; the proportionality of the punishment; the problems of judicial practice; the external accomplice; the new draft of the Criminal Code.*

Contents: 1. Historical development of the normative regulation of special complicity in Albania. 2. Overlaps between forms of special complicity: i) Drug-trafficking criminal organization as a sub-form of criminal organization; ii) Drug-trafficking criminal organization and structured criminal group; iii) Terrorist organization and armed gang; iv) Criminal organization and armed gang; v) Participation of a public official as a qualifying circumstance; vi) Absence of the offence of participation in Article 284/a of the Criminal Code; vii) Complementary application of paragraphs three and four of Article 333 to Articles 234/a and 284/a of the Criminal Code. 3. Coherence in the punishment of special complicity: i) Comparison of sanctions for forms of special complicity; ii) Sentence increases due to qualifying circumstances under paragraphs three and four of Article 333 of the Criminal Code. 4. Conclusions. 5. Bibliography.

1. Historical development of the normative regulation of special complicity in Albania

A general categorization of the types of criminal cooperation is that which distinguishes ordinary cooperation from special cooperation.¹ Traditionally, Albanian criminal law has made this distinction. The Criminal Chamber of the Supreme Court has reasoned that, when it is proven that cooperation has not been incidental and has gone beyond a simple agreement, thus reaching a high level of structural organization

Available online at:

https://www.academia.edu/71309922/Kontroll_Kushtetues_mbi_nenin_334_t%C3%AB_Kodit_Penal. Accessed on 24.04.2025.

1. See “Criminal Law”, General Part, Second Edition, 2019, Assoc. Prof. Dr. Dorina Hoxha, Prof. Dr. Skënder Kaçupi, Prof. Dr. Maksim Haxhia, pp. 481–482.

See “Criminal Law”, General Part, Volume II, Luan Hasneziri, Tirana, 2021, Maluka 2020, p. 85.

and stable compactness¹, which leads to the establishment of decision-making and executive structures at a hierarchical level, this is sufficient to conclude, in principle, the existence of special cooperation². Precisely special criminal complicity will be the main object of analysis of this paper, focusing on the manner in which special substantive criminal law provides for the regime of criminal liability. In this way, special criminal complicity is generally conceptualized by jurisprudence.³

This special regime, as a guarantee of the public security of the State, performs a preliminary protective function for such fundamental values that stand at the foundation of the construction of society, which the legislator is interested in neutralizing at their very genesis. In criminal-law doctrine these crimes are considered crimes of danger or incomplete criminal offences⁴, and they also affect the constitutional legitimacy of collective organizations of individuals as one of the fundamental rights of a social and political character⁵. These are criminal offences that constitute an exception to the general rule, since, due to the social alarm they convey and their social and public dangerousness, the legislator has criminalized even the preparatory phase of the criminal offence⁶. Organization in this manner represents the creation of parallel state mechanisms, which disregard the existence, institutions, and normative rules, thereby creating a parallel power or a “state within the state” in the territory where they

1. See Guideline No. 1, dated 10.01.1966, of the Plenum of the Supreme Court. Inter alia, this Guideline reasons that: *“An organized group is distinguished from simple complicity by the fact that it has greater compactness and stability among its members, as well as a higher degree of organization compared to simple complicity, where organization is of a lower degree or is entirely absent.”*

2. See Decision No. 59000-01410-00-2012, Basic Register, No. 00-2014-1935 of Decision (175), dated 16.07.2014, of the Criminal Chamber of the Supreme Court.

3. See Decision No. 28252, dated 07.06.2017, of the Fourth Criminal Section of the Court of Cassation of the Republic of Italy. See Decision No. 36131, dated 25.08.2014, of the Sixth Criminal Section of the Court of Cassation of the Republic of Italy. See Decision dated 22.01.1997, of the Sixth Criminal Section of the Court of Cassation of the Republic of Italy. See also Decision No. 14, dated 17.04.2007, of the Constitutional Court.

4. See “Criminal Law”, General Part, Second Edition, 2019, Assoc. Prof. Dr. Dorina Hoxha, Prof. Dr. Skënder Kaçupi, Prof. Dr. Maksim Haxhia, pp. 500–501.

5. See “Codice Penale Operativo, annotato con dottrina e giurisprudenza”, I Codici Simone OP3, edited by Luciano Ciafardini, Mario Formisano, Rocco Pezzano, Paolo Scognamiglio, 17th Edition, 2021, Edizioni Giuridiche Simone, p. 1299.

6. See “Criminal Law”, General Part, Volume II, Luan Hasneziri, Tirana, 2021, Maluka 2020, p. 3.

operate and over the activity they carry out.¹

Both types of cooperation are found regulated in the Criminal Code of the People's Republic of Albania² (hereinafter, the Criminal Code of 1952). Article 12 of this Code provided that cooperation means the intentional commission of a crime by several persons together or the creation, for this purpose, of a criminal organization. Paragraph two of Article 14 provided that, in determining punishment for accomplices, the court must take into account the degree and character of each person's participation in the commission of the crime. Meanwhile, paragraph three of this provision provided that a participant in a criminal organization bears criminal responsibility not only for crimes in which he has participated directly, but also for crimes committed by other participants of the criminal organization, if he had knowledge that the commission of these crimes was included in the plan of the activity of the criminal organization.

In the Special Part, this Code provided two provisions and criminal offences through which organization or participation in special forms of criminal cooperation was punished. Article 69 of the Criminal Code of 1952, under the title "Organization or participation in armed gangs", provided that:

"Organization or participation in armed gangs that enter the People's Republic of Albania from abroad or that are formed on the territory of the People's Republic of Albania in order to undermine popular power through attacks against state and social institutions, or against representatives of popular power, social workers or other citizens, or through destruction or damage of enterprises and state, social or citizens' property, shall be punished by deprivation of liberty of not less than ten years or by death, and in every case by confiscation of property."

Article 76 of the Criminal Code of 1952, under the title "Participation in an organization against popular power", provided that:

"Participation in a criminal organization which aims at the commission of crimes against the state, provided for by Articles 64 to 75 and Article 78 of this Code, shall be punished as a crime committed on the basis of the provision that provides for the crime."

1. See "Criminal Law", General Part, Volume II, Luan Hasneziri, Tirana, 2021, Maluka 2020, pp. 2 and 91.

2. See Law No. 1470, dated 23.05.1952, published in the Official Gazette No. 15/1952. Pursuant to Article 342 of this Code, this Law entered into force on 01.09.1952.

Ordinary and special criminal cooperation were also provided for and regulated in the Criminal Code of the People's Socialist Republic of Albania¹ (hereinafter, the Criminal Code of 1977). Article 13 of this Code recognized, as a special form of cooperation, the armed gang and the counter-revolutionary organization. Article 15 of this Code regulated the criminal responsibility of accomplices, members of armed gangs and counter-revolutionary organizations, in the same manner as the analogous provision of the Criminal Code of 1952.

In the Special Part of the Criminal Code of 1977 there were two special provisions that provided as a criminal offence the organization or participation in special forms of cooperation. Article 51, under the title "Organization of armed gangs or participation in them", provided that:

"Organization of armed gangs or participation in these gangs, which enter the People's Socialist Republic of Albania from abroad or are formed within the country to commit crimes against the state, shall be punished by deprivation of liberty of not less than ten years or by death."

Article 57 of the Criminal Code of 1977, under the title "Creation of a counter-revolutionary organization or participation in it", provided that:

"Creation of an organization of fascist, anti-democratic and anti-socialist character, or participation in it, to commit crimes against the state, shall be punished by deprivation of liberty of not less than ten years or by death."

In the initial version of the current Criminal Code, special forms of criminal cooperation had different regulations from those provided today, and at that time they were only two. Article 28 of the Criminal Code in its initial version, from entry into force until 2004, under the title "Armed gang and criminal organization", provided that:

"An armed gang and a criminal organization represent forms of special cooperation, distinguished not only by the number of participants, but also by the degree of their organization and stability for committing a number of criminal offences.

The criminal organization represents the highest level of cooperation for carrying out stable criminal activity.

The creation and participation in an armed gang and in criminal organizations, as well as the commission of criminal offences by them, are

1. See Law No. 5591, dated 15.06.1977, as amended by Law No. 6300, dated 27.03.1981. Pursuant to Article 248 of this Code, this Law entered into force on 01.10.1977.

qualified as separate criminal offences and are punished according to the provisions of the Special Part of this Code.

Members of the armed gang and of the criminal organization are responsible for all criminal offences committed by the gang and organization, when they have acted as organizers, executors, instigators, or helpers.

A member of the armed gang and of the criminal organization is exempted from criminal responsibility for participation in them when he repents and assists the competent bodies in preventing the activity and discovering accomplices.

It serves as a circumstance for mitigation of punishment, and in special cases also for reducing it below the minimum provided by law, when a member of the armed gang or criminal organization who has committed criminal offences repents and cooperates with competent bodies for discovering the activity and other accomplices.

The court, when it assesses that the role of the repentant member of the armed gang or criminal organization is not primary, that the offences committed by him are not of pronounced dangerousness, and that the assistance given in discovering the activity and accomplices of the gang or criminal organization is significant, may exempt him from punishment."

Article 333 of the Criminal Code, under the title "Creation of armed gang and criminal organization", from entry into force until the legal amendments of 2004, provided that:

"Creation of an armed gang or criminal organization, or participation in them, with the purpose of committing crimes, shall be punished by five to fifteen years of imprisonment."

Article 334 of the Criminal Code, under the title "Commission of crimes by an armed gang or criminal organization", from entry into force until the legal amendments of 2004, provided that:

"I. Commission of crimes by an armed gang or criminal organization shall be punished according to the relevant criminal provisions, adding to the punishment for the committed crime five additional years of imprisonment, when the reference provision contains imprisonment and a lighter type of punishment, but without exceeding the maximum limit of imprisonment.

II. When the relevant reference provision contains imprisonment or life imprisonment or death, it shall be punished by twenty-five years of

imprisonment or life imprisonment or death.

III. When the relevant reference provision contains only life imprisonment or death, it shall be punished by life imprisonment or death.”

In 1998, a special form of criminal organization was introduced in the Criminal Code, namely the criminal organization that cultivates, produces, manufactures, or traffics narcotic substances¹. Article 284/a of the Criminal Code, under the title “Organization and leadership of criminal organizations”, provides that:

“Organization, leadership, and financing of criminal organizations for the purpose of cultivation, production, manufacture, or illegal trafficking of narcotics shall be punished by imprisonment from 10 to 20 years.

Creation of conditions or facilities for such activity by persons with state functions shall be punished by imprisonment from 5 to 15 years.”

In 2001, as a consequence of the decision of the Constitutional Court abolishing the death penalty, the words “or death” were repealed from Article 334 of the Criminal Code.²

In 2002, the Republic of Albania ratified by law the United Nations Convention against Transnational Organized Crime together with its two additional protocols³. Since letters “a” and “c” of Article 2 of this Convention provide the definition of special forms of criminal cooperation, Article 5, under the title “Criminalization of participation in an organized criminal group”, provides that each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:

a) either or both of the following as criminal offences distinct from those involving the attempt or completion of the criminal activity:

(i) agreement with one or more persons to commit a serious crime for a purpose relating directly or indirectly to obtaining financial or other material benefit, and, where required by domestic law, involving an act undertaken by one of the participants in furtherance of the agreement or involving an organized criminal group;

1. Law No. 8279, dated 15.01.1998, “On Certain Amendments and Additions to Law No. 7895, dated 27.01.1995, ‘On the Criminal Code of the Republic of Albania’”.

2. See Law No. 8733, dated 24.01.2001, “On Certain Additions and Amendments to Law No. 7895, dated 27.01.1995, ‘The Criminal Code of the Republic of Albania’”.

3. See Law No. 8920, dated 11.07.2002, “On the Ratification of the United Nations Convention against Transnational Organized Crime and its Two Additional Protocols”.

(ii) conduct of a person who, with knowledge of the aim and general criminal activity of an organized criminal group or of its intention to commit the crimes in question, takes an active part in:

(a) the criminal activities of the organized criminal group;

(b) other criminal activities of the organized criminal group, knowing that his or her participation will contribute to the achievement of the above-described criminal aim;

b) organizing, directing, aiding, abetting, facilitating, or counselling the commission of a serious crime involving an organized criminal group.

Further, paragraph 3 of this provision provides that States Parties whose domestic law requires the involvement of an organized criminal group for the purposes of offences established in accordance with paragraph 1(a)(i) of this article shall ensure that their domestic law covers all serious crimes involving organized criminal groups.

Taking into account also the international obligations undertaken, as brought to attention above, in 2004 the Criminal Code underwent significant amendments regarding the normative regulation of special criminal cooperation.¹ Article 28 of the Criminal Code, after these legal amendments, provided that:

“1. A criminal organization is the highest form of cooperation, composed of three or more persons, distinguished by a special degree of organization, structuring, stability, duration, as well as by the purpose of committing one or more criminal offences, to realize material and immaterial benefits.

A criminal organization, for the realization of its purposes, uses force, other means of threat, subjugation and silence deriving from its participation and activity, to commit criminal offences, to secure, in any way, administration or control of economic activities, concessions, authorizations, enterprises and public services, to realize unjust benefits or advantages for itself or others, or to prevent or hinder the free exercise of the right to vote during electoral campaigns, as well as other similar activities.

2. A terrorist organization is a special form of criminal organization, aiming at committing violent acts for terrorist purposes, such as overthrow of the constitutional order, serious disturbance of public order, creation of

1. See Law No. 9275, dated 16.09.2004, “On Certain Additions and Amendments to Law No. 7895, dated 27.01.1995, ‘The Criminal Code of the Republic of Albania’, as amended”.

mass fear and insecurity.

3. *An armed gang is a special form of cooperation which, possessing weapons, military ammunition and other necessary means, aims at committing the criminal offences provided in Chapters V, VI and VII of the Special Part of this Code.*

4. *A structured criminal group is a special form of cooperation, composed of three or more persons, for committing one or more criminal offences, to realize material and immaterial benefits.*

A structured criminal group for committing a criminal offence is not formed randomly and is not required to be distinguished by stable membership, division of tasks, organization and developed structuring.

5. *Creation and participation in a criminal organization, terrorist organization, armed gang or structured criminal group are qualified as criminal offences and punished according to the provisions of the Special Part of this Code or other special criminal provisions.*

6. *Members of the criminal organization, terrorist organization, armed gang or structured criminal group are responsible for all criminal offences committed by them in fulfillment of the purposes of their criminal activity.*

7. *A member of a criminal organization, terrorist organization, armed gang or structured criminal group benefits from exemption from punishment or its reduction when he provides assistance considered decisive for the knowledge of their activity, of other accomplices, of assets owned directly or indirectly by them, as well as for investigative activities conducted against criminal organizations, terrorist organizations, armed gangs and structured criminal groups.”¹*

In the legal intervention of 2004, three new legal provisions were also introduced, forming three special criminal offences. Thus, Article 234/a

1. See Decision No. 59000-01410-00-2012, Basic Register, No. 00-2014-1935 of Decision (175), dated 16.07.2014, of the Criminal Chamber of the Supreme Court. Inter alia, it was reasoned that:

“...with Law No. 9275, dated 16.09.2004, there is no change regarding the legal meaning of the ‘armed gang’ as a special form of complicity; this form of complicity remains the same as before these amendments. However, with the aim of avoiding any kind of interpretation, what prior to the amendments introduced by this law—namely, the clarification of the concept of the ‘armed gang’ as a special form of complicity—was carried out case-by-case by judicial practice and legal doctrine, after these amendments the meaning of this concept has been determined by the law itself, specifically by point 3 of Article 28 of the Criminal Code.”

of the Criminal Code, titled “Terrorist organization”, was added, with the following content:

“Creation, organization, leadership and financing of a terrorist organization shall be punished by imprisonment of not less than fifteen years.

Participation in a terrorist organization shall be punished by imprisonment from seven to fifteen years.”

Further, under the title “Armed gang”, Article 234/b of the Criminal Code provided that:

“Creation, organization, leadership and financing of an armed gang shall be punished by imprisonment from ten to fifteen years.

Participation in an armed gang shall be punished by imprisonment from five to ten years.”

Article 333 of the Criminal Code, under the title “Criminal organization”, as amended in 2004, provided that:

“Creation, organization or leadership of criminal organizations shall be punished by imprisonment from five to fifteen years.

Participation in a criminal organization shall be punished by imprisonment from four to eight years.

If the criminal organization is armed and its members possess weapons and explosive materials for purposes of fulfilling its criminal activity, even if these are hidden or kept in separate places, the punishment of imprisonment shall be increased by one third.

When economic activities undertaken or controlled by members of a criminal organization are financed wholly or partially with proceeds of criminal offences, the measure of punishment, according to the above paragraphs of this article, shall be increased by one third up to one half.”

Further, Article 333/a of the Criminal Code, under the title “Structured criminal group”, provided that:

“Creation, organization or leadership of a structured criminal group for committing criminal offences shall be punished by imprisonment from three to eight years.

Participation in a structured criminal group shall be punished by imprisonment from two to five years.”

In 2007, paragraph two of point one of Article 28 of the Criminal Code was repealed. Meanwhile, through this legislative intervention, point two of this provision was amended with the following content:

“2. A terrorist organization is a special form of criminal organization, composed of two or more persons, who have stable cooperation over time, with the aim of committing offences with terrorist purposes.”¹

2. Overlap between the forms of special complicity

i) The narcotics criminal organization as a sub-form of the criminal organization

The first finding that must be brought to attention is the fact that Article 284/a of the Criminal Code, since 1998, has provided for a sub-form of the criminal organization, specifying this sub-type through the specialty of the subject-matter of the commission of the criminal activity, namely the criminal organization which has been created in order to commit criminal offences with the purpose of the cultivation, production, manufacture, or illegal trafficking of narcotics. This criminal offence has been borrowed or has had as a model the sister criminal offence provided by Article 74 of the Decree-Law of the President of the Republic of Italy no. 309/90², a criminal offence which provides as a crime the creation of the criminal organization devoted to the criminal activity of narcotic substances. Meanwhile, when the legislator intervenes in 2004 to transpose into law the Palermo Convention, it results that it is not taken into account that Article 284/a of the Criminal Code already provided one of the special forms of the criminal organization, a sub-form which is omitted from being mentioned in Article 28 of this Code, in which the legislator has wished to codify, in a pilot provision, the forms of special complicity in an exhaustive manner. In parallel with this existing legal regulation, point 1 of Article 284/a of the Criminal Code also introduces the new regulation of the criminal organization, qualifying it as the highest form and consequently of complicity.

Up to this point of the exposition, *prima facie*, there does not appear to be contradictions or a lack of legal coherence, insofar as it can be

1. See Law No. 9686, dated 26.02.2007, “On Certain Additions and Amendments to Law No. 7895, dated 27.01.1995, ‘The Criminal Code of the Republic of Albania’, as amended.”

2. See Decree-Law No. 309, dated 09.10.1990, which entered into force on 15.11.1990. See the Official Gazette where the full and consolidated text of this law is published: <https://www.gazzettaufficiale.it/eli/id/1990/10/31/090G0363/sg>. Accessed on 12.04.2025.

achieved, through concordant and systematic interpretation, to conclude that the criminal organization whose object of activity is narcotics-related activities is a sub-form of the criminal organization and, as such, it too, like all criminal organizations, represents the highest form of special criminal complicity. This means that substantive criminal law has outlined three sub-forms of the criminal organization, namely the general criminal organization (if it may be called as such, in order to distinguish it from the other two sub-forms, the terrorist organization and the narcotics criminal organization). However, immediately in this analysis the fact emerges that, in this manner, the criminal organization established to traffic narcotic substances appears to have higher social dangerousness in law than the general criminal organization or even than the armed gang, even though these two special forms of complicity commit criminal offences that destabilize society and overturn the public legal order. While paragraph one of Article 333 of the Criminal Code provides sanctions from 5 to 15 years, it results that paragraph one of Article 284/a of the Criminal Code provides sanctions from 10 to 20 years. On the other hand, while paragraph one of Article 234/b of the Criminal Code provides sanctions ranging from 10 to 15 years, paragraph one of Article 284/a of the Criminal Code provides sanctions from 10 to 20 years. In this part of the comparative analysis it seems that the criminal organization created to traffic narcotic substances, theoretically and practically, resembles or may resemble more, and has all the characteristics that naturally also has the lower formation of special complicity, namely the structured criminal group.

ii) The narcotics criminal organization and the structured criminal group

In this part of the analysis it is understood that, case by case, an organized criminal formation whose field of activity is only narcotic substances will be in the permanent dilemma of its qualification either under Article 284/a of the Criminal Code or under Article 333/a of the Criminal Code. In this way it is understood that such a manner of constructing substantive criminal law has created premises for unforeseeability and, consequently, also for inaccessibility of positive law, facts which cannot be reconciled with the principle of legal certainty and with the principle of legality,

*or strict legality, of substantive positive criminal law.*¹ Meanwhile, it is observed that the ranges of sanctions in Article 284/a of the Criminal Code in the first paragraph vary from 10 to 20 years of imprisonment and in the second paragraph from 5 to 15 years of imprisonment. On the other hand, the ranges of sanctions in Article 333/a of the Criminal Code vary from 3 to 8 years in the first paragraph and from 2 to 5 years of imprisonment in the second paragraph. This means that there is a drastic difference in the measures and ranges of the sanction of imprisonment for two different forms of special complicity which are not necessarily entirely clear theoretically and even less so practically. Consequently, I assess that in this regard substantive criminal law should have been clearer, more accessible and more foreseeable, to the extent that it would be possible to understand, even with the assistance of a jurist or lawyer, which case, theoretically and practically, will be legally qualified under Article 284/a and which under Article 333/a of the Criminal Code, while adapting and respecting, at the same time, the relevant case-law of the ECtHR².

On the other hand, it is observed that Article 284/a of the Criminal Code has not provided special regulations for the criminal offence of ordinary participation in the criminal organization operating in narcotics-related activities, unlike what the second paragraphs of Articles 234/a, 234/b, 333 and 333/a of the Criminal Code have done. In these conditions, the legal omission must lead to the conclusion that attachment to such a special criminal organization must be legally qualified as a formal criminal offence committed pursuant to the provision of paragraph two of Article 333 of the Criminal Code, namely pursuant to the provision of the general criminal offence of participation in the general criminal organization. In this part, it appears that there is no ambiguity as regards the legal qualification of participation in a criminal organization with the purpose of committing criminal offences in the field of narcotic substances. In this part of the legal analysis, a legal anomaly of proportionality in the statutory provision of sanctions is observed, since from 10 to 20 years of imprisonment for the

1. See Florjan Kalaja, “Constitutional Dilemmas III”, Chapter III “Constitutional Dilemma on Criminal Punishment in Special Complicity”, Enja Printing House Publications, Tirana, 2023.

2. See *S.W. v. the United Kingdom*, ECtHR judgment of 22 November 1995, Series A no. 335-B. See *Streletz, Kessler and Krenz v. Germany*, Applications nos. 34044/96 and others, Grand Chamber judgment of 22 March 2001, ECHR 2001-II. See *Kokkinakis v. Greece*, ECtHR judgment of 25 May 1993, §52, Series A no. 260-A.

organizers, leaders or financiers of this criminal formation it is reduced to 4 to 8 years for ordinary participants, a reduction which is illogical in light of the manner in which the structures of sanctions are composed in Articles 234/a, 234/b, 333 and 333/a of the Criminal Code. However, this issue will remain a primary object of the legal analysis of the subsequent sub-issue of this paper.

iii) The terrorist organization and the armed gang

On the other hand, I must bring to attention that there is a theoretical overlap between the field of operation of the criminal formation of the terrorist organization and the armed gang, pursuant to the second and third paragraphs of Article 28 of the Criminal Code. Thus, it is observed that in the second paragraph of Article 28 of the Criminal Code, the part in which the subject-matter of the criminal activity that typifies a criminal organization as terrorist is regulated, it is provided that the stable cooperation over time of two or more persons is created with the special objective of committing criminal offences with terrorist purposes. The phrase “criminal offences with terrorist purposes” in the Criminal Code is first mentioned in Article 7/a (Universal jurisdiction), in the second paragraph of Article 28, and further in the title of Chapter VII of the Criminal Code, including therein the exhaustive and completed list of criminal offences considered as terrorist, a Chapter which includes the criminal offences provided from Article 230 to Article 234/b of the Criminal Code¹. From this exposition it is initially understood beyond any

1. Article 230 provides a set of criminal offence figures under the title “Offences with terrorist purposes.” Article 230/a provides for the criminal offence of “Financing of terrorism.” Article 230/b provides for the criminal offence of “Concealment of funds and other assets that finance terrorism.” Article 230/c provides for the criminal offence of “Provision of information by persons exercising public functions or in the exercise of duty or profession.” Article 230/ç provides for the criminal offence of “Performance of services and actions with designated persons.” Article 231 provides for the criminal offence of “Recruitment of persons for the commission of offences with terrorist purposes or for the financing of terrorism.” Article 232 provides for the criminal offence of “Training for the commission of offences with terrorist purposes.” Article 232/a provides for the criminal offence of “Incitement, public calls, and propaganda for the commission of offences with terrorist purposes.” Article 232/b provides for the criminal offence of “Threats to commit offences with terrorist purposes.” Article 233 provides for the criminal offence of “Creation of armed crowds.” Article 234 provides for the criminal offence of “Production of military weapons.” Article 234/a provides for the criminal offence of “Terrorist

doubt that the inclusion of Articles 234/a and 234/b of the Criminal Code in this Chapter has no meaning whatsoever and runs contrary to the logic of the legislative technique that the legislator has chosen to construct the Criminal Code. In this sense, it is assessed that Article 234/a, Article 234/b, and Article 284/a of the Criminal Code should have been placed alongside Articles 333 and 333/a of the Criminal Code, grouping all the formal danger offences of special complicity into one Chapter, namely Chapter XI of the Criminal Code. Thus, this task now belongs to the legislator to take into account in the legislative technique through which this respective part will be regulated in the draft of the new Criminal Code.

On the other hand, the legal criteria that distinguish a formation of special complicity as an armed gang, pursuant to the third paragraph of Article 28 of the Criminal Code, are described by formulating that the armed gang is a special form of cooperation which, by possessing weapons, military ammunition and other necessary means, aims at committing the criminal offences provided in Chapters V, VI and VII of the Special Part of this Code.

The first contrast of this provision is the absence of a legal quorum number to constitute the armed gang, unlike what the first paragraph of Article 28 of the Criminal Code does for the general criminal organization, providing the required criminal quorum number as three persons, and likewise as the fourth paragraph of Article 28 of the Criminal Code has also determined, providing that the quorum necessary to have a structured criminal group is three persons. On the other hand, unlike what the first and fourth paragraphs of Article 28 of the Criminal Code have provided regarding the mandatory legal quorum of three persons, the second paragraph of this provision provides that the necessary and mandatory quorum to have a terrorist organization, as the highest form of special complicity, is the number of two persons. However, unlike what is provided in these respective parts of the first, second and fourth paragraphs of Article 28 of the Criminal Code, the third paragraph of this provision omits to determine a necessary and mandatory quorum number of accomplices to have the first legal premise of the existence of the criminal formation of the armed gang, leaving as a task for the applicators or interpreters of the law the identification of this number. Taking into account the unique specificities of the highest form of social dangerousness of special complicity, namely the terrorist organization, and organisation.” Article 234/b provides for the criminal offence of “Armed band.”

on the other hand the commonalities that the first and fourth paragraphs have in determining the necessary and mandatory criminal quorum for the existence of the general criminal organization, the narcotics criminal organization and the structured criminal group, I assess that it must be concluded that the necessary and mandatory criminal quorum number for the potential existence of an armed gang is necessarily three persons.

On the other hand, it is observed that there is again an omission in the third paragraph of Article 28 of the Criminal Code to qualify specifics or characteristics of the special complicity of the armed gang in relation to the explicit provisions of the first, second and fourth paragraphs of this provision. Thus, in the first paragraph, Article 28 of the Criminal Code has required that the cooperation of three or more persons be characterized and distinguished by the special degree of organization, structuring, stability, duration, as well as by the purpose of committing one or more criminal offences, in order to realize material and immaterial benefits. On the other hand, the second paragraph of this provision provides that the cooperation of two or more persons in a terrorist organization must be characterized by stable cooperation over time, with the aim of committing offences with terrorist purposes. Likewise, for the existence of the lower form of special complicity, namely the structured criminal group, the fourth paragraph of Article 28 of the Criminal Code has required the cooperation of three persons for committing a criminal offence, a cooperation which is not formed randomly and which is not necessary to be distinguished by stable membership, division of tasks, organization and developed structuring, aiming at the creation of criminal financial benefits. In the same provision, nothing concrete is provided regarding the nature and characteristics of the special organization of the criminal formation of the armed gang, with substantive criminal law limiting itself only to evidencing the fact of possession of weapons, military ammunition or other means, and at the same time providing that the purpose of the creation, organization and activity of these formations is the commission of the criminal offences provided in Chapters V, VI and VII of the Special Part of the Criminal Code.

I assess that this manner of regulating the first, second and fourth paragraphs, and at the same time this legal omission of the third paragraph of Article 28 of the Criminal Code regarding the special characteristics of the organization and structuring of the armed gang, lacks legal coherence, and the legislative technique of the third paragraph appears quite problematic in its application in practice. Substantive criminal law in this part must be clear

and unequivocal and, pursuant to the second paragraph of Article 1/c of the Criminal Code, while applying at the same time Article 29 of the Constitution and Article 7 of the ECHR¹, it has provided that analogy in the application of substantive criminal law is not permitted. However, in this case I assess that the development of the meaning of substantive criminal law through the dynamics of jurisprudential interpretation and the development of judicial practice is necessary and indispensable. This means that the legal omission regarding the characteristics of the organization, functioning and structuring of the armed gang, beyond what is sanctioned by the third paragraph of Article 28 of the Criminal Code, must be complemented through judicial legal reasoning.²

This part of the legal reasoning must take into account the hierarchy according to the importance of the special forms of complicity, concluding logically and preliminarily that the armed gang must be organized and structured at least more than a structured criminal group. This means that its organization and structure must not only not be created randomly, but must also be more stable over time, in space, in the roles of each of its members, and must also function in a manner similar to the criminal organization or even to the terrorist organization. These characteristics of structuring and organization of the armed gang are logically a natural consequence of the criminal reason why they have been created, taking into account which criminal offences they aim to realize, their consequences and the high dangerousness they represent.

On the other hand, it is observed that the second paragraph and the third paragraph of Article 28 of the Criminal Code, in the manner in which they are formulated, specifically in the part of identifying the criminal offences

1. See *Coëme and Others v. Belgium*, Applications nos. 32492/96, 32547/96, 32548/96, 33209/96 and 33210/96, §145, ECtHR judgment, ECHR 2000-VII. See also *Başkaya and Okçuoğlu v. Turkey*, Applications nos. 23536/94 and 24408/94, §§42–43, ECtHR judgment, ECHR 1999-IV.

2. See §57 in *Martirosyan v. Armenia*, Application no. 23341/06, ECtHR (Third Section) judgment of 5 February 2013. See *K.-H. W. v. Germany*, Grand Chamber judgment of 22 March 2001, Application no. 37201/97, §45, ECHR 2001-II. See *Dallas v. the United Kingdom*, Application no. 38395/12, ECtHR (First Section) judgment of 11 February 2016, §77. See also Advisory Opinion of the Grand Chamber of the ECtHR of 29 May 2020, “On the use of the technique of ‘reference to legislation’ in defining a criminal offence and the criteria for comparing the criminal law in force at the time of the offence and the amended criminal law”, P16-2019-001.

for which the terrorist organization and the armed gang are created, creates factual and legal premises for confusion in judicial practice, since in many of the identified criminal offences these two different criminal formations of special complicity overlap. Thus, the second paragraph of Article 28 of the Criminal Code provides that the terrorist organization aims at committing one or more criminal offences with terrorist purposes. On the other hand, the third paragraph of Article 28 of the Criminal Code provides that the armed gang is created with the special purpose that, through weapons, military ammunition or other means, it commits the criminal offences provided in Chapters V, VI and VII of the Special Part of the Criminal Code.

It must be brought to attention that criminal offences with terrorist purposes have been placed by the legislator precisely in Chapter VII of the Criminal Code and that, in this manner, substantive criminal law provides that criminal offences with terrorist purposes are the object, simultaneously, of criminal activity both of the terrorist organization and of the armed gang. I assess that this overlap of substantive criminal law renders it unforeseeable and inaccessible at the same time, thereby violating the constitutional standards of the principle of legal certainty¹, contrary to Articles 4 and 29 of the Constitution, Article 7 of the ECHR, and Articles 2 and 3 of the Criminal Code.

In order to resolve this constitutional, conventional and legal problematic of the second and third paragraphs of Article 28 of the Criminal Code, it is necessarily required that the legislator intervene through legal amendments, in order to remove from the third paragraph of this provision the part “and VII”. This paragraph of Article 28 of the Criminal Code must not include within itself the criminal offences that are the exclusive subject-matter of the criminal activity of the highest form of special complicity, namely the terrorist organization. If in the future the legislative initiative of presenting the draft of the new Criminal Code is concretely pursued, then this constitutional, conventional and legal task remains for

1. See Decision no. 24, dated 4 May 2021, of the Constitutional Court. See also *Myumyun v. Bulgaria*, Application no. 67258/13, §76, ECtHR judgment of 3 November 2015. See also *Başkaya and Okçuoğlu v. Turkey*, Applications nos. 23536/94 and 24408/94, §36, Grand Chamber judgment, ECHR 1999-IV. See *Kononov v. Latvia*, Application no. 36376/04, §185, Grand Chamber judgment of 17 May 2010, ECHR 2010. See also *Del Río Prada v. Spain*, Application no. 42750/09, §78, Grand Chamber judgment, ECHR 2013.

the legislator to resolve in the manner in which it will regulate the forms of special complicity in this legal corpus. Nevertheless, I assess that, even if the legislator does not act in the meantime, judicial practice in this regard must develop in such a manner as to address the solution concluded above in the way the indictment is formulated, the historical criminal fact is legally qualified, and the punishment is determined by the court.¹ In this part of the legal analysis and the suggested legal solution, I must bring to attention that the constitutional role of the courts includes, inter alia, the development of law, and that within this concept or constitutional role is included the progressive development of criminal law through judicial law-making or jurisprudence, this contribution of jurisprudence to law-making being recognized and considered also by the ECtHR as one of the most important parts of the legal tradition of the member States of the Council of Europe.² In any case, the limit of the development of criminal law through jurisprudence is the inviolability of the accessibility and reasonable foreseeability of judicial interpretation.³

This means that the criminal offences provided in Chapter VII of the Criminal Code, namely criminal offences with terrorist purposes, undertaken by two or more persons who have stable cooperation between them and this cooperation has as a credential the special criminal purpose of committing these criminal offences, must in every case be concluded to have been committed by a terrorist organization and not by an armed gang. This conclusion applies also when special complicity is realized by more than two persons and they possess weapons and military ammunition and other necessary means. This criminal formation shall in every case be qualified pursuant to the second paragraph of Article 28 of the Criminal Code, and the criminal offence of its leadership, organization, financing or participation shall be legally qualified and shall be further punished pursuant to the provision of Article 234/a of the Criminal Code.

1. See *Cantoni v. France*, ECtHR judgment of 15 November 1996, §29, Reports of Judgments and Decisions 1996-V. See also *E.K. v. Turkey*, Application no. 28496/95, §51, ECtHR judgment of 7 February 2002.

2. See *Kruslin v. France*, ECtHR judgment of 24 April 1990, §29, Series A no. 176-A.

3. See *Pessino v. France*, Application no. 40403/02, §§35–36, ECtHR judgment of 10 October 2006. See *Dragotoniū and Militaru-Pidhorni v. Romania*, Applications nos. 77193/01 and 77196/01, §§43–44, ECtHR judgment of 24 May 2007. See also *Alimuçaj v. Albania*, Application no. 20134/05, §§154–162, ECtHR judgment of 7 February 2012.

iv) The criminal organization and the armed gang

On the other hand, I observe that the other factual and legal premise for having ambiguity or confusion in judicial practice regarding the legal qualification of a formation of special complicity derives from the manner in which the third paragraph of Article 28 of the Criminal Code is formulated in the individualization of the armed gang, and the qualifying element of the third paragraph of Article 333, linked to the first paragraph of Article 28 of the Criminal Code, in the individualization of the criminal organization. Thus, the most qualifying objective legal element of the armed gang, pursuant to the third paragraph of Article 28 of the Criminal Code, is the fact that this criminal formation of three or more persons possesses weapons and military ammunition and other means for the realization of their objectives. On the other hand, the criminal organization formed of three or more persons, distinguished by the special degree of organization, structuring, stability and duration, characterized by the purpose of committing one or more criminal offences in order to realize material and immaterial benefits, pursuant to the third paragraph of Article 333 of the Criminal Code, in the event that it is armed and its members possess weapons and explosive materials for purposes of fulfilling its criminal activity, even if they are hidden or kept in separate places, constitutes a qualifying circumstance and in these cases the punishment is increased by one third. I assess that, in this manner in which the first paragraph of Article 28 is drafted in relation to the third paragraph of Article 28 of the Criminal Code on the one hand, and on the other hand the manner in which the third paragraph of Article 28 of the Criminal Code is formulated, create premises for the unforeseeability and inaccessibility of substantive criminal law and consequently the violation of the constitutional principle of legal certainty.¹

On the one hand, it is observed that the legislator does not explicitly exclude the field of criminal activity of the armed gang, namely Chapters V, VI and VII of the Criminal Code, from the field of criminal activity of the criminal organization, formulated in a completely general and all-inclusive manner in the first paragraph of Article 28 of the Criminal

1. See *Huhtamäki v. Finland*, Application no. 54468/09, §41, ECtHR judgment of 6 March 2012. See Florjan Kalaja, *Constitutional Dilemmas I*, “Fan Noli” Publishing House, January 2016, Chapter IV, entitled “Parallel Reasoning of the Minority in Unifying Criminal Decision No. 2/2014”.

Code. However, taking into account how the second paragraph of this provision is regulated regarding the special subject-matter of the activity of the terrorist organization, and adding also the conclusion reached above regarding the solution of the overlap between the armed gang and the criminal organization, I assess that from this further overlap of the criminal activities of the two different formations of special complicity must be removed precisely the criminal offences provided in Chapter VII of the Criminal Code. If an organized criminal formation commits these criminal offences, it must be concluded with certainty that there is neither a general criminal organization nor an armed gang, but a terrorist organization. However, this partial solution does not resolve the problematic raised above in its entirety. The premises for overlap and confusion of the legal qualification of the first paragraph of Article 28 in relation to Article 333 of the Criminal Code on the one hand, and on the other hand of the third paragraph of Article 28 in relation to Article 234/b of the Criminal Code, are deeply problematic with regard to the criminal offences provided by Chapters V and VI of the Criminal Code.

Consequently, I assess that whenever such legal discussions are raised in judicial practice, the concrete solutions of the courts will be highly debatable, under the conditions of this overlapping legal regulation. I consider necessary and indispensable the intervention of the legislator in Article 28 of the Criminal Code, in order to clarify the special form of complicity of the armed gang and the general criminal organization. I assess that an acceptable and thus also suggestible solution could be that the criminal offences provided by Chapters V and VI of the Criminal Code serve as legal credentials of qualification exclusively for the armed gang. In this way, substantive criminal law, whether the Criminal Code or the draft of the new Criminal Code, will offer a legal solution that will promise both accessibility and foreseeability of criminal law in this matter.

v) Participation of the public official as a qualifying circumstance

Another contrast of legal regulation in the Criminal Code, specifically in all special provisions where as a formal criminal offence are provided the organization, leadership, financing, or participation in special criminal formations, is the lack of legal symmetry in the regulation of the paragraphs that provide qualifying circumstances and consequently special forms of these criminal offences. Specifically and initially, it is brought to attention

that in the second paragraph of Article 284/a of the Criminal Code, namely the special form of the criminal organization created and operating in the activity of narcotic substances, it is provided that the creation of conditions or facilities for the activity of the criminal organization in the cultivation, manufacture, or illegal trafficking of narcotics by persons with state functions is punished by imprisonment from 5 years to 15 years. In this way it is understood that the legislator has specified in a special paragraph the participation of official persons in the criminal activity of the criminal organization and their attachment to these criminal formations. However, this manner of special criminalization of this participation in criminal activity, by providing as a special qualifying circumstance the endowment of the participant with the credentials of public power, results to be a unique feature only of the criminal offence of the criminal organization for narcotic substances, since such a legislative technique of criminalizing the participation of these special subjects does not appear in the criminal offence of the terrorist organization, provided by Article 234/a of the Criminal Code, in the criminal offence of the armed gang, provided by Article 234/b of the Criminal Code, in the criminal offence of the general criminal organization, provided by Article 333 of the Criminal Code, and in the criminal offence of the structured criminal group, provided by Article 333/a of the Criminal Code.

In fact, in each of the special forms of special complicity there exists the possibility that the participating subjects are public officials, who may also serve as helpers in the criminal activity exercised by the organized criminal formation, as is the legislative logic of the second paragraph of Article 284/a of the Criminal Code. But the legislator has chosen not to qualify this participation of this official—who, as a credential and reason for his attachment to these formations, has precisely his quality as an official who exercises a portion of public power¹—as a qualifying circumstance of a special form of participation in criminal formations, namely in the terrorist organization, the armed gang, the general criminal organization, or the structured criminal group, providing it in this manner only in the second paragraph of Article 284/a of the Criminal Code. At this point in the development of the analysis, reasonably and naturally the question arises as to what is the special ratio of such a legal choice?

1. See Decision no. 26 (87-2025-119), dated 9 April 2025, of the Special Court of Appeal for Corruption and Organised Crime.

I assess that this question cannot receive a positive answer argued logically and legally. For the same reasons why the legislator has decided to penalize in a special manner the participation of the public official in the narcotics criminal organization, it should have criminalized in a special manner also his participation in the terrorist organization, the general criminal organization, the armed gang and the structured criminal group, providing accordingly, as a special paragraph, this figure of criminal offence in Articles 234/a, 234/b, 333 and 333/a of the Criminal Code. More than a regulation with a special purpose in 1998¹, I assess that the provision of the second paragraph of Article 284/a of the Criminal Code and its non-repetition as a special figure of participation of the state official in criminal formations in Articles 234/a, 234/b, 333 and 333/a of the Criminal Code is an indicator of the lack of coherence of legal regulation over the years on the part of the legislator and also an indicator of episodic and non-systematic interventions in the Criminal Code², interventions which only lower the standard of cohesion of regulation and codification of substantive criminal law.

Consequently, for all that was reasoned above, I assess that, for the same reasons why participation of the public official in the narcotics criminal organization in the second paragraph of Article 284/a of the Criminal Code is provided as a qualifying circumstance and a special figure of criminal offence, the legislator should have provided, as a qualifying circumstance and a special figure of criminal offence, his participation also in the terrorist organization, in Article 234/a of the Criminal Code; the armed gang, in Article 234/b of the Criminal Code; the general criminal organization, in Article 333 of the Criminal Code; and the structured criminal group, in Article 333/a of the Criminal Code. Unlike issues of mis-regulation or completion of omissions of regulation of criminal law through the development of jurisprudence, I assess that this omission of Articles 234/a, 234/b, 333 and 333/a of the Criminal Code cannot be resolved through interpretation or application by analogy of the second paragraph of Article 284/a of the Criminal Code. Article 29 of the Constitution, Article 7 of the ECHR, and the second paragraph of Article 1/c of the Criminal Code

1. See Law no. 8279, dated 15 January 1998.

2. See, by analogy, the reasoning considerations of Decision no. 9, dated 26 February 2016, of the Constitutional Court concerning the legislative amendments over the years to Article 278 of the Criminal Code.

prohibit the application of criminal law by analogy.¹ Under these conditions, I assess that this task now remains to be addressed with concrete solutions within the framework of future amendments of the Criminal Code or in the draft of the new Criminal Code.

vi) The absence of the criminal offence figure of participation in Article 284/a of the Criminal Code

From the comparative analysis of Articles 234/a, 234/b, 284/a, 333 and 333/a of the Criminal Code, it is observed that Article 284/a of the Criminal Code has another difference in relation to the sister provisions. While the structure of Articles 234/a, 234/b, 333 and 333/a of the Criminal Code is built in such a manner that in the first paragraph they include the figures of the criminal offences of organization, leadership, creation or financing of the special criminal formations, placing in this paragraph their leading subjects, in the second paragraph of the provision participation of subjects in special complicity has been criminalized as a special figure of the criminal offence, thereby creating the legal basis to hold criminally liable any person who participates in them. Meanwhile, Article 284/a of the Criminal Code lacks such a regulation of the general penalization of participation in the narcotics criminal organization, having—again in distinction from the other sister provisions—the penalization of participation in it only for subjects who exercise public functions.

Under these conditions, there is raised for discussion and further for legal solution the issue of how the historical criminal fact of participation of an ordinary subject in the narcotics criminal organization should be legally qualified, in the conditions when Article 284/a of the Criminal Code has no explicit legal provision. I assess that the reasoning and the legal solution in this case should start from the legal argument that the narcotics criminal organization provided by Article 284/a of the Criminal Code is a special form of the criminal organization, provided and regulated

1. See *Del Río Prada v. Spain*, Application no. 42750/09, Grand Chamber judgment of 21 October 2013. See *Vasiliauskas v. Lithuania*, Application no. 35343/05, Grand Chamber judgment of 20 October 2015. See also Advisory Opinion of the Grand Chamber of the ECtHR of 26 April 2022, “On the application of statutory limitation to criminal prosecution, execution and punishment for offences amounting in substance to acts of torture”, issued upon request P16-2021-001 of the Court of Cassation of the Republic of Armenia.

in a general manner in the first paragraph of Article 28 and in Article 333 of the Criminal Code. Consequently, it must be concluded that point 5 of Article 28 of the Criminal Code applies, according to which creation and participation in a criminal organization, terrorist organization, armed gang or structured criminal group are qualified as criminal offences and are punished according to the provisions of the Special Part of this Code or other special criminal provisions. This means that any participation in a special criminal formation must be qualified as a criminal offence and further punished according to a concrete criminal offence provided in the Special Part of the Criminal Code, and that from this absolute rule there can be no exception for non-criminalization of the historical criminal fact of participation of ordinary subjects in the narcotics criminal organization.

Consequently, after reaching the above conclusion and for the sake of applying point 5 of Article 28 of the Criminal Code, it must be concluded that the omission of Article 284/a of the Criminal Code to criminalize as a criminal offence the participation of ordinary subjects in the narcotics criminal organization must be complemented by the application of the second paragraph of Article 333 of the Criminal Code. This means that the participation of an ordinary subject in the narcotics criminal organization must be qualified as a criminal offence pursuant to the provision of the second paragraph of Article 333 of the Criminal Code.

vii) Complementary application of the third and fourth paragraphs of Article 333 to Articles 234/a and 284/a of the Criminal Code

The next problem that I observe in the regulation of the special provisions on the criminalization of the criminal offences of creation and participation in formations of special complicity in the Special Part of the Criminal Code relates to the contrast that exists in the special and general regulation of the criminal organization in Articles 234/a, 284/a and 333 of the Criminal Code on the one hand, and on the other hand to the same contrasts of legal regulation that exist between the structure of Article 333 in relation to that of Articles 234/b and 333/a of the Criminal Code. It must be brought to attention that this legislative technique, namely that of constructing the different paragraphs of the formal criminal offence of each of the formations of special complicity, by using as qualifying elements not only creation, organization, leadership and participation, but also the possession of weapons, explosive substances and/or the full

or partial financing of the activity or economic activities owned by these formations with proceeds of criminal offences, is a special characteristic only of Article 333 of the Criminal Code. Article 234/a, Article 234/b, Article 284/a and Article 333/a of the Criminal Code are formulated only in two paragraphs, placing in the first paragraph the figures of the criminal offence of leadership, creation and organization or financing of the special criminal formations and then the figures of the criminal offence of participation in these formations. Taking into account the legal solution concluded above regarding the legislator's omission to provide, as a qualifying circumstance, the third and fourth paragraphs of Article 333 also in Article 234/a and in Article 284/a of the Criminal Code, it must be further pursued with the complementary application of the increases of punishment for the existence of these qualifying circumstances also to the measures of punishment that these provisions provide.

In this issue for solution, the question is also raised whether, if the terrorist organization or the narcotics criminal organization possesses weapons, military ammunition or explosive substances, the commission of the criminal offences provided by Articles 234/a and 284/a of the Criminal Code should be qualified or accompanied by the aggravating circumstance provided by letter "i" of Article 50 of this Code. It results that in these parts of the provision, as an aggravating and qualifying circumstance, is provided the commission of the criminal offence while possessing explosive substances, military ammunition or weapons. The same debate is raised for solution also regarding the application itself of the third paragraph of Article 333 of the Criminal Code in relation to letter "i" of Article 50 of this Code.

Unlike the preceding debate on the complementary application of the second paragraph of Article 333 also for the participation of ordinary subjects in the narcotics criminal organization pursuant to Article 284/a of the Criminal Code—a debate which was normally resolved by the provision of point 5 of Article 28 of the Criminal Code—I assess that the solution of this next debate is more complicated. Certainly, point 5 of Article 28 of the Criminal Code has relevance, since this provision establishes the general and principled rule that each form of special complicity must be punished as a formal criminal offence by the provisions of the Special Part of the Criminal Code. But in this concrete legal issue raised for discussion, this rule is not sufficient, since it is now raised for discussion whether the special

increases of punishment, pursuant to the third and fourth paragraphs of Article 333 of the Criminal Code, which relate to the existence of specific aggravating circumstances in the configuration of the criminal offence of creation or participation in a criminal organization, apply or do not apply in a complementary manner for the qualification of the criminal offence provided by Articles 234/a, 234/b, 284/a and 333/a of the Criminal Code.

Since, on the one hand, Article 28 of the Criminal Code provides that the terrorist organization is a special form of the criminal organization, and on the other hand Article 284/a of the Criminal Code creates another special form of the criminal organization, namely the narcotics criminal organization, there arises the inevitable legal debate, of essential theoretical and practical legal value, whether the third and fourth paragraphs of Article 333 of the Criminal Code apply cumulatively and in a complementary manner as qualifying elements of the criminal offence provided by Articles 234/a and 284/a of the Criminal Code. At the same time, under the same legal logic, it is raised for discussion whether the increases of the minimum up to the maximum punishment provided by the third and/or fourth paragraph of Article 333 of the Criminal Code will be attached through legal addition to each minimum and maximum measure of the sanction provided respectively by the first and second paragraphs of Articles 234/a and 284/a of the Criminal Code.

Consequently, I assess that the first legal conclusion for resolving the problematic raised above relates to the complementary application or not of the third and fourth paragraphs of Article 333 of the Criminal Code for criminal offences that provide the criminalization of forms of special complicity other than criminal organizations. This means that it is legally impossible and that it would constitute application of criminal law by analogy, contrary to what is sanctioned by Article 29 of the Constitution, Article 7 of the ECHR and the second paragraph of Article 1/c of the Criminal Code, for the third and fourth paragraphs of Article 333 of the Criminal Code to serve as a legal basis for complementing the omission of Articles 234/b and 333/a of the Criminal Code. Consequently, it is concluded that the criminal offences of creation and participation in an armed gang and in a structured criminal group cannot be qualified as being committed under the aggravating circumstance of the third and/or fourth paragraph of Article 333 of the Criminal Code, and consequently these increases of punishment cannot be attached to the measures of punishment

provided in each paragraph of Article 234/b and Article 333/a of the Criminal Code.

Now it remains to resolve the constitutional, conventional and legal dilemma whether the legislative omission of Article 234/a and Article 284/a of the Criminal Code can be complemented by the application of the third and/or fourth paragraph of Article 333 of the Criminal Code, given that all three of these criminal offences of the Special Part are linked with the first and second paragraphs of Article 28 of the Criminal Code and that they are sub-forms of the same parent form of special complicity, namely the criminal organization.

A formal and strict legal interpretation of Articles 234/a, 284/a and 333 of the Criminal Code would conclude that there is no organic link between Article 234/a and Article 333 of the Criminal Code on the one hand, and on the other hand there is no organic link between Article 284/a and Article 333 of the Criminal Code, concluding that each of them represents an autonomous and independent criminal offence. In this way, the conclusion of this interpretation would be that the figures of the criminal offence provided by the first or second paragraph of Article 234/a cannot be legally qualified with the third and/or fourth paragraph of Article 333 of the Criminal Code, just as the figures of the criminal offence provided by the first or second paragraph of Article 284/a of the Criminal Code cannot be legally qualified with the third and/or fourth paragraph of Article 333 of the Criminal Code. In this way, an unequivocal answer and conclusion would also be given to the subsequent question raised above, concluding that the increases of punishment provided in the third and/or fourth paragraph of Article 333 of the Criminal Code cannot in any way be attached either to the first paragraph or to the second paragraph of Article 234/a, nor to the first paragraph or to the second paragraph of Article 284/a of the Criminal Code.

However, it must be brought to attention that in this legal debate there is room also for another manner of interpretation and consequently also for a legal solution to this problematic created by the provisions of the Criminal Code. This manner of interpretation and legal solution would start from the general regulation and the principle sanctioned in the first and second paragraphs of Article 28 linked with Article 284/a of the Criminal Code, where it is provided that the criminal organization is the highest form of special complicity and that the terrorist organization is a special form of the

criminal organization and that, on the other hand, another special form of the criminal organization is the narcotics criminal organization, as provided by Article 284/a of the Criminal Code. In this manner, the interpretation and legal solution of this problematic would continue with the reasoning that the first paragraph of Article 28 of the Criminal Code as well as Article 333 of the Criminal Code are nothing other than general legal provisions or regulations (*lex generalis*) and complementary to be applied alongside the special legal provisions, namely the second paragraph of Article 28, Article 234/a and Article 284/a of the Criminal Code (*lex specialis*).

This means that everything not regulated in the special provisions must be complemented by the general provisions and that the latter will not find application insofar as the special provisions have regulated differently and in a special manner. Consequently, this manner of reasoning would conclude that the first and second paragraphs respectively of Articles 234/a and 284/a of the Criminal Code, when it is proven that they have been committed under the qualifying objective elements pursuant to the third and/or fourth paragraph of Article 333 of the Criminal Code, must be qualified cumulatively as committed also pursuant to these qualifying paragraphs. Under the same legal logic of this legal reasoning, it will be concluded that in these cases the increases of punishment indicated above of the minimum or maximum measure of the punishment of imprisonment of the third and/or fourth paragraphs of Article 333 of the Criminal Code will be legally attached to the minimum and up to the maximum measure of the punishments provided respectively in the first and second paragraphs of Article 234/a or Article 284/a of the Criminal Code.

I assess that both the general criminal organization and its two sub-forms, respectively the terrorist organization and the narcotics criminal organization, are criminal formations that may act armed, possess weapons and/or explosive substances, to enable the achievement of their purposes. On the other hand, the terrorist organization and the narcotics criminal organization, like the general criminal organization, may create economic activities financed by the proceeds of the criminal activity they carry out. Likewise, the terrorist organization and the narcotics criminal organization, like the general criminal organization, may exercise criminal activity simultaneously both armed and financed in the economic activities they own by proceeds of criminal offences. Consequently, despite this lack of cohesion in the regulation of Articles 234/a and 284/a in relation to

Article 333 of the Criminal Code, I assess that it cannot be allowed that a strict and formal interpretation of substantive criminal law prevails in the concrete case over its substantive and teleological interpretation.

If this were to happen, then the results would disrupt the balance of proportionality of the legislator's penal punitive policy, since the general form of the criminal organization would be punished more than its special and qualified forms. This manner of interpretation in a relationship of complementarity between Article 333 and Articles 234/a and 284/a of the Criminal Code would enable the cohesion of the provisions of substantive criminal law regarding the normative regulation, in general, of the criminal organization.

Consequently, for all that was argued above, I assess that one naturally arrives at the conclusion of complementary interpretation of Article 333 and Articles 234/a and 284/a of the Criminal Code, confirming the rule that, insofar as it is not otherwise provided by Articles 234/a and 284/a of the Criminal Code (*lex specialis*), Article 333 of the Criminal Code (*lex generalis*) shall be applied in a complementary manner. This means that the third and/or fourth paragraph of Article 333 of the Criminal Code will serve as a legal basis for complementing Articles 234/a and 284/a of the Criminal Code, qualifying accordingly each of the paragraphs of these special provisions under the aggravating circumstances of the general provision that penalizes the criminal organization. Consequently, the increase of punishment of these paragraphs of the general provision shall also be applied to the measure of punishment provided by each paragraph of Articles 234/a and 284/a of the Criminal Code.

On the other hand, the concurrence of the aggravating circumstance pursuant to letter "i" of Article 50 of the Criminal Code and the aggravating and qualifying circumstance provided by the third paragraph of Article 333 of the Criminal Code cannot be applied simultaneously, since they exclude one another for the effects of the application of the constitutional, conventional and legal principle *ne bis in idem*, provided by Article 34 of the Constitution, Article 4 of Protocol No. 7 to the ECHR and Article 7 of the Code of Criminal Procedure. Taking into account also the relevant case-law of the Criminal Chamber of the Supreme Court¹ on this issue, it

1. See Unifying Criminal Decision no. 56280-01562-00-2018 (Fundamental Register), Decision no. 00-2024-2155 (no. 107), dated 24 April 2024, of the Criminal Chamber of the Supreme Court. See paragraph 26 of Decision no. 55302-00869-00-2019 (Fundamental

must be concluded that subjects cannot bear criminal liability twice for the same historical criminal facts and that applying twice in the same case these substantive legal provisions would violate precisely this principle. In this way, one arrives at the conclusion that in these cases the aggravating circumstance “when the offence has been committed by using weapons, military ammunition, explosive, incendiary, poisonous and radioactive substances”, pursuant to letter “i” of Article 50 of the Criminal Code, cannot find application, insofar as the objective elements of the offence included in this aggravating circumstance coincide with the objective elements of the aggravating and qualifying circumstance of the third paragraph of Article 333 of the Criminal Code.

3. Coherence in the punishment of special complicity

i) Comparison of the sanctions of the forms of special complicity

One of the other problematic issues that the manner in which the Criminal Code has regulated special complicity presents is the lack of coherence and proportionality of the structure of sanctions in each criminal offence provided, in relation to the very hierarchy of importance that each of the special forms of complicity represents. The logic sanctioned in the second paragraph of Article 28 of the Criminal Code appears to have been preserved and correctly applied by the legislator in the drafting of the structure of penal sanctions in the formal criminal offence provided in Article 234/a of this Code. Thus, in the first paragraph of this provision it is provided that the creation, organization, leadership and financing of the terrorist organization are punished with imprisonment of not less than fifteen years. On the other hand, the second paragraph of this provision sanctions that participation in terrorist organizations is punished with imprisonment from seven to fifteen years.

In relation to the other sister provisions, namely Article 234/b (armed gang), Article 284/a (narcotics criminal organization), Article 333 (general criminal organization) or Article 333/a (structured criminal group) of the Criminal Code, it appears that in Article 234/a of this Code the legislator has concretely translated into the highest sanctions established for the formal criminal offences of special criminal formations what the first and second

Register), Decision no. 00-2024-2233 (no. 315), dated 18 December 2024, of the Criminal Chamber of the Supreme Court.

paragraphs of Article 28 of this Code provide, namely that the criminal organization is the highest and most dangerous form of special criminal cooperation. Taking into account the sanctions established in Article 234/a of the Criminal Code, it is understood that the terrorist organization, as a special form of the criminal organization, is the socially most dangerous level of special complicity and simultaneously the most severe.

But, on the other hand, it does not appear that the legislator has preserved this hierarchy of proportionality in the sanctioning or punitive policy of the other special forms of complicity, having regard to the principled and guiding provision of the importance of the special forms of special criminal complicity sanctioned in Article 28 of the Criminal Code. Thus, Article 333 of the Criminal Code, namely the special provision as a criminal offence of the general criminal organization, sanctions that the creation, organization or leadership of criminal organizations is punished with imprisonment from five to fifteen years. On the other hand, participation in a criminal organization is punished with imprisonment from four to eight years.

At the same time, when the first paragraph of Article 28 of the Criminal Code sanctions that the criminal organization is the highest form of complicity, it is observed that the legislator does not adhere to this superior level of social dangerousness when drafting the structure of sanctions in Article 234/b in relation to Article 333 of the Criminal Code. While the creation, organization and leadership of criminal organizations, pursuant to the first paragraph of Article 333 of the Criminal Code, is punished from 5 years to 15 years of imprisonment, the creation, organization, leadership and financing of the armed gang, pursuant to the first paragraph of Article 234/b of the Criminal Code, is punished from 10 years to 15 years of imprisonment. Further, it results that, while participation in a criminal organization, pursuant to the second paragraph of Article 333 of the Criminal Code, is punished with imprisonment from 4 to 8 years, participation in an armed gang is punished with imprisonment from five to 10 years.

This manner of drafting the structure of penal sanctions clearly does not respect the hierarchy of importance and social dangerousness established between the forms of special complicity in Article 28 of the Criminal Code. Regarding this issue, I assess that it is necessary for the legislator to carry out the appropriate interventions to preserve cohesion and the legal logic of proportionality in the structure of sanctions of the forms of

special complicity, so that they are punished according to their importance. Likewise, this issue remains a task to be addressed with concrete legal solutions in the draft of the new Criminal Code.

ii) Increases of sanctions due to the qualifying circumstances of the third and fourth paragraphs of Article 333 of the Criminal Code

In the third paragraph of Article 333 of the Criminal Code it is provided that, if the criminal organization is armed and its members possess weapons and explosive substances for purposes of fulfilling its criminal activity, even if these are hidden or kept in separate places, the punishment by imprisonment is increased by one third. This means that the minimum and maximum of the criminal punishment of a person who commits the criminal offence of creation, organization and leadership of the criminal organization— a formation which possesses weapons and explosive substances for purposes of fulfilling its criminal activity, even if these are hidden or kept in separate places— is from 6 years and 8 months of imprisonment up to 20 years of imprisonment. On the other hand, participation in the criminal organization qualified pursuant to the third paragraph of Article 333 of the Criminal Code shall be punished from 5 years and 4 months of imprisonment up to 10 years and 8 months of imprisonment. This means that the increase of the minimum punishment in the first paragraph, linked with the third paragraph of Article 333 of the Criminal Code, is 1 year and 8 months of imprisonment. On the other hand, the increase of the maximum punishment in the first paragraph, linked with the third paragraph of Article 333 of the Criminal Code, is 5 years of imprisonment. Meanwhile, the increase of the minimum criminal punishment of the second paragraph, linked with the third paragraph of Article 333 of the Criminal Code, is 1 year and 4 months of imprisonment. On the other hand, the increase of the maximum punishment by imprisonment of the second paragraph, linked with the third paragraph of Article 333 of the Criminal Code, is 2 years and 8 months of imprisonment.

Further, in the fourth paragraph of this provision it is provided that, when economic activities undertaken or controlled by members of the criminal organization are financed wholly or partially with proceeds of criminal offences, the measure of punishment, pursuant to the above-mentioned paragraphs of this article, is increased by one third up to one half of it. This means that the criminal offence of creation, organization

and leadership of the criminal organization, which is qualified pursuant to the fourth paragraph of Article 333 of the Criminal Code, shall be punished from the minimum measure of 6 years and 6 months of imprisonment or 7 years and 6 months of imprisonment up to the maximum measure of 20 years of imprisonment or 22 years and 6 months of imprisonment. On the other hand, participation in the criminal organization qualified pursuant to the fourth paragraph of Article 333 of the Criminal Code shall be punished from the minimum measure of imprisonment of 5 years and 4 months of imprisonment or 6 years of imprisonment up to the maximum measure of punishment of 10 years and 8 months of imprisonment or 12 years of imprisonment. This means that the increase of the minimum punishment of the first paragraph, linked with the fourth paragraph of Article 333 of the Criminal Code, begins from 1 year and 6 months of imprisonment up to 2 years and 6 months of imprisonment. On the other hand, the maximum measure of punishment of the first paragraph, linked with the fourth paragraph of Article 333 of the Criminal Code, is from 5 years up to 7 years and 6 months of imprisonment. Meanwhile, the increase of the minimum criminal punishment of the first paragraph, linked with the fourth paragraph of Article 333 of the Criminal Code, is from 1 year and 4 months of imprisonment up to 2 years of imprisonment. On the other hand, 2 years of imprisonment. On the other hand, the increase of the maximum criminal punishment of the second paragraph, linked with the fourth paragraph of Article 333 of the Criminal Code, is from 2 years and 8 months of imprisonment up to 4 years of imprisonment.

On the other hand, if it occurs that the creation, organization and leadership of the criminal organization is accompanied by the qualifying elements of the third and fourth paragraphs of Article 333 of the Criminal Code, then, according to what these paragraphs provide as increased punishments, it results that the minimum and maximum measures for the commission of the criminal offence shall be increased respectively by the sum of the increased punishment of each of these paragraphs. The same conclusion follows also in cases of commission of the criminal offence figure of participation in the criminal organization qualified as also having the objective elements of the third and fourth paragraphs of Article 333 of the Criminal Code. This means that the criminal offence figure of creation, organization or leadership of the criminal organization, qualified as having the elements of the third and fourth paragraphs simultaneously, shall be

punished at its minimum from 8 years and 2 months of imprisonment or from 9 years and 2 months of imprisonment. This measure of punishment shall vary up to the maximum punishment measure of 25 years of imprisonment or 27 years and 6 months of imprisonment.

On the other hand, the criminal offence figure provided by the second paragraph of Article 333 of the Criminal Code, and if the criminal organization is legally qualified as having the objective elements provided by the third and fourth paragraphs of this provision, shall be punished with punishment measures which at the minimum shall be 6 years and 8 months of imprisonment or 7 years and 4 months of imprisonment, a punishment which shall reach the maximum measures of punishment of 13 years and 4 months of imprisonment or 14 years and 8 months of imprisonment. This means that the increase of the minimum punishment for the criminal offence figures provided in the first paragraph, linked cumulatively with the third and fourth paragraphs of Article 333 of the Criminal Code, varies from 3 years and 2 months of imprisonment up to 4 years and 2 months of imprisonment. On the other hand, the increase of the maximum measure of punishment, cumulatively overlapped by the third and fourth paragraphs over the first paragraph of Article 333 of the Criminal Code, varies from 10 years of imprisonment up to 12 years and 6 months of imprisonment. Meanwhile, to the minimum measures of punishment provided by the second paragraph of Article 333 of the Criminal Code, it results that the third and fourth paragraphs of this provision add cumulatively the part of punishment from 2 years and 8 months of imprisonment up to 3 years and 4 months of imprisonment. On the other hand, to the maximum measure of punishment by imprisonment of the second paragraph of Article 333 of the Criminal Code, the third and fourth paragraphs of this provision add cumulatively the measure from 5 years and 4 months of imprisonment up to 6 years and 8 months of imprisonment.

In this manner are configured all possible legal combinations of the mathematical formula of the increase of punishment in Article 333 of the Criminal Code.

It must be brought to attention that this legislative technique, namely that of constructing the different paragraphs of the formal criminal offence of each of the formations of special complicity, by using as qualifying elements not only creation, organization, leadership and participation, but also the possession of weapons, explosive substances and/or the full

or partial financing of the activity or economic activities owned by these formations with proceeds of criminal offences, is a special characteristic only of Article 333 of the Criminal Code. Article 234/a, Article 234/b, Article 284/a and Article 333/a of the Criminal Code are formulated only in two paragraphs, placing in the first paragraph the figures of the criminal offence of leadership, creation and organization or financing of the special criminal formations and then the figures of the criminal offence of participation in these formations. Taking into account the legal solution concluded above regarding the legislator's omission to provide, as a qualifying circumstance, the third and fourth paragraphs of Article 333 also in Article 234/a and in Article 284/a of the Criminal Code, it must be further pursued with the complementary application of the increases of punishment for the existence of these qualifying circumstances also to the measures of punishment that these provisions provide.

Since, on the one hand, Article 28 of the Criminal Code provides that the terrorist organization is a special form of the criminal organization, and on the other hand Article 284/a of the Criminal Code creates another special form of the criminal organization, namely the narcotics criminal organization, there arises the inevitable legal debate, of essential theoretical and practical legal value, whether the third and fourth paragraphs of Article 333 of the Criminal Code apply cumulatively and in a complementary manner as qualifying elements of the criminal offence provided by Articles 234/a and 284/a of the Criminal Code. At the same time, under the same legal logic, it is raised for discussion whether the increases of the minimum up to the maximum punishment provided by the third and/or fourth paragraph of Article 333 of the Criminal Code will be attached through legal addition to each minimum and maximum measure of the sanction provided respectively by the first and second paragraphs of Articles 234/a and 284/a of the Criminal Code. Under these conditions, in the same manner as the increases of punishment and the new measures of punishment of the first and second paragraphs of Article 333 of the Criminal Code were identified through the complementary application of the third and/or fourth paragraphs of this provision, the increases of punishment and the new measures of punishment resulting from the complementary application of the third and fourth paragraphs of Article 333 to the first and second paragraphs of Articles 234/a and 284/a of the Criminal Code must also be analyzed.

This means that the first paragraph of Article 234/a of the Criminal Code, qualified pursuant to the third paragraph of Article 333 of the Criminal Code, will entail the increase of the minimum of the sanction from 15 years to 20 years of imprisonment, resulting in an increase of the minimum punishment by 5 years of imprisonment. Meanwhile, the first paragraph of Article 234/a of the Criminal Code, qualified pursuant to the fourth paragraph of Article 333 of the Criminal Code, will entail the increase of the minimum of the sanction from 15 years to a minimum of 20 years up to 22 years and 6 months of imprisonment, resulting in an increase of punishment from 5 years up to 7 years and 6 months of imprisonment. If it occurs that in the criminal offence provided by the first paragraph of Article 234/a of the Criminal Code the qualifying elements of the third and fourth paragraphs of Article 333 of the Criminal Code are also evidenced, then the two cumulative increases in punishment will cause the minimum sanction of the first paragraph of Article 234/a of the Criminal Code to begin from 25 years of imprisonment, thereby increasing at its minimum by 10 years of imprisonment, and up to 27 years and 6 months of imprisonment, thereby increasing at its maximum minimum by 12 years and 6 months of imprisonment. On the other hand, the maximum measure of punishment by imprisonment related to the first paragraph of Article 234/a of the Criminal Code is not affected by the increase of the third or fourth paragraph of Article 333 of the Criminal Code, given that the maximum punishment for creation, organization, leadership and financing of the criminal organization is the measure of 35 years of imprisonment, pursuant to the first paragraph of Article 32 of the Criminal Code.

Meanwhile, the minimum measure of punishment by imprisonment provided by the second paragraph of Article 234/a of the Criminal Code, after the cumulative addition of punishment pursuant to the third paragraph of Article 333 of the Criminal Code, shall reach the measure of 9 years and 4 months of imprisonment, resulting in an increase of the minimum of the sanction by 2 years and 4 months of imprisonment. The maximum of the sanction provided by the second paragraph of Article 234/a of the Criminal Code, after the cumulative addition of punishment pursuant to the third paragraph of Article 333 of the Criminal Code, shall reach the measure of 20 years of imprisonment, resulting that this qualifying circumstance entails the increase of the maximum measure of punishment by 5 years of imprisonment. Meanwhile, the minimum measure of punishment by

imprisonment provided by the second paragraph of Article 234/a of the Criminal Code, after the cumulative addition of punishment pursuant to the fourth paragraph of Article 333 of the Criminal Code, shall reach from the measure of 9 years and 4 months of imprisonment up to 10 years and 6 months of imprisonment, resulting in an increase of the minimum of the sanction by 2 years and 4 months of imprisonment up to 3 years and 6 months of imprisonment. The maximum of the sanction provided by the second paragraph of Article 234/a of the Criminal Code, after the cumulative addition of punishment pursuant to the fourth paragraph of Article 333 of the Criminal Code, shall reach from the measure of 20 years of imprisonment up to the measure of 22 years and 6 months of imprisonment, resulting that this qualifying circumstance entails the increase of the maximum measure of punishment from 5 years of imprisonment up to 7 years and 6 months of imprisonment. On the other hand, the minimum measure of punishment by imprisonment of the second paragraph of Article 234/a of the Criminal Code, after the cumulatively attached punishment measure for the simultaneous existence of the qualifying circumstances pursuant to the third and fourth paragraphs of Article 333 of the Criminal Code, will cause the sanction to begin from 11 years and 8 months of imprisonment up to 12 years and 10 months of imprisonment, resulting in the increase of the minimum of the sanction by 4 years and 8 months of imprisonment up to 5 years and 10 months of imprisonment. Meanwhile, the maximum measure of punishment by imprisonment of the second paragraph of Article 234/a of the Criminal Code, after the cumulatively attached punishment measure for the simultaneous existence of the qualifying circumstances pursuant to the third and fourth paragraphs of Article 333 of the Criminal Code, will cause the sanction to end from 25 years of imprisonment up to 27 years and 6 months of imprisonment, resulting in the increase of the maximum of the sanction by 10 years of imprisonment up to 12 years and 6 months of imprisonment.

On the other hand, the added minimum sanction in the first paragraph of Article 284/a, pursuant to the complementary application of the third paragraph of Article 333 of the Criminal Code, reaches 13 years and months of imprisonment, by adding the measure of 3 years and 4 months of imprisonment. On the other hand, the maximum measure of punishment of the first paragraph of Article 284/a, pursuant to the complementary application of the third paragraph of Article 333 of the Criminal Code, shall be 26 years and 8 months of imprisonment, thereby adding the maximum measure of punishment by 6

years and 8 months of imprisonment.

Meanwhile, the cumulative increase of the minimum measure of punishment in the first paragraph of Article 284/a of the Criminal Code, pursuant to the complementary application of the fourth paragraph of Article 333 of the Criminal Code, reaches from 13 years and 4 months of imprisonment to 15 years of imprisonment, thereby increasing the minimum measure of punishment from 3 years and 4 months up to 5 years of imprisonment. At the same time, the cumulative increase of the maximum measure of punishment in the first paragraph of Article 284/a of the Criminal Code, pursuant to the complementary application of the fourth paragraph of Article 333 of the Criminal Code, reaches the measure from 16 years and 8 months of imprisonment up to 30 years of imprisonment, thereby increasing the maximum punishment by 6 years and 8 months of imprisonment up to 10 years of imprisonment.

On the other hand, the cumulative increases of the third and fourth paragraphs of Article 333 of the Criminal Code would cause the minimum measures of punishment in the first paragraph of Article 284/a of the Criminal Code to reach from 16 years and 8 months of imprisonment up to 18 years and 4 months of imprisonment at minimum, resulting in an increase of the minimum measure of punishment by 6 years and 8 months of imprisonment up to 8 years and 4 months of imprisonment. On the other hand, the cumulative increases of the third and fourth paragraphs of Article 333 of the Criminal Code would cause the maximum measures of punishment in the first paragraph of Article 284/a of the Criminal Code to reach from 33 years and 4 months of imprisonment up to the possible maximum of punishment by imprisonment of 35 years, being limited by the first paragraph of Article 32 of the Criminal Code and resulting in an increase of the maximum measure of punishment from 13 years and 4 months of imprisonment up to 15 years of imprisonment.

The same legal logic would redefine the minimum and maximum limits of the increase of punishment for the second paragraph of Article 284/a of the Criminal Code dictated by the complementary application of the third and/or fourth paragraphs of Article 333 of the Criminal Code. Thus, the minimum measure of punishment by imprisonment in the second paragraph of Article 284/a of the Criminal Code, after the attachment of the increase provided by the third paragraph of Article 333 of the Criminal Code, shall reach 6 years and 6 months of imprisonment, resulting in an increase of 1 year and 6 months. The maximum measure of the sanction of the second

paragraph of Article 284/a of the Criminal Code, after the attachment of the increase of punishment provided by the third paragraph of Article 333 of the Criminal Code, shall reach 20 years of imprisonment, being increased by 5 years of imprisonment. On the other hand, the minimum measure of the first paragraph of Article 284/a of the Criminal Code, after the attachment of the increase provided by the fourth paragraph of Article 333 of the Criminal Code, shall reach 6 years and 6 months of imprisonment up to 7 years and 6 months of imprisonment, resulting in an increase from 1 year and 6 months up to 2 years and 6 months. The maximum measure of punishment by imprisonment provided by the second paragraph of Article 284/a of the Criminal Code, after the attachment of the increases provided by the fourth paragraph of Article 333 of the Criminal Code, shall reach from 20 years of imprisonment up to 22 years and 6 months of imprisonment. On the other hand, the minimum measure of punishment by imprisonment provided by the second paragraph of Article 284/a of the Criminal Code, after the cumulative increase of punishment provided in the first and second paragraphs of Article 333 of the Criminal Code, shall result from 8 years of imprisonment up to 9 years of imprisonment, thereby adding to the minimum punishment due to these two qualifying elements the measure from 3 years of imprisonment up to 4 years of imprisonment. On the other hand, the maximum measure of punishment by imprisonment provided by the second paragraph of Article 284/a of the Criminal Code, after the cumulative increase of punishments provided in the third and fourth paragraphs of Article 333 of the Criminal Code, shall reach from 25 years of imprisonment up to 27 years and 6 months of imprisonment, resulting in an increase of the maximum punishment from 10 years up to 12 years and 6 months of imprisonment.

On the other hand, taking into account what was concluded above regarding the complementary application of the second paragraph of Article 333 of the Criminal Code also for the participation of ordinary subjects in the criminal offence of the narcotics criminal organization provided by Article 284/a of the Criminal Code, it is concluded that the same punishment measures provided by the second paragraph of Article 333 of this Code, or increased pursuant to complementary application over this paragraph also of the third and/or fourth paragraphs of this provision, shall also apply to Article 284/a of the Criminal Code.

4. Conclusions

It is observed that the legislator has not preserved the cohesion and coherence in drafting the structures of sanctions in Article 234/b in relation to Article 333 of the Criminal Code, because, although in point 1 of Article 28 of the Criminal Code it is provided that the criminal organization is the highest form of special complicity, it results that each sanction for the armed gang is higher than each sanction provided for the criminal organization.

The criminal offences provided by Chapter VII of the Criminal Code, namely the criminal offences with terrorist purposes, undertaken by two or more persons who have stable cooperation among them and this cooperation has as its credential the special criminal purpose of committing these criminal offences, in every case it must be concluded that they have been committed by a terrorist organization and not by an armed gang. This conclusion also applies when the special complicity has been realized by more than two persons and they possess weapons and military ammunition and other necessary means. This criminal formation shall in every case be qualified pursuant to the second paragraph of Article 28 of the Criminal Code, and the criminal offence of its leadership, organization, financing or participation shall be legally qualified and shall be further punished pursuant to the provision of Article 234/a of the Criminal Code.

For the same reasons why participation of the public official in the narcotics criminal organization is provided as a qualifying circumstance and a special figure of criminal offence in the second paragraph of Article 284/a of the Criminal Code, the legislator should have provided, as a qualifying circumstance and a special figure of the criminal offence, his participation also in the terrorist organization, in Article 234/a of the Criminal Code; the armed gang, in Article 234/b of the Criminal Code; the general criminal organization, in Article 333 of the Criminal Code; and the structured criminal group, in Article 333/a of the Criminal Code.

For the sake of applying point 5 of Article 28 of the Criminal Code, it must be concluded that the omission of Article 284/a of the Criminal Code to criminalize as a criminal offence the participation of ordinary subjects in the narcotics criminal organization must be complemented by the application of the second paragraph of Article 333 of the Criminal Code. This means that the participation of an ordinary subject in the narcotics

criminal organization must be qualified as a criminal offence pursuant to the provision of the second paragraph of Article 333 of the Criminal Code.

It is legally impossible and would constitute application of criminal law by analogy, contrary to what is sanctioned by Article 29 of the Constitution, Article 7 of the ECHR and the second paragraph of Article 1/c of the Criminal Code, for the third and fourth paragraphs of Article 333 of the Criminal Code to serve as a legal basis for complementing the omission of Articles 234/b and 333/a of the Criminal Code. Consequently, it is concluded that the criminal offences of creation and participation in an armed gang and in a structured criminal group cannot be qualified as being committed pursuant to the aggravating circumstance of the third and/or fourth paragraphs of Article 333 of the Criminal Code, and consequently these increases of punishment cannot be attached to the measures of punishment provided in each paragraph of Article 234/b and Article 333/a of the Criminal Code.

Article 333 of the Criminal Code is a general provision (*lex generalis*) of the criminalization of the criminal organization, pursuant to the provision of point 5 of Article 28 of the Criminal Code. Consequently, one arrives at the conclusion of the complementary interpretation of Article 333 and Articles 234/a and 284/a of the Criminal Code, confirming the rule that, insofar as it is not otherwise provided by Articles 234/a and 284/a of the Criminal Code (*lex specialis*), Article 333 of the Criminal Code (*lex generalis*) shall be applied in a complementary manner. This means that the third and/or fourth paragraphs of Article 333 of the Criminal Code will serve as a legal basis for complementing Articles 234/a and 284/a of the Criminal Code, qualifying accordingly each of the paragraphs of these special provisions under the aggravating circumstances of the general provision that penalizes the criminal organization. Consequently, the increase of punishment of these paragraphs of the general provision shall be applied to the measure of punishment provided by each paragraph of Articles 234/a and 284/a of the Criminal Code. In this way, one arrives at the conclusion that in these cases the aggravating circumstance provided by letter “i” of Article 50 of the Criminal Code cannot find application, insofar as the objective elements of the offence included in this aggravating circumstance coincide with the objective elements of the aggravating and qualifying circumstance of the third paragraph of Article 333 of the Criminal Code.

5. Bibliography

Positive law

1. The Constitution;
2. The Criminal Code;
3. The Code of Criminal Procedure;
4. The European Convention on Human Rights;
5. Decree-Law No. 309, dated 09.10.1990, which entered into force on 15.11.1990, of the Republic of Italy;
6. Law No. 8279, dated 15.01.1998;
7. Law No. 1470, dated 23.05.1952, published in Official Gazette No. 15/1952, Criminal Code;
8. Law No. 5591, dated 15.06.1977, amended by Law No. 6300, dated 27.03.1981, Criminal Code;
9. Law No. 8279, dated 15.01.1998, “On certain amendments and additions to Law No. 7895, dated 27.01.1995, ‘On the Criminal Code of the Republic of Albania’”;
10. Law No. 8733, dated 24.01.2001, “On certain additions and amendments to Law No. 7895, dated 27.01.1995, ‘Criminal Code of the Republic of Albania’”;
11. Law No. 8920, dated 11.7.2002, “On the ratification of the ‘United Nations Convention against Transnational Organized Crime’ and its two Additional Protocols”;
12. Law No. 9275, dated 16.9.2004, “On certain additions and amendments to Law No. 7895, dated 27.1.1995, ‘Criminal Code of the Republic of Albania’, as amended”;
13. Law No. 9686, dated 26.2.2007, “On certain additions and amendments to Law No. 7895, dated 27.1.1995, ‘Criminal Code of the Republic of Albania’, as amended.”;

Doctrine

1. Florjan Kalaja, “Constitutional Dilemmas III”, Enja Printing House Publications, Tirana, 2023.
2. Florjan Kalaja, “Constitutional Dilemmas I”, “Fan Noli” Publishing House, January 2016;

3. Florjan Kalaja, “Constitutional dilemma on criminal punishment in special complicity”;
4. Florjan Kalaja, “Constitutional dilemma on fixed punishments in the Criminal Code”;
5. “Criminal law”, General Part, Second edition 2019, Assoc. Prof. Dr. Dorina Hoxha, Prof. Dr. Skënder Kaçupi, Prof. Dr. Maksim Haxhia;
6. “Criminal law”, General Part, Volume Two, Luan Hasneziri, Tirana, 2021, Maluka 2020;
7. “Criminal law”, General Part, Volume One, Luan Hasneziri, Tirana, 2021, Maluka 2020;
8. “Codice Penale Operativo, annotated with doctrine and case-law”, Codici Simone OP3, edited by Luciano Ciafardini, Mario Formisano, Rocco Pezzano, Paolo Scognamiglio, XVII Edition 2021, Edizioni Giuridiche Simone;

Jurisprudence

1. Case “S.W. v. the United Kingdom”, ECtHR Judgment of 22.11.1995, série A no 335 B;
2. Case “Streletz, Kessler and Krenz v. Germany” req. nos 34044/96 and 2 others, Grand Chamber Judgment of the ECtHR of 22.03.2001, ECHR 2001 II;
3. Case “Kokkinakis v. Greece”, ECtHR Judgment of 25.05.1993, série A no 260 A;
4. Case “Martirosyan v. Armenia”, Ap. no. 23341/06, ECtHR Section III Judgment of 05.02.2013;
5. Case “K.-H. W. v. Germany”, Grand Chamber Judgment of 22.03.2001, Ap. no. 37201/97, paragraph 45, ECHR 2001-II;
6. Case “Dallas v. the United Kingdom”, Ap. No. 38395/12, ECtHR Section I Judgment of 11.02.2016;
7. Decision No. 24, dated 04.05.2021, Constitutional Court;
8. Case “Huhtamäki v. Finland”, Ap. no. 54468/09, paragraph 41, ECtHR Judgment of 06.03.2012;
9. Decision No. 26 (87-2025-119), dated 09.04.2025, Special Court of Appeal for Corruption and Organized Crime;
10. Decision No. 9, dated 26.02.2016, Constitutional Court;
11. Case “Del Río Prada v. Spain”, Req. no 42750/09, Grand Chamber Judgment of the ECtHR of 21.10.2013;

12. Case “Vasiliauskas v. Lithuania”, Req. no 35343/05, Grand Chamber Judgment of 20.10.2015;
13. Advisory Opinion of the Grand Chamber of the ECtHR of 26.04.2022, “On the application of limitation periods to criminal prosecution, enforcement and punishment for criminal offences that essentially constitute acts of torture”, pursuant to request P16-2021-001 of the Court of Cassation of the Republic of Armenia;
14. Criminal Unifying Decision No. 56280-01562-00-2018 of the Fundamental Register, No. 00-2024-2155 of the decision (107), dated 24.04.2024, Criminal Chamber of the Supreme Court;
15. Decision No. 16, dated 20.03.2023, Special Court of Appeal for Corruption and Organized Crime;
16. Decision No. 33 of the fundamental register, dated 17.12.2021, Special Court of Appeal for Corruption and Organized Crime, “On the suspension of the trial of the case and its referral to the Constitutional Court”;
17. Decision No. 55302-00869-00-2019 of the Fundamental Register, No. 00-2024-2233 (315) Decision, dated 18.12.2024, Criminal Chamber of the Supreme Court;
18. Instruction No. 1, dated 10.01.1966, Plenum of the Supreme Court;
19. Decision No. 59000-01410-00-2012 of the Fundamental Register, No. 00-2014-1935 of Decision (175), dated 16.07.2014, Criminal Chamber of the Supreme Court;
20. Decision No. 28252, dated 07.06.2017, Criminal Section IV of the Court of Cassation of the Republic of Italy;
21. Decision No. 36131, dated 25.08.2014, Criminal Section VI of the Court of Cassation of the Republic of Italy;
22. Decision dated 22.01.1997, Criminal Section VI of the Court of Cassation of the Republic of Italy;
23. Decision No. 14, dated 17.04.2007, Constitutional Court;
24. Case “Myumyun v. Bulgaria”, ap. no. 67258/13, ECtHR Judgment of 03.11.2015;
25. Case “Başkaya and Okçuoğlu v. Turkey”, Ap. nos. 23536/94 and 24408/94, Grand Chamber Judgment of the ECtHR, ECHR 1999-IV;
26. Case “Kononov v. Latvia”, Ap. no. 36376/04, Grand Chamber Judgment of the ECtHR of 17.05.2010, ECHR 2010;
27. Advisory Opinion of the Grand Chamber of the ECtHR of 29.05.2020,

“On the use of the technique of ‘reference to law’ for defining a criminal offence and the criteria applied to compare the criminal law in force at the time of the commission of the criminal offence and the amended criminal law”, P16-2019-001;

28. Case “Cowme and Others v. Belgium”, Ap. nos. 32492/96, 32547/96, 32548/96, 33209/96 and 33210/96, ECtHR Judgment, ECHR 2000-VII;
29. Case “Başkaya and Okçuoğlu v. Turkey”, Ap. nos. 23536/94 and 24408/94, ECtHR Judgment, ECHR 1999 IV;
30. Case “Cantoni v. France”, ECtHR Judgment of 15.11.1996, Reports of Judgments and Decisions 1996 V;
31. Case “E.K. v. Turkey”, Ap. no. 28496/95, ECtHR Judgment of 07.02.2002;
32. Case “Kruslin v. France”, ECtHR Judgment of 24.04.1990, paragraph 29, Series A no. 176 A;
33. Case “Pessino v. France”, Ap. no. 40403/02, ECtHR Judgment of 10.10.2006;
34. Case “Dragotoni v. Militaru-Pidhorni v. Romania”, Ap. nos. 77193/01 and 77196/01, ECtHR Judgment of 24.05.2007;
35. Case “Alimuçaj v. Albania”, Ap. no. 20134/05, ECtHR Judgment of 07.02.2012;

Other

1. <https://www.gazzettaufficiale.it/eli/id/1990/10/31/090G0363/sg>;
2. https://www.academia.edu/71309922/Kontroll_Kushtetues_mbi_nenin_334_t%C3%AB_Kodit_Penal;
3. Official Gazette no. 15/1952.

USE OF ELECTRONIC EVIDENCE AND THE STANDARDS OF THE EUROPEAN COURT OF HUMAN RIGHTS

Adnan Xholi¹

Abstract

Electronic evidence, as acknowledged by the European Court of Human Rights in Yüksel Yalçınkaya v. Türkiye [GC], no. 15669/20, 26 September 2023, has become ubiquitous in criminal proceedings as a consequence of the increasing digitalization of all aspects of life. It may relate to offences committed in the physical world, as well as those that are specific to the digital environment.

Measures for the collection and preservation of electronic evidence are becoming increasingly important for criminal investigations and prosecutions in all jurisdictions. Effective mechanisms for obtaining electronic evidence are essential for combating crime, and such mechanisms must be subject to conditions and safeguards that ensure full compliance with the fundamental rights and principles recognized in the European Convention on Human Rights, Article 6 of the Treaty on European Union (TEU), and the Charter of Fundamental Rights of the European Union (“the Charter”), particularly the principles of necessity, proportionality in data protection, and due process.

The fact that crimes may be committed in cyberspace may require cooperation in the collection and exchange of electronic evidence, giving rise to instruments such as Regulation (EU) 2023/1543 of the European Parliament and of the Council of 12 July 2023 on European Production Orders and European Preservation Orders for electronic evidence in criminal proceedings and for the execution of custodial sentences following

1. Scientific Degree – Doctor. Head of the Section against Organized Crime and Terrorism, Special Prosecution Office against Corruption and Organized Crime, Tirana. Email: xholiadan@gmail.com

criminal proceedings.

The jurisprudence of the ECtHR has established a wide range of standards regarding the specificities of obtaining and using such evidence, as well as ensuring that this does not lead to unjustified interference with the rights and freedoms guaranteed.

Keywords: *inadmissibility, investigation, electronic evidence, standard, jurisprudence*

Introduction

Although the use of computer forensic science in criminal investigations has expanded in recent years, there is limited empirical evidence regarding the prevalence of digital evidence within the judicial system and its impact on prosecutorial outcomes.¹

The terms *digital evidence* and *computer forensic science* are closely related but distinct.² Computer forensics refers to the identification and examination of evidence stored on any electronic device with digital storage capabilities, including computers, mobile phones, and networks.

Although no universally accepted standard exists for computer forensic science, widely recognized practices have been developed in several jurisdictions.³ In 2014, the Scientific Working Group on Digital Evidence (SWGDE) published Best Practices for Computer Forensic Examination, outlining recommended procedures for the collection, acquisition, analysis, and documentation of data discovered during forensic computer

1. See: William J. Sabol, "Social Science Research on Forensic Science: Dear Colleague Letter from William Sabol, Fiscal Year 2015," Funding and Awards, last modified December 5, 2014, aksesuar me datë 24.04.2025, <http://nij.gov/funding/pages/fy15-dear-colleague-forensics.aspx>

2. See: Novak, Martin (2020) "Digital Evidence in Criminal Cases Before the U.S. Courts of Appeal: Trends and

Issues for Consideration", Journal of Digital Forensics, Security and Law: Vol. 14 : No. 4, Article 3. DOI: <https://doi.org/10.15394/jdfsl.2019.160>

3. Among others, the following organisations have published "best practices" for computer forensic science: the National Institute of Standards and Technology (NIST), the Federal Bureau of Investigation (FBI), and the National Institute of Justice (NIJ)

examinations.¹

While computer forensic science encompasses all forms of digital storage, digital evidence refers to information stored or transmitted in binary form that may be relied upon in court. The potential sources of digital evidence are numerous, including text messages, images downloaded onto a computer, mobile device call logs, network access records, chat transcripts, internet browsing histories and memory files, passwords, documents, spreadsheets, and databases.²

Digital evidence generated through computer forensic processes has the potential to identify suspects, establish innocence, or secure a conviction. Information obtained from digital evidence may be used both to substantiate and to determine essential elements of prosecution and defence cases, such as motive, the location of suspects or witnesses, and alibis.

Inevitably, concerns exist regarding its reliability, given that original content may be destroyed, damaged, altered, or easily manipulated. Effective mechanisms for obtaining electronic evidence are essential in combating crime, and such mechanisms must be subject to conditions and safeguards that ensure full compliance with the fundamental rights and principles recognized in the European Convention on Human Rights, Article 6 of the Treaty on European Union (TEU), and the Charter of Fundamental Rights of the European Union (“the Charter”), particularly the principles of necessity, proportionality in data protection, and due process safeguards.³

Accordingly, cybercrime⁴ and electronic evidence present significant challenges for criminal justice systems and the rule of law across all regions. Investigating cybercrime and electronic evidence requires specialized knowledge and skills, adequate technical tools, and appropriate legislative frameworks, as well as effective and efficient international cooperation with foreign criminal justice actors and private entities. States have adapted to

1. See: SWGDE Best Practices for Computer Forensic Examination Version: 1.0 (July 11, 2018). This document includes a cover page with the SWGDE disclaimer. Page 1 of 8

2. See: Novak, Martin (2020) “Digital Evidence in Criminal Cases Before the U.S. Courts of Appeal: Trends and Issues for Consideration,” *Journal of Digital Forensics, Security and Law*: Vol. 14 : No. 4, Article 3. DOI: <https://doi.org/10.15394/jdfsl.2019.160>

3. See: “*Handbook for the European Court of Human Rights on the Use of Electronic Evidence*”, Council of Europe, September 2024, p. 1

4. See: Ensuring Human Rights Compliance in Cybercrime Investigations “OSCE Training Guide For Criminal Justice Practitioners” Vienna, October 2023 © OSCE 2023, fq. 1

these developments by amending their laws, building technical capacities, and introducing new procedural investigative powers. All such measures and tools must be developed and implemented in accordance with states' obligations under international human rights law. As with any other criminal investigation, cybercrime investigations and the specific exercise of procedural powers affect the human rights and fundamental freedoms established in international instruments at both global and regional levels, including the Universal Declaration of Human Rights (UDHR), the International Covenant on Civil and Political Rights (ICCPR), and the European Convention on Human Rights (ECHR).

There are no dedicated provisions within the European Convention that specifically regulate electronic evidence. Nevertheless, the jurisprudence of the European Court of Human Rights has established a body of standards concerning the specificities of collecting and using such evidence and ensuring that this does not lead to unjustified interference with protected rights and freedoms.

1. Evidentiary value of electronic evidence

The increasing use of digital evidence in judicial proceedings offers both opportunities and new challenges. Email evidence, satellite interception, or video footage may assist in establishing the evidentiary link between the defendant and the commission of a criminal offence. Depending on the technology involved, digital evidence may also provide information regarding the time, place, and manner of an event, thereby complementing oral evidence or direct testimony. Digital evidence, however, may be altered or degraded. In addition, it is separated from its original source; for example, a photograph captures only a single perspective of a location at a given moment in time, and an email does not convey the author's behaviour or tone of voice.

The European Court of Human Rights (ECHR) has recognised that electronic evidence may be significant when determining whether particular facts can be considered established, whether in national proceedings or in applications before it. Such facts may relate to issues such as: whether certain individuals were present in a particular location at the time of a specific event—for example, mobile phone and geolocation data determining where the individuals concerned were located at the time of an alleged poisoning;

whether the accused performed an act constituting an element of a criminal offence—for example, video footage showing their involvement in loading drugs into a vehicle; the co-participation of others in certain offences—for example, video footage demonstrating police collaboration in assisting an attack on demonstrators by counter-protesters; whether allegations against an accused person are unfounded—for example, video evidence contradicting the prosecution’s version of events said to implicate the defendant; whether other circumstances exist that would negate a conviction—for example, an audio recording showing that the police pressured the accused to overcome his refusal to accept a bribe; whether resistance was offered during an arrest—for example, video footage of an arrest by heavily equipped police officers, showing that from the moment the applicant stood up until his entry into the police station, the officers’ interaction consisted of asking whether he would walk on his own, requiring him to remain calm, and threatening to break his arm; and determining how a particular outcome occurred—for example, the use of high-resolution satellite imagery to verify that houses were destroyed by shelling rather than fire.

In some cases, the absence of electronic evidence may imply that certain allegations should not be considered credible. Such was the situation in a case where the absence of an audio recording led the ECtHR to conclude that the domestic courts’ finding—namely, that a threat had been made by the applicant during the telephone call in question—was not based on an acceptable assessment of the relevant facts.

Nevertheless, there are a series of considerations that may exclude or limit reliance on particular items of electronic evidence, regardless of their potential probative value, where such reliance would adversely affect the overall fairness of a conviction based upon them.

2. ECHR standards on the administration of electronic evidence and effective investigations

Regardless of its potential significance to criminal proceedings and other procedures, electronic evidence must first be collected and administered, and to do so, several requirements arising under the European Convention must be taken into account.¹ First, electronic evidence may constitute one of the forms of evidence that must be obtained in order to fulfil certain

1. Ibid.

obligations under the Convention to conduct an effective investigation where there is an arguable breach of specific rights, with the aim of prosecuting those responsible.¹ Second, although the exercise of evidence-gathering powers in any criminal procedure may result in the discovery, seizure, or disclosure of electronic evidence, including that obtained through various surveillance measures, the purpose and use of such powers are also subject to respect for certain rights under the Convention.

The collection of certain forms of electronic evidence has been recognised by the European Court of Human Rights as important for fulfilling procedural obligations to conduct an effective investigation, particularly those deriving from Articles 2 and 3 concerning deaths and alleged ill-treatment.

Such forms of electronic evidence have included: mobile-phone usage data²; data stored on specific computers;³ digital photographs;⁴ geolocation information from mobile phones and vehicles;⁵ CCTV and surveillance-camera recordings;⁶ social-media files;⁷ USB flash drives;⁸ usage records of an internet service provider's network infrastructure;⁹ video recordings of interviews;¹⁰ and video recordings of the use of force during an arrest.¹¹

Procedural violations of the obligation to conduct an effective investigation will be found where insufficient efforts have been made to collect relevant electronic evidence, i.e., through taking all reasonable and available steps to secure it, or where there has been a failure to make use of electronic evidence gathered during the investigation.

Such failures have been identified in cases including *Enukidze and Girgvliani v. Georgia*, no. 25091/07, 26 April 2011,¹² in which no attempt was made to verify whom one of the attackers had repeatedly called at

1. See: “*Handbook for the European Court of Human Rights on the Use of Electronic Evidence*”, Council of Europe, September 2024, p. 9

2. See: *Enukidze and Girgvliani v. Georgia*, no. 25091/07, 26 April 2011.

3. See: *Buturugă v. Romania*, no. 56867/15, 11 February 2020.

4. See: *X and Others v. Bulgaria*, no. 22457/16, 2 February 2021.

5. See: *Navalnyy v. Russia (no. 3)*, no. 36418/20, 6 June 2023.

6. See: *Skorupa v. Poland*, no. 44153/15, 16 June 2022.

7. See: *Buturugă v. Romania*, no. 56867/15, 11 February 2020.

8. See: *Başbilen v. Turkey*, no. 35872/08, 26 April 2016.

9. See: *Volodina v. Russia (no. 2)*, no. 40419/19, 14 September 2021.

10. See: *X and Others v. Bulgaria*, no. 22457/16, 2 February 2021.

11. See: *Sochichiu v. Moldova*, no. 28698/09, 15 May 2012.

12. See: *Enukidze and Girgvliani v. Georgia*, no. 25091/07, 26 April 2011.

the exact time when he and others had abducted certain individuals and may already have assaulted them, and an apparent similarity with another attacker shown in a recorded identification parade video was overlooked. Similar shortcomings were noted in *Balázs v. Hungary*, no. 15529/12, 20 October 2015, in which the prosecution authorities failed to explain why the content of particular social-media posts¹ by one of the perpetrators—referencing the Roma origin of the victim and three men who assisted him in escaping the incident—could not be unequivocally linked to the contested events, nor why such posts could not be used to validly infer the motives behind the attack. Encouraging comments posted by acquaintances of the attacker, including one depicting a widely recognised and overtly racist film scene, were also ignored.

Further, in *Ciorap v. Republic of Moldova* (no. 5), no. 7232/07, 15 March 2016, an investigator failed to request the original video recording of a search during which ill-treatment was alleged, despite complaints that the first copy was incomplete and that its electronic format made it easily alterable so as to exclude parts of the footage.²

In *X and Others v. Bulgaria*, no. 22457/16, 2 February 2021, the failure to seize mobile phones, computers, cameras, video cameras, or other media used by persons accused of abusing a child may have prevented access to evidence of that abuse or evidence relating to similar abuse of other children, but no such steps were taken.³

In *Lapunov v. Russia*, no. 28834/19, 12 September 2023, no request was made for geolocation information for the telephones of a torture victim and a potential witness, which could have established their location at the relevant time, nor was the mobile phone of a police officer suspected of filming the applicant while giving a statement examined.⁴

Issues regarding the conduct of an effective investigation were also identified in *Elibashvili v. Georgia*, no. 45987/21, 22 February 2024, where most requests for the seizure and retrieval of traffic-surveillance footage or private CCTV relating to a police pursuit of another driver were made too late, resulting in the loss or deletion of potentially important evidence.⁵

1. See: *Balázs v. Hungary*, no. 15529/12, 20 October 2015.

2. See: *Ciorap v. Republic of Moldova* (no. 5), no. 7232/07, 15 March 2016.

3. See: *X and Others v. Bulgaria*, no. 22457/16, 2 February 2021.

4. See: *Lapunov v. Russia*, no. 28834/19, 12 September 2023.

5. See: *Elibashvili v. Georgia*, no. 45987/21, 22 February 2024.

It should also be emphasised that the failure to seek electronic evidence may lead the ECtHR to find a substantive (rather than procedural) violation of these rights, as in *Olewnik-Cieplińska and Olewnik v. Poland*, no. 20147/15, 5 September 2019.¹ In that case, delays in analysing calls made using a known SIM card—which would have led to the identification and tracing of the kidnappers—was a contributing factor to the Court’s conclusion that the State failed to protect the life of a kidnapped person.

Finally, since evidence obtained during the investigative phase often determines the framework within which the alleged criminal offence is considered at trial, the Court held in *Haarde v. Iceland*, no. 66847/12, 23 November 2017, that deficient pre-trial evidence gathering could disadvantage an accused and thus violate Article 6(1) of the Convention. However, the Court found no violation in that case, as the prosecutor had access to the relevant database and to correspondence from the applicant’s work email.²

3. Challenges in the exercise of procedural powers in the administration of evidence

The collection of evidence—whether through disclosure obligations applicable to those who possess or control it, the exercise of search and seizure powers, or through surveillance measures (such as the interception of communications, audio and video monitoring, and the use of tracking devices)—when carried out without consent, always has the potential to interfere with the right guaranteed under Article 8 of the European Convention, as well as with the rights to freedom of expression and property under Article 10 and Article 1 of Protocol No. 1, respectively, where this concerns journalists and media organisations and involves the taking of physical items.³ Moreover, compelling the disclosure of information that would lead to self-incrimination would be incompatible with the right to a fair trial under Article 6(1).

The importance and existence of valid consent can be observed, for example, in *Posevini v. Bulgaria*, no. 63638/14, 19 January 2017, where the

1. See: *Olewnik-Cieplińska and Olewnik v. Poland*, no. 20147/15, 5 September 2019.

2. See: *Haarde v. Iceland*, no. 66847/12, 23 November 2017.

3. See: “*Handbook for the European Court of Human Rights on the Use of Electronic Evidence*”, Council of Europe, September 2024, p. 11

police gained access to the applicant's email account only because he had provided his password and invited them to do so, and there was no evidence that he did so under explicit or implied duress. However, cooperation in providing information does not render the process consensual where the individual is made to understand that they have no real choice but to allow access to the material in question.¹ This was found to be the case, for instance, in *Saint-Paul Luxembourg SA v. Luxembourg*, no. 26419/10, 18 April 2013, where police officers made it clear that a forced search could be carried out if cooperation was refused.²

The non-consensual collection of evidence may only be regarded as an acceptable interference with Convention rights where it has a legal basis. Such a basis must satisfy the requirements of accessibility and foreseeability, pursue a legitimate aim, and be necessary in a democratic society. Furthermore, these requirements must be respected where the collection of material that may constitute evidence takes place in another state. This applies both to a Contracting Party collecting such evidence in the absence of a request for mutual legal assistance in criminal matters, as confirmed in *Bosak and Others v. Croatia*, no. 40429/14, 6 June 2019, concerning the use of surveillance measures,³ and to the request for or acquisition of such material from a state not party to the Convention, as considered in *Big Brother Watch and Others v. United Kingdom [GC]*, no. 58170/13, 25 May 2021, concerning the interception of material obtained by a foreign intelligence service.⁴

The collection of evidence without any legal basis for undertaking it will inevitably constitute a violation of Article 8. This applies where evidence is gathered by law-enforcement officials or by private individuals acting on their behalf or under their direction, as in *M.M. v. the Netherlands*, no. 39339/98, 8 April 2003, where telephone conversations were recorded at the suggestion of the police using equipment they had installed;⁵ or with their technical assistance, as in *Van Vondel v. the Netherlands*, no. 38258/03, 25 October 2007, where recordings were made voluntarily by

1. See: *Posevini v. Bulgaria*, no. 63638/14, 19 January 2017.

2. See: *Saint-Paul Luxembourg SA v. Luxembourg*, no. 26419/10, 18 April 2013.

3. See: *Bosak and Others v. Croatia*, no. 40429/14, 6 June 2019.

4. See: *Big Brother Watch and Others v. the United Kingdom [GC]*, no. 58170/13, 25 May 2021.

5. See: *M.M. v. the Netherlands*, no. 39339/98, 8 April 2003.

an individual but the police provided instructions regarding what should be recorded.¹

With regard to the meaning of “law,” a legal basis may be provided by any provision having the force of law under the domestic legal system. It is not necessary that the provision take the form of legislation enacted by Parliament; it may be contained in a regulation adopted under delegated administrative powers. However, mere administrative practice will be insufficient for this purpose, as was found in *Heglas v. the Czech Republic*, no. 5935/02, 1 March 2007, concerning the recording of a conversation before the relevant statutory powers entered into force.²

The absence of a legal basis may concern, first, a situation where no provision exists to authorise a particular measure, such as in relation to the interception of communications, the use of covert listening devices, and the monitoring of email and internet usage.³ Second, it may concern circumstances where the limits specified in the authorisation granted under a provision are not observed, such as: who may issue that authorisation, the procedures to be followed, its duration, the scope of items covered, and the authorities to which it may be granted.⁴ Moreover, no provision entering into force only after a measure has taken place may be relied upon.⁵ In all circumstances, it is essential to assess whether the safeguards prescribed by law are actually capable of application to the situation at hand. This was not the case, for example, in *Blagajac v. Croatia*, no. 50236/16, 9 May 2023, in which the Court accepted the Government’s argument that the search of a lawyer’s laptop and mobile phones following a search of his premises was not unlawful because the statutory requirement for the presence of an investigating judge and a representative of the Bar Association applied only to the search of the lawyer’s person or law office.⁶ Furthermore, limits

1. See: *Van Vondel v. the Netherlands*, no. 38258/03, 25 October 2007.

2. See: *Heglas v. the Czech Republic*, no. 5935/02, 1 March 2007.

3. See: *Malone v. the United Kingdom*, no. 8691/79, 2 August 1984; *Bykov v. Russia* [GC], no. 4378/02, 10 March 2009; *Copland v. the United Kingdom*, no. 62617/00, 3 April 2007.

4. See: *A. v. France*, no. 14838/89, 23 November 1993; *Perry v. the United Kingdom*, no. 63737/00, 17 July 2003; *Kvasnica v. Slovakia*, no. 72094/01, 9 June 2009; *Mikhaylyuk and Petrov v. Ukraine*, no. 11932/02, 10 December 2009; *Karabeyoğlu v. Turkey*, no. 30083/10, 7 June 2016.

5. See: *Heglas v. the Czech Republic*, no. 5935/02, 1 March 2007.

6. See: *Blagajac v. Croatia*, no. 50236/16, 9 May 2023.

on the ability to exercise special powers regarding particular categories of individuals must also be respected, as did not occur in *Aydin Sefa Akay v. Turkey*, no. 59/17, 23 April 2024, where the premises of an international judge enjoying diplomatic immunity were searched.¹

4. Requirements of accessibility, foreseeability, and legitimate aim

The requirement of accessibility will normally be satisfied through the publication of the relevant legal provisions. Thus, in *Mikhaylyuk and Petrov v. Ukraine*, no. 11932/02, 10 December 2009, the ECtHR found that this requirement was not fulfilled where internal and unpublished instructions governing the handling of correspondence by the Ministry of Internal Affairs and a penitentiary service were inaccessible to the public.² However, the European Court has held that the requirement may still be satisfied where legal provisions are accessible in practice, even if they are not officially published. This was the situation, for example, in *Roman Zakharov v. Russia [GC]*, no. 47143/06, 4 December 2015, regarding a ministerial order on the interception of communications, which was published in the ministry's official journal distributed by subscription, making it available only to telecommunications specialists and not to the general public. Nevertheless, the order, with amendments, could be accessed via a privately maintained online legal database reproducing the published journal. The Court concluded that, considering its publication and the practical online accessibility for the wider public, further examination of compliance with the accessibility requirement was unnecessary.³

With respect to foreseeability, a legal provision concerning disclosure obligations and powers of search and seizure will be considered “foreseeable” by the Court if it is formulated with sufficient precision to enable individuals, if necessary with appropriate legal advice, to regulate their conduct accordingly. This will not be the case where there is disagreement regarding the legal basis for action, such as in *Bože v. Latvia*, no. 40927/05, 18 May 2017, where the initial legal basis for inspection and seizure of a computer and hard drive had been altered, and uncertainties arose among authorities regarding which specific provision governed the police actions in question;

1. See: *Aydin Sefa Akay v. Turkey*, no. 59/17, 23 April 2024.

2. See: *Mikhaylyuk and Petrov v. Ukraine*, no. 11932/02, 10 December 2009.

3. See: *Roman Zakharov v. Russia [GC]*, no. 47143/06, 4 December 2015.

or where significant protective safeguards are inaccurate or absent,¹ as in *Petri Sallinen v. Finland*, no. 50882/99, 27 September 2005, where there were no applicable regulations specifying with sufficient clarity under what circumstances legally privileged material stored on a lawyer’s computer hard drive could be subject to search and seizure, depriving the applicants of the minimum level of protection required under the rule of law in a democratic society. Similarly, after the seizure of a lawyer’s mobile phone and laptop, the law was found in *Särgava v. Estonia*, no. 698/19, 16 November 2021, to be unclear regarding how any disputes over search keywords or electronic filtering methods should be resolved.²

The law also appeared to provide no clear procedural rules to follow where a lawyer or representative objected to the seizure or review of material on grounds of lawyer–client confidentiality. Furthermore, although a statutory legal basis existed for a search, the law was found in *Taraneks v. Latvia*, no. 3082/06, 2 December 2014, not to provide adequate judicial safeguards either before or after the issuing of a search warrant, thereby depriving the applicant of the minimum protection required by the rule of law in a democratic society.³

In *Sanoma Uitgevers B.V. v. the Netherlands* [GC], no. 38224/03, 14 September 2010, the Court found that no procedure was in place providing adequate legal safeguards to enable independent assessment of whether the interests of a criminal investigation outweighed the public interest in protecting journalistic sources, where a magazine was compelled to surrender photographs on a CD-ROM depicting illegal car races.⁴

1. However, where legislation permitting secret surveillance is challenged before the European Court of Human Rights, the Court views the lawfulness of the interference as closely linked to the question of whether the test of being “necessary in a democratic society” has been respected, so that both requirements may be addressed together. According to the Court, the “quality of the law” in this context means that domestic law must not only be accessible and foreseeable in its application, but must also ensure that secret surveillance measures are applied only when “necessary in a democratic society,” particularly by providing adequate and effective safeguards against abuse; see *Roman Zakharov v. Russia* [GC], no. 47143/06, 4 December 2015, § 236. As a result, the safeguards required for the collection of evidence through secret surveillance measures are addressed in the section below, “Necessary in a Democratic Society.”

2. See: *Särgava v. Estonia*, no. 698/19, 16 November 2021.

3. See: *Taraneks v. Latvia*, no. 3082/06, 2 December 2014.

4. See: *Sanoma Uitgevers B.V. v. the Netherlands* [GC], no. 38224/03, 14 September 2010.

In urgent situations, the ECtHR considered that a procedure must exist to identify and isolate, before inspection, information that could lead to the identification of protected sources from other information posing no such risk. Instead of such a rule determining when breaches of privileged confidentiality were permissible, the Court found in *Kruglov and Others v. Russia*, no. 11264/04, 4 February 2020, that courts appeared to assume that lawyer–client confidentiality could be breached in any case where a criminal investigation existed, even if the investigation was not directed against the lawyer but against their clients.¹

The same conclusion was reached in *Kadura and Smaliy v. Ukraine*, no. 42753/14, 21 January 2021, where no safeguards protected against improper or arbitrary access to information subject to professional legal privilege contained on a lawyer’s mobile phone, which was searched during his arrest while representing a client at a police station. Additionally, an unforeseeable interpretation occurred in *Ivashchenko v. Ukraine*, no. 61064/10, 13 February 2018, where the term “goods” in customs legislation—defined as movable property transported across borders—was interpreted to encompass items such as laptops, memory cards, cameras, video cameras, printed materials and similar items.²

This interpretation was then used to justify lawful sampling procedures without further examination of the digital and intangible nature of electronic content contained therein. The Court held that such interpretation was not foreseeable and therefore did not constitute a lawful basis for copying electronic data stored within such a “container” (laptop).

Nonetheless, the necessary degree of legal precision may also be provided through a substantial body of judicial practice relating to a given provision, as in *K.S. and M.S. v. Germany*, no. 33696/11, 6 October 2016, regarding the possibility of a search warrant being based on data even if obtained unlawfully.³

In the context of surveillance, the ECtHR confirmed in *Roman Zakharov v. Russia* [GC], no. 47143/06, 4 December 2015, that “foreseeability” in relation to secret measures such as communications interception does not require that an individual be able to foresee when his communications are

1. See: *Kruglov and Others v. Russia*, no. 11264/04, 4 February 2020.

2. See: *Ivashchenko v. Ukraine*, no. 61064/10, 13 February 2018.

3. See: *K.S. and M.S. v. Germany*, no. 33696/11, 6 October 2016.

likely to be monitored so as to adjust his behaviour accordingly.¹

Instead, because the risks of arbitrariness are evident—especially where powers are exercised covertly—it is essential that clear and detailed rules exist governing the interception of communications, particularly given increasingly sophisticated technologies. The rules must provide individuals with adequate notice of the circumstances and conditions under which authorities may conduct such measures. Furthermore, because the implementation of covert interception is not open to scrutiny by affected individuals or the general public, unlimited discretion vested in the executive or judiciary would violate the rule of law. Accordingly, the law must clearly define the scope of any such discretionary powers and how they are exercised to protect individuals against arbitrary interference.

This has led the ECtHR to develop minimum safeguards essential to ensuring that interference with Article 8 rights may be justified as “necessary in a democratic society.” These safeguards are discussed in the next subsection.²

The requirement of a legitimate aim is satisfied where measures pursue the prevention of disorder or crime, including securing evidence for prosecution (as recognised in *Nagy v. Hungary*, no. 6437/02, 20 December 2005, §26)³ or facilitating investigations of future crimes⁴ (as found in *P.N. v. Germany*, no. 74440/17, 11 June 2020, §68). Depending on the nature of criminal offences, other legitimate aims may also apply, such as economic well-being of the country (competition-related searches in *Naumenko and Sia Rix Shipping v. Latvia*, no. 50805/14, 23 June 2022),⁵ combating corruption (search of laptop and mobile phone in *Blagajac v. Croatia*, no. 50236/16, 9 May 2023), and national security⁶ (interception of telephone conversations in *Draksas v. Lithuania*, no. 36662/04, 31 July 2012).⁷ Compliance with the requirement of “necessity in a democratic society” will vary depending on the specific measure.

Regarding procedural safeguards, the principle of equality of arms

1. See: *Roman Zakharov v. Russia* [GC], no. 47143/06, 4 December 2015.

2. See: “*Handbook for the European Court of Human Rights on the Use of Electronic Evidence*,” Council of Europe, September 2024, p. 12

3. See: *Nagy v. Hungary*, no. 6437/02, 20 December 2005.

4. See: *P.N. v. Germany*, no. 74440/17, 11 June 2020.

5. See: *Naumenko and Sia Rix Shipping v. Latvia*, no. 50805/14, 23 June 2022.

6. See: *Blagajac v. Croatia*, no. 50236/16, 9 May 2023.

7. See: *Draksas v. Lithuania*, no. 36662/04, 31 July 2012.

applies when challenging the legality of pre-trial detention under Article 5(4) of the Convention. Equality of arms is not secured where access to essential evidence contained in the investigation file is refused. Although effective criminal investigations may require temporary secrecy to prevent interference with evidence or obstruction of justice, such secrecy cannot override fundamental defence rights. This requirement applies equally to electronic evidence.

Thus, in *Akgün v. Turkey*, no. 19699/18, 20 July 2021, a violation of Article 5(4) was found where the applicant was denied access during the entirety of his pre-trial detention to information concerning his appearance on a red-list database of users of a particular messaging application. As this evidence formed the sole basis for the detention order, both the applicant and his lawyer lacked sufficient knowledge of its substance—available exclusively to the prosecution—preventing meaningful challenge to the detention.¹

Conversely, no violation will occur where it cannot be demonstrated that such evidence was relevant to contesting the legality of detention or that access was withheld for that purpose. This was the case in *Falk v. Germany* (dec.), no. 41077/04, 11 March 2008, where: first, material accessed by counsel, including seized data stored on a CD-ROM, a server and a hard drive, contained nothing calling into question the suspicion against the applicant; and second, the applicant failed to show that any delayed-access material—owing to technical issues—would have influenced the arrest-warrant challenge.²

Additionally, the ECtHR held in *Ugulava v. Georgia*, no. 5432/15, 9 February 2023, that where domestic law requires written reasons for ordering or extending detention, access to an audio recording in which the request for release was refused may compensate for the absence of a written decision clearly stating the grounds for continued detention, since the applicant and counsel were able to access and use the recording in subsequent release-request proceedings.³

1. See: *Akgün v. Turkey*, no. 19699/18, 20 July 2021.

2. See: *Falk v. Germany* (dec.), no. 41077/04, 11 March 2008.

3. See: *Ugulava v. Georgia*, no. 5432/15, 9 February 2023.

Bibliography

- William J. Sabol, “Social Science Research on Forensic Science: Dear Colleague Letter from William Sabol, Fiscal Year 2015,” Funding and Awards, last modified December 5, 2014, accessed 24.04.2025, <http://nij.gov/funding/pages/fy15-dear-colleague-forensics.aspx>
- Novak, Martin (2020) “Digital Evidence in Criminal Cases Before the U.S. Courts of Appeal: Trends and Issues for Consideration,” *Journal of Digital Forensics, Security and Law*: Vol. 14 : No. 4, Article 3. DOI: <https://doi.org/10.15394/jdfsl.2019.160>
- SWGDE Best Practices for Computer Forensic Examination Version: 1.0 (July 11, 2018). This document includes a cover page with the SWGDE disclaimer. Page 1 of 8
- Ensuring Human Rights Compliance in Cybercrime Investigations “OSCE Training Guide For Criminal Justice Practitioners” Vienna, October 2023 © OSCE 2023, fq.1
- “Working Paper An Overview Of The Use Of Digital Evidence” In *International Criminal Courts Salzburg Workshop On Cyberinvestigations*, This paper was prepared by Aida Ashouri ’14, Caleb Bowers ’15, and Cherrie Warden ’15, students from the International Human Rights Law Clinic and the Samuelson Law, Technology & Public Policy Clinic at the University of California, Berkeley, School of Law, under the supervision of Professors Laurel E. Fletcher, Chris Hoofnagle, Eric Stover, and Jennifer Urban, October 2013.

Jurisprudence:

- *Elibashvili v. Georgia*, no. 45987/21, 22 February 2024
- *Blagajac v. Croatia*, no. 50236/16, 9 May 2023
- *Aydin Sefa Akay v. Turkey*, no. 59/17, 23 April 2024
- *Navalnyy v. Russia* (no. 3), no. 36418/20, 6 June 2023
- *Lapunov v. Russia*, no. 28834/19, 12 September 2023
- *Ugulava v. Georgia*, no. 5432/15, 9 February 2023
- *Skorupa v. Poland*, no. 44153/15, 16 June 2022
- *Naumenko and Sia Rix Shipping v. Latvia*, no. 50805/14, 23 June 2022

- Women's Initiatives Support Group and Others v. Georgia, no. 73204/13, 16 December 2021
- Volodina v. Russia (no. 2), no. 40419/19, 14 September 2021
- Georgia v. Russia (II) [GC], no. 38263/08, 21 January 2021
- X and Others v. Bulgaria, no. 22457/16, 2 February 2021
- Big Brother Watch and Others v. the United Kingdom [GC], no. 58170/13, 25 May 2021
- Akgün v. Turkey, no. 19699/18, 20 July 2021
- Särgava v. Estonia, no. 698/19, 16 November 2021
- P.N. v. Germany, no. 74440/17, 11 June 2020
- Kruglov and Others v. Russia, no. 11264/04, 4 February 2020
- Navalnyy and Gunko v. Russia, no. 75186/12, 10 November 2020
- Buturugă v. Romania, no. 56867/15, 11 February 2020
- Olewnik-Cieplińska and Olewnik v. Poland, no. 20147/15, 5 September 2019
- Bosak and Others v. Croatia, no. 40429/14, 6 June 2019
- Ivashchenko v. Ukraine, no. 61064/10, 13 February 2018
- Ilgar Mammadov v. Azerbaijan (no. 2), no. 919/15, 16 November 2017
- Haarde v. Iceland, no. 66847/12, 23 November 2017
- Posevini v. Bulgaria, no. 63638/14, 19 January 2017
- Başbilen v. Turkey, no. 35872/08, 26 April 2016
- Ciorap v. Republic of Moldova (no. 5), no. 7232/07, 15 March 2016
- K.S. and M.S. v. Germany, no. 33696/11, 6 October 2016
- Balázs v. Hungary, no. 15529/12, 20 October 2015
- Roman Zakharov v. Russia [GC], no. 47143/06, 4 December 2015
- Nosko and Nefedov v. Russia, no. 5753/09, 30 October 2014
- Taraneks v. Latvia, no. 3082/06, 2 December 2014
- Stojanović v. Croatia, no. 23160/09, 19 September 2013
- Saint-Paul Luxembourg SA v. Luxembourg, no. 26419/10, 18 April 2013
- Sochichiu v. Moldova, no. 28698/09, 15 May 2012
- Draksas v. Lithuania, no. 36662/04, 31 July 2012
- Fejzulla and Mazreku v. "the former Yugoslav Republic of Macedonia" (dec.), no. 23065/07, 31 May 2011
- Enukidze and Girgvliani v. Georgia, no. 25091/07, 26 April 2011
- Sanoma Uitgevers B.V. v. the Netherlands [GC], no. 38224/03, 14 September 2010

- Mikhaylyuk and Petrov v. Ukraine, no. 11932/02, 10 December 2009
- Falk v. Germany (dec.), no. 41077/04, 11 March 2008
- Heglas v. the Czech Republic, no. 5935/02, 1 March 2007
- Van Vondel v. the Netherlands, no. 38258/03, 25 October 2007
- Copland v. the United Kingdom, no. 62617/00, 3 April 2007
- Nagy v. Hungary, no. 6437/02, 20 December 2005
- M.M. v. the Netherlands, no. 39339/98, 8 April 2003

PRELIMINARY SESSION, SEEN FROM THE PERSPECTIVE OF INNOVATIONS AND PROBLEMS

Assoc. Prof. Dr. Admir Belishta¹
Klea Biqiku²

Abstract

The legal changes of 2017, as a result of the justice reform, have also affected the Criminal Procedure Code. Consequently, this code, in almost 2/3 of its content, has undergone legal amendments, which have been reflected in the form of additions, updates, or provisions of new procedural institutes. The latter have been seen as innovations not only for the sanctioning for the first time in this code, but also for the legal consequences that they have brought in judicial practice. One of the new institutes foreseen in this code is the preliminary hearing. The purpose of this paper is the detailed analysis of this criminal procedural institute, which begins with its theoretical legal treatment and continues with a reflection of the progress and problems arising in judicial practice, referring to concrete cases. Special attention is paid to the role of the judge in this phase of the criminal proceedings, as well as the impact of his decision-making on the legal treatment of criminal cases. In this perspective, this legal analysis aims to highlight the importance of the preliminary hearing in revealing the truth and guaranteeing justice through fair and legally based decisions. In conclusion, referring to this paper, through findings or observations, it brings concrete recommendations for improving the preliminary hearing, through legal amendments, consolidated judicial practice with developmental or unifying decisions of the Supreme Court, as well as efficient professional training. This is because only if it is correctly

1. Dean, Faculty of Law, "Luarasi" University, admir.belishta@luarasi-univ.edu.al

2. 5th year student, Faculty of Law, "Luarasi" University, klea.biqiku@luarasi-univ.edu.al

foreseen and effectively implemented, the preliminary court hearing will achieve the appropriate importance as a phase of criminal proceedings.

Keywords: *Preliminary hearing, Preliminary hearing judge, Request for sending the case to trial, Judicial practice, Criminal Procedure Code.*

Methodology of the work: This work is based on a research and study of at least 50 judicial decisions of different jurisdictions, of Albanian courts, which belong to trials in the preliminary hearing. At the end of the research and studies of these types of judicial decisions, an analytical and comparative legal analysis was carried out in relation to the concrete findings or conclusions. This analysis is viewed from the perspective of innovations and problems, given that the preliminary hearing was implemented for the first time in the Criminal Procedure Code in 2017. As a result of the methodology used in this research paper, which is of a practical nature as it refers to concrete judicial decision-making, we have initially focused on the findings, or conclusions. Then, as a result of these findings, we reached concrete conclusions, accompanied by the relevant suggestions or recommendations.

Entry

The preliminary hearing is a criminal procedural institute, foreseen or implemented in the Criminal Procedure Code, in 2017, as a result of the legal changes made by the Albanian legislator to this code due to the justice reform. This procedural institute, numbered by fraction in the Code of Criminal Procedure, is provided for in a group of criminal procedural provisions, specifically from article 332 to article 332/gj¹. What should be noted regarding the preliminary hearing is the fact that, despite being judged by the preliminary hearing judge, the subject matter of the trial is specifically defined, being standard. Thus, in a preliminary hearing, this type of judge usually reviews the prosecutor's request with the aim of sending the case to trial. This is because, exceptionally, in addition to the main request, the prosecutor may also submit a second request, with the

1. See the content of articles 332-332/gj of the Criminal Procedure Code, added and amended by laws No. 35/2017, dated 30.03.2017 and No. 41/2021, dated 29.05.2021.

aim of dismissing one charge, while requesting that the other or others be sent for trial on the merits, thereby ensuring that the criminal proceedings or criminal case remain.

It should be emphasized that the subject of thematic analysis of this reference are only the decisions that the preliminary hearing judge has at his disposal, within the course of the preliminary hearing, during the review of the request to send the case to trial. We say this because the functional jurisdiction of the preliminary hearing judge are not only those types of decisions that are made in the preliminary hearing. This is because this type of judge, in addition to these decisions, or the review of this request, has other competencies provided for in the Criminal Procedure Code. Thus, this judge also reviews requests from the prosecution to dismiss cases or charges, in relation to criminal offenses of the crime type, or appeals from interested parties, such as defendants, accusers, or complainants, against decisions to dismiss cases or charges, for criminal offenses of the criminal misdemeanor type. Likewise, this judge also reviews appeals against decisions of the prosecutor who has suspended investigations, or requests for the revocation of dismissal decisions¹.

Referring to the decisions cited above, it results that the concept of the preliminary hearing judge is also larger in scope than the preliminary hearing itself. Consequently, referring also to the subject of the referral, we have limited ourselves to the analysis of the practical applicability of the procedural provisions of the preliminary hearing, as well as the problems encountered in judicial practice by practitioners, such as lawyers, prosecutors, or judges in cases subject to referral to court. Seen from this perspective, it should be emphasized that the decisions made by the preliminary hearing judge, whether on the findings themselves or on the initiatives of other subjects of that type of trial, are different. They have a series of specifications or typologies, which are nominatively provided for as such in the provisions of the code itself. As such, these types of decision-making serve precisely the final purpose of what is conceived as a preliminary hearing, which is to prepare the criminal file, or investigation dossier from a procedural point of view, to be as complete as possible for the judge or panel that will judge the merits of the specific case.

So, referring to the content of the legal provisions that regulate the

1. See the Monograph *The Judge of the Preliminary Session*, by Assoc. Prof. Dr. Admir Belishta, Kumi Publications, Year 2022, pages 224-308

preliminary hearing, it results that the judge of this hearing has within his/her competence to express his/her opinion on a number of issues such as the invalidity of acts; the inadmissibility of evidence; the request for new evidence made by the defendant; the defendant's request to make statements; the defendant's request to be questioned; the civil lawsuit in the criminal process; the provision of evidence; the defendant's request for a summary trial; or plea agreements and sentencing. Likewise, this type of judge also has in his/her competences the dispositions regarding the completion of investigations, returning the acts to the prosecutor; the amendment of the charge; the communication of the aggravating circumstance; the new criminal fact; or the incorrect legal qualification of the criminal fact, or the failure to formulate and specify the charge¹.

It turns out that all these types of decision-making that we cited above belong to a nature that resolves the impasses of the moment, and that from a doctrinal point of view can be considered as intermediate, or non-final, decisions. This is because it turns out that other decisions have been provided for the preliminary hearing judge, which, by their nature, can be considered final, putting an end to the trial of a case in a preliminary hearing. As such, we can first mention the disposition that occurs most frequently in judicial practice, which is accepting the prosecutor's request and sending the case to trial, if the investigations are complete and the preliminary hearing judge finds sufficiency of evidence, a terminology used for the first time with this procedural institute in this code.

In addition to this decision, the judge of the preliminary hearing at the end of this hearing may also issue a decision on the merits if two factual situations are proven. Specifically, if as a preliminary hearing judge he accepts the request for summary judgment and the request for approval of the plea agreement and sentencing. In these two cases, this judge, after accepting the request from the preliminary hearing judge, becomes the judge who examines the case on the merits, issuing a final decision on the merits. There are also other decisions that the preliminary hearing judge may make at the end of this hearing, which are decisions to dismiss charges or cases, or to declare incompetence and send cases to a preliminary hearing at the competent court.

Referring to the set of decisions available to the preliminary hearing judge cited above, which are provided for in the Code of Criminal

1. See articles 332/c, 332/ç and 332/d, of the Code of Criminal Procedure

Procedure, difficulties or problems have been identified during their disposition in judicial practice, that is, during the implementation of this group of legal provisions that regulate such decision-making. Precisely some of these problems encountered or ascertained in judicial practice, as well as the innovations that the anticipation and development of the preliminary hearing has brought to this practice, will be the focus of this full paper, the subject of reference at the conference. What should be emphasized is the fact of the importance and relevance that the preliminary hearing itself presents, not only from a theoretical and research point of view, but mostly from a practical point of view.

Findings and conclusions

As a result of research and studies of a set of judicial decisions related to the preliminary hearing, belonging to the courts of different jurisdictions of the Albanian judiciary, we have identified a number of innovations and problems, which we are highlighting or reflecting together with the relevant legal arguments, in the form of concrete findings. Of course, due to the format of this paper, we are limited to reflecting all the findings, which are certainly not exhaustive. This is because judicial practice, during its course, systematically produces or highlights such findings every day. For this reason, we will focus on some of them.

I. The legislator's purpose in providing for the preliminary hearing, in addition to the approximation or approximation of this institute with the institutes provided for in the domestic legislation of the countries of the European Union, an organization in which we intend to join, is essentially related to a benefit or "benefit" for the criminal judicial processes themselves. This is primarily in terms of the quality of the trials, but also of their completion within a reasonable trial period. Thus, through the preliminary hearing, which is nothing more than a filter between the investigation and the trial of the merits, the judge of this hearing has the duty to prepare the file in terms of the quality of the acts and evidence (although the legal provisions refer only to the terminology acts, when in fact they are also evidence, since the criminal file contains both of these categories), for the judge or the panel that will judge the merits of the case. Thus, in concrete terms, the preliminary hearing judge has the duty to check whether, among the acts and evidence in the file, there are invalid

acts or unusable evidence, by “eliminating” them through the dispositions by decision. At the same time, by ordering the investigative body to redo or recover them when the circumstances of the fact objectively allow such a possibility.

Likewise, this judge, who is a different judge from the one who will receive the file for trial on the merits later, will analyze and determine whether the investigations are complete and comprehensive, a procedural term known for criminal investigation, or whether there is a need for additional investigations, through the performance of specific procedural actions. This may result from the determination of the file without prior ruling on the invalidity of acts or evidence, but it may also occur as a result of such a ruling by the preliminary hearing judge, and consequently there is a need to redo the acts declared invalid, or to recover the evidence declared unusable, through the completion of the investigations. Of course, this is in the case where this is objectively possible, since evidence that results from a non-repeatable procedural action, such as examining the crime scene, would not be possible to retrieve again.

On the other hand, all actions of the preliminary hearing judge aimed at reviewing the legality of acts and evidence performed and obtained by the prosecutor during the investigation of a criminal case must be carried out within a one-month period. Therefore, the legislator’s purpose in introducing the code, or providing for the preliminary hearing, was not only to check legality and prepare the file for the trial on the merits, but also to dispose of or conclude this preliminary hearing within a period of only one month¹.

While referring to the court decisions taken as a study sample for the purposes of this paper, it results that currently very few preliminary hearing trials are completed within a month. This has resulted in a delay in the timely closure of criminal cases, including the trial of the merits. At the beginning of the practical implementation of the preliminary hearing, in 2017 and 2018, statistical indicators showed that around 90% of these types of trials nationwide were completed within the legal deadline of one month. Not only that, but in the justifications or decisions disclosed of this type that have respected such a procedural deadline, a structured analysis

1. See Article 332/3, of the Code of Criminal Procedure, as well as the Monograph The Judge of the Preliminary Session, by Prof. Assoc. Dr. Admir Belishta, Kumi Publications, Year 2022, pages 54-57

of all the legal elements for the preliminary hearing is easily ascertained, including the prosecutor's respect for the 10-day deadline that the law recognizes for the defendant to make claims or legal requests, before the criminal case is tried in court¹.

Meanwhile, it turns out that this indicator today is presented in opposite figures, causing us to deviate from the concept or purpose of the preliminary session itself. This has consequently led to quite a few discussions regarding its importance, going so far as to discuss its current necessity in the conditions when the trials of this session go from one month to several months, even close to a year. This of course leads to delays in criminal trials, at a cost to the defendants themselves who demand a fair decision from the court, but most importantly within a reasonable time, i.e. within optimal investigation and trial deadlines².

On the other hand, the law does indeed use the term preliminary hearing, literally using the singular number, but this does not prevent the hearing judge from holding several more hearings, but in the end, this type of trial must be concluded according to the imperative procedural norm within one month from the moment the prosecutor's request is filed. Of course, procedural subjects, whose participation is mandatory, can make requests for postponements, even if justified, but the postponement should not be long, having as a reference the fact that this type of trial must be completed within one month, since another trial that has not yet begun, which is the trial on the merits, depends on this type of trial. This is undoubtedly in circumstances where the evidence in the file is considered sufficient for a trial on the merits. Meanwhile, exceeding this deadline actually diminishes the very role that the preliminary hearing carries, as a phase of the criminal proceedings.

Referring to the judicial practice of extending court hearings, a significant portion of which last several months, it is found that the extensions have been for various reasons, whether objective or subjective. Among the

1. See decisions No. 41-2018-1268(273 S.P), dated 11.04.2018; No. 41-2018-1067 (215 S.P), dated 27.03.2018; No. 41-2018-3007 (611 S.P), dated 14.09.2018 and 41-2018-3376 (658 S.P), dated 09.10.2018, of the Korça Judicial District Court.

2. See decisions No. 36/23 Act, dated 05.12.2022, concerning criminal case No. 36/2, year 2019 (238 of 2017), against defendants A.M, etc. and No. 21 dated 21.02.2023, concerning criminal case No. 142/21 Act, against defendants L.K etc., of the judge of the preliminary hearing, of the Special Court of First Instance, for Corruption and Organized Crime

objective causes, we can mention the problem of notifications, which exists in almost every court, specifically the failure to declare accurate addresses, the malfunctioning of the postal service due to the invalidity of notifications, the failure to notify the defendant, which as a result also leads to the suspension of this type of trial for up to 1 year, as is also provided for in the trial on the merits. Likewise, the large stock of files or the movements of judges from cases that are in the preliminary hearing, due to the administrative process of vetting, transfer or promotion, are also objective causes that have to do with the postponement, and consequently the non-completion within the legally foreseen deadline, of the preliminary hearings. Considering the analysis in this perspective, it can be said that there is a need for intervention in the direction of minimizing these causes, by finding the appropriate and adequate mechanisms.

II. As we have mentioned in the introductory part, the object of the trial in the preliminary hearing is specific, namely sending the case to trial. The law allows that in the request addressed to the court, especially to the judge of the preliminary hearing, there may be two objects of inquiry joined together, where in addition to the request for sending to court, there may also be another request for the dismissal of any charge that belongs to the same criminal proceeding, or case, if it is for criminal offenses of the crime type¹.

On the other hand, the criminal procedural law requires that when sending the case to court, the investigative body or the prosecution must respect the legal obligations provided for in the content of Article 327 of the Criminal Procedure Code. As such, this body must respect the 10-day deadline that the defendant has from the moment of notification of the manner of completion of the investigations, which has the consequence of invalidity. This means that if this deadline is not respected, the prosecution's request to send the case to court is invalid. Consequently, the pre-trial judge must in any case return the file to the prosecutor in order to carry out investigative actions to respect this procedural deadline of an imperative nature and, most seriously, with the consequence of invalidity of the request. We say this because the Criminal Procedure Code has also provided for other cases when procedural subjects must be notified, regarding the prosecutor's request to the court, such as in the case of a

1. See Article 329/a/2, of the Code of Criminal Procedure

criminal order, or a plea bargain, but in the event that this legal obligation is not fulfilled by the prosecutor's office, the procedural law does not provide for any concrete consequence of invalidity, both in the first case and in the other two cases.

Regarding notification and especially respecting the 10-day deadline for the defendant, judicial practice has not been unified in its positions. This is because in quite a few cases, court decisions are noted where this practice has strictly respected the legal provisions which guarantee the defendant's right to request additional investigations, or to be questioned, within 10 days from the communication of the prosecutor's request to the conclusion of the investigations with the aim of sending the case to court¹.

As there have been cases where the judges of the preliminary hearing did not consider the prosecutor's failure to comply with the 10-day deadline as a violation. In fact, this deadline is imperative and must be respected, except for those cases where the subject for whose benefit it was created can reduce or limit it by a written statement. In all other cases, referring not only to the literal and logical interpretation of the norm, but also to the teleological one (according to the purpose), we share the opinion that the prosecutor of the case must send the file to the judge of the preliminary hearing, only after having respected the legal deadline of 10 days. This is in the function of being procedurally correct in relation to respecting the procedural guarantees for the defendant, as is this specific deadline of 10 days².

Meanwhile, respecting the 10-day deadline should not mean that on the 11th day after the expiration of this deadline, the prosecutor must submit the request for sending the case to court, along with the relevant file in the court, to the judge of the preliminary hearing. This is because the defendant may have sent the requests by mail, for example, on the 10th day. So, within the legal limits, he has caught the legal deadline. In these cases, the prosecutor must wait a reasonable time that a postal service would need when he is within the country, for example, let's say a 3-day deadline, or something more when the defendant is abroad and the postal service requires an even longer time. We state this fact as conclusive, after referring to

1. See decisions No. 41-2018-0000 (528 S.P), dated 16.07.2018 and No. 41-2018-3220 (633 S.P), dated 27.09.2018, of the Korça Judicial District Court

2. See the Monograph "The Judge of the Preliminary Session", by Prof. Assoc. Dr. Admir Belishta, Botmet Kumi, Year 2022, pages 85-91

cases of judicial practice, there have been cases when the 10-day deadline was met by the defendant on the 10th day and on the other hand, the prosecutor himself, immediately after waiting for the end of this deadline, within 1 or 2 days sent the file together with the request to the court. Meanwhile, one or two days after the submission of this file to the court, the defendant's request was filed with the judge of the preliminary hearing, requesting the performance of other procedural actions.

Faced with such a situation, the prosecutor had no option but to resolve it, and as a result, the defendant's defense attorney filed a request before the judge of the preliminary hearing for the invalidity of the request to send the case to court, a request that was rightly accepted, in our opinion, as well-founded by this judge. This is because, the judge of the preliminary hearing, referring to the specific trial, had found, on the one hand, that the legal deadline of 10 days set as a procedural guarantee for the defendant had not been respected and, on the other hand, that his requests or claims had not been resolved by the prosecutor, due to the fact that the file had been sent to the judge of the preliminary hearing, at the time of their filing in this institution.

Meanwhile, from the perspective of respecting the deadline, according to the legal provisions of the code itself, this deadline is considered to be occupied even on the last day, regardless of the choice of means of communication by the subject for occupying this deadline. In this sense, the moment of its occupation will be considered the moment of deposit in the post office if he uses communication with the postal service, taking into account the date of deposit on the postal envelope. Then it is the obligation of the proceeding body itself, in the specific case of the prosecutor, to take into consideration such a fact, that is, the days that the postal service would need to reach the defendant's requests, referring to the place of residence or by receiving and analyzing through the disposition the claims or requests of the defendant himself.

In fact, referring also to the cases investigated by judicial practice, it turns out that such a "rush" of the prosecutor occurs in quite a few cases also due to the performance of procedural actions within the limits of the investigation or detention deadlines, when the defendant is detained, i.e. with the measure of personal security of arrest in prison. As a result of the passage or exhaustion of these deadlines, the prosecutor requests that their interruption be made precisely at the moment of the transfer of the acts to

the court. Meanwhile, the problem arises if the judge of the preliminary hearing disposes of the invalid declaration of the prosecutor's request and the sending of the case to court, returning the acts, i.e. the court file to the prosecutor. This is in order to continue the actions, which consist of re-notifying the defendant, respecting the 10-day deadline for his exercise of procedural rights and guarantees, as well as waiting for a reasonable time if the deadline is reached on the last day and the sending of requests or claims is done through the means of communication with the postal service. After familiarizing himself with these types of claims or requests, the prosecutor, depending on the nature, must dispose of each of them. Only after this moment, if there is no change in the legal position, the prosecutor must re-submit the updated request, along with the file documents, to the court, to the same judge of the preliminary session.

Meanwhile, if the investigation or detention deadlines expire, then the proceeding body, in this case the prosecution, must issue a decision to extend the investigation, and the defendant or his defense attorney must request the termination of the personal security measure of arrest in prison. In fact, these two types of practical situations have put the prosecutor in difficulty, thus prolonging the procedural actions, some of which arise newly precisely due to the circumstances created. These are precisely the reasons and motives for which we share the opinion that prosecutors are a little "impatient" at the moment of moving the case to a preliminary hearing, compiling and sending the request to send the case for trial to the judge of this hearing.

In research of this nature, when the 10-day deadline set in favor of the defendant was seized by the latter on the last day using the postal service, among several court decisions, a decision was also found to have been newly issued by the judge of the preliminary session of the Court of First Instance, of General Jurisdiction in Gjirokastra. Referring to the dispositions of this decision-making, as well as the arguments used in the reasoning of this judicial decision, we judge that this should be the judicial decision-making approach in such factual situations, as a professional stance, orienting judicial practice in an objective and fair manner.

III. Among the decisions that the preliminary hearing judge gives or disposes of at the end of this hearing is the dismissal of the case or charge if the case has more than one charge. Referring to the literal or grammatical

provision of point ç, of article 332/dh, of the Criminal Procedure Code, there are no concrete causes or reasons sanctioned for which the judge of the preliminary hearing may decide to dismiss. It refers only to the word “dismissal” which is instituted in Article 328 of the Criminal Procedure Code. Meanwhile, if we refer to this procedural provision, it is found that there are cited or nominated a set of reasons or causes to which the disposing procedural subject can refer in dismissing the case or accusation. As such causes, the Albanian legislator has nominated when it turns out that the fact clearly does not exist; it is not provided for by law as a criminal offense; the victim has not made a complaint, or has waived it, when the initiation of the proceedings has begun at his request; the person cannot be considered a defendant or cannot be punished; there is a cause that extinguishes the criminal offense, or for which the criminal offense should not have been initiated or should not have continued; it turns out that the defendant did not commit the criminal offense, or it is not proven that he committed it; by a final decision the defendant has been tried for the same criminal offense; the defendant dies; as well as in all other cases that are provided for by law and that are available with this type or nature of decision-making.

The question that could be asked in these cases, it is enough to examine one of them, lies in the fact of who is the disposing subject? Referring to the provisions made by this code itself, the subject of proceedings regarding the disposition of the dismissal decision is the prosecutor for criminal offenses of the criminal misdemeanor type, the judge of the preliminary hearing, during the review of the prosecutor’s request in the preliminary hearing, for sending the case to trial, or the prosecutor’s request for dismissal of the case or the accuser for criminal offenses of the crime type, as well as the judge of the trial of the case on the merits. Referring to the grammatical or literal interpretation of this point of the provision, it results that as long as there are no legal obstacles or prohibitions regarding the type of cause or reason for dismissal, as a rule the prosecutor or judge, even the one of the preliminary hearing, can dispose of any type of cause. However, despite these types of legal provisions, which we believe left no room for vacuums, inaccuracies or uncertainties, the Criminal Panel of the Supreme Court, regarding the position or disposition of the judge of the preliminary hearing, in the preliminary hearing, regarding the dismissal of the charge or case, has maintained a position different from what the law provides

or imposes restrictions on. Thus, in a cumulative or unifying decision-making, this panel has reasoned, among other things, that: "... the judge of the preliminary hearing may dismiss the charge, when the circumstances provided for by law exist, but he cannot enter into the evaluation and assessment of the evidence, since this is characteristic of the trial of the case on the merits...."¹

According to the reasoning and disposition of this decision of the Criminal Chamber of the Supreme Court, which in its essence contains a legal logic of judging in relation to the concept of evidence, and its price or legal assessment, if the cause of the dismissal has to do with the elements of law enforcement, provided for by Article 328 of the Criminal Procedure Code, which regulates the institute of dismissal, such as, for example, cases of amnesty, statute of limitations, withdrawal of appeal, etc., this can be done by the judge of the preliminary hearing. Meanwhile, if the established reason for dismissal has to do with the assessment of evidence, this can only be done by the trial judge, referring to the fact that evidence is assessed by this type of judge, according to the typology of trial on the merits. In fact, this type of interpretation made by the Criminal Chamber of the Supreme Court, in addition to raising a broad and very sensitive discussion regarding the competencies and the degree or level of assessment of evidence by the judge of the preliminary hearing and the judge of the merits of the trial of the case, practically imposes restrictions on specific cases of legal provision for dismissal of the case or accusation by the judge of the preliminary hearing, at a time when the legislator himself did not foresee it reasonable to impose such a restriction, which would require a legal addition equal to a sentence.

IV. Another issue identified in the positions held by judicial practice in relation to the decision-making of the judge in the preliminary hearing concerns the nature of the request that the prosecutor of the case must dispose of after the return of the acts for completion by the judge of the preliminary hearing, in relation to the consideration of his request for sending the case to trial. So, we are in the factual situation where initially the prosecutor addresses the court (the judge of the preliminary hearing), with a request to send the case to trial. For his part, this judge, after ascertaining the fact that the file presents problems in terms of complete

1. See decision No. 94 (23), dated 19.01.2023, of the Criminal Chamber of the Supreme Court

and comprehensive investigations, returns the acts, i.e. the physical file, to the prosecutor, keeping this case open, in the electronic case management system. At the same time, it leaves concrete tasks to be performed, as well as a deadline within which these tasks must be performed, even anticipating or planning the next court session. Similarly, if in the session this judge has invalid acts and unusable evidence, and they have an objective possibility of being redone or recovered, then it leaves the task to the prosecutor to redo the act declared invalid or the evidence declared unusable¹.

On the other hand, after carrying out these specific procedural actions, and respecting the deadline set by the court for this purpose, the prosecutor has the right, as the person who disposes of the charge, but also the head of the investigation, to dispose not only of the same nature or subject of the request, as the initial one, referral to trial, but also of another request, such as dismissal of the case, or even a mixed request, or of two requests, such as referral to trial for one charge and dismissal of the other charge if the case has more than two charges, etc. This is in the situation when, after carrying out certain procedural actions, the prosecutor shares a different position in relation to the initial position.

Seen in this perspective, or legal and logical analysis, this should also be the approach that judicial practice should take in relation to such factual situations. However, it is found that there are cases when judicial practice has a different approach in relation to this factual situation. Thus, there are cases when the judge of the preliminary hearing shares the position crystallized by judicial decision-making that after performing the necessary procedural actions or tasks left by this same judge, the prosecutor should come or dispose of the same request, or object of investigation. In the function of providing insightful and scholarly opinions or opinions, without at all questioning the legal force of a judicial decision, we believe that this type of judicial approach is wrong and as such there is a need for a unified approach by courts or judges, posing the need for a solution with unifying judicial decisions by the Criminal College of the Supreme Court².

1. See Article 332/ç, of the Code of Criminal Procedure

2. See decision No. 46 Regj. Them, dated 31.10.2023, of the Court of First Instance, of General Jurisdiction Tirana, concerning criminal proceedings No. 8391, of 2019, against the defendant T. K.

Conclusions and Recommendations

As a result of the legal analysis cited above, reflected in the form of concrete findings, it can be said that we have reached conclusions or conclusions accompanied by some suggestions or recommendations. Thus:

- The preliminary hearing and the preliminary hearing judge are a stage of the proceedings and a very necessary and even indispensable procedural subject for the criminal trial. They are the guarantors of a fair legal process, based on the provisions of domestic constitutional and legal acts, as well as acts of an international nature¹. What should be emphasized is that the judge of the preliminary hearing is obliged to strictly respect the mandatory legal norms that are foreseen for the preliminary hearing. Only in this way will this preliminary hearing play its role for which it is foreseen in the code, and will serve judicial practice with its importance and theoretical and practical values. Otherwise, we would lose the concept of this hearing, and consequently, we would diminish its role.

- What is presented as a basic obligation has to do with the fact of recognizing and implementing this criminal procedural institute as fairly as possible by trial subjects, such as lawyers, prosecutors and judges. An important role in this regard can also be played by ongoing trainings with this topic or training focus, which can be organized by the School of Magistracy, but not only. We say this because in addition to the school, such trainings can also be organized by other international organizations, or law faculties within the framework of organizing seminars or workshops on various projects. We believe that the treatment and discussion of various issues arising from judicial practice in relation to the preliminary hearing will have a positive impact on the fairest implementation of the legal provisions that provide for this procedural institute.

- In addition to various trainings, national or international scientific conferences can also play an important role in terms of recognizing and implementing legal provisions on the preliminary hearing, where through various references, papers and publications, researchers come to the aid of judicial practice regarding the preliminary hearing. Meanwhile, in the programs or curricula of the subjects, the faculties of law in Albania may see the possibility of providing as special modules the treatment of the preliminary hearing and the preliminary hearing judge. This is because the knowledge and

1. See Article 42 of the Constitution of the Republic of Albania, as well as Article 6 of the European Convention on Human Rights and Fundamental Freedoms

awareness of the concepts of these two procedural institutes carries a special importance not only in terms of the training of students or future lawyers, but also the in-depth doctrinal treatment and the most fair application of these concepts in practice, if they exercise duties that make them subjects of judgment in the preliminary hearing, such as lawyers, prosecutors or judges.

- During the analysis of the findings in this research work, we have found quite a few cases where different judges in the same court, or in different courts, have held different positions or decision-making approaches, in relation to aspects pertaining to the preliminary hearing. This is due to the lack of clear provision of legal norms, legal vacuums, or even the failure to properly implement these legal norms, such as the case of respecting the 10-day deadline for the defendant, before the prosecutor's request for sending him to trial is filed with the court, which was discussed above, etc. Seen from this perspective and through the prism of analysis, the cases legally treated by judicial practice I think raise the need for a more active role of the High Court, through its Criminal Chamber. This chamber has in its functional competence also the unification or recognition of judicial practice for similar or identical issues. Such a type of decision-making, for different decision-making approaches, would greatly assist judicial practice at this moment, referring to the problems encountered during the implementation of the procedural provisions on the preliminary hearing. I think this constitutes an immediate need of the practice itself for legal treatment through the identification of issues that belong to the preliminary hearing. This is not only for the common or unified approach, but mostly also for the fact that this unification comes due to the legal force, or the binding nature of this type of judicial decision-making by the Criminal College of the Supreme Court. From this perspective, it can be said that this type of conclusion, and consequently the suggestion or recommendation, is very necessary in the conditions of legal discussions that practitioners themselves, but also scholars or researchers of criminal procedural law are involved in due to the problems created.

- Although the unifying decisions of the Criminal College of the Supreme Court constitute a solution to the problems of the cases created, we believe that this does not constitute a final solution, since this type of solution comes through the interpretation of legal provisions, and not through the necessary legal amendments. We reach this type of conclusion due to the very fact that, referring to the nature or typology of the problems created, it results that there are cases of lack of cohesion of the criminal norm, which has led to ambiguity,

or cases where there are even legal vacuums in the provision. This requires a more essential and deeper intervention, by making legal amendments or changes.

It results from the section of the preliminary session that, after the initial provision of this procedural institute in 2017, the Albanian legislator has made legal changes in 2021, but despite this fact, judicial practice has still referred to problems in this regard. Consequently, we believe that the best way to provide a final or exhaustive solution to the problems created so far by this institute is that of legal changes in specific provisions that really need intervention. What may constitute a problem or concern regarding this suggestion is the fact of the legal procedures required to achieve legal amendments.

Thus, initially required and very important, is the phase of creating the working group that will deal with the drafting. The composition of this group plays a determining role in identifying the concrete norms that need amendments. For this reason, this requires a group with mixed composition, which will exchange professional experiences of a study or academic nature with those of a practical nature. So, in addition to criminal law researchers, the working group should also include practitioners such as lawyers, prosecutors, or judges, who, by implementing the provisions of the preliminary session, have closely touched upon the difficulties created in implementation or the need for legal intervention. Consequently, if the working group that will do the drafting is selected taking into account such elements, undoubtedly the legal interventions will be not only qualitative and sustainable over time, but also those that are really needed by judicial practice and that facilitate its work during the implementation of such criminal procedural norms.

On the other hand, we must also accept the fact that these types of interventions, due to their nature, require respect for the procedures or stages they go through before they enter into force and produce legal consequences or effects. This means that legal interventions also require a certain time, within which all stages of the process are exhausted. However, despite this, their role and importance in terms of the type or nature of the solution they provide if they are well studied, remains irreplaceable. Similarly, we believe that none of the other types of suggestions or recommendations cited above should be left aside, since each of them carries in itself a type of solution or minimization of problems created in connection with the preliminary session.

References

1. Constitution of the Republic of Albania
2. European Convention on Human Rights and Fundamental Freedoms
3. Code of Criminal Procedure, approved by Law No. 7977, dated 26.07.1995, amended by Laws No. 35/2017, dated 30.03.2017 and No. 41/2021, dated 29.05.2021
4. Monograph of the judge of the preliminary session, Prof. Assoc. Dr. Admir Belishta, Botimet Kumi, 2022.
5. Decision No. 94 (23), dated 19.01.2023, of the Criminal Chamber of the Supreme Court
6. Decision No. 36/23 Act, dated 05.12.2022, concerning the criminal case No. 36/2, year 2019 (238 of year 2017), against the defendants A.M, etc., of the judge of the preliminary session, of the Special Court of First Instance, for Corruption and Organized Crime
7. Decision No. 21 dated 21.02.2023, concerning the criminal case No. 142/21 Act, against the defendants L.K. etc., of the judge of the preliminary session, of the Special Court of First Instance, for Corruption and Organized Crime
8. Decision No. 46 Regj. Them, dated 31.10.2023, of the Court of First Instance, of the General Jurisdiction of Tirana, concerning the criminal proceeding No. 8391, of year 2019, against the defendant T. K.
9. Decision No. 41-2018-1268 (273 S.P), dated 11.04.2018, of the Korça Judicial District Court
10. Decision No. 41-2018-1067 (215 S.P), dated 27.03.2018, of the Korça Judicial District Court
11. Decision No. 41-2018-3007 (611 S.P), dated 14.09.2018, of the Korça Judicial District Court
12. Decision No. 41-2018-3376 (658 S.P), dated 09.10.2018, of the Korça Judicial District Court
13. Decision No. 41-2018-0000 (528 S.P), dated 16.07.2018, of the Korça Judicial District Court
14. Decision No. 41-2018-3220 (633 S.P), dated 27.09.2018, of the Korça Judicial District Court

TREATMENT OF VICTIMS IN CRIMINAL CASES RELATED TO ADULT/MINOR TRAFFICKING: BETWEEN LEGAL STANDARDS AND JUDICIAL REALITY

**PhD Candidate
Magistrate Manjola KAJANA¹**

Abstract

In the context of organized crime and high-risk criminal offenses such as trafficking in adults/minors, the protection of victims constitutes one of the main challenges of Albanian criminal justice.

Therefore, in this paper, the author will focus on the way in which Albanian judicial practice has addressed the rights and needs of victims in such cases, focusing on the role of the prosecutor, the effectiveness of punitive measures and prevention mechanisms.

Through the analysis of several concrete cases and the criminal legislation in force, the article aims to point out that despite the significant progress, challenges such as evidence collection, victim cooperation and their personal safety require further institutional improvements and deeper inter-institutional and international cooperation.

Keywords: *Trafficking of persons, Victim, Criminal justice, Victim protection*

1. PhD candidate, Department of Criminal Law, Faculty of Law, University of Tirana.

1. Indroduction

Trafficking crimes pose a serious threat to a country's society.¹ They have always been seen as an increased threat to the very existence of the human community.²

Our customary law has taken care to protect the victim from criminal acts. It has even tried to show you what the criteria and meaning of the victim were. According to Albanian customary law, a victim would be understood as any individual whose life or health was exposed to unlawful actions that, regardless of their form of guilt, violated the fundamental rights and freedoms of the individual.³

Forgiveness, self-justification, and compensation for damage in kind or in money were the three main forms in which victims' rights were elaborated/focused.⁴

Undoubtedly, today the victim enjoys many more rights than at the time when customary law extended its effects. Of course, these rights are well defined thanks to the positive dynamics of the development of substantive and procedural criminal law.

The victim has today become a central figure in the criminal process and the criminal justice system.⁵ Favorable position and active role⁶ is an

1. PRIFTI, A., Trafficking in persons. The human dimension and the legal character of the fight against it, Dissertation for the defense of the scientific degree "Doctor", Department of Criminal Law, Faculty of Law, University of Tirana, Tirana, 2015, p. 17-207..

2. WHITE, A., *Media and Trafficking in Human Beings Guidelines*, Ethical Journalism Netëork, International Centre for Migration Policy Development (ICMPD), 2017, f. 5-21.

3. LIKMETA, E., KAÇUPI, S., "Protection of victims of criminal offences according to Albanian customary law", National Scientific Conference "Issues of theory and practice on the protection of victims' rights in the criminal process", 19 December 2019, Tirana, p. 738-757.

4. LIKMETA, E., KAÇUPI, S., "Protection of victims of criminal offenses according to Albanian customary law", National Scientific Conference "Issues of theory and practice on the protection of victims' rights in the criminal process", 19 December 2019, Tirana, p. 738-757.

5. NANO, V., SHEGANI, A., ÇELIKU, XH., "A model for the protection of the private life and image of the victim of a criminal offense?", National Scientific Conference "Issues of theory and practice on the protection of victims' rights in the criminal process", 19 December 2019, Tirana, p. 1-25.

6. It is an essential procedural moment that shows the utmost care and appreciation for and towards the respect of the victim's fundamental rights and freedoms through

attribute of a contemporary/modern approach of our legislator.¹ We say this because the efficiency of a criminal justice system depends greatly on the care shown in the function of recognition, integration² as well as the protection of victims' rights throughout criminal proceedings, whether at the national or international level.³

In addition, public trust in institutions and law enforcement agencies will be significantly strengthened when the victim's compensation for the damage caused by the criminal offense and the perpetrator's punishment are successfully finalized.⁴

2. Theoretical and practical aspects of the criminal offenses of trafficking in adults and minors

Criminal legislation has been enriched over the years with many new figures in order to protect society from crime.

Trafficking in the context of a criminal offense clearly constitutes a serious act of violation of human dignity.⁵

Legal mechanisms in function of protection against criminal acts of

effective and transparent justice. SHEQI, E., "Participation of victims in international criminal proceedings", National Scientific Conference "Issues of theory and practice on the protection of victims' rights in criminal proceedings", 19 December 2019, Tirana, p. 31-48.

1. NANO, V., SHEGANI, A., ÇELIKU, XH., "A model for the protection of the private life and image of the victim of a criminal offense?", National Scientific Conference "Issues of theory and practice on the protection of victims' rights in the criminal process", 19 December 2019, Tirana, p. 1-25.

2. NANO, V., SHEGANI, A., ÇELIKU, XH., "A model for the protection of the private life and image of the victim of a criminal offense?", National Scientific Conference "Issues of theory and practice on the protection of victims' rights in the criminal process", 19 December 2019, Tirana, p. 1-25.

3. PEPPPO, E., BODE, J., "Protection of victims' rights under international criminal law", National Scientific Conference "Issues of theory and practice on the protection of victims' rights in the criminal process", 19 December 2019, Tirana, pp. 31-48.

4. ANASTASI, A., "On a classification of victims' rights in access to due process", National Scientific Conference "Issues of theory and practice on the protection of victims' rights in the criminal process", 19 December 2019, Tirana, pp. 399-414.

5. MUÇO, E., Human trafficking in Albania: perceptions and attitudes on human trafficking and relationships between society, institutions and victims of trafficking, Dissertation for the defense of the scientific degree "Doctor", Department of Social Work and Social Policy, Faculty of Social Sciences, University of Tirana, Tirana, 2018, p. 30-44.

trafficking are multidimensional. At the international level we can mention the European Convention “For the Protection of Human Rights and Fundamental Freedoms” the Council of Europe Convention “On measures against trafficking in human beings”,¹ Council of Europe Convention “On the Protection of Children against Sexual Exploitation and Sexual Abuse”,² The United Nations Convention on the Rights of the Child, etc.

Legal provisions against trafficking in adults and especially minors as a vulnerable group are positive measures³ undertaken by our legislator. However, researchers emphasize the need for more qualified and dignified treatment in relation to these strata.⁴ In this regard, law enforcement agencies should reflect greater accountability in carrying out their duties in the interest of victims’ rights.⁵

2.1 Trafficking in adults

The adult trafficking provision was added thanks to the legal interventions of 2001. Over the years, it has undergone changes in title, structure and content.

For the first time, it was sanctioned by the legislator as a blanket provision⁶ as follows: *Trafficking in persons, for the purpose of material gain or any other benefit, is punishable by imprisonment from five to fifteen years.*

1. Official Gazette of the Republic of Albania No. 132, Date. 18/12/2006, p. 5169-5180.

2. Official Gazette of the Republic of Albania No. 21, Date. 06/03/2009, p. 1353-1372.

3. BEHRI, MUSTAFA, I., SULA, G., “Participation of victims in international criminal proceedings”, National Scientific Conference “Issues of theory and practice on the protection of victims’ rights in criminal proceedings”, 19 December 2019, Tirana, pp. 115-128.

4. FURRAMANI, E., “Criminal justice and “vulnerable” victims: a look at the practice of the European Court of Human Rights”, National Scientific Conference “Issues of theory and practice on the protection of victims’ rights in the criminal process”, 19 December 2019, Tirana, pp. 211-224.

5. ANASTASI, A., “On a classification of victims’ rights in access to due process”, National Scientific Conference “Issues of theory and practice on the protection of victims’ rights in the criminal process”, 19 December 2019, Tirana, pp. 399-414.

6. HAZNEZIRI, L., Legal-criminal analysis of the criminal offense of “trafficking in persons”, and the problems encountered in relation to the correct legal qualification of this criminal offense, in SCHOOL OF MAGISTRATES, “Legal framework on human trafficking in Albania and the challenges encountered in judicial practice”, Tirana, 2013, p. 34-45.

The same offense, when committed in collaboration or more than once or accompanied by mistreatment and coercion by physical or psychological violence of the injured party to perform various actions or resulting in serious health consequences, is punishable by imprisonment of not less than fifteen years and, when resulting in death, by life imprisonment.”¹

This provision was structured in two paragraphs, where from the very beginning of its title it was understood that the object of criminal legal protection was people without distinction.² Essentially, for the purpose of legal qualification, the purpose was important - material gain as an element of the subjective side.

The penalty ranges ranged from five to fifteen years of imprisonment for the first paragraph.³

In the second paragraph, the minimum criminal sanction was not less than fifteen years of imprisonment. The death penalty was applicable only in the case where the death of the person had resulted. In addition to the latter, another important element of the objective side for legal qualification was the occurrence of a serious health consequence.⁴

Also, elements of the objective side were important, such as: collaboration, committing it more than once, or through physical or psychological violence, as well as various mistreatments.⁵

With the legal changes of 2004,⁶ The criminal provision is titled “Trafficking in Persons” and no longer “Human Trafficking” as it was originally named. In fact, the change in title was intended to, first, make our criminal legislation more contemporary in terms of the terminology used and, above all, to be more comprehensive.⁷ This is because, referring to our Criminal Code as well as international legal instruments of a universal or regional nature - trafficking in terms of the elements of the objective side means undertaking active actions such as: recruiting, transporting, transferring, hiding or receiving persons with the aim of carrying out a

1. Official Gazette of the Republic of Albania No. 4, Date. 26/02/2001, p. 100-116.

2. Official Gazette of the Republic of Albania No. 4, Date. 26/02/2001, p. 100-116.

3. Official Gazette of the Republic of Albania No. 4, Date. 26/02/2001, p. 100-116.

4. ELEZI, ISMET, Criminal Law (Special Part), Kumi Publications, Tirana, 2021, p. 137-142.

5. ELEZI, ISMET, *Criminal Law (Special Part)*, Botimet Kumi, Tirana, 2021, p. 137-142.

6. Official Gazette of the Republic of Albania No. 13, Date 16 March 2004, pp. 541-544.

7. Official Gazette of the Republic of Albania No. 13, Date 16 March 2004, pp. 541-544..

certain criminal activity that may not necessarily and should not be limited only to forced labor, slavery or other similar forms, organ trafficking, etc.¹

On the other hand, “trafficking in persons” as a term is mostly related to illegal acts of crossing the border and entering a certain country, such as entering the United States of America, the European Union, etc. So, the focus of our legislator’s attention for the effects of criminal punishment was² and is the punishment of any criminal behavior (forced labor, slavery, organ trafficking, etc.) that aims to exploit persons for certain illegal interests.³ Now, it is not limited to the criminalization of the criminal act of transporting persons for profit or other favor.

Finally, the title of the article has been defined as “Trafficking in Adult Persons”.”⁴ Only thanks to the legal interventions of 2013,⁵ such specification of the name clearly indicates to law enforcement agencies what is the object of this criminal figure. And, moreover, which is the concrete category (adults) that should receive and enjoy special legal-criminal protection against criminal behavior. The new name of the provision eliminates any possible ambiguity that may have arisen or come as a result of legal misunderstandings that may have arisen in practice regarding other figures of trafficking. Now, it is clearly distinguished from Article 128/b “Trafficking in minors”. In the case of the unifying decision of the Criminal Chamber⁶ of the Supreme Court, the differences between these criminal offenses, as well as the forms of committing the criminal offense from an objective perspective, have been explicitly addressed, unifying judicial practice in several cases, including the interpretation of the term “internal trafficking”. Thus⁷, human trafficking in the criminal law of the Republic of Albania, provided for in two provisions: “Trafficking in adults” – article 110/a and “Trafficking in minors” – article 128/b of the Criminal Code), is considered to include three essential elements: a) Actions/forms of trafficking (recruitment, transportation, transfer, concealment or reception of persons); b) Means of trafficking/ways in which traffickers achieve their purpose (threat, use of force and other forms of coercion, fraud, coercion,

1. Official Gazette of the Republic of Albania No. 13, Date 16 March 2004, pp. 541-544.

2. Official Gazette of the Republic of Albania No. 13, Date 16 March 2004, pp. 541-544.

3. Official Gazette of the Republic of Albania No. 83, Date. 17/05/2013, p. 3526-3536.

4. Official Gazette of the Republic of Albania No. 83, Date. 17/05/2013, p. 3526-3536.

5. Official Gazette of the Republic of Albania No. 83, Date. 17/05/2013, p. 3526-3536..

6. Decision nr 217 dated 27.07.2022 of the Criminal Panel of the Supreme Court

7. Decision nr 217 dated 27.07.2022 of the Criminal Panel of the Supreme Court

deception or abuse of power or a position of vulnerability or the giving or receiving of payments or benefits); c) Purpose (sexual exploitation, forced labor or services, slavery or practices similar to slavery);

- The criminal offense provided for in Article 110/a of the Criminal Code is considered fully committed when one of the forms/actions, one of the means and the purpose of exploiting the victim are proven. In the case of trafficking in adult persons, the consent or will of the victim to engage in prostitution or other forms of exploitation does not affect the qualification of the criminal offense as long as it is proven that one of the means referred to in the specific criminal provision was used to achieve the goal (*Means in cases of trafficking in human beings are: fraud, use of force, kidnapping, threat or use of other forms of coercion, abuse of office or taking advantage of social, physical or psychological situation, etc. - these are elements that must be proven in the case of trafficking in an adult person*).

While in the criminal offense of “Trafficking in Minors”, two elements should be highlighted: (i) the means used to achieve the criminal purpose are not important. The means do not affect the legal qualification of this criminal offense, which means that due to the legal qualification of the offense, it is sufficient to prove the existence of one of the forms of trafficking such as: recruitment, sale, transportation, transfer, concealment or reception of the minor, with the aim of exploiting him. (ii) the will or consent of the minor victim of trafficking, in relation to the intended exploitation, has no value, regardless of the circumstances or the manner in which it was manifested.

The second paragraph of Article 110/a provided for imprisonment and a fine for committing other elements of the objective side such as: organizing, directing and financing human trafficking.¹

Another qualifying circumstance sanctioned in criminal law is the commission of the crime in collaboration or more than once, as well as the occurrence of serious consequences for the health and life of the person as a result of physical or psychological violence.²

With the interventions that the criminal law underwent during 2013,

1. ELEZI, ISMET, *Criminal Law (Special Part)*, Botimet Kumi, Tirana, 2021, p. 137-142.

2. ELEZI, ISMET, *Criminal Law (Special Part)*, Botimet Kumi, Tirana, 2021, p. 137-142.

another qualifying circumstance was added¹. Specifically, the one that has to do with the fact that when the criminal act of trafficking is directed against an adult female person, this constitutes a completely unacceptable behavior and as such is punishable by law with imprisonment from ten to fifteen years.²

At the same time, the legal amendments of 2013 sanctioned the emergence of criminal liability for the perpetrator of this crime, regardless of the place of its commission. Thus, the place as an element of the objective side is not important for the effect of the legal qualification of the criminal offense.³

Also, the spectrum of aggravating circumstances included the commission of the criminal offense by a special subject – a public official, who achieved the criminal intent through the use of his state function or public service.⁴

Imprisonment and fines were cumulative penal measures applied for this provision. They varied from one paragraph to another. Thus, the imprisonment penalty provided for in the first paragraph was from five years to fifteen years and a fine from two million to five million Albanian Lek.⁵ In the second paragraph, the author was sentenced to imprisonment from seven to fifteen years and a fine from four million to six million lekë.⁶ In the next paragraph, the punishment applied to the author was a minimum of no less than fifteen years of imprisonment and a fine of six million to eight million Lek.⁷ Whereas when trafficking resulted in serious consequences – harm to human life – the perpetrator was sentenced to no less than twenty years or life imprisonment, accompanied by a fine of seven million to ten million Lek.⁸

It should be noted that for the purpose of the legal qualification of the criminal offense, the determination of its subject was not important. It is, as it is today, relevant only in the last paragraph of this article – when the criminal offense is committed through the use of state function

1. Official Gazette of the Republic of Albania No. 83, Date. 17/05/2013, p. 3526-3536.

2. Official Gazette of the Republic of Albania No. 83, Date. 17/05/2013, p. 3526-3536.

3. Official Gazette of the Republic of Albania No. 83, Date. 17/05/2013, p. 3526-3536.

4. Official Gazette of the Republic of Albania No. 13, Date 16 March 2004, p. 541-544.

5. Official Gazette of the Republic of Albania No. 13, Date 16 March 2004, p. 541-544.

6. Official Gazette of the Republic of Albania No. 13, Date 16 March 2004, p. 541-544.

7. Official Gazette of the Republic of Albania No. 13, Date 16 March 2004, p. 541-544.

8. Official Gazette of the Republic of Albania No. 13, Date 16 March 2004, p. 541-544.

or public service.

So, when the crime in question was committed by a specific subject, the prison sentence was increased by $\frac{1}{4}$ of the sentence given, as well as the fine.¹ The latter was abolished as the main penalty in all criminal measures of this provision with the legal amendments of May 2013.²

As can be seen, our legislator has defined and developed a proportional and gradual system of criminal penalties for the criminal offense of trafficking in persons, taking into account in particular elements of the objective side such as: aggravating circumstances and consequences or use of official position, etc.

It is characterized by the implementation of a relatively harsh criminal policy with sanctions of imprisonment which also go to the application of a life sentence.³ Also, it is not foreseen that the act will remain in the attempted stage.⁴ And, that the trafficking provision can be applied equally to both transnational and domestic trafficking.⁵

2.2. Trafficking of minors

Trafficking of minors was a white provision, as was trafficking of adults in its early days. This undoubtedly had several reasons. Firstly, in the first decade of transition, our society as an isolated community that came from a totalitarian regime and was somewhat conservative in ideas and thoughts was unprepared to “welcome” into its fold the bitter reality that had recently emerged - the presence of negative phenomena such as trafficking of adults or minors, narcotics, weapons, etc. Secondly, the lack of life tradition and professional experience towards the existence of these

1. Official Gazette of the Republic of Albania No. 13, Date 16 March 2004, p. 541-544.

2. Official Gazette of the Republic of Albania No. 13, Date 16 March 2004, p. 541-544.

3. ZAJMI, I., Does the Albanian criminal legislation on human trafficking exceed the threshold of international standards, in SCHOOL OF MAGISTRATES, “Legal framework on human trafficking in Albania and challenges encountered in judicial practice”, Tirana, 2013, p. 24-33.

4. ZAJMI, I., Does the Albanian criminal legislation on human trafficking exceed the threshold of international standards, in SCHOOL OF MAGISTRATES, “Legal framework on human trafficking in Albania and challenges encountered in judicial practice”, Tirana, 2013, pp. 24-33.

5. ZAJMI, I., Does the Albanian criminal legislation on human trafficking exceed the threshold of international standards, in SCHOOL OF MAGISTRATES, “Legal framework on human trafficking in Albania and challenges encountered in judicial practice”, Tirana, 2013, p. 24-33.

phenomena that were not at all accepted by our society was another factor that influenced the creation of such a white provision.¹

Our community was not prepared and could not perceive and no longer accept the existence of such phenomena. Therefore, this is another reason that has directly influenced the worldview of the legislator of the time.

Of course, the negative phenomenon of trafficking has had its ups and downs.

As doctrine and practice have shown, trafficking has become a phenomenon that has directly affected the genesis of many Albanian families.

Although it must be admitted that the trends in decrease or in the change of destination show that this social wound has been cured over the years in many dimensions - first, it has been despised by the citizens themselves but also fought with force by law enforcement agencies. And, therefore, its consequences have been significantly mitigated and reduced.

Albania, today from a country of origin and transit of trafficking, is a country that truly cannot be immune, but this is due to the country's rapid development and progress in many sectors of life, especially in the economy, tourism, etc. There is no doubt that trafficking² violates the human dignity and fundamental freedoms of the persons who are its victims, and therefore cannot be seen as compatible with a democratic society, nor with the values sanctioned in the European Convention on Human Rights. The ECtHR has argued in several cases that trafficking in human beings is based on the exercise of certain attributes of the right to property, where human beings are treated as goods that can be bought and sold, can be subjected to forced labor, often little or no pay. Trafficking implies strict supervision of the activities of victims and often, the latter have their freedom of movement restricted, are subjected to acts of violence or threats, and are placed in unsuitable living and working conditions.

In terms of criminal law, criminal liability would arise for the perpetrators of the criminal offense of trafficking in minors only when the existence of

1. HAZNEZIRI, L., Legal-criminal analysis of the criminal offense of "trafficking in persons", and the problems encountered in relation to the correct legal qualification of this criminal offense, in SCHOOL OF MAGISTRATES, "Legal framework on human trafficking in Albania and the challenges encountered in judicial practice", Tirana, 2013, p. 34-45.

2. Decision nr. 217 dated 27.07.2022 of the Criminal Panel of the Supreme Court

the purpose of obtaining (whether this material or not) was proven, as well as cooperation, repetition of the crime, or the occurrence of a serious consequence that could harm the life or health of the person.¹ So, for this crime figure, as well as for adult trafficking, the elements of the objective side were important as a qualified circumstance, in addition to the element of the subjective side that was provided for in the first paragraph.²

The legal changes of 2004 were essential. They enriched the legal norm not only in its title, but also in its structure and content. The criminal offense is titled as it is today “Trafficking in Minors” and not “Trafficking in Children”.

In terms of the elements of the objective side, the criminal offense clearly defines what are the forms of its commission. They include criminal acts such as: recruitment, transportation, transfer, concealment or reception of minors for specific purposes such as forced labor, enslavement³, the use or transplantation of organs, sexual exploitation, and other forms of exploitation.⁴

It is worth mentioning that in Albania, the Criminal Justice Code for Minors (CJMC) was also adopted by Law No. 37/2017. The CJMC provides special rights for minors who are victims of a criminal offense, guaranteeing the protection of the minor and his/her best interest, in accordance with the Constitution and international standards. Unlike the CPC, this Code in its Article 3 provides definitions, among which it is worth highlighting the provision that “a minor is any person under the

1. Official Gazette of the Republic of Albania No. 4, Date. 26/02/2001, p. 100-116.

2. Official Gazette of the Republic of Albania No. 4, Date. 26/02/2001, p. 100-116.

3. *The understanding of slavery as a phenomenon goes beyond sale, presupposes a longer time interval, it is a mechanism used by the beneficiary (trafficker) to secure material or non-material gain, continuous, which begins with concrete actions in function of committing the crime and ends with enslavement or with forms similar to slavery (performing various forced works or services), but which may or may not function in parent-child relationships and beyond. The very existence of the term “enslavement or forms similar to slavery” used by the legislator in provisions of the Criminal Code within the framework of “trafficking in minors” and its provision in the law, Article 128/b/3 of the Criminal Code, is not enough to be considered present as a special form of committing this criminal offense a priori without proving the circumstances that have led to enslavement and which often become difficult to prove. HAVERI, DH., Trafficking of minors. Problems encountered in judicial practice in SCHOOL OF MAGISTRATES, “Legal framework on trafficking in human beings in Albania and challenges encountered in judicial practice”, Tirana, 2013, p. 86-89.*

4. Official Gazette of the Republic of Albania No. 13, Date 16 March 2004, p. 541-544.

age of 18”. Meanwhile, in point 5 of this provision of the CJMC, the term ‘minor victim’ is also specified – considering as such any person under the age of 18 who has suffered moral, physical or material damage as a result of a criminal offense..

In terms of the qualified circumstances, the elements of the objective side are considered such as: organization, management and financing of trafficking in minors; cooperation, repetition of the same crime more than once, serious consequences on the health and life of the citizen.¹

The legislator has maintained and expressed the same position (as in the case of trafficking in adult persons) when the criminal offense is committed by a special subject – an employee performing a public duty.² This is because he achieves the criminal goal by exploiting the power given to him.³

The punishment measures for this crime figure were also variable. They varied depending on the specific circumstances of the commission of the criminal offense. The criminal sanctions provided for this crime figure are a minimum of ten years to life imprisonment.⁴ The fine as one of the two main penalties added in 2004 has been abolished as the main penalty in all criminal measures of this provision, as has happened with the criminal offense of trafficking in adults.⁵

3. Identification of victims and their compensation

The identification of victims of trafficking is carried out in accordance with the Standard Operating Procedures approved by **the Decision of the Council of Ministers, No. 582, dated 27.7.2011** “*On the Approval of Standard Operating Procedures for the Identification and Referral of Victims/Potential Victims of Trafficking*” (PSV).

- The SOPs are designed in accordance with the provisions of the Council of Europe Convention on Action against Trafficking in Human Beings (the Convention). According to the Convention, victims of trafficking must be formally identified as such, in order to prevent them from being treated as

1. Official Gazette of the Republic of Albania No. 13, Date 16 March 2004, pp. 541-544.

2. Official Gazette of the Republic of Albania No. 83, Date. 17/05/2013, p. 3526-3536.

3. Official Gazette of the Republic of Albania No. 13, Date 16 March 2004, p. 541-544.

4. Official Gazette of the Republic of Albania No. 83, Date. 17/05/2013, p. 3526-3536.

5. Official Gazette of the Republic of Albania No. 83, Date. 17/05/2013, p. 3526-3536.

irregular migrants or as criminals.

- Identification is carried out by specially trained professionals (police officers, social workers, labour inspectors, doctors, support service providers, etc.), who follow agreed procedures, as well as relevant identification criteria and define the steps to be taken by the structures responsible for the initial and formal identification of victims/potential victims of trafficking with a view to referring them to assistance and reintegration services. The measures necessary to assist victims in their physical, psychological and social recovery under the Convention include, as minimum standards, ensuring their livelihood, through measures such as:

- adequate and safe housing;
- psychological assistance;
- material assistance;
- access to emergency medical treatment;
- translation and interpretation services as necessary;
- advice and information, in particular regarding their legal rights and relevant procedures, in a language they understand;
- legal aid and free legal aid under specific conditions;
- access to the labour market, vocational training and education, and
- access to children's education, taking into account the victim's safety and protection needs.

*According to international norms, the **Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, adopted by the UN General Assembly**¹, is the fundamental international act, which defines the rights of victims and the procedures for compensating them for damage. This document also promotes some of their rights such as access to justice and fair treatment, which, among other things, means legal assistance and timely notification of all procedural aspects, restitution of property, compensation for damage, restoration of rights, etc., compensation from the state when the perpetrator's financial means are insufficient for this, etc..*

The issue of victim compensation is highly sensitive due to the problems that arise in practice. There is no specific law in Albanian legislation on

1. List of international acts ratified by Republic of Albania, Official Gazette June 2010

victim compensation and reparation. The only possibility that victims have under criminal procedural law to be compensated for the damage caused to them is through a civil lawsuit in criminal proceedings. A civil lawsuit in criminal proceedings is provided for in Article 61 of the Code of Criminal Procedure and gives the victim, as a civil plaintiff, the right to request, through a civil lawsuit in criminal proceedings against the trafficker or the civil defendant, the return of property and compensation for damage. Also, a victim of trafficking may file a special civil lawsuit in the civil court, referring to Article 647/a of the Civil Code, on compensation for non-pecuniary damage. The civil lawsuit provides protection to the victim because, at her request as a civil plaintiff, the proceeding body, in order to ensure the return of property and compensation for damage, may decide to seize the property of the defendant or civil defendant. This measure remains in effect until the conclusion of the case.

Another procedural deficiency is the fact that the civil lawsuit in criminal proceedings can be used under Article 61 of the Code of Civil Procedure only for material damage and not for non-material damage, depriving victims of the right to seek compensation for non-material damage in a criminal proceeding. As stated above, this right can be enjoyed through a direct lawsuit in the civil court, a lawsuit which in this court has “*problems of costs, time and unclear result*”.

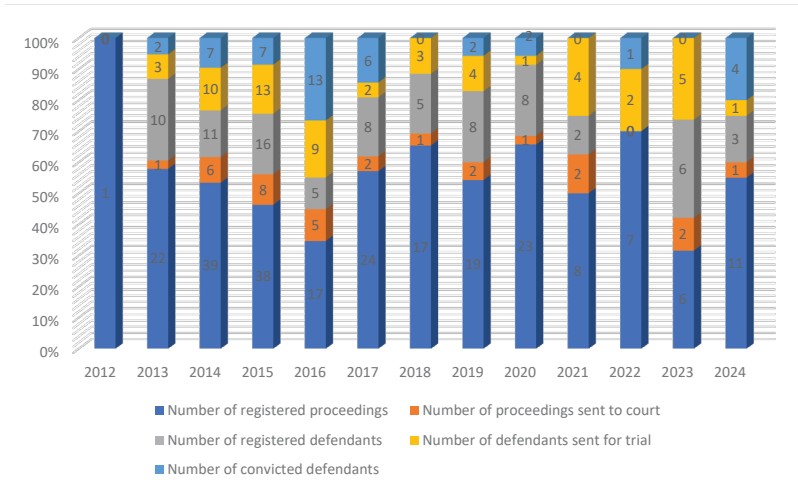
4. Analysis of statistical data regarding these criminal offense figures

The statistics of the General Prosecutor’s Office for the period 2012-2024 show a clear picture of the development of proceedings and defendants registered for the criminal offenses of trafficking in adults and minors.

From the analysis of the data, it is noted the change in the trends of these offenses, especially after the 2013 amendments to the criminal legislation.

Chart 1

Dynamics of the development of proceedings and defendants in the criminal offense of “Trafficking in Adult Persons” during the years 2012-2024¹



The graph shows the dynamics of proceedings for the criminal offense of trafficking in adult persons.² As can be seen, the number of registered proceedings has increased almost gradually from 2013 to 2020, reflecting efforts to tighten control over trafficking in adult persons. This increase may be related to the strengthening of legal measures, such as the amendments made to Article 110/a.³ The largest increase was recorded in 2013-2015, when law enforcement agencies intensified prosecutions to address adult trafficking.⁴

1. GENERAL PROSECUTOR'S OFFICE (2012-2024), Reports of General Prosecutor on the state of criminality, Tirana. Furthermore:
https://www.pp.gov.al/Documents/REPORTS_OF_THE_PROSECUTOR_GENERAL/.
 Last accessed online: 3.8.2025.

2. GENERAL PROSECUTOR'S OFFICE (2012-2024), Reports of General Prosecutor on the state of criminality, Tirana. Furthermore:
https://www.pp.gov.al/Documents/REPORTS_OF_THE_PROSECUTOR_GENERAL/.
 Last accessed online: 3.8.2025.

3. Law, No. 7895, Date of Act: 27.01.1995, Date of Approval: 27.01.1995, Official Gazette No. 2, Page: 23, as amended.

4. GENERAL PROSECUTOR'S OFFICE (2012-2024), Reports of General Prosecutor on the state of criminality, Tirana. Furthermore:
https://www.pp.gov.al/Documents/REPORTS_OF_THE_PROSECUTOR_GENERAL/.
 Last accessed online: 3.8.2025.

Chart 2

Total proceedings and defendants for the criminal offense of “Trafficking in Adult Persons” during the years 2012-2024¹

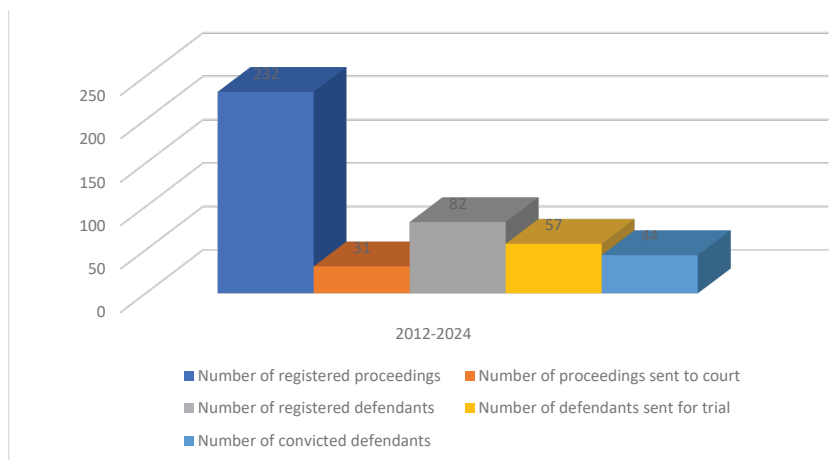
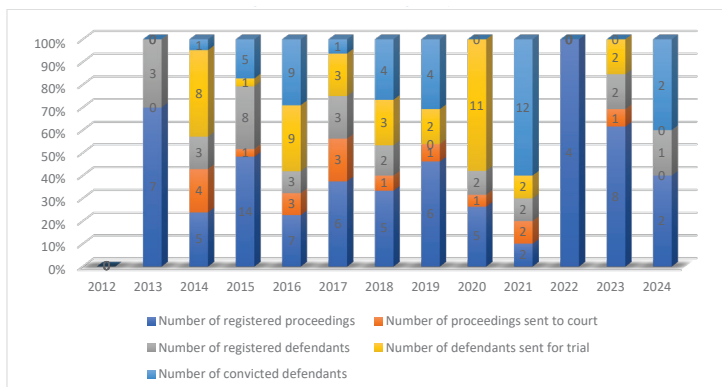


Chart 3

Dynamics of the development of proceedings and defendants in the criminal offense of “Trafficking in Minors” during the years 2012-2024²



1. GENERAL PROSECUTOR’S OFFICE (2012-2024), Reports of General Prosecutor on the state of criminality, Tirana. Furthermore:

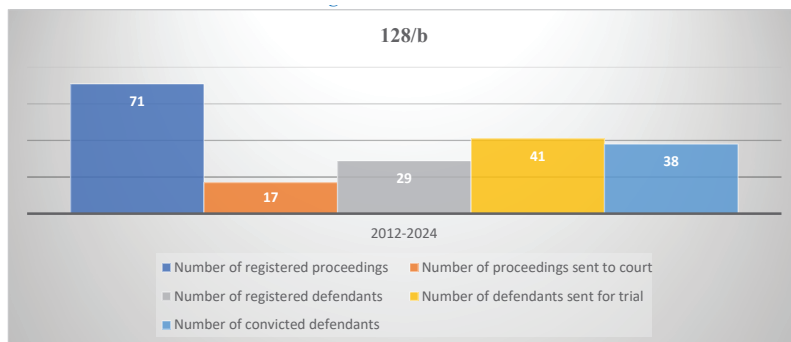
https://www.pp.gov.al/Documents/REPORTS_OF_THE_PROSECUTOR_GENERAL/. Last accessed online: 3.8.2025.

2. General Prosecutor’s Office (2012-2024), Reports of General Prosecutor on the state of criminality, Tirana. Furthermore:

https://www.pp.gov.al/Documents/REPORTS_OF_THE_PROSECUTOR_GENERAL/. Last accessed online: 3.8.2025.

Chart 4

Total Proceedings and Defendants for the Criminal Offense of “Trafficking in Minors” during the Years 2012-2024¹



Statistics show that for the criminal offense of trafficking in minors, as provided for in Article 128/b of the Criminal Code, a small number of proceedings have been registered and sent to court.²

This criminal offense is not characterized by a high dynamics in practice.³

4. Conclusion

From the study of statistical data of the General Prosecutor’s Office for the criminal offense “Trafficking in Adult Persons” in the period 2012-2024, it results that:⁴

1. Republic of Albania, General Prosecutor’s Office, Report on the State of Crime 2012-2024. For more see: http://www.pp.gov.al/web/Raporte_te_Prokurorit_te_Pergjithshem_353_1.php#.XxgS0XvivIU retrieved online on 3.8.2025.
2. Law, No. 7895, Date of Act: 27.01.1995, Date of Approval: 27.01.1995, Official Gazette No. 2, Page: 23, as amended.
3. Law, No. 7895, Date of Act: 27.01.1995, Date of Approval: 27.01.1995, Official Gazette No. 2, Page: 23, as amended.
4. GENERAL PROSECUTOR’S OFFICE (2012-2024), Reports of General Prosecutor on the state of criminality, Tirana. Furthermore: https://www.pp.gov.al/Documents/REPORTS_OF_THE_PROSECUTOR_GENERAL/. Last accessed online: 3.8.2025.

- 232 is the number of proceedings registered;
- 31 is the number of proceedings sent to court;
- 82 is the number of defendants registered;
- 57 is the number of defendants sent for trial;
- 44 is the number of defendants convicted.

From the analysis of these data it is provided that 13% of the proceedings registered are brought to court to be judged. Meanwhile 69.5% of the defendants registered under investigation are brought to the court and 53.6% are condemned.

Form the analysis of the statistical data of General Prosecution Office of Albania, regarding the criminal offence “Trafficking of minors” during 2012-2024 it is provided that:¹

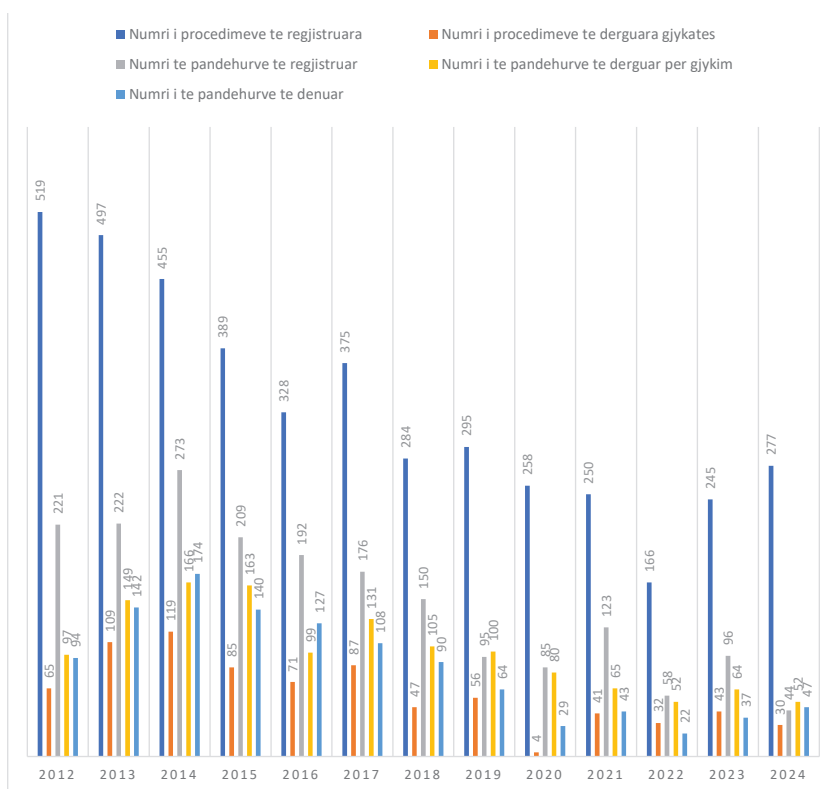
- 71 is the number of proceedings registered;
- 17 is the number of proceedings sent to court;
- 29 is the number of defendants registered;
- 41 is the number of defendants sent for trial;
- 38 is the number of defendants convicted.

1. General Prosecutor’s Office (2010-2023), Reports of General Prosecutor on the state of criminality, Tirana. Furthermore:
https://www.pp.gov.al/Documents/REPORTS_OF_THE_PROSECUTOR_GENERAL/.
 Last accessed online: 3.8.2025.

Chart 5

Development dynamics for the criminal offenses of illegal trafficking for the period 2012-2024¹

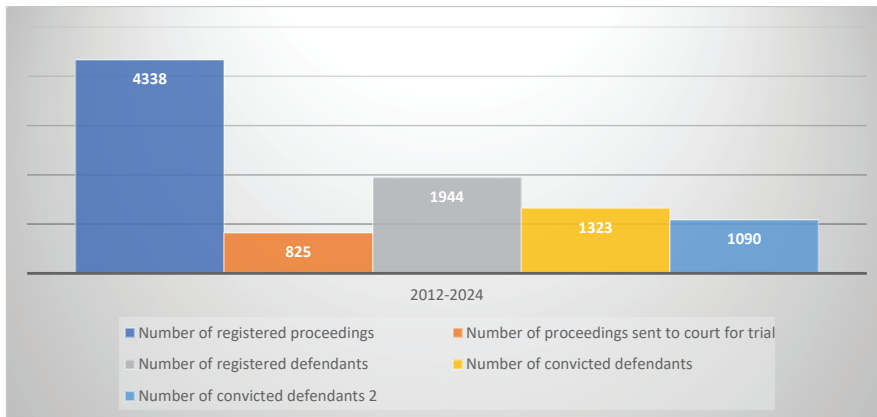
This chart is a summary of various criminal offenses in the field of illegal trafficking, including the provisions provided for in Articles 110/a “Trafficking in Adults”, 128/b “Trafficking in Minors”, 138/a “Trafficking in Works of Art and Culture”, 141/a “Trafficking in Motor Vehicles”, 278/a “Trafficking in Weapons and Ammunition”, Article 282/a “Trafficking in Explosives, Combustibles, Poisonous and Radioactive Substances”, and Article 283/a “Trafficking in Narcotics”.



1. General Prosecutor’s Office (2010-2023), Reports of General Prosecutor on the state of criminality, Tirana. Furthermore:
https://www.pp.gov.al/Documents/REPORTS_OF_THE_PROSECUTOR_GENERAL/.
 Last accessed online: 3.8.2025.

Chart 6

Development dynamics for criminal offences of illegal trafficking for the period 2012-2024¹



The results of the study show that criminal offenses related to illegal trafficking, such as trafficking in persons or minors, occupy a small place in relation to the overall volume of this category of crime.² Thus, more sophisticated criminal offenses, such as trafficking in persons and minors, have lower numbers of prosecutions and convictions.³

The criminal offense provided for by Article 110/a of the Criminal Code, such as “Trafficking in Persons”, has a low number of registered proceedings (277) and proceedings sent to court (30) during the period 2012-2024.⁴ Expressed as a percentage, it accounts for about 5.3% of the

1. GENERAL PROSECUTOR’S OFFICE (2010-2023), Reports of General Prosecutor on the state of criminality, Tirana. Furthermore:
https://www.pp.gov.al/Documents/REPORTS_OF_THE_PROSECUTOR_GENERAL/.
 Last accessed online: 3.8.2025.

2. GENERAL PROSECUTOR’S OFFICE (2010-2023), Reports of General Prosecutor on the state of criminality, Tirana. Furthermore:
https://www.pp.gov.al/Documents/REPORTS_OF_THE_PROSECUTOR_GENERAL/.
 Last accessed online: 3.8.2025.

3. GENERAL PROSECUTOR’S OFFICE (2010-2023), Reports of General Prosecutor on the state of criminality, Tirana. Furthermore:
https://www.pp.gov.al/Documents/REPORTS_OF_THE_PROSECUTOR_GENERAL/.
 Last accessed online: 3.8.2025.

4. General Prosecutor’s Office (2010-2023), Reports of General Prosecutor on the state of criminality, Tirana. Furthermore:

total volume of registered proceedings and 3.7% of the total volume of proceedings sent to court.¹ For the same research period, this criminal figure shows a low number of registered defendants (82), defendants sent for trial (57) and convicted defendants (44).² The latter account for approximately 4.2% of the total number of registered defendants, 4.3% of the total number of defendants sent to court for trial, and 4% of the total number of convicted defendants.³

Trafficking of minors sanctioned by Article 128/b of the criminal legislation accounts for 1.6% of the total volume of the number of proceedings registered for criminal offenses of illegal trafficking.⁴ Meanwhile, regarding the number of proceedings sent to court, for this crime figure, we can say that it accounts for about 2.6% of the total volume of the number of proceedings sent to court for illegal trafficking.⁵ The same trend is observed for the low number of defendants registered (1.4%), sent

https://www.pp.gov.al/Documents/REPORTS_OF_THE_PROSECUTOR_GENERAL/.
Last accessed online:

3.8.2025.

1. General Prosecutor's Office (2010-2023), Reports of General Prosecutor on the state of criminality, Tirana. Furthermore:

https://www.pp.gov.al/Documents/REPORTS_OF_THE_PROSECUTOR_GENERAL/.
Last accessed online:

3.8.2025

2. General Prosecutor's Office (2010-2023), Reports of General Prosecutor on the state of criminality, Tirana. Furthermore:

https://www.pp.gov.al/Documents/REPORTS_OF_THE_PROSECUTOR_GENERAL/.
Last accessed online:

3.8.2025.

3. General Prosecutor's Office (2010-2023), Reports of General Prosecutor on the state of criminality, Tirana. Furthermore:

https://www.pp.gov.al/Documents/REPORTS_OF_THE_PROSECUTOR_GENERAL/.
Last accessed online:

3.8.2025.

4. General Prosecutor's Office (2010-2023), Reports of General Prosecutor on the state of criminality, Tirana. Furthermore:

https://www.pp.gov.al/Documents/REPORTS_OF_THE_PROSECUTOR_GENERAL/.
Last accessed online:

3.8.2025.

5. General Prosecutor's Office (2010-2023), Reports of General Prosecutor on the state of criminality, Tirana. Furthermore:

https://www.pp.gov.al/Documents/REPORTS_OF_THE_PROSECUTOR_GENERAL/.
Last accessed online:

3.8.2025.

to court for trial (3.1%) and defendants convicted of the criminal offense of trafficking in minors (3.4%) in relation to the total volume of criminal offenses of illegal trafficking.¹

In addition, other figures of crime, provided for in articles 138/a, 141/a, 141/a, 278/a, 282/a, as well as another provision 283/a, show a considerable number of defendants sent for trial and convicted.² The same trend is also observed in relation to the number of proceedings registered and sent to court during this period. In these figures, the highest number is for Article 283/a “Trafficking in narcotics”, Article 278/a “Trafficking in weapons and ammunition”, Article 282/a “Trafficking in explosives, flammable, poisonous and radioactive substances”, Article 141/a “Trafficking in motor vehicles” and Article 138/a “Trafficking in works of art and culture”.³

The preliminary investigation must be proactive. The victim’s testimony is important, but not a condition for the investigation. The prosecutor must definitely contact the victim, the victim requires guarantees, security, trust. The provision of evidence is a very applicable institute in these cases, where the victim’s testimony is taken in court at the preliminary investigation stage, in order not only to avoid possible interference by the perpetrators of the criminal offense, but also to create appropriate and efficient protection for the victim in real time. The victim must be treated with respect, dignity and justice. Special consideration must be given to the question of the victim, especially the minor, the victim’s gender, avoiding his/her re-victimization.

These data reflect the need for increased attention by the authorities in prosecuting and punishing criminal offenses related to illegal trafficking, especially those related to trafficking in persons and minors, financial investigation of cases, and compensation for victims of trafficking.

1. General Prosecutor’s Office (2010-2023), Reports of General Prosecutor on the state of criminality, Tirana. Furthermore:
https://www.pp.gov.al/Documents/REPORTS_OF_THE_PROSECUTOR_GENERAL/.
Last accessed online: 3.8.2025.

2. General Prosecutor’s Office (2010-2023), Reports of General Prosecutor on the state of criminality, Tirana. Furthermore:
https://www.pp.gov.al/Documents/REPORTS_OF_THE_PROSECUTOR_GENERAL/.
Last accessed online:
3.8.2025.

3. Republic of Albania, General Prosecutor’s Office, Report on the State of Crime 2012-2024. For more see: http://www.pp.gov.al/web/Raporte_te_Prokurorit_te_Pergjithshem_353_1.php#.XxgS0XvivIU retrieved online on 3.8.2025.

PROCEDURAL GUARANTEES IN THE SEIZURE AND SEQUESTRATION OF COMPUTER DATA FROM THE CELLULAR DEVICE

Ylli Pjetërnikaj ¹

Enisa Shahini ²

Abstract

Cyber-crime and electronic evidence present significant challenges to criminal justice systems and the rule of law in all states. Investigating cyber-crime and electronic evidence requires specific knowledge and skills, technical tools, and adequate legislative frameworks, as well as effective and efficient international cooperation with foreign criminal justice actors and private entities. States have adapted to these developments by amending their laws, building their technical capabilities, and introducing new procedural investigative competences. All these measures and tools must be developed and implemented in accordance with states' responsibilities, and in compliance with international human rights law.

As in any other criminal investigation, cyber-crime investigations and the use of special procedural competences affect the human rights and freedoms defined in international instruments at the global and regional level. These include the Universal Declaration of Human Rights (UDHR), the International Covenant on Civil and Political Rights (ICCPR), and the European Convention on Human Rights (ECHR).

In this light, access to data included in a mobile phone, as it is intuitive, constitutes a serious interference with the fundamental rights of the data subject. Such data generally includes messages, photos, videos, web

1. Scientific Degree: PhD; Lecturer at the School of Magistrates of Albania; Email: Ylli.Pjeternikajcpp.gov.al

2. Scientific Degree: PhD in progress; Judge at First Instance Administrative Court of Tirana; Email: enishahinici@gmail.com

browsing history, searches in applications such as Maps, allowing very accurate conclusions to be drawn about the person's private life.

Moreover, much of the data included in a cell phone, such as images or IP addresses, allow the identification of the person, or his/her interlocutors, or can be defined as "sensitive", that is, they are able to reveal the racial or ethnic origin of the interested party, his/her religious or philosophical beliefs, his/her political opinions, different health data, trade union membership, etc.

Awaiting the approval of new procedural rules regarding the seizure and sequestration of mobile devices, this paper will focus on the standards set by the jurisprudence of our country, as well as the jurisprudence of other countries, as guarantees for the seizure and sequestration of such a device.

Keywords: *seizure, sequestration, investigation, computer data, electronic evidence, cyber-crime*

Introduction

In the recent years, the use of electronic devices, especially mobile phones (smartphones), has become ubiquitous in contemporary society, and their importance as sources of evidence in criminal proceedings is very great, but cannot be overstated.¹

To ensure the preservation of these digital evidence during investigations, European criminal justice systems, including that of our country, have applied several means of evidence search, such as inspection, control, seizure and sequestration, which allow the competent authorities to administer them temporarily, preventing their owner from changing, transferring, converting or deleting any data the device contains, in order to ensure that they remain intact during preliminary investigations and trial.

It is of fundamental importance that the procedural bodies, during the

1. See: Lorenzo Bernardini and Francesco Sanvitale "Searches and seizures of electronic devices in European criminal proceedings: a new pattern for independent review?", p. 1. The magazine 'Ítalo-Española de Derecho Procesal'; No. 1 (2023) | pp. 73-119; Madrid, 2023; DOI: 10.37417/rivitsproc/1475 ISSN: 2605-5244 Recibido: 04/05/2023 | Aceptado: 20/06/2023.

application of means of searching for evidence, are able to carry it out effectively, preserving all investigative opportunities offered by a mobile device.¹ This implies that care should be taken to ensure that every seized phone is and remains in a condition that gives forensic experts the best chance of accessing the content stored on it. This task can be challenging for forensic police officers given potential factors such as lack of training, the pace of device change, or forensic technique, or lack of accepted and formally documented best practices.

The forensic analysis of a mobile phone is the science of recovering electronic evidence from a mobile phone under optimal forensic conditions by using accepted methods.² A cell phone no longer simply connects you vocally with another person, but rather stores its user's activities, dates, numbers, written and visual, or audio-visual experiences, it allows access to the internet, where private and public messages are sent. Everything is recorded on "Smartphones". Such data generally include messages, photos, videos, web browsing history, searches in applications such as Maps, allowing very accurate conclusions to be drawn about a person's private life.³ Moreover, much of the data included in a mobile phone, such as images or IP addresses, allow the identification of the person, or his/her interlocutors, or can be defined as "sensitive," meaning that they are able to reveal the racial or ethnic origin of the interested party, his/her religious or philosophical beliefs, his/her political opinions, different health data, trade union membership, etc.⁴ The capabilities of cell phones, the increase in performance, storage capacity, and multimedia functionality, are in continuous increasing progression, turning phones into data reservoirs that can hold a wide range of personal information. From an investigative standpoint, the digital evidence obtained from a mobile phone can provide

1. See: Graeme Horsman, Richard Hale and Adam Firman "A First Responder Guide to Handling and Seizing Mobile Phones", p. 1, Posted on: 4 Nov 2024. Available at SSRN: <https://ssrn.com/abstract=5007997> or <http://dx.doi.org/10.2139/ssrn.5007997>.

2. See: Kevin Curran, Andrew Robinson, Stephen Peacocke, Sean Cassidy "Mobile Phone Forensic Analysis", *International Journal of Digital Crime and Forensics*, Vol. 2, No. 2, pp., April-May 2010, ISSN: 1941-6210, IGI Pub, p. 1.

3. See: Marjan Stoilkovski "Guide to Computer Crime Investigation" Tirana, 2022, p. 25.

4. See: Punja, S., Mislán, R. (2008) *Mobile Device Analysis*, Small scale digital device forensics journal, Vol. 2., No. 1, pp: 1-16, June 2008, ISSN#1941-6164.

a wealth of information about the user, and every technical advancement in digital capabilities offers greater opportunities for recovering additional information.¹

In this optic, even accessing data included in a cell phone, as it is intuitive, constitutes a serious interference with the fundamental rights of the data subject. Awaiting the approval of new procedural reforms regarding the seizure and sequestration of cell phones, this paper will focus on the standards established by the jurisprudence of our country, other countries, including international jurisprudence, as guarantees for seizure and sequestration, as well as some basic rules of digital forensics related to these devices.

1. The Forensic Analysis of the Mobile Phone (Smartphone).

The digital forensics is a branch of forensic science that focuses on the identification, acquisition, processing, analysis, and reporting of data stored electronically. Electronic evidence is a component of almost all criminal activities, and the support from digital forensics is essential for crime investigation.²

Mobile device forensics, also called cellular phone “forensics,” is a specific subcategory of digital forensics that involves recovering digital data from smart mobile devices such as smartphones and tablets.³ It is defined as the process of extracting and analyzing information, which is stored on mobile devices.⁴ There are also included aspects such as administration, collection, storage, and archiving of data found on devices. This must be done in a way that does not compromise the importance and reliability of the evidence while enabling its presentation in court if necessary.

Cellular forensics involves the use of specialized tools and precise

1. See: Jansen, W, Delaitre, A, Moenner, L. (2008) Overcoming Impediments to Cell Phone Forensics, Proceedings of the 41st Annual Hawaii International Conference on System Sciences,, pp: 483-483, ISBN: 978-0-7695-3075-8.

2. See: Marjan Stoilkovski “Guide to Computer Crime Investigation” Tirana, 2022, p. 25.

3. See: <https://www.geeksforgeeks.org/mobile-forensics-definition-uses-and-principles/>, accessed on 16.04.2025.

4. See: <https://www.carneyforensics.com/digital-forensics-services/cell-phone-forensics/>, accessed on 16.04.2025. Cell phone experts at Carney Forensics began recovering text messages and phone contact lists from old flip phones in 2008. Powerful new cell phone forensics tools have provided new capabilities for recovering evidence from smartphones using iPhone and Android forensics services. Cell phones have become the new DNA with the power to recover compelling and probative evidence throughout America.

forensic methods to perform phone imaging, including its memory, network data from physical or electronic SIM cards, and external storage media on microSD cards.¹

The essential difference between cell phone forensics and traditional computer forensics lies in the aspect that cell phones and their evidence are no longer immobile, isolated, and static.² Digital mobile phone evidence is dynamic and mobile, because devices reach mobile phone towers around the world, GPS navigation satellites in low earth orbit, Wi-Fi networks, and the public internet. They also connect to other devices via Bluetooth and near-field communication signals. When activated, they receive and process information from multiple external sources and use hundreds of applications to prepare it for mobile phone user consumption.

The forensic process of cellular devices includes four general steps, which should be followed during an analysis and forensic investigation, such as: identifying digital evidence, acquiring it, analyzing it, and preparing a forensic report.³ These steps, which have the character of procedural phases, include: *First*, the seizure of the device from the user. In this phase, officers must also begin documenting the procedural chain of administration.

In our country (Albania), there are no relevant protocols that guide the prosecuting authorities in the seizure and sequestration of mobile devices, to guarantee the integrity and authenticity of digital data.

A good practice of mobile device management, as a preliminary phase of forensic analysis, is given in the manual “7 Things Every Examiner SHOULD DO - When Collecting Mobile Devices”.⁴ In this manual, a short list has been compiled with 7 “things” that officers should perform if they are administering a cellular device, from the moment of coming into contact with it, such as: removing the device from the network⁵, applying

1. See: Jason E James, Foundations of mobile forensics: an academic approach, Issues in Information Systems Volume 25, Issue 3 pp. 94-108, 2024, p. 1.

2. See: <https://www.carneyforensics.com/digital-forensics-services/cell-phone-forensics/>, accessed on 16.04.2025.

3. See: <https://www.eccouncil.org/cybersecurity-exchange/computer-forensics/mobile-device-forensics/>, accessed on 17.04.2025.

4. See: “Best Practices for Seizing Mobile Evidence vf2.pdf - 7 Things...ITEC 6200, 8/9/2023; accessed on 17.04.2025 in the following link <https://www.coursehero.com/file/209687728/Best-PracticesforSeizingMobileEvidence/>.

5. Faraday Technology, or write-blocking material, is another option to prevent a device

power to it, keeping the device open and powered on, if it is in that state, attempting to obtain the passcode, applying the criminal legal procedure for seizing and obtaining the data stored on it, creating a digital copy and placing it on a complementary device, and investigating all potentially paired external devices.¹

Second, as a procedural phase of the forensic process is the capture of device data. Officers create a sector-level duplicate of the device, a process known as “imaging” or “capture”. This copied image and the original device are passed through a hashing function and their results are compared to ensure it is an exact copy. Then, analysts decide on the appropriate approach and objectives of the investigation.²

Device analysis constitutes the *third phase* of the forensic process. Officers begin working on the device image to confirm a hypothesis, or to search for hidden data. Specialized tools are used by them to help find and recover data, which may be located within the accessible space of the hard drive, the deleted (unallocated) disk space, or in the operating system cache.³

The *fourth phase* is called reporting. After receiving the data, the officers store and analyze them to reconstruct a reliable version of events. Finally, they prepare a technical report.⁴ It is important to emphasize that throughout all these stages the audit trail principle must be respected.

All actions taken during the handling of electronic evidence must be

from sending or receiving signals from a wireless network. This includes most radio frequencies. Some options for using Faraday materials for this purpose are as follows: Faraday bag - small bag designed to fit cell phones; Faraday box - larger and heavier box connected to the device being tested to ensure a neutral signal environment; Aluminum foil - This works and requires many layers. It is a cheap alternative if budgets do not allow for Faraday containers; SIM/UICC Removal: This method will remove the device from the cellular network, but does not protect against Wi-Fi, Bluetooth, NFC, or other radio devices within the device; SIM card removal may also affect biometric unlocking capabilities.

1. See: “Best Practices for Seizing Mobile Evidence vf2.pdf - 7 Things...ITEC 6200, 8/9/2023; accessed on 17.04.2025 in the following link <https://www.coursehero.com/file/209687728/Best-PracticesforSeizingMobileEvidence/>.

2. See: <https://www.eccouncil.org/cybersecurity-exchange/computer-forensics/mobile-device-forensics/>, accessed on 17.04.2025.

3. See: <https://www.eccouncil.org/cybersecurity-exchange/computer-forensics/mobile-device-forensics/>, accessed on 17.04.2025.

4. See: <https://www.eccouncil.org/cybersecurity-exchange/computer-forensics/mobile-device-forensics/>, accessed on 17.04.2025.

recorded and saved so that they can be audited later. An independent third party should not only be able to repeat those actions, but also achieve the same result.¹ All activity related to the searching, seizure and sequestration, access, storage, or transfer of electronic evidence must be fully documented, stored, and available for review. Any subsequent action related to the processing and examination of electronic evidence should also be suitable for audit in the same way. All changes made must be documented.²

2. Seizure and sequestration of electronic data stored on cell phones.

The legal issues that arise and need to be addressed in order to seize electronic data stored on mobile devices are also evident in the words of Chief Justice John Roberts of the Supreme Court of the United States,³ citing: *“...The government argues that a search of all data stored on a cell phone is “materially indistinguishable” from searches of these types of physical items (such as cigarette packs, wallets, or address books). This is like saying a horse ride is materially indistinguishable from a flight to the moon. Both are ways to get from point A to point B, but little else justifies bringing them together....”*

If a traditional police search of an arrestee’s pockets, bag, or wallet for investigative purposes can be characterized as a “simple horseback ride,”⁴ then, comparatively, a smartphone search of an arrestee is “a flight to the moon.”⁵ Both searches, although both important for law enforcement

1. See: Marjan Stoilkovski “Guide to Computer Crime Investigation” Tirana, 2022, OSCE, Presence in Albania, p. 30.

2. See: “Standard Operating Procedures for the collection, analysis and presentation of electronic evidence”, prepared by Cybercrime Programme Office of the Council of Europe (C-PROC), Version 12 September 2019, p. 25.

3. See: *Riley v. California*, 573 U.S. 373, 393 (2014) (citation omitted).

4. See: Bryce Clayton Newell and Bert-Jaap Koops “From horseback to the moon and back: comparative limits on police searches of smartphones upon arrest”, *Hastings Law Journal* [vol. 72:229 November 2020], p. 233.

5. In *Riley*, the search of two different types of cell phones was under discussion: a “smartphone,” defined by the court as “a cell phone with a broad range of other functions based on advanced computing capability, large storage capacity, and internet connectivity,” and a “flip phone,” which displays “a smaller range of functions than a smartphone.” *Id.* at 379–80. Although the Court focused most of its reasoning on the advanced capabilities of modern smartphones, the discussion covered both. The Court, argued that: “...both phones are based on technology almost unimaginable just a few decades ago.” As such,

investigations, are fundamentally distinct from each other in character, both are ways to get from point A to point B, but few other things justify efforts to bring them together.”¹

The distinction is imposed by the fundamental interest in personal privacy that limits unreasonable police searches of persons and their property. While “*searching the pockets of an arrestee does not bring any substantial additional intrusion on privacy beyond the arrest itself*,” the search of a person’s cell phone constitutes another qualitative and quantitatively different (and much greater) intrusion on personal privacy.²

This reasoning extends to both smartphones and non-smartphones. This was also emphasized by the Ontario Court of Appeal (Canada), citing: “....controls of these devices raise privacy concerns that have no analogues.”³ Moreover, issues concerning the proper scope of searches conducted in cases of arrest in flagrante delicto and detention are important, partly because the power to search in these cases not only allows them to do so without a decision of the prosecuting authority, but done in these circumstances, the reasons to obtain a decision do not exist.”⁴

As courts have recognized globally, electronic devices have revolutionized the amount of information readily accessible to investigators in a criminal case.⁵ A single mobile device today contains a wealth of information that 40 years ago would have been found in many different places,” the Court of Appeal of England and Wales recently noted.⁶

Most people carry one, functionally holding papers, a diary, a notebook, and photo albums, as the U.S. Supreme Court regretfully noted, “*...smartphones are now such a pervasive and insistent part of daily life that the proverbial visitor from Mars might conclude they were an important feature of human*

although we focus in this decision on modern smartphones, we also discuss where the doctrine may distinguish between different cell phones based on their capabilities (broad or limited).

1. See: *Riley v. California*, 573 U.S. 373, 393 (2014).

2. See: Bryce Clayton Newell and Bert-Jaap Koops “From horseback to the moon and back: comparative limits on police searches of smartphones upon arrest”, *Hastings Law Journal* [vol. 72:229 November 2020], p. 233.

3. See: *R. v. Nero* (2016), 345 O.A.C. 282, para. 157 (Can. Ont. C.A.).

4. See: *R. v. Fearon*, [2014] 3 S.C.R. 621, para. 16 (Can.) Supreme Court of Canada.

5. See: Jonathan Rogers “Complainant Phone Data Extraction by Police in England and Wales: Outstanding Issues and Practical Guidance”, Cambridge Pro Bono Project, July 2022, p. 6.

6. See: Case: *Bater-James v R* [2020] EWCA Crim 790 [73].

anatomy...”¹ However, NGOs, lawyers and politicians have recently drawn attention to a particularly disturbing way in which police officers and the prosecution exploit this “treasure trove” of data. This phenomenon has been the subject of recent publications by the UK government and several other states.²

In Albania, the prosecuting bodies during the exercise of criminal prosecution, especially in relation to serious crimes, corruption and money laundering, have been faced with some legal dilemmas as to whether mobile phones of persons attributed to criminal offenses, or certain witnesses, can be seized. Also, the questions that arise are: What are the procedural-criminalistic aspects for the administration of these pieces of evidence? What is the seizure procedure? According to articles 298-300 of the Criminal Procedure Code? or article 208/a of the Criminal Procedure Code? What is the data acquisition modality? Who decides on the computer expertise and what are the expert’s questions? How is the expertise data read? How is it stored? What will be the object of the requests addressed to the court, if the latter is the only competent body?

In Albania, two practices have been followed: The first, widely used, is seizure as material evidence, while the judicial police officer appoints the expert and conducts the expertise. The second, applied in sporadic cases, the seizure of computer data from mobile devices has been done in compliance with the requirements of Article 208/a of the Criminal Procedure Code.

Taking into consideration the practices followed in Albania, the importance of the rights that may be violated, such as the right to correspondence, the right to privacy, the right to due process of law, etc., in order to answer the aforementioned questions, it is necessary to elaborate on the latest jurisprudential developments in our country, in other countries, as well as of the European Court of Justice, and of the European Court of Human Rights.

1. See: Case: *Riley v California* 573 US 373, 382 (2014).

2. See: Big Brother Watch, ‘Digital Strip Searches: The Police’s Data Investigation of Victims’ (July 2019); Information Commissioner’s Office [ICO], Information Commissioner’s Opinion: Who’s Under Investigation? The processing of victims’ personal data in rape and serious sexual offence investigations (31 May 2022) [ICO, Who’s Under Investigation?]; and UK Government, The end-to-end rape review report on findings and actions CP 437 (June 2021) 35, 37–38, and 40–42. 4 See Big Brother Watch (n 3) 47–50.

2.1. The revolutionary approach of the Supreme Court's jurisprudence on the seizure and sequestration of computer data.

The procedural approach to computer systems by prosecuting authorities in Albania, above all according to a consolidated practice, was concerning. Therefore, the intervention made by the Supreme Court of the Republic of Albania with the unifying decision No. 147 dated 23.12.2021 should be considered revolutionary.¹

The Supreme Court acknowledged the need to establish a fair balance between the needs of the prosecution to seize computer data and, on the other hand, to ensure effective protection of persons whose data is seized, and because the appeal raises issues relating to the application of procedural law of fundamental importance for the unification and development of judicial practice.

On this basis, the College² assessed to unify the judicial practice regarding the implementation of Article 212 of the CPC, after the legal changes that this provision has undergone, with the entry into force of Law no. 35/2017, dated 30.03.2017, as well as Articles 208 and 208/a of the CPC, raising for unification, among other things, the following issue: “.....2. *Which are the criteria from which the Court should start to allow the seizure of data or computer systems?....*”. Regarding the issue raised for unification, the College comes to the unifying conclusion that: “.... *First, the general conditions according to Article 208 of the CPC must exist. This means that seizure, even in the case of computer data, is imposed for material evidence, the meaning of which is given in Article 187 of the CPC, and for items related to the criminal offense. For items related to the criminal offense, it must be reasoned that these items are also necessary for the verification of the facts. Second, the Court must argue which criminal offense is reasonably suspected of having been committed. Third, the Court must reason why the seizure of data or computer systems is necessary for the resolution of the case. Fourth, the Court must determine or argue which data or computer systems will be subject to seizure and what is intended to be proven by imposing the seizure on the data or*

1. See: Unifying decision No. 147, dated 23.12.2021, of the Penal College of Supreme Court of Albania.

2. See: Paragraph 27 of the unifying decision No. 147, dated 23.12.2021, of the Penal College of Supreme Court of Albania.

*computer systems. In this determination, the Court must be based on the principles of proportionality and appropriateness, allowing the seizure of data or computer systems for investigative needs only if it is necessary, to the extent it is necessary, and for as long as it is necessary. Fifth, the Court must determine and justify in the decision the modalities for the seizure of data or computer systems. In this case as well, the Court must be based on the principles of proportionality and suitability. The seizure must be carried out in such a way that only the data or systems specifically defined in the court decision are seized. For the extraction of data, the devices can be seized, only if it is necessary and for as long as it is necessary to obtain the data or create copies... ”.*¹

Regardless of the fact that this decision is not exclusively related to the seizure of data from cellular devices, even their computer data is included in the scope of this decision. This implies that the entry, control, and seizure of this data must be done in accordance with the conditions and criteria specified in articles 202/a/2, 208/a of the Criminal Procedure Code.

Recently, the High Court² reviewed the appeal of the person under investigation, in which he raised issues of invalidity and illegality of the decisions that allowed the acceptance of the request of the Special Prosecution against Corruption and Organized Crime, for allowing the seizure of computer data in the computer system.³

1. See: Paragraph 77 of the unifying decision No. 147, dated 23.12.2021, of the Penal College of Supreme Court of Albania.

2. See: Decision No. 76, dated 25.03.2024, of the Penal College of Supreme Court of Albania.

3. From the circumstances of the fact, it results that with decision no. of act 501, dated 13.12.2023, the Special Court of First Instance for Corruption and Organized Crime, has allowed the seizure of computer data in the computer system at the workplace where the journalist performs his duty at TV Ora News, and in his apartment on “Migjeni” street, Astir, Tirana, by requesting, entering, extracting and taking the computer data in the computer system, as well as the prohibition of carrying out further actions or securing data or the computer system. The Special Prosecution with the decision dated 14.12.2023, regarding the validation of the seizure, of the Special Prosecution which has validated as legal the seizure report of 13.12.2023, at 22:30, carried out by the Investigators of the National Bureau of Investigation, of the items/material evidence indicated in the respective report. According to the place inspection report dated 13.12.2023, at 19:00, it appears that a search was conducted at the residence of the citizen Elton Qyno. According to the report “For the seizure of items”, dated 13.12.2023, at 20:20, it appears that during the search of the journalist’s apartment, the items that are requested to be returned were seized.

The Supreme Court has argued that the Court of Appeals for Corruption and Organized Crime has provided a reasoned response to the claims related to the seizure of mobile devices seized at “Bar Classic,” in connection with the claim that the Court incorrectly assessed the seizure of telephones as items and not as devices carrying electronic data.

The Penal College accepts the arguments of the Court of Appeals’ decision that mobile phones are not computer systems but objects. It also accepts its reasoning regarding the interpretation it made of the claim in the appeal that the regulations stipulated in Article 208/a of the Code of Criminal Procedure have been violated. In the case of the seizure of telephones, we are not dealing with the seizure of data or computer systems, but with the seizure as an object.¹

It refers to the unifying decision of the Penal College of the Supreme Court, in which, among other things, it was reached in the unifying sentence that: “*The seizure must be done in such a way that only the data or systems specifically defined in the court decision are seized. For the extraction of data, devices can be seized only if it is necessary and for as long as is necessary to obtain the data or create copies.*”.

As noted, the Supreme Court considers cellular devices as objects, material evidence, and not devices that carry computer data. Also, it is not directly determined whether the entry and seizure of computer data, carried by the cellular device, should be done according to the modalities defined in article 208/a of the CPC, but indirectly, from the continuous reference to the unifications made by the unifying decision, it is understood that the application of these provisions is mandatory.

2.2. The experience of other countries regarding the seizure and sequestration of computer data from cell phones.

The seizure and sequestration of computer data from mobile phone devices (smartphones) is a very debatable issue even in the jurisprudence of other countries, which has required the intervention of the High Courts and respective Constitutional Courts to define addresses related to it. This issue has also become the subject of decision-making by international courts, such as EUROJUST and the European Court of Justice. Recently,

1. See: Paragraph no. 48 of Decision No. 76, dated 25.03.2024, of the Penal College of Supreme Court of Albania.

legal reforms have been undertaken in various countries to make specific regulations for obtaining computer data from mobile phone devices.

Thus, in Italy, on April 10, 2024, a bill was approved in the Senate aiming to bring changes to the Code of Criminal Procedure regarding the seizure of devices, computer or telematic systems, or digital memory, including smartphones.¹ This is Decree AS no. 806, which provides for the introduction of article 254-ter CCP, entitled “*Amendments to the Code of Criminal Procedure for the seizure of equipment, computer or telematic systems or digital memory*”.² The bill foresees a rather complex procedural path, which leads to the access of the judicial police and the prosecutor to the data contained in the telephone device through four distinct phases.³

Awaiting the approval of the new rules, the Court of Cassation of

1. See: Luigi Giordano, Sostituto Procuratore Generale presso la Corte di Cassazione “Il sequestro del cellulare nella giurisprudenza di legittimità” Pubblicato il 25/02/2025; accessed on 22.04.2025, in: <https://www.altalex.com/documents/2025/02/25/sequestro-cellulare-giurisprudenza-legittimita#Premessa>

2. The Senate Judiciary Committee has begun reviewing draft laws no. S 690 and n. S 806; these are two proposed laws, both aimed at introducing Article 132, paragraph 1 of the Code of Criminal Procedure, Article 254-ter CCP, a new rule to regulate the seizure of computer equipment and systems, smartphones, and digital memory.

Draft Law No. S 690 was initiated by Senator Scarpinato, communicated to the Presidency on May 9, 2023, regarding “the introduction of Article 254-ter of the Code of Criminal Procedure containing provisions for the seizure of electronic instruments”.

Draft Law No. S 806 is the draft law initiated by senators Zanettin and Bongiorno, communicated to the Presidency on July 19, 2023, containing “amendments to the Code of Criminal Procedure regarding the seizure of computer equipment and systems, smartphones and digital memories”. See: Andrea Chelo “Tanto tuonò che piovve: il nuovo sequestro di dispositivi informatici”, February 29, 2024, accessed on 22.04.2025, in: <https://www.penaledp.it/il-nuovo-sequestro-di-dispositivi-informatici/>.

3. *First*, the judge of preliminary investigations, initially, at the request of the public prosecutor, orders the seizure of the computer device or system or digital memories “necessary for the continuation of the investigations”, “in accordance with the principle of proportionality”. *Second*, the public prosecutor, within 5 days from the decision to seize, orders the duplication of the content of the computer device. *Third*, after performing the forensic duplicate analysis, the public prosecutor proceeds with a reasoned decision to seize data, information, and programs “*strictly related to the crime in relation to the time and place circumstances of the fact and the ways of behavior, in accordance with the criteria of necessity and proportionality.*” *Fourth*, if the public prosecutor intends to seize data related to communications, he must submit a request to the judge of preliminary investigations, who will issue a reasoned decision in the presence of the conditions defined in Article 266, paragraph 1, and 267, paragraph 1, of the Code of Criminal Procedure.

Italy has developed a series of procedural standards that have “wrapped” the seizure of mobile phones with guarantees, ensuring the protection of individual rights and fundamental freedoms. The legal development has followed the objective of reaching a point of equilibrium between conflicting constitutional interests, guaranteeing respect for individual rights, without preventing the bodies of criminal prosecution from seizing the electronic device and the computer data it carries, within the limits of the “necessity for establishing the facts”.

The Court of Cassation, first of all, stated that the decision to seize evidence must contain a specific justification of the purpose pursued for the establishment of the facts.¹ In several decisions, the United Sections of the Court of Cassation have emphasized the obligation to provide reasons for the decision to seize electronic evidence, arguing that the decision to seize evidence (as well as the decision to validate the seizure), even when it concerns items that constitute the *corpus delicti*, must contain a specific reason for the purpose pursued in ascertaining the facts.²

The Constitutional Court of Italy explicitly referred to the seizure of cell phones, computers, or other electronic devices, indicated as “containers” of computer data.³ In this regard, the decision emphasized that *“investigating bodies should be considered authorized to order... the seizure of the container.”* However, *“in the case of electronic seizure of evidence, the ‘real’ object of the seizure is not the electronic device (‘container’), which in itself normally has no interest to the investigations, but its data (‘content’), to the extent that they are useful for the investigations themselves...”*. This means that the computer data contained in the electronic device, according to the indications of jurisprudence, must be selected for this purpose and possibly be the subject of a cloning copy, with the return of the device (and the availability of all other data) to the owner.⁴

From the nature of correspondence, it follows that messages on a mobile device, even if stored in the memory of an electronic device, are

1. See: Cass. pen., Sec. A., n. 36072, dated 19/4/2018, in CED Cass. n. 273548.

2. See: Cass. pen., Sec. A., n. 5876, dated 28/1/2004, B., in CED Cass. n. 226711; Cass. pen., Sec. A., n. 18954 of 31/3/2016, C., in CED Cass. n. 266789; Cass. pen., Sec. A., n. 36072, dated 19/4/2018, B., Rv. 273548-01.

3. See: Decision No. 170, dated 27/07/2023, (data ud. 07/06/2023) of the Constitutional Court of Italy.

4. See: Decision No. 170, dated 27/07/2023, (data ud. 07/06/2023) of the Constitutional Court of Italy.

not documents, as such accessible in accordance with Article 234 of the Criminal Procedure Code¹, but, even after being received by the recipient, they fall under the constitutional discipline of Article 15 of the Italian Constitution, with the consequence that they must be managed by means of a seizure order in accordance with Article 254 of the Italian Code of Criminal Procedure.^{2 3} After the decision of the Constitutional Court of Italy, the Court of Cassation also maintained the position that the decision to seize correspondence, as provided for by Article 254 of the Code of Criminal Procedure, constitutes the reasoned act of the judicial authority that allows the restriction of freedom and confidentiality of correspondence.⁴

According to the jurisprudence of the Italian Court of Cassation, access to the content of the memory of the seized device and the selection of relevant data to be extracted and transcribed can be done by the judicial police, but with the prior authorization of the public prosecutor, in accordance with the limits and respecting the conditions and formalities provided for by articles 353 to 357 of the Italian Code of Criminal Procedure, in the absence of specific reasons, in the indiscriminate capture of a mass of computer data, without any prior selection thereof and in any case without indicating any selection criteria.⁵

In Austria, on December 11, 2024, the Austrian Parliament approved a bill for the seizure of mobile data carriers in order to review the data stored

1. See: Art. 234 of the Criminal Procedure Code of Italy, entitled “Documentary Evidence”

2. See: Cass. pen., Sec. II, n. 25549, dated 15/5/2024 , in CED Cass . n. 286467 – 01; Cass. pen., Sec. Uni, n. 43444, dated 17.10.2024.

3. Article 254 of the Italian Code of Criminal Procedure, entitled “Seizure of Correspondence,” stipulates that:

“1. Those who provide postal, telegraphic, telematic, or telecommunications services are permitted to proceed with the seizure of letters, envelopes, parcels, valuables, telegrams, and other items of correspondence, even if sent electronically (1), for which the judicial authority has strong reasons to believe that they were sent by the accused [60, 61] or under another name, with another address, 23, or that in any case may be related to the crime [103 6]. 2. When a judicial police officer carries out a seizure (4), he must hand over the seized correspondence to the judicial authority, without opening or changing them (5) and without otherwise becoming aware of their content [353].

3. Seized letters and other documents that are not included in the correspondence subject to seizure shall be returned immediately to the person to whom they belong and may not be used in any case [191].

4. See: Cass. pen., Sec. Uni, n. 43444, dated 17.10.2024.

5. See: Cass. pen., Sec. VI, n. 6623, dated 9.12.2020 , zv. 2021, in CED Cass . n. 280838-01.

and accessed through them.¹ Scheduled to enter into force on January 1, 2025, for the first time the seizure of this data will be regulated by a legal framework specifically created for these investigative actions.²

Due to the need for a court decision, the Public Prosecutor's Office of Austria (PPO) will need to submit a request to the Court (Beschluss) to seize mobile data carriers and their data. The new legal framework outlines the information that a court decision must contain, beyond what is required for the authorization of investigative measures, including the reasons why the measure is proportional, the basis for assuming that the evidence necessary for the proceedings will be found, the facts under investigation, and the suspicion that supports the investigation.

The new amendments to the Austrian law on criminal procedure entered into force on January 1, 2025. In addition, the Austrian Federal Ministry of Justice presented a draft on the implementation of EU criminal justice acts. In light of these legislative changes and the draft law, the European Chief Prosecutor sent an official letter to the European Commission on January 23, 2025, expressing her concerns. According to her, the changes to the Austrian law on criminal procedure cannot be reconciled with the principles of the rule of law as foreseen in Regulation (EU) 2020/2092 on a general regime of conditionality for the protection of the EU budget (Conditionality Regulation eucrim 2020, 174-176). She criticizes that the new legislation makes the collection and seizure of digital evidence extremely difficult, if not impossible, for prosecution services, including the EPPO, when operating in Austria.³

On December 14, 2024 (G 352/2021), the Austrian Constitutional Court issued a landmark ruling on whether the provisions applicable to the seizure of "ordinary" items also apply to the seizure of mobile data and data carriers. The court agreed with numerous experts and rejected this notion. In essence, the court argued that the infringement of data protection and privacy was particularly intensive, as access to a data carrier not only provided a view of the person's behavior, but a comprehensive insight into

1. See: <https://es-law.at/en/lawyer-regulation-seizure-of-data-carriers-austria/>, accessed on 23.04.2025.

2. See: <https://www.schoenherr.eu/content/seizure-and-examination-of-mobile-data-and-data-carriers-in-austria-where-do-we-stand-and-what-s-next/>, accessed on 23.04.2025.

3. See: <https://www.eppo.europa.eu/en/media/news/statement-regarding-amendments-to-austrian-law-criminal-procedure.>, accessed on 23.04.2025.

important parts of their past and present life.¹

Furthermore, the Court provided a guide on which aspects should be considered when amending the legal framework. Most importantly, the prosecutor must submit to the court a request for the seizure of data held by mobile devices. The Constitutional Court of Austria gave the legislature until December 31, 2024, to amend the current provisions.²

In the United Kingdom, before the High Court³ in January 2022, Privacy International filed written submissions as an intervener in a landmark case challenging the practice of mobile phone seizure ('MPE') by immigration authorities in the United Kingdom. The case was brought by asylum seekers against the Home Office, seeking judicial review of the policy and practice of seizing mobile phones from all migrants arriving in the United Kingdom in small boats, and in some cases extracting data from these phones.

The decision was issued on March 25, 2022, in which the Supreme Court ruled that the UK Home Office's secret policy seizing and inspecting migrants' phones were in violation of Article 8 of the ECHR and data protection laws.⁴

Also, the U.S. Supreme Court⁵ in *Riley v. California*, 573 U.S. 373 (2014), one of the first cases worldwide to explore the use of MPE (mobile phone extraction) evidence, noted: *"Cell phones differ both quantitatively and qualitatively from other objects that can be held by the arrested person. [...] The storage capacity of cell phones has several interrelated consequences for privacy. First, a cell phone collects within it many different types of information—an address, a note, a recipe, a bank statement, a video—that reveal much more in combination than any isolated record. Second, the capacity of a mobile phone allows only one type of information to be conveyed much more than was previously possible. The sum of an individual's private life can be reconstructed through a thousand photographs tagged*

1. See: Decision of the Constitutional Court of Austria, VfGH-Erkenntnis - G - 352 - 2021 - Vom - 14. - Dezember – 2023.

2. See: <https://www.schoenherr.eu/content/seizure-and-examination-of-mobile-data-and-data-carriers-in-austria-where-do-we-stand-and-what-s-next/>, accessed on 23.04.2025.

3. See: Case No: Co/4793/2020 Co/577/2021 The High Court of Justice Queen's Bench Division Divisional Court in an Application for Judicial Review, Lord Justice Edis Mr Justice Lane.

4. See: <https://privacyinternational.org/legal-action/r-hm-and-ma-and-kh-v-secretary-state-home-department>, accessed on 23.04.2025.

5. See: The US Supreme Court in the case of *Riley vs. California* 573 US 373 (2014).

*with dates, locations, and descriptions; the same cannot be said for one or two photographs of loved ones tucked away in a wallet. Third, the data on a phone can date back to when the phone was purchased, or even earlier... a search of a cell phone will usually expose the government to much more than the most exhaustive search of a home: a phone not only contains in digital form many sensitive records previously found in a home; it also contains a wide range of private information that is never found in a home in any form – unless the phone is.”*¹

The European Court of Justice in the case C-548/21 ruled that Article 4(1)(c) of Directive (EU) 2016/680 of the European Parliament and of the Council, of 27 April 2016, on the protection of natural persons with regard to the processing of personal data by competent authorities for the purposes of the prevention, investigation, detection or prosecution of criminal offenses, the execution of such data for the free return and the work of the Council. The Decision 2008/977/JHA, read in the light of Articles 7, 8 and Article 52(1) of the Charter of Fundamental Rights of the European Union, must be interpreted as not excluding national legal rules which give the competent authorities the possibility to access data located on a mobile phone for the purposes of preventing, investigating, detecting and prosecuting criminal offenses in general, provided that these rules: define with sufficient precision the nature or categories of criminal offenses in question; ensure respect for the principle of proportionality and rely on this possibility, except in duly justified urgent cases, subject to prior review by a judge or an independent administrative body.

It also ruled that Articles 13 and 54 of Directive 2016/680, read in the light of Article 47 and Article 52(1) of the Charter of Fundamental Rights, must be interpreted as precluding national legal rules authorizing the competent authorities to attempt to access data contained in a mobile phone without informing the data subject, within the framework of the applicable national procedural rules, of the reasons on which the authorization to access this data is based, issued by a court or an independent administrative body, since the communication of that information is no longer at risk of jeopardizing those authorities directly under the duty.²

The ECHR, in its case law regarding the use of electronic evidence, has assessed that non-consensual control will be considered necessary only in a democratic society and therefore not as a violation of Article 8, when the

1. See: The US Supreme Court in the case of *Riley vs. California* 573 US 373 (2014).

2. See: Judgment of the Court (Grand Chamber) of 4 October 2024. Case C-548/21.

reasons presented to justify such a measure were “relevant” and “sufficient” and the principle of proportionality is respected.¹

This requires, among other things, judicial control, which should normally take the form of prior authorization when judges properly examine the existence of a reasonable suspicion, draft the search warrant in such a way as to keep its impact within reasonable limits, and be convinced that the search of the relevant place for which the warrant was requested could provide relevant evidence,² but in urgent cases (e.g., to prevent the destruction or concealment of documents, the need for which was not demonstrated in the *Nagla vs. Latvia* case, no. 73469/10, July 16, 2013), *ex post facto* judicial review will be acceptable as long as those affected are not excluded from seeking it, there are clear rules for its purpose, then there is a real consideration of the real need to act without first seeking judicial authorization and the actual review carried out can be considered effective.³

Furthermore, the lack of judicial control has been considered by the European Court of Human Rights as an insufficient legal framework and a lack of safeguards for the protection of data subject to legal professional privilege during the seizure by the police of a smartphone and the control of its mirror copy.⁴

Any seizure during the inspection of material not covered by the authorization for it, as well as the seized material during an inspection that has no legal basis, would constitute a violation of Article 8 and Article 1 of Protocol No. 1, as in the case of *Bagiyeva vs. Ukraine*, no. 41085/05, 28 April 2016 (which concerned the seizure of mobile phones when these were not within the scope of the mandate in question) and in the case of *Zaurbekova and Zaurbekova vs. Russia*, no. 27183/03, 22 January 2009 (in which a central computer processing unit and compact discs were seized when there was no warrant at all).⁵

1. See: “Handbook on the European Court of Human Rights on the Use of Electronic Evidence, Council of Europe, September 2024”, p. 22.

2. See: *Case of Vinks and Ribicka vs. Latvia*, no. 28926/10, 30 January 2020.

3. See: *The case of Kruglov and Others vs. Russia*, no. 11264/04, February 4, 2020; the case of *Prezhdarovi vs. Bulgaria*, no. 8429/05, September 30, 2014; the case of *Taraneks vs. Latvia*, no. 3082/06, February 2, 2014; and the case of *Stefanov vs. Bulgaria*, no. 73284/13, November 16, 2021.

4. See: *The case of Saber vs. Norway* (Application no. 459/18) dated 17/03/2021.

5. See: “Handbook on the European Court of Human Rights on the Use of Electronic Evidence, Council of Europe, September 2024”, fq. 26.

Bibliography:

- Andrea Chelo “Tanto tuonò che piovve: il nuovo sequestro di dispositivi informatici”, 29 Febbraio 2024; accessed on 22.04.2025 in: <https://www.penaledp.it/il-nuovo-sequestro-di-dispositivi-informatici/>
- “Best Practices for Seizing Mobile Evidence vf2.pdf - 7 Things... ITEC 6200, 8/9/2023; accessed on 17.04.2025 in: <https://www.coursehero.com/file/209687728/Best-PracticesforSeizingMobileEvidence/>
- Bryce Clayton Newell and Bert-Jaap Koops “From horseback to the moon and back: comparative limits on police searches of smartphones upon arrest”, *Hastings Law Journal* [vol. 72:229 November 2020]
- Big Brother watch, ‘Digital Strip Searches: The Police’s Data Investigation of Victims’ (July 2019); Information Commissioner’s Office [ICO], Information Commissioner’s Opinion: Who’s Under Investigation? The processing of victims’ personal data in rape and serious sexual offence investigations (31 May 2022) [ICO, Who’s Under Investigation?]; and UK Government, The end-to-end rape review report on findings and actions CP 437 (June 2021) 35, 37–38, and 40–42. 4 See Big Brother Watch (n 3) 47–50
- “Handbook on the European Court of Human Rights on the Use of Electronic Evidence, Council of Europe, September 2024”, p. 22
- Graeme Horsman, Richard Hale and Adam Firman “A First Responder Guide to Handling and Seizing Mobile Phones”, Posted: 4 Nov 2024. Available at SSRN: <https://ssrn.com/abstract=5007997> or <http://dx.doi.org/10.2139/ssrn.5007997>
- Jansen, W, Delaitre, A, Moenner, L. (2008) Overcoming Impediments to Cell Phone Forensics, Proceedings of the 41st Annual Haëaii International Conference on System Sciences,, pp: 483-483, ISBN: 978-0-7695-3075-8
- Jason E James, Foundations of mobile forensics: an academic approach, Issues in Information Systems Volume 25, Issue 3 pp. 94-108, 2024
- Jonathan Rogers “Complainant Phone Data Extraction by Police in England and Wales: Outstanding Issues and Practical Guidance”, Cambridge Pro Bono Project, July 2022
- Kevin Curran, Andrew Robinson, Stephen Peacocke, Sean Cassidy “Mobile Phone Forensic Analysis”, *International Journal of Digital*

Crime and Forensics, Vol. 2, No. 2, pp:, April-May 2010, ISSN: 1941-6210, IGI Pub

- Lorenzo Bernardini and Francesco Sanvitale “Searches and seizures of electronic devices in European criminal proceedings: a new pattern for independent review?, p 1. Magazine Ítalo-Española de Derecho Procesal; Num. 1 (2023) | pp. 73-119; Madrid, 2023; DOI: 10.37417/rivitsproc/1475 ISSN: 2605-5244 Recibido: 04/05/2023 | Aceptado: 20/06/2023
- Luigi Giordano, Sostituto Procuratore Generale presso la Corte di Cassazione “Il sequestro del cellulare nella giurisprudenza di legittimità” Publicado il 25/02/2025, accessed on 22.04.2025, in: <https://www.altalex.com/documents/2025/02/25/sequestro-cellulare-giurisprudenza-legittimita#Premessa>,
- Marjan Stoilkovski “Guide to computer crime investigation” Tirana, 2022
- Punja, S., Mislán, R. (2008) Mobile Device Analysis, Small scale digital device forensics journal, Vol. 2., No. 1, pp: 1-16, June 2008, ISSN#1941-6164
- “Standard Operating Procedures for the collection, analysis and presentation of electronic evidence”, prepared by Cybercrime Programme Office of the Council of Europe (C-PROC), Version 12 September 2019

Addresses in Internet:

- <https://www.geeksforgeeks.org/mobile-forensics-definition-uses-and-principles/>, <https://www.carneyforensics.com/digital-forensics-services/cell-phone-forensics/>,
- <https://www.eccouncil.org/cybersecurity-exchange/computer-forensics/mobile-device-forensics/>,
- <https://es-law.at/en/lawyer-regulation-seizure-of-data-carriers-austria/>,
- <https://www.schoenherr.eu/content/seizure-and-examination-of-mobile-data-and-data-carriers-in-austria-where-do-we-stand-and-what-s-next/>,
- <https://www.eppo.europa.eu/en/media/news/statement-regarding-amendments-to-austrian-law-criminal-procedure>,
- <https://privacyinternational.org/legal-action/r-hm-and-ma-and-kh-v-secretary-state-home-department>,

Jurisprudence:

- Unifying Decision No. 147 dated 23.12.2021 of the Penal College of the Supreme Court of Albania
- Decision No. 76 dated 25.03.2024 of the Penal College of the Supreme Court of Albania
- The US Supreme Court in the case of Riley vs. California 573 US 373 (2014)
- The Case of R. vs. Nero (2016), 345 O.A.C. 282, Appeal Court of Ontario, Canada
- R. vs. Fearon, [2014] 3 S.C.R. 621, para. 16 (Can.) Supreme Court of Canada
- The case of Bater-James vs. R [2020] EWCA Crim 790 [73], The England and Wales Court of Appeal (Criminal Division)
- Decision No. 170 dated 27/07/2023, (data ud. 07/06/2023) of the Constitutional Court of Italy
- Cass. pen., Sec. Uni, n. 43444, dated 17.10.2024
- Cass. pen., Sec. II, n. 25549 dated 15/5/2024, in CED Cass . n. 286467 – 01; Cass. pen., Sec. Uni, n. 43444, dated 17.10.2024
- Cass. pen., Sec. VI, n. 6623, dated 9.12.2020 , zv. 2021, in CED Cass. n. 280838-01
- Cass. pen., Sec. A., n. 36072 dated 19.4.2018 , in CED Cass . n. 273548
- Cass. pen., Sec. A., n. 5876, dated 28/1/2004, B., në CED Cass. n. 226711; Cass. pen., Sec. A., n. 18954 e 31/3/2016, C., in CED Cass. n. 266789; Cass. pen., Sec. A., n. 36072 dated 19/4/2018, B., Rv. 273548-01
- Decision of the Constitutional Court of Austria, VfGH-Erkenntnis - G - 352 - 2021 - Vom - 14. - Dezember – 2023.
- Case No: Co/4793/2020 Co/577/2021 The High Court Of Justice Queen’s Bench Division Divisional Court in an Application for Judicial Review, Lord Justice Edis Mr Justice Lane
- Judgement of the Court (Grand Chamber) of 4 October 2024. Case C-548/21
- The case of ECHR Vinks and Ribicka vs. Latvia, no. 28926/10, 30 January 2020
- The case of ECHR Kruglov and Others vs. Russia, no. 11264/04, 4 February 2020
- The case of ECHR Prezhdarovi vs. Bullgaria, no. 8429/05, 30

September 2014

- The case of ECHR Taraneks vs. Latvia, no. 3082/06, 2 February 2014
- The case of ECHR Stefanov vs. Bulgaria, no. 73284/13, 16 November 2021
- The case of ECHR Saber vs. Norway (Application no. 459/18) dated 17/03/2021.

HISTORICAL AND CRIMINAL ASPECTS OF VIGILANTISM IN ALBANIA

Prof. Asoc. Engjëll Likmeta¹
PhD (c) Klei Kaçupi²

Abstract

In Albanian customary law, a complex system of traditional norms, the protection of victims held a central place within the mechanisms of popular justice. Through the Canon- Kanun, the true sovereign—the people, guided by their inherited wisdom and experience—had established fundamental pathways for resolving disputes: agreement between parties, mediation, and adjudication. These mechanisms not only served to preserve social order and harmony but also ensured justice for victims.

One of the main pillars of the Canon system was the principle of restoring the rights of the injured party through clearly defined and proportionate punishments. These punitive measures were aimed not at revenge, but at compensation and the restoration of balance within the community. This paper aims to examine the historical and legal aspects of victim protection in Albanian customary law, analyzing the role of Canon-based punishments as tools for ensuring justice and preventing vigilantism—a phenomenon that still echoes from the past into modern Albanian society.

Keywords: *Vigilantism, Canon, Customary Law.*

1. Lecturer, Department of Criminal Law, Faculty of Law, University of Tirana, engjell.likmeta@fdut.edu.al

2. PhD Candidate, Department of Criminal Law, Faculty of Law, University of Tirana, kacupikle@gmail.com

1. Introduction

Throughout the historical development of Albanian law, the protection of the victim and the preservation of social order have constituted the two fundamental pillars upon which the national legal culture has been built. Prior to the establishment of modern state institutions and the contemporary judicial system, Albanians relied on the norms of the *Kanun*—a consolidated body of customary rules transmitted from generation to generation, designed to ensure justice and maintain social equilibrium.

Within this context, the concept of vigilantism occupies a distinctive place, having emerged as a mechanism positioned between the legitimate right to self-protection and the risk of disrupting public order, thereby reflecting the historical tension between legal normativity and arbitrariness.

2. Vigilantism under Albanian Customary Law

In antiquity, Albanian customary law determined the essential mechanisms for the functioning and productive and effective development of society. The sovereign—understood as the collective wisdom and experience of the people—formulated comprehensively within the *Kanun* that agreement between parties, mediation, and judicial adjudication constituted the three unique and legitimate avenues for resolving social disputes¹.

The protection of victims of civil wrongs or criminal acts was secured through the imposition of penalties. One of the fundamental purposes of the sanctions prescribed in the norms of the *Kanun* was the restoration of the violated rights of victims of civil infringements, criminal acts against life, health, moral integrity, property, and similar protected interests².

As a rule, Albanian customary law did not permit the exercise of vigilantism. In principle, it was prohibited. Moreover, the Canon established specific rights and obligations aimed at preventing acts of private justice. The Elders (*Pleqtë*)—the customary adjudicating authority—were entrusted with the duty to take every effort and adopt concrete steps to prevent any

1. ILIA, FRANO, *Canon of Skanderbeg*, publisher La Rosa, Milot, 1993, p.148.

2. ILIA, FRANO, *Canon of Skanderbeg*, publisher La Rosa, Milot, 1993, p.148.

arbitrary, unilateral, and unlawful action leading to vigilantism¹.

The Canon of the Region of *Labëria* expressly addressed vigilantism within the framework of other offenses in its Chapter 46².

The realization of a claimed right, the recovery of a missing object, or the return of livestock loaned for a specified period, was required to be sought through strict adherence to the prescribed customary procedures and continual respect for local self-governing institutions. Failure to comply with these customary procedures resulted in legal responsibility³.

A monetary fine and the restitution of the forcibly taken property were the two penalties applied against those who engaged in vigilantism under the Canon of *Labëria*⁴, but not only there. The determination of the value of the fine fell within the discretion of the local judicial authority—the Elders’ Council⁵. Similarly, under the Canon of the Region of Benda, the offender was required to restore the forcibly taken property and pay a fine determined by the competent customary authority⁶.

Under the *Canon* of the Region of Luma, vigilantism was permitted only in exceptional circumstances⁷—precisely, only after the legal avenues had been fully exhausted and the governing bodies had been duly informed⁸, and even then, only when the public and legitimate claim continued to be disregarded by the opposing party⁹. Thus, with full awareness and intent, the opposing party refused to return the debt, the object, or the borrowed property¹⁰. Vigilantism was therefore viewed as a last resort mechanism for enforcing the return of property or fulfillment of obligations owed to the legitimate owner¹¹. This *Kanun* authorized seizure (*preja*¹²) of the

1. GJEÇOVI, SHTJEFËN, *Canon of Lekë Dukagjini*, Press House “Kuvendi”, Printing Office “Geer”, Tirana, 1999, p. 93.

2. ELEZI, ISMET, *Canon of Labëria*, Tirana, 2006, p. 248.

3. ELEZI, ISMET, *Canon of Labëria*, Tirana, 2006, p. 248.

4. ELEZI, ISMET, *Canon of Labëria*, Tirana, 2006, p. 248.

5. GOCI, HAXHI, *Canon of Benda’s Province*, Tirana, 2010, p. 138.

6. GOCI, HAXHI, *Canon of Benda’s Province*, Tirana, 2010, p. 138.

7. HOXHA, SHEFQET, *Canon of Luma*, Tirana, 2013, p. 231.

8. HOXHA, SHEFQET, *Canon of Luma*, Tirana, 2013, p. 231.

9. HOXHA, SHEFQET, *Canon of Luma*, Tirana, 2013, p. 231.

10. HOXHA, SHEFQET, *Canon of Luma*, Tirana, 2013, p. 231.

11. HOXHA, SHEFQET, *Canon of Luma*, Tirana, 2013, p. 231.

12. “Preja” referred to the taking of property belonging to an individual, village, or community under the pressure and coercion of weapons and physical force. MARTINI, XHAFERR, *Canon of Dibra*, Tirana, 2007, p. 545.

debtor's property as the final tool for fulfilling overdue obligations, which could consist of movable goods, livestock, draft animals, food supplies, and various grains.

Likewise, under the Canon of the Region of Dibra, seizure served as a catalyst for opening negotiations between disputing parties regarding compensation for damages¹. Non-compliance by the true owner of the property resulted in full legal and social liability². The community where the offender resided had the authority to expel and isolate³ him for seizing property contrary to the norms of the Canon of Luma⁴. Furthermore, the offender was obliged to return the wrongfully seized property⁵. Additionally, the offender was required to offer a communal reconciliation meal as acknowledgment of wrongdoing and to restore social harmony⁶.

Similarly, the Canon of Skanderbeg, Canon of Lekë Dukagjini, and others provided that social exclusion (*leçitja*) was imposed as a sanction for noncompliance with customary judicial decisions or refusal to voluntarily execute binding determinations⁷.

The customary legal norms of the Albanian territories—including the regions of Labëria, Luma, Dibra and beyond—extended the notion of vigilantism to acts involving the deprivation of life as a means of restoring violated honor or moral dignity⁸. Customary law recognized and accepted killing for revenge⁹ and blood feud as forms of arbitrary private justice¹⁰, a

1. MARTINI, XHAFERR, *Canon of Dibra*, Tirana, 2007, p. 545-553.

2. HOXHA, SHEFQET, *Canon of Luma*, Tirana, 2013, p. 231-232.

3. “Leçitja/veçimi” referred to the exclusion of an individual from the community. Such a person no longer benefited from the protection of the collective because he had committed serious offences reflecting civil disobedience to the customary legal order. ILIA, FRANO, *Canon of Skanderbeg*, publisher La Rosa, Milot, 1993, p.149.

4. HOXHA, SHEFQET, *Canon of Luma*, Tirana, 2013, p. 231.

5. HOXHA, SHEFQET, *Canon of Luma*, Tirana, 2013, p. 231.

6. HOXHA, SHEFQET, *Canon of Luma*, Tirana, 2013, p. 231.

7. ILIA, FRANO, *Canon of Skanderbeg*, publisher La Rosa, Milot, 1993, p.149.

8. HOXHA, SHEFQET, *Canon of Luma*, Tirana, 2013, p. 233.

9. The concept of “Hakmarrja” (revenge) denoted a retaliatory mechanism whereby the victim or his kin inflicted punishment on the perpetrator as recompense for an earlier wrongful act. Such retaliation could target physical integrity, property, honour, or the moral dignity of the offender or his family members. AUTHORS’ GROUP, *History of State and Law in Albania*, Tirana, 1997, p. 50-51.

10. ELEZI, ISMET, *Labëria Customary Law*, Press House “Toena”, Tirana, 2002, p. 169.

tragic practice deeply rooted in historical tradition¹.

Accordingly, the preservation and regulation of civil, administrative, or criminal disputes through law had as its principal and singular objective the maintenance of social order and coexistence in Albania.

Under the norms of the Canon of Skanderbeg, the *Kanun* represented the expression of the will of the people in the name of God, and only through the *Kanun*—i.e., through law—could disputes of any type or nature be resolved².

In this manner, Albanian customary law sought to establish equilibrium between protecting individual rights and preserving social order. Although vigilantism was not entirely excluded in extraordinary circumstances, it was treated strictly as a last resort, always under the supervision of community structures, to prevent arbitrariness and uncontrolled conflict.

Through clearly articulated sanctions, social penalties, and the moral duty of reconciliation, the Canon aimed to restrain revenge and the use of private violence, favoring peaceful and institutional dispute resolution. This approach demonstrates that, although rooted in a challenging historical reality, Albanian customary law fundamentally functioned as an instrument of community justice that anticipated the modern legal demarcation between lawful right and unlawful vigilantism.

3. Vigilantism under the Norms of the Statutes of Shkodra

Vigilantism was not explicitly defined as a term in the Statutes of Shkodra. Nevertheless, the concept was recognized in the legal sphere and was treated as the unlawful appropriation without a judicial decision. In this respect, the forcible restoration of a property right—whether involving movable or immovable property—without the support of a court ruling, was strictly prohibited under the Statutes³.

Thus, in the context of civil disputes regarding property rights, Chapter 157, entitled “On those who appropriate without a court decision,” provided for severe penalties against any individual acting on their own initiative—through vigilantism—without respecting the norms and

1. ELEZI, ISMET, *Labëria Customary Law*, Press House “Toena”, Tirana, 2002, p. 169.

2. ILIA, FRANO, *Canon of Skanderbeg*, publisher La Rosa, Milot, 1993, p.156.

3. NADIN, LUCIA, *Statutes of Shkodra*, Press House “Onufri”, Second Edition, University “Wisdom”, Tirana, 2010, p. 344.

Statutes of Shkodra¹.

Firstly, the perpetrator would lose the judicial process, and any evidence submitted in support of his claim to ownership or property rights would be deemed invalid². Furthermore, he would be required to pay a monetary fine in the amount of seven *grosh* (a historical unit of currency used in the region at the time)³. According to the rationale reflected in the statutory norm, the severity of such sanctions—including the loss of actual proprietary rights over the disputed property—served the purpose of instilling respect for the rule of law among the citizens of the Commune of Shkodra⁴. Individuals were expected to demonstrate restraint and civility at all times, even when seeking recognition of a presumed or violated right⁵. Therefore, no person could legitimately choose the “shortest path”—that of vigilantism—to resolve legitimate claims or disputes⁶.

Another penalizing mechanism aimed at preventing vigilantism was prescribed in Chapter 127, “On disputed matters”⁷. This statutory provision prohibited the undertaking of any concrete actions towards enforcing an alleged right before the Court had issued its ruling on the matter⁸. Any action taken prior to the judicial decision automatically resulted in the loss of the asserted right⁹. Accordingly, any dispute or conflict arising between parties had to be submitted to judicial review, and under no circumstances could the parties act solely on their own initiative without awaiting the final verdict of

1. NADIN, LUCIA, *Statutes of Shkodra*, Press House “Onufri”, Second Edition, University “Wisdom”, Tirana, 2010, p. 344.

2. NADIN, LUCIA, *Statutes of Shkodra*, Press House “Onufri”, Second Edition, University “Wisdom”, Tirana, 2010, p. 344.

3. NADIN, LUCIA, *Statutes of Shkodra*, Press House “Onufri”, Second Edition, University “Wisdom”, Tirana, 2010, p. 344.

4. NADIN, LUCIA, *Statutes of Shkodra*, Press House “Onufri”, Second Edition, University “Wisdom”, Tirana, 2010, p. 344.

5. NADIN, LUCIA, *Statutes of Shkodra*, Press House “Onufri”, Second Edition, University “Wisdom”, Tirana, 2010, p. 344.

6. NADIN, LUCIA, *Statutes of Shkodra*, Press House “Onufri”, Second Edition, University “Wisdom”, Tirana, 2010, p. 344.

7. NADIN, LUCIA, *Statutes of Shkodra*, Press House “Onufri”, Second Edition, University “Wisdom”, Tirana, 2010, p. 336.

8. NADIN, LUCIA, *Statutes of Shkodra*, Press House “Onufri”, Second Edition, University “Wisdom”, Tirana, 2010, p. 336.

9. NADIN, LUCIA, *Statutes of Shkodra*, Press House “Onufri”, Second Edition, University “Wisdom”, Tirana, 2010, p. 336.

judicial authority¹.

The interpretation of this provision clearly demonstrates that lawful procedures, rather than vigilantism, constituted the primary and exclusive means of resolving civil, family, administrative, and other conflicts².

In conclusion, the norms of the Statutes of Shkodra clearly reflect a legal philosophy oriented toward strengthening institutional authority and cultivating civic discipline. By prohibiting the restoration of rights through private force and imposing severe sanctions for any action outside judicial channels, the Statutes sought to prevent conflicts and eliminate the roots of vigilantism. This model of jurisprudential regulation represents an important step toward the establishment of the rule of law and marks a gradual departure from traditional concepts of violent private justice, paving the way toward a more modern culture of legal order.

4. Vigilantism under the Criminal Code of the Albanian Monarchy

Vigilantism was classified among the offences against the administration of justice in Title IV of the Criminal Code of the Albanian Monarchy. More specifically, this legal institution was regulated in Chapter VIII of the Code³. The use of harsh and inhumane methods, which stood in open contradiction with social morality and the spirit of the law, was punishable under the criminal legislation of the time.

According to Article 269 of the Criminal Code, the restoration of a claimed right through the use of force, while bypassing the authority of the State, constituted an unlawful act—and, moreover, an unethical one. The conduct pursued a specific purpose: in practice, the force employed could be directed either against property or against individuals⁴.

The criminal punishment applied to the perpetrator depended significantly on the nature of the object against which the violent act was directed. A severe fine of up to 1,500 gold francs constituted the principal penalty when the

1. NADIN, LUCIA, *Statutes of Shkodra*, Press House “Onufri”, Second Edition, University “Wisdom”, Tirana, 2010, p. 336.

2. NADIN, LUCIA, *Statutes of Shkodra*, Press House “Onufri”, Second Edition, University “Wisdom”, Tirana, 2010, p. 336.

3. ALBANIAN KINGDOM, THE MINISTRY OF JUSTICE, *The Albanian Criminal Code 1927*, printing-house “Sun”, Tirana, 1929, p. 140-142.

4. ALBANIAN KINGDOM, THE MINISTRY OF JUSTICE, *The Albanian Criminal Code 1927*, printing-house “Sun”, Tirana, 1929, p. 140-141.

violence was exercised against property¹. Conversely, when the perpetrator employed unlawful mechanisms intended to create an insecure environment, instill fear or intimidate individuals, the principal penalty, in addition to the heavy fine, included imprisonment for up to one year or exile (internment) for up to two years².

The degree of punishment imposed changed when the perpetrator used weapons—whether cold weapons or firearms such as a revolver, pistol, or rifle. In such circumstances, the legal qualification depended on whether the unlawful act had caused serious harm to a person's health. The legislator established a minimum threshold of punishment when the act resulted in minor bodily injury causing temporary incapacity to work for up to ten days. In such cases, the sentence could not be less than one month of imprisonment, and internment for less than three months³, always accompanied by a fine of no less than 200 gold francs⁴. When it was proven that the perpetrator acted in defense of a right which in reality belonged to him, the prescribed penalty was reduced by one-third⁵.

Article 269, paragraph 4 of the Criminal Code stipulated that prosecution for the offence of vigilantism was not initiated *ex officio*, except in cases where criminal proceedings were requested by the injured party, or where vigilantism was committed in conjunction with another offence subject to public prosecution⁶.

According to Article 271 of the Criminal Code of the Monarchy, any person who—despite claiming that a movable or immovable property rightfully belonged to him—resorted to taking possession of such property by force during judicial enforcement proceedings or following a court decision, was subject to criminal liability for vigilantism⁷. The purpose of this provision was

1. ALBANIAN KINGDOM, THE MINISTRY OF JUSTICE, *The Albanian Criminal Code 1927*, printing-house “Sun”, Tirana, 1929, p. f. 140.

2. ALBANIAN KINGDOM, THE MINISTRY OF JUSTICE, *The Albanian Criminal Code 1927*, printing-house “Sun”, Tirana, 1929, p. 141.

3. ALBANIAN KINGDOM, THE MINISTRY OF JUSTICE, *The Albanian Criminal Code 1927*, printing-house “Sun”, Tirana, 1929, p. 141.

4. ALBANIAN KINGDOM, THE MINISTRY OF JUSTICE, *The Albanian Criminal Code 1927*, printing-house “Sun”, Tirana, 1929, p. 141.

5. ALBANIAN KINGDOM, THE MINISTRY OF JUSTICE, *The Albanian Criminal Code 1927*, printing-house “Sun”, Tirana, 1929, p. 141.

6. ALBANIAN KINGDOM, THE MINISTRY OF JUSTICE, *The Albanian Criminal Code 1927*, printing-house “Sun”, Tirana, 1929, p. 141.

7. ALBANIAN KINGDOM, THE MINISTRY OF JUSTICE, *The Albanian Criminal*

to protect the authority of judicial decisions and the enforcement process, but also to safeguard property that the court had legally recognized as belonging to the opposing party. The perpetrator was punishable by imprisonment from three months to three years, together with a heavy fine of up to 3,000 gold francs¹. Additionally, the penalty was increased by one-third where violence was directed against a person, and reduced by up to one-half where the object involved was of small value—although the law did not specify what constituted a “small value”².

In summary, the provisions of the Criminal Code of the Albanian Monarchy reflect a clear legislative approach to treating vigilantism as a serious threat to legal order and public security. Through detailed definitions of prohibited conduct, the gradation of penalties, and the application of the principle of proportionality, the legislator sought to discourage traditional tendencies of individuals to take justice into their own hands and to affirm the unquestionable role of state institutions in resolving disputes. This legal regulation represents an important step toward the construction of a modern rule-of-law state and marked a decisive shift away from customary practices and the mentality of private justice.

5. Vigilantism during the period 1945–1990

Vigilantism was expressly provided for in the Criminal Code of 1952.³ It was sanctioned under Article 250, within the framework of offences against administrative order – specifically, obstruction of the activity of state authorities.⁴

Under this criminal provision, vigilantism implied the resolution of disputes and conflicts through non-institutional and unlawful means.⁵ In other

Code 1927, printing-house “Sun”, Tirana, 1929, p. 141-142.

1. ALBANIAN KINGDOM, THE MINISTRY OF JUSTICE, *The Albanian Criminal Code 1927*, printing-house “Sun”, Tirana, 1929, p. 142.

2. ALBANIAN KINGDOM, THE MINISTRY OF JUSTICE, *The Albanian Criminal Code 1927*, printing-house “Sun”, Tirana, 1929, p. 142.

3. MINISTRY OF JUSTICE OF THE POPULAR SOCIALIST REPUBLIC OF ALBANIA, *Criminal Code of the Popular Socialist Republic*, Tirana, 1952, p. 123.

4. MINISTRY OF JUSTICE OF THE POPULAR SOCIALIST REPUBLIC OF ALBANIA, *Criminal Code of the Popular Socialist Republic*, Tirana, 1952, p. 123.

5. MINISTRY OF JUSTICE OF THE POPULAR SOCIALIST REPUBLIC OF ALBANIA, *Criminal Code of the Popular Socialist Republic*, Tirana, 1952, p. 123.

words, the perpetrator personally took the initiative to resolve the matter in question without addressing it to the competent local or central government authorities, and without awaiting or complying with the decisions of the state organs.¹ In such circumstances, an individual would incur criminal liability for vigilantism when he failed to refer the matter to state institutions or law-enforcement agencies, even if he believed that he was exercising a right that belonged to him, presumed belonged to him, or was not recognized by the opposing party.²

The criminal law provided for two types of sanctions applicable to this offence: a fine or corrective labour. The offender could be punished with a fine of up to 5,000 Lek – a monetary penalty of significant value which, at the time, exceeded the annual salary of a well-qualified employee.³ In addition, the perpetrator could be sentenced to corrective labour for up to six months.⁴

The Criminal Code of 1977 differed from the 1952 Code in both the legal qualification of the offence and the types of sanctions imposed.⁵ It provided for three forms of punishment applicable to the offence of vigilantism: social reprimand, re-education through labour for up to six months, and imprisonment – or, as the legislator of the time phrased it, “deprivation of liberty” – for up to three months.⁶ Furthermore, another significant distinction from the 1952 Code was that vigilantism was now classified and treated as a criminal contravention, since, unlike the previous legislation, the Criminal Code of 1977 formally distinguished between crimes and criminal contraventions.⁷

1. MINISTRY OF JUSTICE OF THE POPULAR SOCIALIST REPUBLIC OF ALBANIA, *Criminal Code of the Popular Socialist Republic*, Tirana, 1952, p. 123.

2. MINISTRY OF JUSTICE OF THE POPULAR SOCIALIST REPUBLIC OF ALBANIA, *Criminal Code of the Popular Socialist Republic*, Tirana, 1952, p. 123.

3. MINISTRY OF JUSTICE OF THE POPULAR SOCIALIST REPUBLIC OF ALBANIA, *Criminal Code of the Popular Socialist Republic*, Tirana, 1952, p. 123.

4. MINISTRY OF JUSTICE OF THE POPULAR SOCIALIST REPUBLIC OF ALBANIA, *Criminal Code of the Popular Socialist Republic*, Tirana, 1952, p. 123.

5. MINISTRY OF JUSTICE OF THE POPULAR SOCIALIST REPUBLIC OF ALBANIA, *Criminal Code of the Popular Socialist Republic*, press house “8 November”, Tirana, 1977, p. 90.

6. MINISTRY OF JUSTICE OF THE POPULAR SOCIALIST REPUBLIC OF ALBANIA, *Criminal Code of the Popular Socialist Republic*, press house “8 November”, Tirana, 1977, p. 90.

7. MINISTRY OF JUSTICE OF THE POPULAR SOCIALIST REPUBLIC OF ALBANIA, *Criminal Code of the Popular Socialist Republic*, press house “8 November”, Tirana, 1977, p. 90.

However, regarding the substantive content of the provision, it remained unchanged from the regulation introduced by the earlier legislator in 1952.

In conclusion, the criminal regulation of vigilantism during the period 1945–1990 clearly reflects the state policies of the communist regime aimed at the absolute centralization of authority and the eradication of any form of individual legal autonomy. Unlike earlier historical periods, in which vigilantism appeared as a reflection of customary tradition or institutional gaps, the socialist regime regarded it as an act of political opposition to the Party line and a threat to the monistic order. For this reason, the legislator introduced punitive mechanisms with a primarily educational and disciplinary character rather than traditional penal repression, intending to achieve the ideological transformation of the citizen and his unconditional obedience to the state. This penal framework perhaps most strongly demonstrates that, during the communist period, vigilantism was not treated merely as unlawful conduct, but as a form of ideological deviance that had to be eliminated through social discipline and legal repression.

6. Vigilantism under the Current Criminal Code

As in previous legislative periods, the Albanian legislator has maintained the same position regarding vigilantism. Thus, in the contemporary codification of criminal rules, the legislator has preserved an identical approach concerning the formulation, structure, and substantive definition of vigilantism. It is classified as a criminal contravention within the framework of criminal offences against public order and public security.¹

Similarly to the last Criminal Code drafted under the monist regime, the perpetrator of this criminal contravention is still punishable by a fine or imprisonment of up to three months.² In essence, the content of this criminal contravention does not differ from the provision as regulated in the 1977 Criminal Code. The distinction lies in the fact that, whereas previously this offence was included in the section of criminal contraventions against administrative order, it is now incorporated within the system of criminal offences against public order and public security.³

The High Court of the Republic of Albania, in its role of clarifying

1. LAW No.7895, Date of Act: 27. 01. 1995, Adoption date: 27. 01. 1995, Official Journal No. 2, Page 23: amended.

2. ELEZI, ISMET, *Criminal Law (Special Part)*, Press “Erik”, Tirana, 2009, p. 497-499.

3. ELEZI, ISMET, *Criminal Law (Special Part)*, Press “Erik”, Tirana, 2009, p. 497-499.

and consolidating judicial practice concerning the legal qualification of the offence of vigilantism under Article 277 of the Criminal Code and the judicial interpretation of this provision¹, has emphasized the importance of a detailed analytical assessment of the subjective elements of this offence². For the purpose of unifying judicial practice and ensuring objective evaluation, the United Chambers have focused on the analysis and interpretation of the elements of three criminal offences— Kidnapping (Article 109), Unlawful Deprivation of Liberty (Article 110), and Vigilantism (Article 277)³.

According to the jurisprudence of the High Court:⁴

“[...] Vigilantism, under Article 277 of the Criminal Code, presupposes the exercise of a right by an individual who holds such a right or believes that he holds such a right, and which is not recognized by the other party, without addressing the competent State authority. This provision aims not only to protect the exercise of State authority but also to prevent and punish socially dangerous conduct through which the perpetrator attributes to himself the power to realize a right or resolve a dispute with the injured party by avoiding the legal procedures and the competent State authority. In this regard, the perpetrator acts by violating and ‘replacing’ the function of the competent authority, which has the jurisdiction, competence, and duty to resolve disputes between parties according to the law, objectively and impartially. Such conduct is inherently unlawful and arbitrary.

Although not explicitly stated in the provision, from the perspective of the objective element, vigilantism is committed through the arbitrary exercise of a right, by means of various forms of physical or psychological violence (threats, etc.), either directly against the person or indirectly by acting upon property or an interest over which the perpetrator legitimately or allegedly claims to hold a right. The object over which the perpetrator acts is not necessarily the same as the object of the alleged right.

It is essential that there exists a legal avenue and the real possibility for the

1. Through the Unifying Decision No. 1, dated 25 March 2005, of the United Chambers of the Supreme Court, alongside the clarification of Article 227 “Vigilantism”, the Court established a precise judicial practice regarding the legal qualification of the criminal offence and the judicial interpretation of the offences of “Kidnapping” and “Unlawful Deprivation of Liberty”, as provided in Articles 109 and 110 of the Criminal Code.

2. SUPREME COURT, United Chambers, Decision No. 1, date 25.03.2005.

3. SUPREME COURT, United Chambers, Decision No. 1, date 25.03.2005.

4. SUPREME COURT, United Chambers, Decision No. 1, date 25.03.2005.

perpetrator to exercise his right by addressing the competent State authority, particularly the courts.

The United Chambers of the High Court reached several conclusions aimed at consolidating judicial practice.

First, the provisions of Articles 109 (Kidnapping or holding a person hostage), 110 (Unlawful deprivation of liberty), and 277 (Vigilantism) of the Criminal Code protect social relations concerning the person and property. In the case of vigilantism, however, the protected legal interest relates to public order and public security. It is evident that the legislator establishes a specific yet interconnected regulation of the protected interests within these criminal provisions.

If there is no unjust benefit—that is, if the perpetrator seeks or claims to pursue a legitimate interest—while simultaneously interrupting or violating the liberty of another person (kidnapping or holding the victim hostage), the conduct falls under the criminal offence of unlawful deprivation of liberty (Article 110), which may concur with vigilantism (Article 277). The lawful or unlawful nature of the benefit or interest must be assessed not on the basis of the personal perception of the perpetrator, but through an objective evaluation of the circumstances proven during trial.

From the perspective of the subjective element, vigilantism also differs from extortion by means of threats or violence for obtaining property (Article 109/b of the Criminal Code). Under Article 109/b, the perpetrator seeks an unlawful profit and is aware that what he aims to obtain is illegal and unjust. Conversely, the perpetrator of vigilantism seeks to realize a right that belongs to him or which he, based on the circumstances, believes belongs to him and is convinced that his claim is legitimate, even if such claim is ultimately incorrect.

Unlike Articles 109 and 109/b, where the subjective motive is the pursuit of unlawful gain, under Article 277 the motive and purpose relate to the protection of a lawful right or interest. In this context, identical or similar acts in terms of objective conduct do not lead to the conclusion that Articles 109 or 109/b prevail over Article 277.

In Article 109, the offence is committed through kidnapping or hostage-taking—acts which constitute elements of unlawful deprivation of liberty—while Article 109/b criminalizes other forms of physical or psychological coercion not included in Article 109. Therefore, Article 109 does not concur with Article 109/b. By contrast, Articles 110 and 277 do concur, given that vigilantism is consumed when the motive is the protection of a lawful interest

*without recourse to the competent authority. Regardless of the protected lawful interest, the perpetrator's actions—of any kind—are directed arbitrarily against persons or property. If these acts include deprivation of liberty, then the perpetrator also commits the offence of unlawful deprivation of liberty under Article 110.”*¹

According to the jurisprudence of the High Court:

*“[...] There is no case of vigilantism—an arbitrary and unlawful exercise of a right—when the perpetrator acts upon a thing with the intention of protecting his lawful and actual possession that has been violated or disturbed by the unlawful act of a third party, provided that no legal obligation or possibility exists to address the competent State authority or the court.”*²

In this way, the judicial interpretation of Article 277 clearly consolidates the legal framework governing vigilantism, placing it at the boundary between the protection of a legitimate right and the prohibition of the use of private force to the detriment of State authority.³

The jurisprudence of the High Court has played a fundamental role in standardizing judicial practice and in establishing a unified approach to distinguishing between criminal offences that may appear similar at first glance but differ significantly in their legal structure and substantive elements.⁴

Within the same unifying decision, the dissenting opinion of the United Chambers expressed an alternative position, disagreeing with the majority both with respect to the dispositive part of the judgment and the legal reasoning that led to it.⁵ According to this opinion, if the exercise of a purported right is accompanied by forms of violence that fulfil the constituent elements of the criminal offence of kidnapping or holding a person hostage, then the conduct can no longer be qualified as vigilantism under Article 277 of the Criminal Code, but rather as the offence provided in Article 109 or Article 110 of the

1. SUPREME COURT, United Chambers, Decision No. 1, date 25.03.2005.

2. SUPREME COURT, United Chambers, Decision No. 1, date 25.03.2005.

3. SUPREME COURT, United Chambers, Decision No. 1, date 25.03.2005.

4. SUPREME COURT, United Chambers, Decision No. 1, date 25.03.2005.

5. *The Prosecution had charged them with the criminal offences of kidnapping and unlawful possession of military weapons, provided by Article 109 of the Criminal Code, in conjunction with Article 25 thereof, as well as Article 278/2 of the same Code. This position was upheld by the representative of the General Prosecutor's Office during the examination of the case both before the Criminal Chamber and before the United Chambers of the Supreme Court.* SUPREME COURT, United Chambers, Decision No. 1, date 25.03.2005.

Criminal Code.¹

From this perspective, vigilantism is considered solely as a subjective element (intent or purpose) of the crime of kidnapping, and not as an autonomous legal figure capable of concurring with it. For this reason, the dissent argued that the principle of absorption must apply, meaning that the lesser offence (vigilantism) is absorbed by the more serious offence (kidnapping or unlawful deprivation of liberty), since both protect the same legal interest – the personal liberty of the individual.²

This alternative interpretation highlights the importance of accurately defining the relationship between vigilantism and other offences against personal liberty, demonstrating that the nature and intensity of the violence used may directly influence the legal qualification of the act. As such, the dissenting opinion remains an important reference in doctrinal debate concerning the dividing line between vigilantism and crimes against personal liberty.³

In light of the above legal and jurisprudential analysis, it follows that vigilantism within the current criminal framework retains its historical character and is perceived as an arbitrary intrusion into the sphere of State authority and as a social threat to public order and security.

The role of the High Court is crucial in consolidating the boundaries between vigilantism and other criminal offences that violate individual liberty, guiding judicial practice toward a clearer and more coherent interpretation. Unlike previous historical periods, contemporary emphasis lies on the necessity of institutional dispute resolution and the principle that no individual may take justice into his own hands.

7. Conclusion

The above sections addressed the historical, doctrinal, and normative dimensions of the institution of vigilantism, beginning with Albanian customary law, the Statutes of Shkodra, the criminal codifications of the Monarchy, the period of the socialist regime, and extending to the contemporary criminal framework. This analysis demonstrated that the position of the Albanian legislator has been consistently firm in prohibiting arbitrary actions and in

1. SUPREME COURT, United Chambers, Decision No. 1, date 25.03.2005.

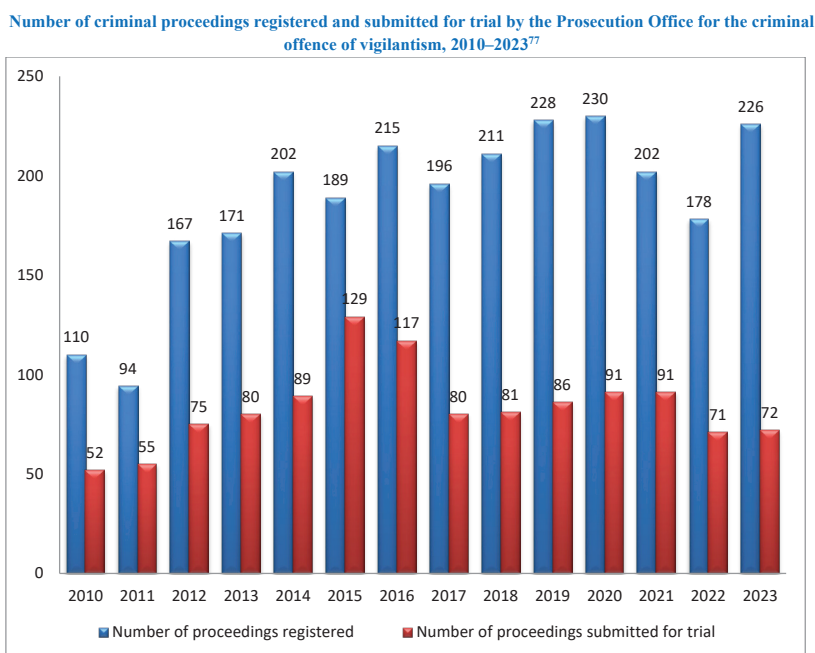
2. SUPREME COURT, United Chambers, Decision No. 1, date 25.03.2005.

3. SUPREME COURT, United Chambers, Decision No. 1, date 25.03.2005.

safeguarding the authority of the State in resolving disputes.

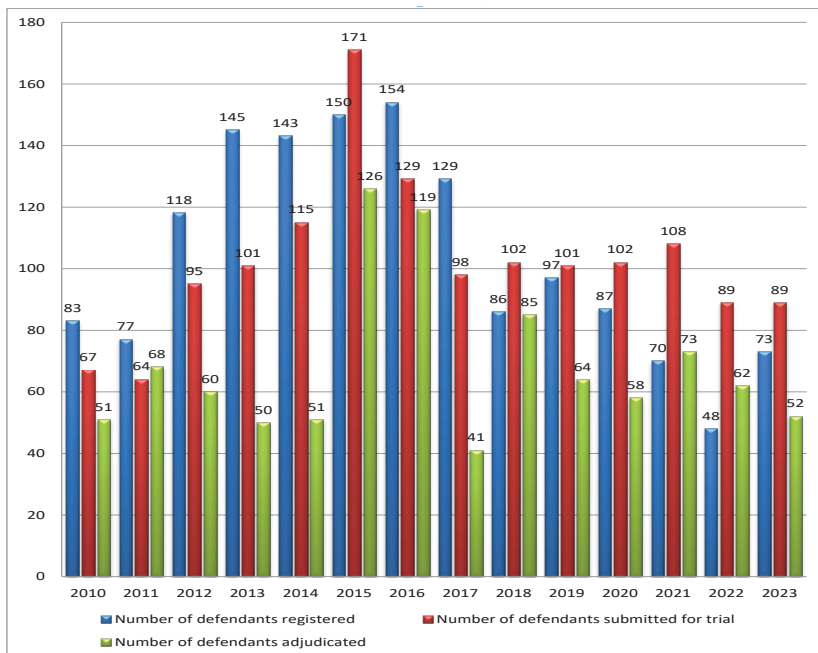
However, the historical perspective would be incomplete without assessing how this institution operates in practice today and how it is reflected in the statistical data of the justice system in Albania. For this reason, we analyzed the official data of the Prosecutor General's Office concerning the criminal offence of vigilantism for the period 2010–2023, with the aim of understanding the real and current dimensions of this phenomenon.

Figure 1
Number of criminal proceedings registered and submitted for trial by the Prosecution Office for the criminal offence of vigilantism, 2010–2023¹



1. GENERAL PROSECUTOR'S OFFICE (2010-2023), Reports of General Prosecutor on the state of criminality, Tirana. Furthermore:
https://www.pp.gov.al/Documents/REPORTS_OF_THE_PROSECUTOR_GENERAL/.
 Last accessed online: 7.05.2024.

Figure 2
Number of defendants registered, submitted for trial by the Prosecution Office and adjudicated for the criminal offence of vigilantism, 2010–2023¹



Based on the analysis of the statistical data reported by the General Prosecutor's Office regarding the criminal offence of vigilantism for the period 2010–2023, the following results emerge:²

- 2619 is the number of registered criminal proceedings;
- 1169 is the number of proceedings submitted to the court for trial;
- 1460 is the number of registered defendants;

1. GENERAL PROSECUTOR'S OFFICE (2010-2023), Reports of General Prosecutor on the state of criminality, Tirana. Furthermore:
https://www.pp.gov.al/Documents/REPORTS_OF_THE_PROSECUTOR_GENERAL/.
 Last accessed online: 7.05.2025.

2. GENERAL PROSECUTOR'S OFFICE (2010-2023), Reports of General Prosecutor on the state of criminality, Tirana. Furthermore:
https://www.pp.gov.al/Documents/REPORTS_OF_THE_PROSECUTOR_GENERAL/.
 Last accessed online: 7.05.2025.

- 1431 is the number of defendants submitted for trial;
- 960 is the number of convicted defendants.

The processing of these data indicates that 53.8% of the criminal proceedings registered by the Prosecution Office have been forwarded to the court for trial. At the same time, 98% of registered defendants have been referred to trial, and 65.7% of them have been convicted. Furthermore, 67% of the defendants submitted for trial have been convicted by the courts.¹

The statistical data demonstrate that vigilantism remains a notably persistent phenomenon within Albanian judicial practice.² The relatively high number of registered criminal proceedings (2,619 cases over a 13-year period) indicates that citizens continue to resort to private mechanisms for resolving disputes, circumventing the competent judicial authorities. This trend reflects a low level of public trust in institutional effectiveness and in the ability of the state to guarantee swift and fair resolution of conflicts.³

On the other hand, the fact that an exceptionally high percentage of registered defendants (98%) are referred for trial and that 67% of those tried are convicted shows that the justice system treats this criminal offence with significant seriousness and that there is a clear trend toward consolidating penal practice in response to it.⁴ The relationship between the number of initiated proceedings and the level of judicial convictions reveals that vigilantism is not only frequent in Albanian society, but that arbitrary individual actions are being sanctioned with considerable

1. GENERAL PROSECUTOR'S OFFICE (2010-2023), Reports of General Prosecutor on the state of criminality, Tirana. Furthermore:
https://www.pp.gov.al/Documents/REPORTS_OF_THE_PROSECUTOR_GENERAL/.
 Last accessed online: 7.05.2025.

2. GENERAL PROSECUTOR'S OFFICE (2010-2023), Reports of General Prosecutor on the state of criminality, Tirana. Furthermore:
https://www.pp.gov.al/Documents/REPORTS_OF_THE_PROSECUTOR_GENERAL/.
 Last accessed online: 7.05.2025.

3. GENERAL PROSECUTOR'S OFFICE (2010-2023), Reports of General Prosecutor on the state of criminality, Tirana. Furthermore:
https://www.pp.gov.al/Documents/REPORTS_OF_THE_PROSECUTOR_GENERAL/.
 Last accessed online: 7.05.2025.

4. GENERAL PROSECUTOR'S OFFICE (2010-2023), Reports of General Prosecutor on the state of criminality, Tirana. Furthermore:
https://www.pp.gov.al/Documents/REPORTS_OF_THE_PROSECUTOR_GENERAL/.
 Last accessed online: 7.05.2025.

intensity, functioning as a deterrent and as an instrument of public legal education.

The study of the historical and normative development of the legal institute of vigilantism clearly demonstrates that the stance of the Albanian legislator has been consistently and unequivocally opposed to any form of arbitrary exercise of rights outside state structures. From the era of customary law and the Statutes of Shkodra, through the Penal Codes of the Monarchy, the period of socialist rule, and the contemporary penal framework, vigilantism has been treated as socially dangerous conduct that jeopardizes public order, the authority of judicial institutions, and public security. The historical analysis shows that the cultural roots of this phenomenon have been strongly tied to institutional instability and to a deeply ingrained mistrust in state-administered justice.

In the current legal landscape, the interpretation of Article 277 of the Criminal Code and the jurisprudence of the Supreme Court have played a decisive role in standardizing penal practice and in clarifying the boundaries between vigilantism and other criminal offences against personal liberty. Nevertheless, the statistical data from the General Prosecutor's Office for the period 2010–2023 confirm that this phenomenon remains a tangible reality: 2,619 registered proceedings and 1,431 defendants referred for trial demonstrate that private conflict resolution remains a widely practiced approach among a significant segment of the Albanian population.¹ At the same time, the high conviction rate (67% of those who went to trial) indicates that the criminal justice system is responding forcefully and consistently to such conduct.²

The interpretation of these data leads to the conclusion that, although the legal framework is now fully consolidated, the central challenge no longer lies in legislative regulation, but in the need for cultural transformation and the strengthening of public trust in the judiciary. As long as citizens perceive the institutional system as slow or ineffective, the tendency

1. GENERAL PROSECUTOR'S OFFICE (2010-2023), Reports of General Prosecutor on the state of criminality, Tirana. Furthermore:
https://www.pp.gov.al/Documents/REPORTS_OF_THE_PROSECUTOR_GENERAL/.
Last accessed online: 7.05.2025.

2. GENERAL PROSECUTOR'S OFFICE (2010-2023), Reports of General Prosecutor on the state of criminality, Tirana. Furthermore:
https://www.pp.gov.al/Documents/REPORTS_OF_THE_PROSECUTOR_GENERAL/.
Last accessed online: 7.05.2025.

toward private dispute resolution will continue to persist, regardless of criminal sanctions.

In this sense, vigilantism should be understood not merely as a criminal offence, but as an indicator of democratic maturity and institutional effectiveness. Reducing this phenomenon requires strengthening real access to justice, increasing judicial transparency and efficiency, expanding legal civic education, and promoting awareness of alternative dispute resolution mechanisms such as mediation and arbitration. Only through a functional and trustworthy justice system can vigilantism become not merely prohibited by law, but unnecessary in practice.

Bibliography

- ALBANIAN KINGDOM, THE MINISTRY OF JUSTICE, The Albanian Criminal Code 1927, printing-house “Sun”, Tirana, 1929.
- AUTHORS’ GROUP, History of State and Law in Albania, Tirana, 1997.
- ELEZI, ISMET, Labëria Customary Law, Press House “Toena”, Tirana, 2002.
- ELEZI, ISMET, Canon of Labëria, Tirana, 2006.
- ELEZI, ISMET, Criminal Law (Special Part), Press “Erik”, Tirana, 2009.
- HOXHA, SHEFQET, Canon of Luma, Tirana, 2013.
- GENERAL PROSECUTOR’S OFFICE (2010-2023), Reports of General Prosecutor on the state of criminality, Tirana.
- GOCI, HAXHI, Canon of Benda’s Province, Tirana, 2010.
- GJEÇOVI, SHTJEFËN, Canon of Lekë Dukagjini, Press House “Kuvendi”, Printing Office “Geer”, Tirana, 1999.
- ILIA, FRANO, Canon of Skanderbeg, publisher La Rosa, Milot, 1993.
- LAW No.7895, Date of Act: 27. 01. 1995, Adoption date: 27. 01. 1995, Official Journal No. 2, Page 23: amended.
- NADIN, LUCIA, Statutes of Shkodra, Press House “Onufri”, Second Edition, University “Wisdom”, Tirana, 2010.
- MARTINI, XHAFERR, Canon of Dibra, Tirana, 2007.
- MINISTRY OF JUSTICE OF THE POPULAR SOCIALIST

REPUBLIC OF ALBANIA, Criminal Code of the Popular Socialist Republic, Tirana, 1952.

- MINISTRY OF JUSTICE OF THE POPULAR SOCIALIST REPUBLIC OF ALBANIA, Criminal Code of the Popular Socialist Republic, press house “8 November”, Tirana, 1977.
- SUPREME COURT, Decision No. 1, date 25.03.2005.
- https://www.pp.gov.al/Documents/REPORTS_OF_THE_PROSECUTOR_GENERAL/

SURVEILLANCE AND PRIVATE RECORDINGS

Dr. Eliora Elezi¹
Dr. Ardian Elezi²

Abstract

Surveillance as a Means of Evidence Collection and the Sensitivity of Private Recordings: Legal, Ethical, and Technological Considerations. Wiretapping as a method of evidence collection, as well as private recordings, are invasive techniques that raise significant concerns regarding individuals' right to privacy and pose serious risks to the violation of fundamental human rights. Their proper application, in accordance with criminal procedural law and the authorization conditions stipulated by it, permits their use in the interest of evidence gathered within the framework of an initiated criminal proceeding.

However, the widespread use of private recordings by individuals or the media—regardless of the balance between the right to information and the right to privacy—demands clear regulation concerning the manner in which such recordings are conducted and the locations where they are allowed. This phenomenon, often followed by the unauthorized dissemination of information and the manipulation of specific situations, may lead to irreversible consequences.

The rules and legal frameworks governing surveillance and private recordings vary across countries. Nonetheless, most legal systems emphasize a delicate balance between public safety and the preservation of personal privacy. In many jurisdictions, laws pertaining to surveillance and

1. Magistrate - Prosecutor at the Prosecutor's Office of the General Jurisdiction in Tirana, External Lecturer at the School of Magistrate and the Faculty of Law in Tirana. Email: elioralezi@yahoo.com

2. Lecturer at "Luarasi" University, Tirana. Email: ardael2004@yahoo.com

private recordings are detailed and require specific judicial authorization to carry out such activities. Nevertheless, the unnecessary or excessive use of these instruments can result in misuse and pose irresponsible risks to both individuals and society at large.

This abstract explores the legal, ethical, and technological aspects of surveillance and private recordings, while also analyzing the challenges posed by rapid technological advancements and their impact on individuals' private lives.

Keywords: *surveillance, private recording, evidence, right to information, inadmissibility of evidence*

1. Interception: Definition and Legal Regulation

In the activity of the judicial police for the verification of criminal activity, a significant role is played by the technique of interception. This technique can be conducted in both private and public environments. However, within the framework of a comprehensive analysis, it is important to distinguish between environmental interception used for verifying criminal information—functioning as an intelligence-gathering tool—and environmental interception used as an evidentiary method.

Interception as a means of obtaining evidence¹ is regulated by the **Criminal Procedure Code**, specifically in **Articles 221 and following**, and is carried out by a state authority that allows the acquisition of knowledge about private conversations or communications between two or more individuals, conducted in public or private spaces.

The **Criminal Procedure Code** assigns the judicial police the duty of detecting criminal activity, while also providing for a series of actions that the police can initiate independently, such as: gathering information, crime scene inspection, arrests in flagrante delicto, seizures, etc.

Many crimes do not have a clearly defined crime scene; therefore, their investigation poses difficulties. In such cases, the judicial police must first obtain initial knowledge through information gathering, subsequently verify this information, and inform the prosecution office. Thus, the initial data remains within the framework of a **suspicion of potential criminal**

1. Instruction No. 1, dated April 2, 2006, of the General Prosecutor “On Interceptions”

activity, which must go through preliminary verification in order to be sufficient for referral to the prosecuting authority for further investigation.

In these circumstances, it is necessary for the judicial police to carry out **environmental interceptions** of conversations (e.g., between an informant and a suspect), for several purposes:

- Verifying the accuracy of information regarding the criminal fact;
- Assessing the credibility and character of the informant;
- Collecting any other relevant data that may emerge from the investigation.

These interceptions are **not conducted in accordance with the procedure foreseen in the Criminal Procedure Code** and **do not require prior authorization by the prosecutor**, thus **they cannot serve as evidence in court.**¹

From a more technical point of view, interception is defined as the covert intervention aimed at capturing, listening to, and recording the content of communications and data related to them, between their point of origin and their point of arrival.

Furthermore, **Law no. 9187 of 2004 “On Interceptions”** allows for covert interceptions to be conducted by the judicial police for the purposes of verifying and confirming information, **without the prior approval of the prosecutor**, but requires that the prosecutor be made **aware of the results**. Ultimately, the results obtained from these secret environmental interceptions are appended to the information collected and submitted to the prosecution office for the authorization of further investigation².

1. Decision No. 129, dated October 12, 2011, the **High Court of Albania** emphasized the following: *“Information from the State Intelligence Service (SHISH), foreign intelligence services, and other operational data are sufficient to satisfy the court’s subjective assessment regarding the existence of ‘reasonable evidence’ to justify the verification of a criminal offense. At the time of authorizing interception, it is not required that the individual associated with the intercepted phone number be proven guilty. The existence of sufficient evidence became evident only at the conclusion of the criminal proceedings, where the involved individuals were found guilty and sentenced for their role in the trafficking activit*

2. In its Decision No. 138, dated October 26, 2011, the **High Court of Albania** stated: *“In cases where the authorization is granted by the prosecutor—who is the authority responsible for conducting criminal prosecution—the court’s assessment fulfills a dual function: on the one hand, it evaluates the legality of the prosecutor’s actions; on the other hand, it legitimizes the evidence that has been preliminarily obtained and administered by that authority. The absence of a specific right to appeal the court’s decision that validates the interception*

From a technical perspective, the organization and execution of secret environmental interceptions used for information verification do not differ from those used in the context of evidence gathering.

1.1 Private Recordings: Meaning and Admissibility

As previously emphasized, interception is one of the tools for the collection of evidence, regulated under procedural criminal legislation and used strictly by criminal procedural authorities in accordance with the law. However, with the advancement of technology, it has become increasingly easy for individuals to make **private audio and video recordings**.

It is crucial to make a clear distinction: the **covert recording of a conversation or communication by one of the participants**, without the knowledge or authorization of state authorities, **does not constitute interception** within the meaning established by the **Criminal Procedure Code**. Consequently, **Articles 221 and following**, which regulate state-authorized interceptions, **are not applicable**¹ in these cases.

Nonetheless, the **illegality of such recordings cannot be presumed solely based on the fact that the formal requirements for lawful interception were not followed**. Judicial practice in Albania has been divided in its approach:

- Some decisions classify these recordings as **irregular evidence** within the meaning of **Article 151/3 of the Criminal Procedure Code**;
- Others treat them as **private documents**².

Despite these differing interpretations, it is generally accepted that **recordings made by a private individual**—particularly those conducted **in their own interest**—may be admitted. This has also been reinforced by amendments to **Article 8/a of the Albanian Criminal Procedure Code**,

serves to preserve and guarantee the equal standing of the parties (the accused and the prosecution) before the court. It also prevents the prosecution from utilizing unlawfully obtained evidence, avoids undue prolongation of the trial beyond reasonable time limits, and safeguards the confidentiality that characterizes such procedural acts.

1. Article 151, paragraph 3 of the **Criminal Procedure Code** of Albania stipulates “*When a piece of evidence is requested that is not regulated by law, the court may admit it if it is relevant to proving the facts and does not infringe upon the free will of the individual. The court shall decide on the admissibility of such evidence after hearing the parties regarding the manner of its acquisition.*”

2. Article 191, paragraph 1 of the **Criminal Procedure Code** of Albania states: “*The acquisition of documents representing facts, persons, or objects is permitted through photography, filming, sound recording, or any other means.*”

which grant discretion to prosecutorial bodies to admit as evidence materials not expressly regulated by the Code¹.

A recurring legal question is whether such recordings, made by individuals **without official authorization**, infringe upon the **right to respect for private life**.²

In the ECtHR case “**Lüdi v. Switzerland**”³, the Court recognized that telephone tapping constitutes an **interference with private life and correspondence**, but emphasized that such interference is not a violation of the Convention if it meets the requirements of **Article 8(2)**, specifically that it is:

- “*In accordance with the law*”, and
- “*Necessary in a democratic society*” for, inter alia, the **prevention of crime**.

The Court held:

“There is no doubt that the telephone tapping constituted an interference with the applicant’s private life and correspondence. However, such interference does not breach the Convention if it complies with Article 8(2). In this case, the measure was based on provisions of the Code of Criminal Procedure, applicable during the preliminary investigation phase, where there were reasons to believe that criminal offenses were about to be committed. Moreover, the purpose was crime prevention, and the Court accepted its necessity in a democratic society.”

Similarly, the Italian Court of Cassation has held that:

1. In some cases, such interceptions have not been considered documentary evidence, nor even atypical evidence under Article 151/3 of the Criminal Procedure Code. Instead, they have been deemed interceptions made in violation of the law and, therefore, inadmissible as evidence. For further clarification, refer to the High Court Decision No. 570, dated December 17, 2008, and Decision No. 6, dated September 21, 2012.

2. In the case *Panarisi v. Italy*, Application No. 46794/99, dated April 10, 2007, the European Court of Human Rights (ECHR) reaffirmed the general characteristics of the permissibility of telephone tapping and the principles for not considering it as an infringement of private life under Article 8(1) of the European Convention on Human Rights. The Court acknowledged that telephone interceptions constitute an interference with private life, but such interference cannot be considered a violation, as long as it is foreseen by law, serves one or more legitimate interests, in accordance with paragraph 2 of Article 8, and is necessary in a democratic society. (Page 65)

3. *Application No. 12433/86, dated June 15, 1992, the European Court of Human Rights (ECHR)*

“Those who communicate in places that are not legally protected cannot reasonably expect confidentiality.”

In criminal practice, particularly in public sector corruption cases, individuals (such as whistleblowers) often use private audio or video recordings to document demands for bribes or other illicit behavior. In cases involving citizen or journalist-initiated corruption allegations, prosecutors and courts in Albania have accepted recordings made by the complainant, provided that:

- The complainant was a participant in the conversation;
- The recording was made to protect a legitimate interest;
- The use of the recording is proportionate to the intended purpose (e.g., uncovering a criminal offense).

Victims of domestic violence also frequently rely on recordings to document:

- Psychological abuse,
- Threats,
- Patterns of violent behavior.

These may include audio or video files capturing conversations, threats, or assaults. While there is no ECtHR case law specifically addressing private recordings in domestic violence contexts, broader jurisprudence on private evidence and the State’s duty to protect victims applies. In particular, the *Opuz v. Turkey* case highlights the State’s positive obligation to safeguard the life and physical integrity of women facing domestic violence.

Albanian courts, particularly in protective order proceedings, have accepted such recordings as indicators of danger or risk. In criminal proceedings, if the recording is made by the victim themselves and reasonably serves self-protection, it tends to be admitted as evidence.

For example, in Decision No. 00-2020-1609 of the High Court, a recording made by a domestic violence victim was accepted as valid evidence, considering the context of protection and the proportionality of its use.

In corruption cases, the ECtHR judgment in *Pruteanu v. Romania* emphasizes the need for legal clarity and judicial oversight, noting that while private recordings can aid in uncovering crimes such as corruption, their admissibility must rest on:

- A clear legal framework, and
- Effective judicial control.

1.2 Investigative Journalism, the Legality of Their Actions, and the Admissibility of the Results in Criminal Proceedings

Often, activities similar to undercover operations are carried out by investigative journalists, who justify their actions within the framework of freedom of expression and the right to information. In Albania, criminal activities, especially in cases of corruption, have been uncovered through the public airing of filmed material by the media. Investigative journalists or private individuals engage in actions that, at first glance, appear similar to simulated actions. This fact raises important procedural and substantive issues. Several questions arise:

1. Are these actions carried out by journalists considered special investigative techniques?
2. Are the results obtained from these actions admissible as evidence and can they be used in the context of criminal procedural law?
3. What is the procedural status of the journalist or private individual not authorized by the prosecutor when engaging in such actions?
4. Should journalists be held criminally responsible for their actions?
5. Do these actions violate human rights and the right to privacy?
6. Are simulated actions by journalists permissible according to ethical standards?
7. To what extent should investigative journalism extend in its investigations?

Each of these questions will be analyzed according to relevant legislation, doctrine, and jurisprudence.

Special investigative techniques are foreseen in the Criminal Procedure Code as specific means of collecting evidence that are subject to strict criteria to avoid violating human rights. The responsibility for their proper implementation lies with the prosecutorial and judicial authorities. When similar actions are undertaken by unauthorized subjects, such actions cannot be classified as special investigative techniques. Cooperation with the police and prior authorization are essential conditions for the legal procedural nature of these techniques.

Actions carried out by journalists cannot be classified as special investigative techniques under the definition of the Criminal Procedure Code. The results obtained from such actions cannot be considered equivalent to evidence gathered through the use of special investigative

techniques and are not covered by the provisions of Articles 294/a and 294/b of the Criminal Procedure Code. In all cases where journalists conduct such investigative activities, they are accompanied by private video or audio recordings.

Regarding the procedural position of the journalist or private individual, rules related to individuals with important information about a criminal investigation or witnesses in criminal proceedings can apply if no legal restrictions exist. Since these individuals act on their own initiative and without collaboration with state authorities (i.e., no cooperation agreement or authorization to carry out a criminal act), they cannot benefit from the privileges available to participants in an authorized controlled operation. The authorized person is exempt from criminal liability for a simulated act when it is in line with the powers granted by the law. However, a person who, for example, engages in a corrupt act risks being held criminally liable for active corruption.

The question arises as to whether these actions, if carried out with good intentions such as the right to inform the public, should be assessed in accordance with permissible investigative standards and the risk of infringing on human rights. In the case of special investigative techniques, significant attention is paid to constitutional rights, such as the right to a fair trial and the right to privacy. Provocation is often the “Achilles’ heel” of their use, with a fine line between what is considered legal and what is illegal. The risk of abuse in investigative journalism is potentially high when no oversight is in place. However, even when an investigative journalist provokes or induces a crime, the results obtained (whether through video or audio documentation) cannot be used in court, as they would violate the prohibition on the use of evidence under Articles 151/3 and 151/4 of the Criminal Procedure Code. Therefore, when such actions infringe on human rights, they are inadmissible.

According to the **Journalist’s Code of Ethics**¹, the following principles should be respected for their work to be considered ethical:

- Journalists should respect the honor and reputation of individuals who become the subject of their professional interest.

1. According to point 4 “Interference with people’s private life” in the **Albanian Media Ethics Code**, published by the **Albanian Media Institute**, supported by **OSCE** (BK Publishing, Tirana 2006):

- A journalist is not allowed to engage in blackmail or offer compensation in exchange for information. If payment is necessary to obtain information that the public has the right to know, this should be clear in the reporting.
- Journalists must respect an individual's right to privacy. Investigative actions that interfere with someone's private life may only be justified when protecting society's interests.
- Journalists may use hidden cameras or microphones, assume a false identity, or conceal their professional identity only when these methods are the only way to uncover information of vital public importance. The methods used must be disclosed during reporting.
- Journalists should never draw attention to personal or private aspects unless they are significant. The "sudden" use of cameras in public spaces or institutions must be done with respect for the sensitivity and desires of those present. Public figures have less privacy protection; however, information about their private life may only be made public if it serves the public interest.

These principles are also expressed in various media statutes, such as that of the **Albanian National Television**, which specifies that covert methods of news gathering are not permitted¹. These methods may only be used after all efforts to obtain information through other means have been exhausted. Such methods should be used with a clear understanding of the legal framework, privacy issues, and professional integrity. When using hidden cameras, prior authorization must be obtained from the editor or program director. Authorization may only be granted if the information to be gathered serves an important purpose, is essential, and cannot be obtained by other means. Special care must be taken in cases of serious crimes. These editorial principles also allow for concealing the journalist's identity when there is a legitimate interest, but only when seeking information as an ordinary citizen.

However, Albanian regulations on journalism do not foresee active interventions but rather the gathering of information. Carrying out active interventions to uncover a criminal act raises significant ethical concerns.

1. **Lawrence Marzouk** *Unveiling the Truth: A Guide for Investigative Journalism in Albania* (published with the support of the **OSCE Presence in Albania** and the **Balkan Network for Investigative Journalism**, Tirana, 2015). Accessed on April 5, 2017, at the address: <http://www.osce.org/sq/albania/201336?download=true>.

The issue is raised as to whether recordings made in private spaces are admissible. It is legal to record a conversation among those present, provided that it does not take place in a private setting where the other party is unaware. If such a recording occurs in a private space without the consent of the person being recorded, it constitutes a criminal act under **Article 121 of the Penal Code**, which states: “Placing devices for listening or recording words or images, listening to, recording or transmitting words, fixing, recording, or transmitting images, as well as storing or publishing these data that expose a person’s private life without their consent, constitutes an administrative violation punishable by a fine or imprisonment of up to two years.”

Thus, the recording is valid for the person who carries it out but not for the person unaware of it when it occurs in their private space. However, when the interception occurs in public places, there are no criminal sanctions. The **Italian Court of Cassation**, in **Judgment No. 18908, dated 13.05.2011**, stated that “anyone who engages in a conversation also takes the risk of having it recorded.”

2.1 Legal Regulations of Other States Regarding Private Recordings and the Legitimacy of Activities of Entities Carrying Them Out

An important discussion point is the allowance of licensed activities where entities conduct private recordings for specific purposes, but in a manner contracted by the parties. In most countries, wiretaps (interception of communications) are strictly regulated by law and are usually prohibited for private entities, whether they are licensed or not. Permission to conduct wiretapping is typically granted only to state law enforcement agencies, and only with judicial authorization. However, in some jurisdictions, private entities may use permitted tools to collect information, but not engage in wiretapping in the legal sense of the term.

For example: In the United States, private detectives are licensed in most states, while federal law (as well as most state laws) prohibits the interception of private communications without the consent of the parties. In some states, consent from both parties (two-party consent) is required, while in others, consent from one party (one-party consent) is enough. Even in states with “one-party consent,” detectives are not allowed to wiretap conversations in which they are not participants. The use of wiretapping devices (such as hidden microphones, “bugs,” etc.) without

judicial authorization is illegal.

In the United Kingdom, the Regulation of Investigatory Powers Act (RIPA) prohibits wiretapping by third parties. Only government agencies can obtain permission to conduct wiretaps. Private detectives cannot carry out illegal wiretaps. They can observe, follow people, analyze public data, but cannot interfere with private communications.

Germany licenses the activity of private detectives, but they are not allowed to wiretap. The Data Protection Act is very strict. The use of wiretapping equipment is a crime if there is no legal authorization.

In Italy, although licensed private detectives exist, the law prohibits the wiretapping of communications without judicial authorization. They can collect information through surveillance, but cannot wiretap phone calls or conversations.

Albania does not recognize private entities as authorized to conduct “wiretaps” or private recordings. Wiretapping is only permitted by state structures (prosecution, SHISH, police), with a court order.

2.2. Private Recordings and Wiretaps in Light of the European Convention

Article 32/2 of the Albanian Constitution stipulates that no person can be convicted based on illegally collected data. According to the ECHR, the application of Article 6 covers the entire procedure, including those related to the gathering of evidence, thus covering investigative and judicial procedures¹. Since private recordings, by nature, are invasive and secretive, there is a potential risk of interfering with the right to private life according to Article 8 (1) of the European Convention on Human Rights (ECHR). The right to privacy, guaranteed by Article 8, is not absolute. Limiting the right protected by Article 8 (1) will be lawful if the interference is:

1. In accordance with the law;
2. In pursuit of one or more of the legitimate aims mentioned in Article 8 (2):
 - National security interests;
 - Public safety interests;
 - Economic well-being of the country;

1. See ECHR, *Engel and Others v. Netherlands*, Application No. 5100/71; 5101/71; 5102/71; 5354/72; 5370/72, dated June 8, 1976, pp. 82-83

- Prevention of disorder or crime;
- Protection of health or morals;
- Protection of the rights and freedoms of others; and

3. Necessary in a democratic society.

Even in public spaces, an individual may have the right to a certain level of privacy¹. However, private recordings may be acceptable if they respect the principle of proportionality and are not taken illegally². The use of wiretaps in criminal proceedings: There must be procedural guarantees, judicial oversight, and protective measures for the right to privacy. Balancing interests: Between the public interest (e.g., investigation of corruption) and the right to privacy³.

2.3 ECHR Jurisprudence on the Use of Private Recordings

To evaluate the application of these standards, I will provide examples from several decisions of the European Court of Human Rights (ECtHR), which fundamentally assess private recordings and their validity.

Pruteanu v. Romania (2021): Another important aspect addressed in this case is the violation of the right to privacy, according to Article 8 of the European Convention on Human Rights, which specifically protects individuals' rights to privacy, family, home, and correspondence. In this case, Pruteanu argued that the media publication of a wiretapped conversation during a criminal investigation violated his right to privacy, as his personal conversations were made public without his consent, causing significant harm to his private life and reputation. He claimed a violation of Article 8, which consisted of the fact that the authorities, including the media, failed to strike a fair balance between an individual's right to privacy and the public interest in information. The publication of his wiretapped conversations without his consent violated the essence of his right to privacy, leading to harm in his private life.

The Court accepted his claim, ruling that the publication of the wiretapped materials violated his right to privacy. Romanian authorities and the media had failed to strike a fair balance between protecting the public interest and safeguarding individual privacy rights, as required by

1. European Court of Human Rights Judgment, *Peck v. the United Kingdom* (2003)

2. European Court of Human Rights Judgment, *Pruteanu v. Romania* (2021).

3. European Court of Human Rights Judgment, *Khadija Ismayilova v. Azerbaijan*.

Article 8 of the Convention. As a result, the Court called on Romania to take measures to prevent such violations in the future and to ensure the protection of citizens' privacy rights.

Peck v. the United Kingdom (2003): This case addresses the violation of the right to privacy under Article 8 of the European Convention on Human Rights, focusing on the filming of a suicide attempt by a public camera and the distribution of the footage without the consent of the individual concerned. In this case, Mr. Peck, a British citizen, was filmed by a public camera in a London street attempting to commit suicide. The footage of this act, which occurred in a public place, was broadcast by the media without his consent, becoming publicly known. The applicant claimed a violation of his right to privacy and argued that the publication of these personal images, which occurred at a very sensitive and private moment for him, violated his right to privacy and protection of private life, as these images were distributed without his approval. He argued that the authorities and the media had exposed him in an unprecedented and inappropriate way at a painful moment in his life.

The European Court of Human Rights (ECtHR) found that the publication of the footage without the individual's consent violated Mr. Peck's right to privacy, as he was in a sensitive situation that should have been protected from public disclosure without his consent. The Court emphasized that while there is a public interest in actions occurring in public spaces, a balance between media freedom and the protection of privacy must be considered.

The Court found that the British authorities had not taken adequate measures to protect Peck's right to privacy and to prevent the distribution of his images without his consent. The Court also noted that filming such a private moment and distributing it resulted in a violation of the right to private life and personal dignity, especially when this act occurred at such a dramatic moment. This decision sets the standard that states should take measures to ensure that such events are handled with greater care and respect for individuals' privacy in the future.

Barbulescu v. Romania (2017 – Grand Chamber): The European Court of Human Rights examined an important case related to the monitoring of employees' communications by employers and the violation of the right to privacy under Article 8 of the European Convention on Human Rights. The case involved a violation of the right to privacy, as the employer had monitored the employee's personal communications without informing him

clearly about this. The Court emphasized that the monitoring of employees' communications must be justified and necessary, and it should not be excessive.

In this case, the lack of clear information and the absence of a proper balance between the employer's need to monitor employee activities and the employees' right to privacy were key factors leading to the violation of Mr. Barbulescu's right to privacy. The Court emphasized that monitoring personal communications during working hours may be acceptable under certain circumstances, but there must always be a fair and proportionate relationship between the employer's interests and the employees' right to privacy.

The European Court of Human Rights found that the monitoring of employees' communications in this case was unjustified and excessive, violating Mr. Barbulescu's right to privacy. The Court highlighted that the lack of clear information and proportionality in the control measures represented a serious violation of his privacy rights.

Khadija Ismayilova v. Azerbaijan (2021): This case concerned the covert recording of a female journalist and its subsequent public distribution. The Court ruled that states have a positive obligation not only to refrain from illegal surveillance but also to protect individuals from illegal wiretaps carried out by third parties. This ruling underlined the state's responsibility to prevent such violations of privacy and safeguard the rights of individuals against unlawful surveillance, especially when it involves individuals exercising their freedom of expression, as in the case of a journalist.

These decisions illustrate how the European Court of Human Rights has consistently upheld the right to privacy in the face of private recordings, unauthorized surveillance, and the distribution of personal materials. The Court's rulings emphasize the importance of balancing public interest with individual rights, highlighting that states must take proactive measures to protect privacy and prevent unjustifiable intrusions into personal life.

2. Conclusion and Recommendations

Private recordings are, by nature, invasive and secretive, creating a potential risk for the violation of the right to private life under Article 8 (1) of the ECHR. As for the legality and admissibility of evidence obtained through them, they should primarily be assessed in accordance with Article

6 (fair trial) of the Convention. Thus, the use of private recordings cannot, in itself, violate the right to a fair trial. Compliance with ECHR standards is mandatory for member states, including Albania. State authorities must ensure effective oversight and judicial control for any wiretap.

The use of evidence gathered privately must pass the test of proportionality and legitimate purpose. The Penal Code (Article 121/a) prohibits the dissemination of images or personal data without the consent of the person when it invades their private life. However, the recording of public spaces is not explicitly prohibited, especially if the person recording is part of the conversation. Nevertheless, their use as evidence in court depends on the context – if the recording was made honestly and in a public space, it is often accepted. Secretly recording a conversation in which you are not a participant is considered illegal wiretapping. Training judges, prosecutors, and investigators on ECHR jurisprudence is essential.

Bibliography:

1. Law No. 7895, dated 27.1.1995 “Penal Code of the Republic of Albania”, as amended.
2. Law No. 7905, dated 21.03.1995 “Code of Criminal Procedure of the Republic of Albania”.
3. Law No. 9157, dated 04.12.2003 “On the Interception of Electronic Communications”, amended by Law No. 9885, dated 3.3.2008, and Law No. 116, dated 13.12.2012.
4. Law No. 9187, dated 12.02.2004 “On some amendments and additions to Law No. 7905, dated 21.03.1995 ‘Code of Criminal Procedure of the Republic of Albania’”.
5. Law No. 9258, dated 15.07.2004 “On measures against the financing of terrorism”.
6. Law No. 9284, dated 30.9.2004 “On the prevention and suppression of organized crime”.
7. Law No. 9604, dated 11.09.2006, ratifying the Convention on Police Cooperation for South-East Europe.
8. Law No. 9887, dated 10.03.2008, amended by Law No. 48/2012 “On the protection of personal data”.
9. Privacy Directive 97/66 / EC.

10. Electronic Privacy Directive 2002/58 / EC.
11. European Investigation Order Directive 2014/41 / EU.
12. Directive 95/46/EC “On the protection of individuals with regard to the processing of personal data and the free movement of such data”.
13. Directive 2002/58 “On the processing of personal data and the protection of privacy in the electronic communications sector”.
14. Directive 2006/24 EC “On the retention of data generated or processed in connection with the provision of publicly available electronic communication services or public communication networks”.
15. Charter of Fundamental Rights of the European Union. Official Journal of the European Communities C 364/1, 18.12.2000.
16. Framework Decision 2005/222/JHA of the Council of Ministers of the EU, dated 24 February 2005 “On attacks against information systems”.
17. European Union Agency for Fundamental Rights. Council of Europe “Handbook on European Data Protection Law” 2013, p. 17.
18. “Interference in people’s private life” Code of Ethics of the Albanian Media, Albanian Media Institute, supported by OSCE (Published by BK, Tirana 2006).
19. Lawrence Marzouk, *Revealing the Truth: A Guide to Investigative Journalism in Albania* (published with the help of OSCE Presence in Albania and the Balkan Network for Investigative Journalism, Tirana, 2015).
20. European Court of Human Rights Judgment, *Pruteanu v. Romania* (2021).
21. European Court of Human Rights Judgment, *Barbulescu v. Romania* (2017 – Grand Chamber).
22. European Court of Human Rights Judgment, *Peck v. the United Kingdom* (2003).
23. European Court of Human Rights Judgment, *Khadija Ismayilova v. Azerbaijan*.
24. European Court of Human Rights Judgment, *Panarisi v. Italy*.
25. Judgment of the Supreme Court of Albania, No. 129, dated 12 October 2011.

TERRORISM AND VIOLENT EXTREMISM: LEGAL MEASURES AND THEIR EFFECTIVENESS

Blendi Himçi PhD.¹

Regis Topurja²

Orjona Shermadhi³

Xhoana Agolli⁴

Abstract

Terrorism and violent extremism pose serious threats to public and societal, national and international security throughout the world. This paper analyses the legal measures taken by states and international organizations in order to prevent acts of terrorism and to protect and defend the citizens from the threats, the attacks on the physical integrity of a person, kidnapping, massive destruction of the objects, either in private or in public, through terrorism and extremism, and violence. Special importance in this study is given to the legal analysis of and strategies that the most advanced states use, such as the United States, the United Kingdom, and France, comparing these with countries with more limited resources. The United States and the United Kingdom have been the pioneers in the use of information and technology in order to fight terrorism, including the interception and disruption of the terrorist financing network, whereas France, has developed a strong response and

1. “Aleksander Xhuvani” University, Elbasan, The Faculty of Business and Justice, blendih@yahoo.com

2. “Aleksander Xhuvani” University, Elbasan, The Faculty of Business and Justice, regis.topurja@uniel.edu.al

3. “Aleksander Xhuvani”, University Elbasan, The Faculty of Business and Justice, orjonashermadhi@gmail.com

4. “Aleksander Xhuvani” University, Elbasan, The Faculty of Business and Justice, agollixhoana75@gmail.com

prevention approach, including the rigorous legal measures and a more reinforced security in the most affected cities. Furthermore, the Anti-Terrorism European Committee has played a key role in the development of standards and mechanisms to coordinate the combat against terrorism in Europe, in order to strengthen international cooperation and to support member states in their efforts. By using empirical research and comparison methods, this paper seeks to evaluate the effectiveness of legal measures by comparing success figures in the reduction of acts of terrorism and the activities of extreme violence, in more developed and developing countries as well. In this study, it is also suggested that in our country, a robust infrastructure, strong legal mechanisms, and advanced international cooperation mechanisms should be built, to deal with greater challenges in the implementation of these measures.

Keywords: terrorism, extremism, violence, technology, a measure of legal protection, the strategy, the European Union.

1. Introduction

The terms “terrorism” and “extremism” do not have a determinant definition¹. However, according to the conventions, there are serious threats to public safety and social, national and international security all around the world, including Albania, because of the attacks, the irreparable damages, and kidnapping of the population².

1. For more see: Belavusau, Ulad, Berenice Boutin, Marloes van Noorloos, and Christophe Paulussen. “Regional Legal Obligations.” Edited by Rumyana Grozdanova and Maria Sperling. A Comparative Research Study on Radical and Extremist (Hate) Speakers in European Member States. International Center for Counter-Terrorism, 2019, pg. 7. <http://www.jstor.org/stable/resrep29498.5>. The same resonance is also expressed by the Council of Europe for the manual prepared regarding Human Rights Education with Young People, “War and Terrorism” in which they quote that: “(...) Terrorism is another of those terms that everyone seems ready to use, but no one can agree on a precise definition. Even experts continue to debate how the term should be applied, and it is said that there are over a hundred different definitions of terrorism, none of which is universally accepted. (...)”, <https://www.coe.int/en/web/compass/war-and-terrorism>, accessed April 2025.

2. For more, see the official website of the United Nations Human Rights, office of the high commissioner, accessed at the link: <https://www.ohchr.org/en/topic/terrorism-and-violent-extremism>, accessed April 2025.

The prevalence of this phenomenon has started in the twentieth century, respectively, in the year 1988, when Al-Qaeda began its activities as a terrorist and notorious organization. In 2001, this terrorist organization began with violent acts, with attacks against powerful countries, like the United States, when they hijacked four planes, causing over 3000 victims¹.

Under this global threat that various countries around the world were facing, urgent intervention was needed to take preventive measures against this unforeseen/unprecedented phenomenon, as directly were violated section (2) of the European Convention on Human Rights (ECHR), The “right for life”² and article (3) “Prohibition of torture”³.

In this aspect, the United Nations Organization (UNO), in 1999 adopted the international convention “On the Prohibition of the Financing of Terrorism”⁴. The aim of this convention, was a clear definition for terrorist acts, and it aimed to make it mandatory for states to prosecute those who fund these activities. The convention also emphasized the importance of international co-operation by encouraging more countries to help each other in the investigation, extradition, and prosecution of the persons involved in acts of terrorism. The convention also intended to establish a legal and global framework to combat terrorism, in particular relating to its financing, and to secure a coordinated international response, against terrorist threat⁵, which in about 192 countries, it became a part of their legislation through ratification⁶.

1. For more, see the publication on the official website of the “Council on Foreign Relations”, accessed at the link: <https://www.cfr.org/backgrounder/al-qaeda-aka-al-qaida-al-qaida>, April 2025

2. Article 2, paragraph 1 of the ECHR provides that: “Everyone’s right to life shall be protected by law. No one shall be deprived of his life intentionally except in the execution of a sentence of death imposed by a court of law following conviction for a crime for which such a penalty is provided for by law”, accessed at: https://www.echr.coe.int/documents/d/echr/convention_sqi, April 2025.

3. Article 3 of the ECHR provides that: “No one shall be subjected to torture or to inhuman or degrading treatment or punishment”, accessed at the link: https://www.echr.coe.int/documents/d/echr/convention_sqi, April 2025.

4. See the International Convention for the Suppression of the Financing of Terrorism, accessed at: <https://www.unodc.org/documents/treaties/Special/1999%20International%20Convention%20for%20the%20Suppression%20of%20the%20Financing%20of%20Terrorism.pdf>, April 2025.

5. There too.

6. For more see: https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_

Alongside the UN, the North Atlantic Treaty Organization (NATO), the International Criminal Police Organization (INTERPOL), and the European Union have developed multidimensional mechanisms of cooperation to address the serious challenges posed by terrorism and violent extremism. These mechanisms include the drafting and implementation of binding international instruments, the development of common security policies, the establishment of coordinated structures for the prevention and punishment of terrorist acts, as well as the real-time exchange of information among member states and law-enforcement agencies¹. The UN, through the Security Council and its respective bodies, has adopted a series of resolutions obliging states to undertake concrete measures to combat international terrorism and to monitor financial networks and recruitment channels. NATO, for its part, has transformed counter-terrorism into one of its core strategic pillars following the events of September 11, 2001, developing collective defense capacities and conducting international operations in various regions of the world². INTERPOL plays a key role in sharing criminal data, issuing international notices, and assisting in the cross-border pursuit of individuals suspected of terrorist activities³.

Additionally, the role of the Council of Europe's Committee on Counter-Terrorism (CDCT) should be noted, as it contributes to the development of consolidated practices, strategies, and guidelines for combating this phenomenon⁴.

At the national level, Albania, in its efforts to combat and prevent terrorism, has not only incorporated international conventions into the hierarchy of legal sources but has also explicitly established specific provisions in its Criminal Code. Specifically, Chapter VII, "Offenses

no=XVIII-11&chapter=18&clang=_en, accessed April 2025.

1. For more see: official website of the United Nations, Office of Counter-Terrorism, accessed at the link: <https://www.un.org/counterterrorism/un-global-counter-terrorism-strategy>, April 2025.

2. For more see: NATO's official website, counter-terrorism section, accessed via the link: https://www.nato.int/cps/en/natolive/topics_77646.htm, April 2025.

3. For more see: Interpol's official website, terrorism section, accessed at the link: <https://www.interpol.int/en/Crimes/Terrorism>, April 2025.

4. For more see: Council of Europe Portal, accessed at the link: [https://www.coe.int/en/web/counter-terrorism/cdct#:~:text=of%20Parties%20\(COP\)-,Council%20of%20Europe%20Committee%20on%20Counter%2DTerrorism%20\(CDCT\),of%20Europe's%20action%20against%20terrorism](https://www.coe.int/en/web/counter-terrorism/cdct#:~:text=of%20Parties%20(COP)-,Council%20of%20Europe%20Committee%20on%20Counter%2DTerrorism%20(CDCT),of%20Europe's%20action%20against%20terrorism), April 2025.

for Terrorist Purposes,” adopted by Law no. 7895, dated 27.01.1995, as amended, provides the applicable punitive measures under Articles 230–234/a¹. These provisions aim to prohibit financing and to punish perpetrators who support, recruit, train, incite, or call for the commission of terrorist acts with the objective of destabilizing public order and security².

In this regard, the present study seeks to provide a rigorous analysis of the legal measures and international strategies implemented by these organizations in the fight against terrorism and violent extremism. In addition to examining best practices and international cooperation mechanisms, the study will also focus on evaluating their effectiveness, as reflected in concrete benefits for various countries worldwide, including Albania.

2. Factors that Drive Terrorism and Violent Extremism

2.1. Political Factors: Terrorism and violent extremism often thrive in contexts where political repression, lack of institutional representation, and exclusion from decision-making processes prevail³. Authoritarian regimes that restrict fundamental freedoms and suppress opposition create deep frustration, which may evolve into radicalization⁴. Likewise, the foreign policies of certain global powers, perceived as unjust or biased, have contributed to the construction of a victimhood narrative exploited by extremist groups to justify their actions. The state’s failure to provide security, justice, and basic services further exacerbates this situation, leaving citizens unprotected and vulnerable to extremist ideologies⁵.

1. For more see: articles 230-234/a of the Criminal Code of the Republic of Albania, accessed on the website of the Center for Official Publications (QBZ), at the link: https://qbz.gov.al/share/_YCvI02dROybrYpg2hNERg, April 2025.

2. There too.

3. For more see: United Nations Development Programme (UNDP), *Journey to Extremism in Africa: Pathways of Recruitment and Disengagement* (New York: UNDP, 2023), accessible at: <https://www.undp.org/africa/publications/journey-extremism-africa-pathways-and-rengit>. April 2025.

4. For more see: Martha Crenshaw, “The Causes of Terrorism,” *Comparative Politics* 13, no. 4 (1981): 379–399, accessed at: <https://courses.kvasaheim.com/hist319a/docs/Crenshaw%201981.PDF>, April 2025.

5. For more information, see: United States Agency for International Development (USAID), *The Development Response to Violent Extremism and Insurgency: Putting Principles into Practice* (Washington, DC: USAID, 2011), accessed at: <https://www.cvereferecneguide>.

2.2. Economic Factors: Difficult economic conditions are among the most significant contributors to the spread of extremism. Unemployment, poverty, and the absence of future opportunities make young people more susceptible to extremist propaganda¹. Economic and social inequality, particularly when experienced as structural injustice, fuels dissatisfaction with the system and increases the willingness to join groups that offer “radical solutions”². Furthermore, in the absence of the rule of law, corruption becomes a funding source for extremist activities³, while individuals involved in such criminal structures are often exposed to terrorist networks.

2.3. Socio-Cultural Factors: Social marginalization, discrimination based on ethnicity, religion, or culture⁴, and a sense of exclusion from public life and institutions constitute key elements in the dynamics of terrorism and extremism. When individuals perceive themselves as unrepresented or ignored by society and the state, they may seek identity and meaning in extremist ideologies⁵. In this context, culture and identity are exploited by

org/sites/default/files/resources/USAID_DevResponsetoVEandInsurgency.pdf, April 2025.

1. For more, see: James A. Piazza, “Rooted in Poverty? Terrorism, Poor Economic Development, and Social Cleavages,” *Terrorism and Political Violence* 18, no. 1 (2006): 159–77, accessed at: https://scholar.google.com/scholar_lookup?title=Rooted+in+Poverty%3F+Terrorism%2C+Poor+Economic+Development%2C+and+Social+Cleavages&author=Piazza+James+A.&publication+year=2006&journal=Terrorism+and+Political+Violence&volume=18&doi=10.1080%2F095465590944578#d=gs_qabs&t=1745231118835&u=%23p%3D10VHtaB3QisJ, April 2025.

2. For more see: *European Journal of Political Economy*. Volume 27, Supplement 1, December 2011, Pages S5-S16. The origins of terrorism: Cross-country estimates of socio-economic determinants of terrorism, accessed at: <https://doi.org/10.1016/j.ejpoleco.2011.06.009>, April 2025.

3. For more see: MEIERRIEKS, DANIEL, and DANIEL AUER. “Bribes and Bombs: The Effect of Corruption on Terrorism.” *American Political Science Review*, 2024, 1–17, accessed on the official website of Cambridge University Press <https://doi.org/10.1017/S0003055424000418>, April 2025

4. For more see: Recommendation 1687 (2004) Combating terrorism through culture, accessed at the link: <https://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=17278&lang=en>, April 2025.

5. For more see: Azar, Khalil. *Causes of Terrorism*. Vol. 6 (2003) Undergraduate Research Journal, accessed at: <https://scholarworks.iu.edu/journals/index.php/iusburj/article/view/19747/25830>, April 2025.

extremist groups to promote division and hatred, constructing narratives of “us” versus “them.” Social media and modern technology have facilitated the dissemination of violent ideologies, creating new spaces for recruitment and indoctrination¹.

2.4. Psychological and Individual Factors: At the individual level, psychological factors play a delicate role in the radicalization process. Feelings of loss, existential emptiness, and the search for identity and belonging are strong motivations for joining causes that promise purpose and justice². Studies show that individuals who have experienced childhood trauma, domestic violence, or emotional or physical abuse are more vulnerable. Unstable family environments characterized by parental neglect, substance abuse, moral deterioration, or domestic violence may create conditions favorable to deviant and antisocial behavior³. In such cases, the family loses its protective and socializing function, becoming instead a criminogenic factor.

3. International Legal Measures for Combating Terrorism and Violent Extremism and their effectiveness.

3.1. International Convention for the Suppression of the Financing of Terrorism (1999): The financing of terrorism is one of the most dangerous means of empowering this global phenomenon. The International Convention for the Suppression of the Financing of Terrorism,⁴ adopted

1. For more see: Gabriel Weimann, *Terrorism in Cyberspace: The Next Generation* (New York: Columbia University Press, 2015), accessed on the official website of Yale University at the link: <https://archive-yaleglobal.yale.edu/terrorism-cyberspace-next-generation>, April 2025.

2. For more see: *Psychology of terrorism*, point 147, page 100. Accessed at the link: <https://www.ojp.gov/pdffiles1/nij/grants/208551.pdf>, April 2025.

3. Referring to the family as a criminogenic factor, we can say that: “the family is the basic unit of antisocial behavior, which will form a violent or aggressive personality, an inappropriate way of relating to the environment or society, attacking others due to internal conflicts... Usually, the family can acquire a criminogenic character when the parents are involved in alcohol consumption, debauchery, prostitution, in a state of abandonment, situations which become decisive in pushing family members towards deviant behavior”. For more see: Mustafaraj. B., “Elements of Clinical and Developmental Criminology”, Shpresa Print publications, 2016, ISBN 978-9928-4239-9-3, pages 141-144.

4. For more see: *International Convention for the Suppression of the Financing*

by the UN General Assembly in 1999, constitutes one of the cornerstones of the international legal framework against terrorism. This convention obliges each State Party to take measures to criminalize, in accordance with its legal system, any act aimed at providing funds to commit terrorist acts. It requires the freezing of assets, the prohibition of financial support and the establishment of international cooperation for the extradition and confiscation of assets acquired through the financing of terrorism¹. In practice, this convention has played an important role in building a universal legal framework, although challenges in its implementation remain evident, especially in countries with weak financial supervision systems.

3.2. *UN Security Council Resolution 1373 (2001)*: Following the attacks of September 11, 2001, the international community was faced with the urgent need for a common response to terrorism. United Nations Security Council Resolution² 1373 was adopted unanimously, setting a binding standard for all member states. It obliges states to prohibit and punish the financing of terrorism, deny safe haven to terrorists, strengthen border controls, and share information with other states to prevent terrorist acts. By establishing the Counter-Terrorism Committee (CTC), this resolution contributed to the institutionalization of oversight and technical assistance to states that requested assistance in implementing these standards.

3.3. *The European Union Legal Framework and Directive (EU) 2017/541*: The European Union, as an area without internal borders, has faced major challenges in managing the threat of terrorism, particularly in the post-ISIS era. Directive (EU) 2017/541³ constitutes the latest attempt to unify and standardise definitions, preventive measures and criminal penalties relating to terrorist offences. It covers activities such as recruitment, training, travel for terrorist purposes and financing of

of Terrorism (1999), accessed at: https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XVIII-11&chapter=18&clang=_en, April 2025.

1. There too.

2. For more see: United Nations Security Council, Resolution 1373 (2001), adopted on 28 September 2001, S/RES/1373. Accessed at: [https://docs.un.org/S/RES/1373\(2001\)](https://docs.un.org/S/RES/1373(2001)), April 2025.

3. For more see: Directive 2017/541, accessed at the link: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32017L0541>, April 2025.

terrorism. The Directive also emphasises cross-border cooperation through mechanisms such as Europol and Eurojust. While Member States have made progress in approximating their laws to this Directive, effective implementation often depends on state resources, institutional capacities and coordination between national agencies¹.

3.4. CDCT Committee: The Council of Europe Counter-Terrorism Committee (CDCT)² is an intergovernmental body that plays a key role in developing policies and legal standards for the fight against terrorism in the member states of the Council of Europe. In addition to its normative function, the CDCT drafts long-term strategies and work plans to address the changing challenges of contemporary terrorism, including lone wolf terrorism, cyber threats and the nexus between violent extremism and hate online. Its strategy for the period 2023–2027 emphasizes prevention, the protection of human rights and the strengthening of international cooperation³. The Committee also serves as a forum for the exchange of good practices and for the evaluation of the implementation of existing instruments such as the “Convention on the Prevention of Terrorism” and its Additional Protocol.

3.5. Effectiveness of the international legal framework: Following the events of 11 September 2001, the international community has taken important steps to strengthen the legal framework against terrorism. The adoption of Resolution 1373⁴ by the UN Security Council obliged Member

1. For more see: European Parliament and Council of the European Union, Directive (EU) 2017/541 on combating terrorism and replacing Council Framework Decision 2002/475/JHA and amending Decision 2005/671/JHA, March 15, 2017, Official Journal of the European Union, L 88/6, accessed at the link: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32017L0541>, April 2025.

2. The Counter-Terrorism Committee (CDCT) was established by the Committee of Ministers of the Council of Europe in 2018, as a continuation of the work of the previous Committee called CODEXTER (Committee of Experts on Terrorism), established in 2003, which was amended by decision CM/Del/Dec(2018)1324/10.2, accessed at: <https://www.coe.int/en/web/counter-terrorism/codexter>, <https://search.coe.int/cm?i=09000016808db52>, April 2025

3. For more see: Council of Europe Counter-Terrorism Strategy (2023-2027), accessed at: <https://search.coe.int/cm?i=0900001680a9ad67>, April 2025

4. For more see: United Nations Security Council, Resolution 1373 (2001), adopted on 28 September 2001, S/RES/1373. Accessed at: [https://docs.un.org/S/RES/1373\(2001\)](https://docs.un.org/S/RES/1373(2001)), April 2025.

States to criminalise the financing of terrorism and to strengthen international cooperation in this area. The European Union has also improved its legislation through Directive (EU) 2017/541¹ which standardises the definitions and criminal measures for terrorist offences. However, the implementation of these legal instruments faces numerous challenges. The lack of a universal definition of “terrorism” creates difficulties in harmonising national legislation and can lead to abuses, with some governments using anti-terrorist laws to suppress political opposition². Furthermore, the lack of trust between States hinders effective information sharing, despite the existence of mechanisms such as Interpol and Europol. Organisations such as the Council of Europe’s Counter-Terrorism Committee (CDCT) play a key role in developing strategies and policies to prevent violent extremism. The CDCT contributes to the development of standards and provides support to member states in implementing effective counter-terrorism measures. In conclusion, while the international legal framework has made significant progress in the fight against terrorism, challenges in its implementation remain. To increase effectiveness, better harmonisation of national legislation, strengthening international cooperation and respect for human rights in all counter-terrorism measures are necessary.

4. Comparison of International Counter-Terrorism Strategies

4.1. *United States of America (USA)*: The USA has built a robust and comprehensive counter-terrorism strategy, based on the intensive use of intelligence, technology and interagency capabilities. The “Patriot Act”³ and the “National Strategy for Homeland Security”⁴ have strengthened the capabilities of federal agencies such as the FBI, CIA and DHS to identify, prevent and pursue terrorist activities, including administrative

1. For more see: Directive 2017/541, accessed at the link: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32017L0541>, April 2025.

2. For example, it can lead to violations of freedom of expression. See: Misuse of anti-terror legislation threatens freedom of expression. Accessed from the official website of the Council of Europe, at the link: <https://www.coe.int/en/web/commissioner/-/misuse-of-anti-terror-legislation-threatens-freedom-of-expression>, April 2025.

3. For more see: Official website of the U.S. Department of Justice, accessed at the link: https://www.justice.gov/archive/opa/pr/2006/March/06_opa_113.html, April 2025.

4. For more see: Official website of the U.S. Department of Justice, accessed at the link: https://www.justice.gov/archive/opa/pr/2006/March/06_opa_113.html, April 2025.

interdictions, financial interventions and advanced surveillance¹.

4.2. United Kingdom: The British “CONTEST” strategy is based on four fundamental pillars: preventing radicalization, protecting infrastructure and citizens, prosecuting suspects, and preparing for incident response. Britain has established an advanced monitoring system, extensive interagency cooperation, and a community-based approach to identifying early signs of violent extremism².

4.3. France: Following a series of violent attacks in Paris and other cities, France has adopted a tough and comprehensive strategy to combat terrorism. The 2017 law on internal security and the fight against terrorism (Loi n° 2017-1510) has institutionalized several measures that were previously part of the state of emergency, including house arrest, the closure of locations suspected of radicalization (such as mosques), and administrative detentions without a court order³. The French strategy also emphasizes the importance of the preventive component, with special programs in schools for education against radicalization and special rehabilitation measures in prisons for high-risk individuals⁴.

4.4. Countries with Limited Resources: In countries with limited institutional and financial capacity, such as some countries in the Western Balkans or Central Africa, implementing similar measures is difficult. The lack of resources for training, advanced technology, and coordinated mechanisms complicates effective prevention. These countries often rely on international assistance, but remain vulnerable to external influences and radicalization⁵.

1. For more see: The White House, National Strategy for Homeland Security, Washington D.C., 2007, accessed at the link: <https://georgewbush-whitehouse.archives.gov/deptofhomeland/sect1.html>, April 2025.

2. For more see: Counter-terrorism strategy (CONTEST) 2018, accessed at the link: <https://www.gov.uk/government/publications/counter-terrorism-strategy-contest-2018>, April 2025.

3. For more see: LOI n° 2017-1510 du 30 octobre 2017 renforçant la sécurité intérieure et la lutte contre le terrorisme (1), accessed at the link: <https://www.legifrance.gouv.fr/jorf/id/JORFTEXT000035932811/>, April 2025.

4. For more see: Le Plan national de prévention de la radicalisation, accessed at the link: <https://www.cipdr.gouv.fr/plan-national-prevention-radicalisation/>, April 2025.

5. For more see: United Nations Office of Counter-Terrorism, *Counter-Terrorism Compact Annual Report 2022*, accessed at the link: <https://www.un.org/counterterrorism/sites/>

4.5. Albania: Albania has taken important steps in line with international standards for the fight against terrorism. This was accompanied by the strengthening of the capacities of the State Police and intelligence services to identify and detain radicalized individuals. However, Albania still faces significant challenges in terms of the lack of advanced technologies for tracking and prevention, as well as the lack of human resources trained at specialized levels. The National Strategy for the Prevention of Violent Extremism 2015–2020¹ and its continuation for the period 2023–2025², is an important step towards developing a balanced approach between security and rehabilitation. Albania has also significantly strengthened cooperation with international organizations such as INTERPOL, EUROPOL and the European Union’s Radicalization Prevention Network (RAN)³ which has provided an important basis for strengthening local capacities in this area. One of the most prominent cases of success in Albania’s efforts to prevent violent extremism is the establishment of the Countering Violent Extremism (CVE)⁴ Centre, which was established in 2017 and became fully operational in June 2018. This centre aims to coordinate and strengthen the capacities of local actors and frontline practitioners, through the sharing of good practices, the development of evidence-based measures and the implementation of effective approaches against the threats of radicalization and violent extremism⁵.

According to data from the annual reports on the state of crime in Albania of the Prosecutor General, a total of 27 criminal proceedings related to acts of terrorism were registered during the period 2020–2024. Specifically, in

www.un.org.counterterrorism/files/2022_counter_terrorism_compact_annual_report_-_final_nov_2023.pdf, April 2025.

1. For more see: 2015 National Strategy Against Violent Extremism, accessed at the link: <https://cve.gov.al/legislation/>, April 2025.

2. For more see: Cross-sectoral Strategy for Preventing Violent Extremism and Countering Terrorism and Action Plans 2023–2025, accessed at the link: <https://cve.gov.al/wp-content/uploads/2024/05/Strategjia-CT-CVE-2023-2025-vkm-81-14-02-2023.pdf>, April 2025.

3. For more see: European Commission, Progress Report on Albania 2023, Brussels: European Commission, https://enlargement.ec.europa.eu/albania-report-2023_en, <https://mia.gov.al/konferenca-e-51-te-e-interpol-it-per-europen-balla-rritja-e-operacione-te-perbashketa-e-ben-shqiperine-partner-te-besuar/>, April 2025.

4. Created with decision no. 737, dated 13.12.2017 “On the establishment of the Coordination Center Against Violent Terrorism (CCCT), accessed at the link: <https://cve.gov.al/wp-content/uploads/2021/03/vendim-2017-12-13-737.pdf>, April 2025.

5. For more see: The official CVE website, at the link: <https://cve.gov.al/>, April 2025

2020, 12 proceedings¹ were registered, in 2021 there were 9², in 2022 only 1³, in 2023 4⁴ were registered, and in 2024 only 1 proceeding⁵. This downward trend can be interpreted as a consequence of the strengthening of preventive policies and measures taken within the framework of the national strategy against violent extremism, as well as the increase in inter-institutional and international cooperation in this field.

5. Albania's Challenges in Effective Implementation and the Need for Approximation with the EU

Despite Albania's efforts to build a sustainable legal and strategic framework for preventing and countering violent extremism, the practical implementation of these measures faces significant challenges. These include the lack of sustainable financial resources, institutional fragmentation, and difficulties in effective information exchange between state actors and civil society organizations⁶. Another prominent challenge is the lack of sustainable structures for the rehabilitation and reintegration of persons returning from conflict zones, who often face social stigmatization and inadequate psychosocial treatment⁷. Due to the complexity of the phenomenon of terrorism and violent extremism, which includes legal, political, social, and technological dimensions, a comprehensive treatment

1. For more see: The Prosecutor General's Report on the State of Crime in Albania for 2020, accessed at the link: https://www.pp.gov.al/rc/doc/Raporti_Vjetor_2020_Kuvendit_Kriminaliteti_PP_5290.pdf, April 2025.

2. For more see: The Prosecutor General's Report on the State of Crime in Albania for 2021, accessed at the link: https://www.pp.gov.al/rc/doc/Raporti_Vjetor_Kuvendit_per_Kriminalitetin_2021_31_03_22_PP_6411.pdf, April 2025.

3. For more see: The Prosecutor General's Report on the State of Crime in Albania for 2022, accessed at the link: https://www.pp.gov.al/rc/doc/Raporti_Vjetor_kriminaliteti_2022_Kuvendit_Prokuroria_e_Pergjithshme_6915.pdf, April 2025.

4. For more see: The Prosecutor General's Report on the State of Crime in Albania for 2023, accessed at the link: https://www.pp.gov.al/rc/doc/Raporti_1_PP_2023_date_28_03_2024_7383.pdf, April 2025.

5. For more see: The Prosecutor General's Report on the State of Crime in Albania for 2024, accessed at the link: https://www.pp.gov.al/rc/doc/Raporti_PP_2024_permbledhes_28_03_2025_7729.pdf, April 2025.

6. For more see: European Commission, Progress Report on Albania 2023, Brussels: European Commission, 2023, 40-60, accessed at the link: https://enlargement.ec.europa.eu/albania-report-2023_en, April 2025.

7. For more see: <https://www.gcerf.org/albania/>, accessed April 2025.

of all its aspects is not possible within the limits of this paper. However, this analysis provides an initial perspective and aims to serve as a starting point for further and more detailed studies in the future.

6. Conclusions and Recommendations

6.1. Conclusions:

- Terrorism and violent extremism pose a serious challenge to internal and international peace, security and stability. The phenomenon knows no borders and spreads rapidly through social networks, propaganda and online and offline radicalization mechanisms.
- Although there is no single international definition of terrorism, international practice and key documents such as the UN Convention for the Suppression of the Financing of Terrorism and Security Council resolutions provide a solid basis for identifying it as a criminal and global threat.
- International organizations, including the UN, the EU, NATO and INTERPOL, have built a consolidated system of cooperation to combat terrorism, combining legal measures, preventive strategies and joint security operations.
- European Union countries have taken joint measures through comprehensive strategies against radicalism and violent extremism, with an emphasis on education, social inclusion and the use of advanced technologies for threat detection.
- Albania, in line with its international commitments and aspirations for EU integration, has adopted a legal framework that includes specific provisions in the Criminal Code, the law on measures against the financing of terrorism and national security strategies.
- The causes of violent extremism in the region are related to various factors such as poverty, unemployment, lack of prospects for young people, radical religious propaganda, as well as distrust of state institutions.

6.2. Recommendations:

- Deepen regional and international cooperation, through the exchange of intelligence information, joint training of security structures and coordination of criminal investigations at the cross-border level.

- Review and improve the Albanian legal framework, aiming at harmonization with EU directives and ensuring effective protection of fundamental rights during anti-terrorist measures,
- Implement a comprehensive national strategy, involving education, civil society, media and religious communities in preventing radicalization and promoting intercultural tolerance.
- Develop effective mechanisms for the rehabilitation and reintegration of individuals returned from conflict zones, with psychosocial, educational and employment support, to avoid returning to extremist networks.
- Strengthen the capacities of law enforcement agencies, through continuous training, technological equipment and cooperation with international partners for the investigation and prosecution of terrorist acts.
- Effective supervision of non-profit organizations' funding and financial transactions, in order to prevent money laundering and terrorist financing practices.
- Raising awareness by including them in anti-terrorism and extremism programs, information campaigns.
- It is recommended to integrate relevant modules into curricula, develop training and awareness campaigns, as well as support educational platforms in universities¹.

Bibliography

a) Primary sources:

1. Azar, Khalil. *Cycle of Terrorism*. Vol. 6 (2003), the Undergraduate Research Journal, akesuar on the link: <https://scholarworks.iu.edu/journals/index.php/iusburj/article/view/19747/25830>
2. Belavusau, Ulad, Berenice Boutin, Marloes van Noorloos, and Christophe Paulussen. "Regional Legal Obligations" Edited by Romyana Grozdanova and Mary Sperling. A Comparative Research

1. From a questionnaire with 66 law students conducted in April 2025, 45.5% stated that they are not familiar with the concepts of terrorism and extremism, while 87.9% have not participated in training or lectures on these topics. Also, 47% feel not at all prepared to analyze security issues, but 78.8% think that universities should offer more education in this area. https://drive.google.com/file/d/1P__y-cg8Y-2b1nWKPWOWvRloZ9nEubWc/view?usp=drivesdk

Study on the Radical and Extremist (Hate) Speakers in the European Member States, the International Centre for Counter-Terrorism, 2019, pg. 7. <http://www.jstor.org/stable/resrep29498.5>

3. The Counter-terrorism strategy (CONTEST) 2018. <https://www.gov.uk/government/publications/counter-terrorism-strategy-contest-2018> European Journal of Political Economy. Volume 27, Supplement 1, December 2011, Pages S5-S16. The origins of terrorism: Cross-country estimates of socio-economic determinants of terrorism, access the link: <https://doi.org/10.1016/j.ejpoleco.2011.06.009> April 2025.
4. The European Parliament and Council of the European Union, Directive (EU) 2017/541 on combating terrorism and replacing Council Framework Decision 2002/475/JHA and amending Decision 2005/671/JHA, March 15, 2017 The Official Journal of the European Union, L 88/6. <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32017L0541>
5. Gabriel Weimann, Terrorism in Cyberspace: The Next Generation (New York: Columbia University Press, 2015). <https://archive-yaleglobal.yale.edu/terrorism-cyberspace-next-generation>
6. James A. Piazza, "Rooted in Poverty? Terrorism, Poor Economic Development, and Social Cleavages," *Terrorism and Political Violence* 18, no. 1 (2006): 159-77. https://scholar.google.com/scholar_lookup?title=Rooted+in+Poverty%3F+Terrorism%2C+Poor+Economic+Development%2C+and+Social+Cleavages&author=Piazza+James+A.&publication+year=2006&journal=Terrorism+and+Political+Violence&volume=18&doi=10.1080%2F095465590944578#d=gs_qabs&t=1745231118835&u=%23p%3D10VHtaB3QisJ
7. The Criminal code of the Republic of Albania, and access to the site in the Center of the Publishing Process (QBZ) in the link: https://qbz.gov.al/share/_YCvI02dROybrYpg2hNERg
8. The European commission, Progress Report on Albania, 2023, Brussels: European Commission, 2023, 40-60, https://enlargement.ec.europa.eu/albania-report-2023_en
9. The European convention on Human Rights, access to the link: https://www.echr.coe.int/documents/d/echr/convention_sqi
10. The International convention for the prevention of the Financing of Terrorism, access the link: <https://www.unodc.org/documents/>

treaties/Special/1999%20International%20Convention%20for%20the%20Suppression%20of%20the%20Financing%20of%20Terrorism.pdf

11. Le Plan national de prévention de la radicalisation, <https://www.cipdr.gouv.fr/plan-national-prevention-radicalisation/>
12. LOI n° 2017-1510 du 30 octobre 2017 renforçant la sécurité intérieure et la lutte contre le terrorisme (1), <https://www.legifrance.gouv.fr/jorf/id/JORFTEXT000035932811/>
13. Owner's Manual with respect to education, the Rights of Man and of the Young people, "war and terrorism", <https://www.coe.int/en/web/compass/war-and-terrorism>
14. Martha Crenshaw, "The Cycle of Terrorism," *Comparative Politics* 13, no. 4 (1981): 379-399, <https://courses.kvasaheim.com/hist319a/docs/Crenshaw%201981.PDF>
15. Meierrieks, Daniel, and Daniel Auer, "Bribes, and Bombs: The Effect of Corruption on Terrorism." *American Political Science Review*, 2024, 1-17. <https://doi.org/10.1017/S0003055424000418>
16. Misuse of anti-terror legislation threatens the freedom of expression, <https://www.coe.int/en/web/commissioner/-/misuse-of-anti-terror-legislation-threatens-freedom-of-expression>
17. Mustafaraj. (B), "the Elements of Criminology, Clinical, and Development", our Hope is Print, 2016, ISBN 978-9928-4239-9-3, pp. 141-144
18. Psychology of terrorism, melting point 147, page 100, <https://www.ojp.gov/pdffiles1/nij/grants/208551.pdf>
19. In the report of the Prosecutor General on the situation of crime in the Albania, for the year of 2020, https://www.pp.gov.al/rc/doc/Raporti_Vjetor_2020_Kuvendit_Kriminaliteti_PP_5290.pdf
20. In the report of the Prosecutor General on the situation of crime in the Albania, for the year 2021, https://www.pp.gov.al/rc/doc/Raporti_Vjetor_Kuvendit_per_Kriminalitetin_2021_31_03_22_PP_6411.pdf
21. In the report of the Prosecutor General on the situation of crime in the Albania, for the year of 2022, https://www.pp.gov.al/rc/doc/Raporti_Vjetor_kriminaliteti_2022_Kuvendit_Prokuroria_e_Pergjithshme_6915.pdf
22. In the report of the Prosecutor General on the situation of crime

- in the Albania, for the year of 2023, https://www.pp.gov.al/rc/doc/Raporti_1_PP_2023_date_28_03_2024_7383.pdf
23. In the report of the Prosecutor General on the situation of organized crime in Albania in the year 2024, https://www.pp.gov.al/rc/doc/Raporti_PP_2024_permbledhes_28_03_2025_7729.pdf
 24. Recommendation 1687 (2004) Combating terrorism through culture, <https://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=17278&lang=en> April 2025.
 25. The strategy of the Council of Europe counter-Terrorism (2023-2027), <https://search.coe.int/cm?i=0900001680a9ad67>
 26. The National strategy Against Extremism and Violence, <https://cve.gov.al/legislation/>
 27. The cross-cutting strategy for the prevention of violent extremism and the war on terror, and the plans of action for 2023-2025, <https://cve.gov.al/wp-content/uploads/2024/05/Strategjia-CT-CVE-2023-2025-vkm-81-14-02-2023.pdf>
 28. The White House, National Strategy for Homeland Security, Washington, D. C., 2007, <https://georgewbush-whitehouse.archives.gov/deptofhomeland/sect1.html>
 29. The United Nations Development Programme (UNDP), *Journey to Extremism in Africa: Pathways to Recruitment and Disengagement* (New York: UNDP, 2023), <https://www.undp.org/africa/publications/journey-extremism-africa-pathways-recruitment-and-disengagement>
 30. The United Nations Office of Counter-Terrorism, Counter-Terrorism Compact Annual Report 2022, https://www.un.org/counterterrorism/sites/www.un.org.counterterrorism/files/2022_counter_terrorism_compact_annual_report_-_final_nov_2023.pdf
 31. The United Nations Security Council, Resolution 1373 (2001), adopted on 28 September 2001, S/RES/1373. [https://docs.un.org/S/RES/1373\(2001\)](https://docs.un.org/S/RES/1373(2001))
 32. The United States Agency for International Development (USAID), *The Development Response to Violent Extremism and Insurgency: Putting Principles into Practice* (Washington, DC: USAID, 2011), https://www.cvereferecguide.org/sites/default/files/resources/USAID_DevResponsetoVEandInsurgency.pdf
 33. The directive 2017/541, access the link: <https://eur-lex.europa.eu/>

legal-content/EN/TXT/?uri=CELEX%3A32017L0541 April 2025.

34. Decision no. 737, dated 13.12.2017 “On the establishment of the Center of the Coordination of Counter-Terrorism and Violence (QKEDH), access the link: <https://cve.gov.al/wp-content/uploads/2021/03/vendim-2017-12-13-737.pdf> April 2025

(b) The Resources of the internet:

35. <https://cve.gov.al/>
36. [https://www.coe.int/en/web/counter-terrorism/cdct#:~:text=of%20Parties%20\(COP\)-,Council%20of%20Europe%20Committee%20on%20Counter%2DTerrorism%20\(CDCT\),of%20Europe's%20action%20against%20terrorism](https://www.coe.int/en/web/counter-terrorism/cdct#:~:text=of%20Parties%20(COP)-,Council%20of%20Europe%20Committee%20on%20Counter%2DTerrorism%20(CDCT),of%20Europe's%20action%20against%20terrorism)
37. <https://www.dhs.gov/national-strategy-homeland-security-october-2007>
38. <https://www.gcerf.org/albania/>
39. <https://www.interpol.int/en/Crimes/Terrorism>
40. https://www.justice.gov/archive/opa/pr/2006/March/06_opa_113.html
41. https://www.nato.int/cps/en/natolive/topics_77646.htm
42. <https://www.ohchr.org/en/topic/terrorism-and-violent-extremism>
43. <https://www.un.org/counterterrorism/un-global-counter-terrorism-strategy>
44. <https://mia.gov.al/konferenca-e-51-te-e-interpol-it-per-europen-balla-rritja-e-operacioneve-te-perbashketa-e-ben-shqiperine-partner-te-besuar/>

ORGANISED CRIME AND THE CHALLENGES OF CRIMINAL JUSTICE IN ALBANIA

Genci Gjonçaj¹

Abstract

Organized crime remains the most serious threat to public security and the stability of a state, as it impacts political and decision-making structures, causing devastating damages to a country's economy and social development. As one of the most dangerous manifestations of criminal behavior, inevitably linked with corruption, it has spread beyond the territorial borders of a single state, establishing transnational criminal networks. This paper aims to analyze Albania's legal framework and institutional measures in the fight against organized crime, international instruments and statistical reports, and compares the legislation of various European countries to assess the current state and risk of the evolution of organized crime in our country, as well as the need to strengthen legal measures against it.

Money laundering constitutes a criminal offense closely linked to corruption and organized crime, and it remains a challenge due to the exploitation of corrupt practices, the lack of coordination and cooperation among law enforcement institutions, as well as the low level of criminal seizure and confiscation, which are key mechanisms for limiting the financial power of criminal groups.

Although our country has made significant progress with the 2016 judiciary reform and the establishment of new anti-corruption and organized crime structures (SPAK and GJKKO), which are tasked with investigating, prosecuting, and adjudicating criminal offenses committed by structured criminal groups or criminal organizations as part of the fight against organized crime, there remains a clear need for a broader

1. Secretary General, Parliament of Albania, gjoncajgenci@gmail.com

definition of the provisions of the Criminal Code and the Code of Criminal Procedure to better identify organized crime and the methods of punishing it in our country.

The paper presents critical conclusions regarding the level of recognition of organized crime in our country, the somewhat unrealistic perception of its existence domestically, as well as the major challenge posed by the current developments of its transnational evolution, a substantial threat to the social security of citizens and to the Albanian state itself.

Keywords: *Organised crime, money laundering, criminal legislation, international cooperation, transnational activity, judiciary reform, criminal sequestration, fight against corruption.*

Introduction

Organized crime represents one of the most complex current challenges to a state's national security and to international security worldwide. In its complexity and flexibility of manifestation, it is typically identified as a form of a structured group of individuals who cooperate continuously to commit serious crimes, with the aim of obtaining financial profit or power.

The characteristics, forms and extent of the impact of organized crime, at both the international and national levels, present challenges and priorities for national and international agendas, as well as a range of institutional and interstate response mechanisms. Globalization, modern technologies and weaknesses in legal and political systems have continuously created a favorable environment for the development of criminal organizations.

Historically, organized crime, as the most distinct and aggressive form of criminal activity, has evolved over the years with cross-border, interstate and international crime. In the United States, the self-incriminating public testimony about "Cosa Nostra"¹ before the Senate² Investigative Committee by one of the members of powerful organized crime clans, Joseph Valachi, in 1963³, sounded the alarm for the American state to

1. BBC, Cosa Nostra means "our thing", <https://www.bbc.com/news/world-europe-42794848>, accessed on 26 April 2025

2. FBI, what we investigate <https://www.fbi.gov/investigate/transnational-organized-crime/history-of-la-cosa-nostra#:~:text=The%20sentencing%20%C2%A4,ceremony%20and%20members>, accessed on 23 April 2025

3. Levin Center Home, <https://levin-center.org/what-is-oversight/portraits/valachi->

recognize and combat it.

In Albania, the first signs of high-level criminal activity during the transition period initially appeared after the 1990s, in the form of human and arms trafficking, migrant smuggling and the smuggling of oil and various goods. Over the following decade, after the 2000s, the country's international developments, including visa liberalization and the consolidation of law enforcement institutions and international cooperation, led to a drastic reduction in human trafficking, while the trafficking of various drugs continued to remain a significant concern.

Based on international reports¹ and the reports of the Specialised Structure for Anti-Corruption and Organised Crime (SPAK)², Albania remains a transit country of major drugs: cocaine, marijuana and, to a lesser extent, heroin. It is a well-known fact that cannabis cultivation in Albania held the highest record in Europe³ and that a major crackdown operation by public order forces in 2014 resulted in a significant reduction. Recently, a different form of cultivation is being used, in indoor environments, which is being relocated to other countries⁴. In terms of organization and cooperation within the Balkan region, according to reports by the Global Initiative Against Transnational Organized Crime, the region remains a transit area for various drugs, but remains “a relatively small market for organized crime” and “there is no Balkan cartel.”

The legalization of monetary means and assets acquired illegally, commonly known as money laundering, is another manifestation of organized criminal activity. Compared to other forms of organized crime, it represents a typical form of corruption's influence on the development of organized crime. A direct indicator of the rise of organized crime is precisely the ongoing process of money laundering, which implies more

hearings/ accessed on 22 April 2025

1. Undoc, Global Cocaine Report 2023, https://www.unodc.org/documents/data-and-analysis/cocaine/Global_cocaine_report_2023.pdf, accessed on 22 April 2025, Global organized crime index report 2023, <https://ocindex.net/Albania>, accessed on 5 April 2025

2. Annual report SPAK 2024, <https://spak.gov.al/wp-content/uploads/2025/04/Raportivjetor-SPAK-2024.pdf>, page 26

3. BBC news, <https://www.bbc.com/news/magazine-38111945#:~:text=Europe%27s%20outdoor%20cannabis%20capital>, accessed on 27 April 2025

4. Global Initiative against transnational organized crime, <https://riskbulletins.globalinitiative.net/see-obs-001/sq/02-albanian-cannabis-moves-indoors.html#:~:text=SHP%C3%8BRNDAJE>, accessed on 22 April 2025

crime, illicit income, corruption and impunity.

Parallel to the indicator of money laundering, and closely linked to it, is corruption, which is one of the phenomena that must be taken into account when determining the extent of organized criminal activity. If a state experiences high levels of corruption, it automatically becomes a facilitating factor for the expansion and influence of organized crime.

Corruption and organized crime are closely intertwined, forming a vicious cycle in which each reinforces and protects the other. State capture¹ serves the interests of organized crime to ensure its unhindered existence beyond the reach of law and society, enabling the creation of protective structures and the evasion of justice. Therefore, the prevention of corruption is essential in reducing organized crime and plays a critical role in strengthening the rule of law.²

Albania has progressively established an important framework for combating organized crime and corruption by ratifying the United Nations Convention against transnational organized crime, adopted by the UN in December 2000 in Palermo, Italy (UNO-General Assembly resolution 55/25, 2000³) by law no. 8920, dated on 11.7.2002, "On the Ratification of the United Nations Convention against transnational organized crime and its two supplementary protocols." Furthermore, Albania has ratified other international instruments, such as the United Nations Convention against Corruption (UNCAC), ratified by law no. 9492, dated on 13.03. 2006, and the Convention on laundering, search, seizure and confiscation

1. Transparency International, 2020_Report Examining StateCapture_English.pdf, page 6 : Undue Influence on Law-Making and the Judiciary in the Western Balkans and Turkey. "State capture is understood as efforts by private actors and public actors with private interests to redirect public policy decisions away from the public interest, using corrupt means and and clustering around certain state organs and functions", last accessed on 28 April 2025

2. Special parliamentary committee on good-governance, rule of law and anti-corruption for 2030 Albania, www.masl.al, https://masl.al/wp-content/uploads/2024/11/Shtylla-II_K-II_Permbledhje-ekzekutive_botim.pdf, page 2, accessed on 23 April 2025

3. General Assmblly UN Resolution

<https://www.bing.com/ck/a?!&&p=97d778852c09a99dd6b38295ac8975bf60e03c3942cf19aff69da7ea4b396446JmltdHM9MTc0NTE5MzYëMA&ptn=3&ver=2&hsh=4&fclid=3ebcea66-6880-6a80-3c5de569699e6bbd&psq=General+Assembly+resolution+55%2f25%2c+2000&u=a1aHR0cHM6Ly93d3cudw4ub3JnL2VuL2RldmVsb3BtZW50L2Rlc2EvcG9ëdwxhdGlvbI9taWdyYXRpb24vZ2VuZXJhbGFzc2VtYmx5L2RvY3MvZ2xvYmF5Y29tcGFjdC9BX1JFU181NV8yNS5wZGY&ntb=1>,

of the proceeds from crime and on the financing of terrorism, ratified by law no. 9646, dated on 27.11.2006, enabling international cooperation and mutual assistance in the prosecution and prevention of crimes. Albania also cooperates with Europol, Interpol, Eurojust and other partners for cross-border investigations.

This paper aims to analyze the current state and the risk of the evolution of organized crime in our country. It analyzes the national legislation and the need for its improvement, in conjunction with the definitions set forth by international acts, as well as international reports and statistical data. It also includes comparisons with the legislation of European and regional countries in order to highlight how organized crime, as the most dangerous form of criminal organization, inevitably linked to corrupt networks, expands its criminal activities beyond the borders of a specific state and connects with various international criminal organizations.

I. Meaning, characteristics and indicators of the evolution of organized crime at the global level

According to the UNTOC1 Convention, an **“organized criminal group”** is defined as a structured group of three or more persons, existing for a period of time and acting in harmony with each other, with the aim of committing one or more serious crimes or offences, established as such in accordance with this Convention, in order to obtain, directly or indirectly, a financial or other material benefits.

This Convention links the definition of organized crime to the concept of an organized criminal group that commits serious offenses. In the context of the same Convention, its application also extends to the commitment of criminal acts when such crimes are considered serious, defined as offenses punishable by a minimum of four years of imprisonment, and possess a transnational nature.

According to the Global Organized Crime Index² “organized crime is defined as illegal activities carried out by groups or networks operating in collaboration, using violence, corruption or similar means to obtain,

1. United Nations Office for Drugs and Crime <https://www.unodc.org/> accessed on 9 April 2025

2. Global Initiative Index Report on organized crime, page 38, last accessed on 27 April 2025, <https://globalinitiative.net/wp-content/uploads/2023/09/Global-organized-crime-index-2023-web-compressed-compressed.pdf>

directly or indirectly, financial or material benefits. These activities may be conducted within a single country or internationally by an organized criminal group”.

A key feature of organized crime is the covert nature of its detection, along with the characteristic of a networked environment in which collaboration among individuals engaged in criminal activities takes place fluidly, systematically and with a clear focus on economic gain. It is structured and operates much like a business environment, where the core of the criminal network consists of leadership levels and field operators. This structure includes a range of actors who serve the objectives of the “criminal organization,” providing support services such as intermediaries, document forgers, technical experts, legal and financial advisors, money launderers and other service providers¹.

1.1 Transnational nature of organized crime

Organized crime is widespread across many countries and typically involves transnational activities. At the European level, it is now widely acknowledged that in all EU member states, organized crime groups are present.² “Serious and organized crime remain a major threat to the internal security of the European Union”³. In Article 3, paragraph 2 of the international Convention against organized crime⁴ it is specified where the transnational character of organized crime lies, stating that the international nature of the crime must meet the following conditions:

- when crime has been committed in more than one state;
- when the crime is committed in one state, but a substantial part of its activities, such as preparation, planning, leadership and control, is carried out from another state;

1. Europol Assessment Report EU Socta 2021, Corruptive influence: infiltration and mining of Europe’s economy and society by organized crime. [https://www.europol.europa.eu/publications-events/main-reports/socta-report#:~:text=Share,EU%20Serious%20and%20Organised%20Crime%20Threat%20Assessment%20\(EU%2DSOCTA\),Identifying%20the%20priorities%20in%20the%20fight%20against%20major%20crime,-Content%20type](https://www.europol.europa.eu/publications-events/main-reports/socta-report#:~:text=Share,EU%20Serious%20and%20Organised%20Crime%20Threat%20Assessment%20(EU%2DSOCTA),Identifying%20the%20priorities%20in%20the%20fight%20against%20major%20crime,-Content%20type), page 10, accessed on 16 April 2025

2. Ibid EU Socta 2021

3. Ibid, EU Socta, page 8

4. United Nations Convention against Transnational Organized Crime (UNTOC) <https://www.unodc.org/documents/treaties/UNTOC/Publications/TOC%20Convention/TOCebook-e.pdf>

- the crime is committed in one state but involves the participation of organized criminal groups whose sphere of activity extends across multiple states;
- the crime is committed in one state but its main consequences are felt in other states.

In an interview with UN News, the Regional Representative of UNODC for the Andean Region and the Southern Cone of South America¹, emphasized the global nature of the threat: “Almost all organized crime is transnational; it does not occur within a single country but often crosses borders within regions and even beyond.” “Criminal networks are making use of the global vulnerabilities on a large scale, from human trafficking to environmental destruction and cybercrime. Organized crime operates beyond borders, posing serious challenges that no single country can address alone.”

On 15 November 2024, UNODC marked the first International Day for the Prevention of and Fight against All Forms of Transnational Organized Crime (TOC), approved by Resolution 78/267² of the General Assembly. The inaugural slogan of UNODC is: “Organised crime steals, corrupts and kills. It is time to come together to push back”³.

It is now internationally recognized that, although transnational organized crime activities take many forms, their consequences are often the same: “the weakening of governance, corruption, lawlessness, violence and ultimately death and destruction”⁴.

1. UN news, <https://www.unodc.org/> <https://news.un.org/en/news/topic/law-and-crime-prevention>, 14 November 2024, UN News Candice welsch <https://news.un.org/en/story/2024/11/1156981#:~:text=UN%20News,perspective%20Human%20stories>, accessed on 17 April 2025

2. Rezoluta e Assamblese se UNDOC, per miratimin e dites nderkombetare te krimite te organizuar nderkombetar, mars 2024<https://www.bing.com/ck/a?!&&p=2ad410da169236843bf11de29f51c5bddc17139027ea1816d4191024e8172c7bJmItdHM9MTc0NTE5MzYëMA&p=3&ver=2&hsh=4&fclid=3ebcea66-6880-6a80-3c5d-e569699e6bbd&psq=by+General+Assembly+resolution+78%2f267&u=a1aHR0cHM6Ly9kb2N1bwVudHMudw4ub3JnL2RvYy9lbnRvYy9nZë4vbjI0LzA4Ny85NS9ëZGYvbjI0MDg3OTUucGRm&ntb=1> Accessed on 23 April 2025

3. Lajme UN News 2024

<https://www.unodc.org/unodc/en/TOCday/index.html#:~:text=Organized%20crime%20steals%2C%20corrupts%20and%20kills.%20It%E2%80%99s%20time%20we%20pull%20together%20to%20push%20back>. Accessed on 23 April 2025

4. <https://www.un.org/en/why-is-transnational-organised-crime/>

1.2 Data on the global impact of organized crime

At the global level, data on organized crime show that in 2021, 300 million people used drugs, including cocaine, methamphetamine and opium, a 20% increase compared to the previous decade. Meanwhile, the number of people suffering from drug-related consequences increased by 45% over the past ten years, reaching a total of 40 million people¹. According to Europol, 29 billion euro have been generated in Europe by human trafficking, while the global report on trafficking of persons² indicates that around 50,000 cases were reported to the United Nations Office on Drugs and Crime (UNODC) from more than 140 countries in 2020. Statistics show that over 90% of those trafficked for the purpose of sexual exploitation were women and girls.

Cybercrime has also seen a rise in attacks, particularly by structured groups³ with an alarming trend of ransomware attacks targeting vital systems, such as healthcare services, banks and holding critical data hostage⁴.

In various analyses, organized crime is identified as having a significant impact on the economies of the countries where it is present, accounting for a considerable percentage of their national product. This impact is often accompanied by phenomena such as money laundering and the destabilization of macroeconomic indicators. With even more severe consequences, this negative phenomenon of capital flight, through the sophisticated cooperation of financial operations involving banks or suspicious transaction agencies, particularly endangers economically weak states and those undergoing economic recovery processes.

Based on a UN report on financial integrity⁵, the process of concealing

1. World drug report 2021, <https://www.un.org/en>. accessed on 23 April 2025

2. <https://www.unodc.org/unodc/data-and-analysis/glotip.html>, <https://unis.unvienna.org/unis/en/pressrels/2023/unisma318.html#:~:text=The%202022%20report%20is%20the%20seventh%20of%20its,on%20trafficking%20cases%20detected%20between%202017%20and%202021>.

3. <https://pcworld.al/fbi-godet-rrjetin-famekeq-te-maluereve-duke-cliruar-700-mi-je-kompjutere-te-infektuar/#:~:text=FBI%20godet%20rrjetin,30%20Gusht%202023> Conti dhe Revil. Accessed on 23 April 2025

4. <https://www.un.org/en/peace-and-security/transnational-crime> Accessed on 23 April 2025

5. https://factipanel.org/docpdfs/FACTI_Interim_Report_ExecutiveSummary.pdf accessed on 25 April 2025

the origins of illegally obtained money, transforming it from “dirty money” into “clean money”, is a global scourge that fuels corruption, undermines financial institutions and facilitates a wide range of criminal activities. It is estimated that each year approximately \$1.6 trillion, or 2.7% of the global GDP, is laundered, distorting economies and hindering development. Nevertheless, accurately determining the exact amount of laundered money continues to be a significant challenge.

II. Organised crime in the Balkans and Albania and institutional measures

In the analysis of the past two decades, according to the Global Initiative¹ report, it results that criminal networks from Albania, Bosnia and Herzegovina, Kosova, Montenegro, North Macedonia and Serbia have evolved from regional actors into key players within the global cocaine supply chain. These groups have established strategic relationships with coca producers, criminal organizations and business circles throughout South America, particularly in Colombia, Peru, Bolivia, Brasil, Ecuador, and the Caribbean.

Nevertheless, it is still observed that the ports of Southeastern Europe, including those of the Western Balkans, play a secondary role in the flow of cocaine into Europe. Three-quarters of the 213 tons of cocaine seized in the European Union in 2020 were intercepted at the ports of Belgium, the Netherlands, and Spain, which are major ports and have long served as the principal gateways for cocaine entering Europe.

A current and substantial risk is the involvement of organized crime groups from the Western Balkans in the international drug trade, including the trafficking of cocaine from Latin America. Criminal networks engage in poly-drug trafficking, meaning that the same networks generally traffic both heroin and cocaine, although cannabis appears to be handled by different groups in some cases. These findings confirm earlier suspicions that the progress made by Western Balkan criminals in international trafficking is partly attributable to the high level of protection they have established within their home

1. Global Initiative Report/, <https://globalinitiative.net/wp-content/uploads/2025/03/Fatjona-Mejdini-Cocaine-connections-Links-between-the-western-Balkans-and-South-America-GI-TOC-April-2025.pdf>, page 25

countries.

The “UNODC Global Strategy¹” will continue to support the countries of Southeastern Europe in five key areas related to organized crime: drug prevention, treatment and care, international organized crime, anti-corruption and asset recovery, prevention of terrorism and violent extremism, crime prevention and criminal justice.

UNODC has conducted training across all five thematic priority areas in the countries of Southeastern Europe and the Balkans during the 2020–2024 period, including in Albania. The Regional Programme for the countries of Southeastern Europe² envisions continuous cooperation with the Civil Society Team to expand a network of NGOs aimed at promoting and engaging in the implementation of UNTOC, UNCAC, and other standards falling under UNODC’s mandate.

II. 1 Organised crime in Albania and legal instruments

According to Global Organized Crime Index 2023³, Albania is exposed to drug trafficking, human trafficking and money laundering. In 2023, the country’s crime index was recorded at 5.17 / 10.

The index reports that Albanian networks exert influence within the EU, particularly in Italy, the Netherlands and the United Kingdom. Albania serves as a transit country for international organized criminal activities, a role also facilitated by its favorable geopolitical position. Albanian groups involved in international organized crime are connected along specific routes and regions, depending on the international criminal organizations to which they are subordinate.

Significant operations have been made public over the past two years. In July 2023, a successful law enforcement operation was carried out, aided by information obtained from decrypted applications. Suspicions were raised against a former high-ranking police official and a prosecutor, who were alleged to have assisted a dangerous criminal organization

1. Undoc Strategy <https://www.unodc.org/unodc/strategy/index.html> accessed on 27 April 2025

2. Regional program for the south-east Europe countries, https://www.unodc.org/documents/southeasterneurope//RPSEE-2024-2029/RPSEE_-_October_Public_Version_v2.0.pdf, accessed on 28 April 2025

3. 2023 Report, Global Organized Crime Index <https://ocindex.net/>, last accessed on 28 April 2025

believed to have connections in South America. “Albanian was reported to be one of the most commonly used languages after English on Sky ECC.”¹ A 2024 decision of the Constitutional Court², provided an interpretation regarding the validity and admissibility of such evidence in court, ensuring its compliance with the legal standards applied by supreme courts in EU member states.

SPAK reports for the year 2024³ that, based on extensive cooperation with Europol and other international agencies, 9 out of 16 highly dangerous criminal groups have been identified. These groups primarily operate in drug trafficking and the circulation of illicit funds through cryptocurrencies. The success of international cooperation was demonstrated in August 2024, when the media highlighted a major joint effort between the relevant Albanian authorities, Europol and law enforcement agencies from Belgium, the Netherlands and France. This collaboration culminated in the successful completion of a major operation⁴, known as GORGON Operation, which resulted in the arrest of 15 suspected members of a notorious Albanian organized crime group under investigation in multiple jurisdictions, as well as the seizure of substantial assets, including real estate properties and 1 million euro in *cash*.⁵

1. Fatjona Medini page 25, <https://globalinitiative.net/wp-content/uploads/2025/03/Fatjona-Mejdini-Cocaine-connections-Links-between-the-western-Balkans-and-South-America-GI-TOC-April-2025.pdf>, accessed on

2. Decision of the Constitutional Court no. 86 dated on 30.12.2024, accessed on 29 April 2025 <https://www.gjykatakushtetuese.gov.al/wpcontent/uploads/2025/03/vend.8624.pdf>

3. SPAK annual report 2024, page 27, <https://spak.gov.al/wp-content/uploads/2025/04/Raporti-vjetor-SPAK-2024.pdf>

4. Europol newsroom, <https://www.europol.europa.eu/media-press/newsroom/neës/15-arrested-in-crackdown-high-profile-albaniancriminalnetwork#:~:text=15%20arrested%20in%20crackdown%20on%20high%2Dprofile%20Albanian%20criminal%20network>, accessed on 25 April 2025

5. <https://www.europol.europa.eu/media-press/newsroom/neës/15-arrested-in-crackdown-high-profile-albanian-criminal-network#:~:text=From%20contract%20killings,outside%20of%20Albania>. From contract killings to complex money laundering schemes. This well-known Albanian organized crime group was hierarchically structured, with branches operating at the international level. The gang was composed primarily of members from the same family and associates originating from the same region in Albania. Group members are suspected of being responsible for a large number of contract killings, large-scale drug trafficking, and the laundering of illicit profits through complex cryptocurrency transactions. Among those arrested was a well-known money launderer based in Tirana, who provided his services to several other high-level criminal

The Special Structure against Corruption (SPAK) reports that, as of 2024¹, Albanian groups continue to be active in the trafficking of cocaine and cannabis across several EU countries, such as Italy, the Netherlands, Spain, Belgium, Germany, Norway, France, the United Kingdom, etc. These groups purchase the drugs directly from countries of origin, for example, in Latin America and oversee the entire process of transport and transfer, moving the drugs from the country of production to their final destination, a route that also involves the Western Balkans and Albania. “These findings are also consistent with data reported by Europol²”. “At a lower scale, Albanian criminal groups are also involved in human smuggling and cybercrime, which are part of the international markets of the EU, the United States and the United Kingdom.”³

Based on the above data, it is evident that the elements influencing organized crime, in the form of its international networks, have begun to establish partnerships with structured criminal groups operating in our country. This interaction is present, but not at an advanced level, that would categorize Albania alongside other countries where organized crime activities are consolidated.

In his annual activity report, presented in May 2024⁴ in the Parliament of Albania, during a public hearing held by the Parliamentary Committee on Legal Affairs, the Head of SPAK stated, among other things: “Albania plays a very modest role as a transit country, criminal groups seek to traffic

groups involved internationally in activities such as murder, corruption and large-scale drug trafficking, among other criminal activities. The coordinated effort, called GORGON Operation, culminated in a series of raids conducted in Tirana, Albania, on July 31, targeting key figures of this criminal network. As a result, substantial assets were seized, including real estate properties and 1 million euro in cash. At least seven murders have been attributed to this particular criminal group between 2019 and 2020, some of which were carried out outside the territory of Albania.

1. 2024 SPAK annual report for 2023, <https://spak.gov.al/wp-content/uploads/2025/04/Raporti-vjetor-SPAK-2024.pdf>,

2. raporti Europol <https://www.europol.europa.eu/cms/sites/default/files/documents/Europol%20report%20on%20Decoding%20the%20EU-s%20most%20threatening%20criminal%20networks.pdf>, accessed on 25 April 2025

3. Ibid

4. Parliamentary Committee on Legal Issues minutes report 22 May 2024, SPAK annual report, www.parlament.al, <https://kuvendiwebfiles.blob.core.windows.net/webfiles/202406111354427194Komisioni%20i%20%20Ligjeve%2022.5.2024.pdf>, accessed on 29 April 2025

drugs directly into the ports of other countries. Tons of drugs have been seized.”

Albania has established a legal framework for international judicial cooperation in criminal cases¹, has concluded several extradition agreements² and has ratified nearly all relevant treaties on organized crime. The country continues to pursue a strategy oriented toward and focused on the European Union, through which it benefits from substantial technical and financial assistance.

The legislative framework to address organized crime is quite strong, however, the implementation of this framework remains a challenge. Law no. 96/2016³ “On the Organization and Functioning of Institutions for combating Corruption and Organized crime” as amended, guarantees the functioning of the Special Prosecution Office, as a specialized prosecution body, the Independent Investigative Unit (BKH), and the GJKKO, as dedicated institutions responsible for exercising the competences provided for in paragraph 2 of Article 135 of the Constitution⁴ and article 75/a of the Criminal Procedure Code, as amended⁵, in an effective and independent manner, free from any unlawful, internal or external influence.

The national legal framework is primarily based on the Criminal Code, the Criminal Procedure Code, Law no. 96/2016 “On the Organization and Functioning of Institutions for Combating Corruption and Organized Crime,” Law no. 10192, dated on 03.12.2009, “On the Prevention and Fight against Organized Crime, Trafficking, Corruption and Other Crimes through Preventive Measures Against Property,” as amended, widely known as the “Anti-Mafia Law”, as amended, and other supporting laws such as law no. 9917/2008 “On the prevention of money laundering,” as amended, law no. 34/2019 “On the administration of seized and

1. Convention on mutual legal assistance on criminal matters https://spak.gov.al/wp-content/uploads/2024/08/konventa_evropiane_per_ndihme_juridike_penale_803-1.pdf, accessed on 28 April 2025

2. There is still no extradition agreement with the United Arab Emirates, which has created obstacles for the prosecution of Albanian nationals. Annual report 2024 SPAK www.spak.al, accessed on 26 April 2025

3. [https://spak.gov.al/wp-content/uploads/2023/04/ligj-2016-10-06-95-2016-perditesuar_\(consolidated_version\).pdf](https://spak.gov.al/wp-content/uploads/2023/04/ligj-2016-10-06-95-2016-perditesuar_(consolidated_version).pdf) accessed on 26 April 2025

4. [https://president.al/Constitution of Republic of Albania kushtetuta-e-shqiperise/](https://president.al/Constitution%20of%20Republic%20of%20Albania%20kushtetuta-e-shqiperise/) accessed on 26 April 2025

5. <https://spak.gov.al/kodet-2/> accessed on 19 April 2025

confiscated assets,” law no. 157/2023 “On measures against the financing of terrorism,” law no. 72/2019 “On international restrictive measures in the Republic of Albania,” law no. 10173/2009 “On the protection of justice collaborators,” and law no. 112/2020 “On Beneficial Owners” etc. Albania is also expected to adopt the draft law “On the Establishment of the Asset Recovery Office” in response to the European Commission’s report¹, which highlights the establishment of such an office as essential for the country’s progress in the fight against organized crime.²

The Strategy against Organised Crime and Serious Crimes (2021–2025)³ is a well drafted and ambitious document, that focuses on three main priorities following the approaches of: (i) Prosecution⁴ (ii) Protection⁵: (iii) Prevention⁶. However, its success depends on the practical implementation of measures and the addressing of internal challenges such as corruption, lack of resources and institutional coordination.

The Government’s 2024-2030 Strategy Against Corruption and Organized Crime has identified the reduction of the risk and threat of organized crime, focusing efforts particularly on sectors with a high risk of corruption⁷. Similarly, the 2025-2027 SPAK Strategy⁸ aims to increase punity against corruption, organized crime, terrorism and cybercrime, to intensify the investigation of money laundering and adopt a preventive

1. European Commission Albania Report 2024, https://enlargement.ec.europa.eu/document/download/a8eec3f9-b2ec-4cb1-8748-9058854dbc68_en?filename=Albania%20Report%202024.pdf, page 8, page 42, last accessed on 29 April 2024

2. The Council of Europe (CoE), through the 2005 CoE Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism, and the European Union, through a series of its legal acts, have recently updated and adopted the entry into force of Directive 2024/1260, dated on 24 April 2024, “On Asset Recovery and Confiscation”.

3. Strategy against organized crime <https://ikrtk.gov.al/wp-content/uploads/2021/06/VKM-nr.1140-date-24.12.2020-PER-MIRATIMIN-E-STRATEGJISE-KUNDER-KRIMIT-TE-ORGANIZUAR-DHE-KRIMEVE-TE-RENDIA.pdf>, accessed on 26 April 2025

4. Ibid, To pursue the reduction of threats and the impact of organized crime and serious crimes,

5. Ibid, Protection of the public, institutions and the economy,

6. Ibid, Strengthening of preventive capacities against the threats of organized crime and serious crimes.

7. 2024-2030 cross-sectoral strategy against corruption <https://amshc.gov.al/wp-content/uploads/2025/01/vendim-2024-12-26-859.pdf>, accessed on 27 April 2025

8. 2025-2027 SPAK Strategy, www.spak.al, accessed on 27 April 2025

approach to money laundering investigations and to expand international cooperation and mutual assistance. From the analysis conducted so far, money laundering can be considered a direct indicator of the power held by organized crime. The growth of organized crime, when accompanied by the ongoing process of money laundering, implies an increase in criminal activities, illicit income, corruption and impunity.

Albania has adopted the 2024-2030 “National Strategy “On the prevention of Money Laundering and the Financing of Terrorism”¹. This legal evolution reflects the effort to strengthen the legal framework in the fight against organized crime and to support criminal justice through preventive measures targeting the financial sources of criminal activities.

In the 2024 European Commission report on Albania², is stated that “Albania must continue to develop the systematic use of financial investigations in cases involving organized crime, illicit trafficking, terrorism and money laundering, and must ensure that any voluntary tax and compliance legislation (including amnesty) is fully aligned with the relevant EU acquis and the international standards set by Moneyval and the Financial Action Task Force”.

Recently, the Albanian Government has approved the Priority Policy Document 2026–2028³, which consolidates all national/cross-sectoral strategies/the National Strategy for Development and Integration 2022–2030⁴, priority reforms, international IPA 2022–2027 programs, and the EU political priorities for 2024–2029. The integration into the European Union and the completion of the EU accession negotiations remain Albania’s political and strategic objective, guiding its legal, economic and institutional systems⁵.

1. National strategy for the prevention of money laundering <https://fiu.gov.al/legjislacioni/strategjia-kombetare-ppp-ft/> June 2024 adopted by decision no. 1, dated on 24.07.2024 of the coordination Committee for the fight against money laundering

2. 2024 European Commission Progress Report https://enlargement.ec.europa.eu/albania-report-2024_en accessed on 28 April 2025

3. CMD no. 91, dated on 12.2.2025 “On the adoption of the Priority Policies Document 2026–2028” accessed on 28 Ap

4. National strategy for Development and Integration 2022–2030 <https://qbz.gov.al/eli/vendim/2023/02/22/88/59519cb2-2180-4e7e-9d91-68545a68e008>, accessed on 28 April 2025

5. Based on Chapter 23, “Judiciary and Fundamental Rights,” and Chapter 24, “Justice, Freedom and Security,” Albania aims, among others to: ensure the independence and impartiality of the judiciary through ongoing reforms that improve the quality and

An achievement that must be pointed out is Albania's removal from the grey list of Moneyval and FATF¹ in October 2023. Referring to the mission of the Financial Action Task Force (FATF), which leads and oversees global actions to combat money laundering, terrorist financing and the financing of the proliferation of weapons, the process that FATF follows with countries under monitoring for anti-money laundering and countering the financing of terrorism (AML/CFT) measures, culminating in removal from the grey list, as occurred with Albania, demonstrates the implementation of proper reforms and meaningful measures. These actions have successfully addressed the recommendations of these bodies, strengthening the legal framework and digitizing vital processes in the service of citizens. However, there remains an increased risk within the banking system, particularly concerning second-level banks and the concrete role of the Bank of Albania, as well as the monitoring of transactions and reporting by the Financial Intelligence Agency.

Organized crime seeks to use corruption to influence political and legislative processes in order to favor its illegal activities. It is identified as one of the main offenses defined under the standards of the Financial Action Task Force (FATF), highlighting its prevalence and critical nature. Corruption often undermines the overall effectiveness of efforts to combat crime, particularly organized crime. Corruption is one of the key elements that must be considered when determining the extent of organized criminal activity. If a state experiences high levels of corruption, it automatically becomes a facilitating factor for the expansion and spread of organized crime.

On the other hand, it is not only law enforcement and investigative bodies that have a role in the prevention and fight against corruption and organized crime. The legislative branch also exercises its parliamentary mechanisms

efficiency of the courts; deepen anti-corruption strategies by strengthening international cooperation and improving legal mechanisms for the prevention and prosecution of corruption; strengthen the fight against organized crime and human trafficking through ongoing cooperation with EU agencies, such as EUROPOL and FRONTEX; intensify financial investigations and the fight against money laundering by strengthening law enforcement structures and improving systems for monitoring financial transactions; improve migration and asylum policies, by adhering to European standards and committing to the fair and lawful treatment of asylum seekers and migrants.

1. Ministry of Infrastructure and Energy Announcement, posted on 27.10.2023, <https://www.infrastruktura.gov.al/shqiperia-del-nga-lista-gri-e-pastrimit-te-parave/>

to focus its priorities on quality and transparent lawmaking, as well as on monitoring the enforcement of these laws. Two innovative instruments that were piloted during 2024, with their respective methodologies approved by the Parliament of Albania and incorporated into the Rules of Procedure of the Parliament¹ are: “Corruption proofing²”- the preventive assessment analysis of legislation, which enables a preliminary review of draft laws and identifies potential risks of proposed corruptive provisions, as well as “ Post Legislative Scrutiny³” – PLS – the review of control (ex-post legislative) after the adoption and implementation of a law.

One of the innovative instruments that can minimize and prevent corruption, and consequently hinder the penetration and strengthening of criminal groups and their activities, is “Corruption Proofing”. This methodology aims to assist in drafting laws that are more effective in preventing and combating corruption. This methodology was also piloted on several draft laws during 2024, and amendments to the Rules of Procedure of the Parliament have been approved. According to Parliament’s Strategic Plan, corruption proofing will be fully integrated as a process within the preventive assessment analysis of all draft laws during the next legislative term.

Considering the introduction of these very important parliamentary instruments into the processes of the Parliament, both in the exercise of its legislative function and its oversight role, as well as in fulfillment of the objectives and priorities of the Albanian state in its commitments toward, it is deemed necessary that the law “On the Prevention and Fight Against Organized Crime, Trafficking, Corruption and Other Crimes Through Preventive Measures Against Assets,” as amended (commonly known as

1. Adoption of addenda in Parliament’s Rules of Procedure on corruption proofing and ex-post legislative scrutiny by decision no. 6, dated on 30.01.2025 of the Parliament of Albania, www.parlament.al, last accessed on 26 April 2025

2. The provision for this instrument was added to articles 38, 71, and 105 of Parliament’s Rules of Procedure, through amendments approved by the Parliament of Albania on January 30, 2025, by Decision No. 6/2025 of the Parliament of Albania, www.parlament.al, last accessed on 26 April 2025

3. The provision for this instrument was added to articles 102, 103/3 (approximated laws) of Parliament’s Rules of Procedure, through amendments approved by the Parliament of Albania on January 30, 2025, by Decision No. 6/2025 of the Parliament of Albania, www.parlament.al, last accessed on 26 April 2025

the Anti-Mafia Law¹), which is a priority and essential law for the prevention of organized crime and corruption, should be subjected to post-legislative review by the Parliament of Albania. The objective of this review would be to assess the impact and effectiveness of the law's implementation, particularly regarding drug trafficking, the laundering of the proceeds of crime or criminal activities, as well as the law's effectiveness in preventing and combating such crimes and its role in enhancing international cooperation.

What appears to align with the analysis presented in this paper, with a focus on measures targeting the assets of criminal activities and their seizure and confiscation, is reflected in the report delivered by the Head of SPAK, Mr. Altin Dumani, during his reporting in the Parliament of Albania, in May 2024 (at the Parliamentary Committee on Legal Affairs). He informed the Parliament about the method of asset investigation and asset proceedings used in every case under the Anti-Mafia Law, as well as the application of seizure measures, both as material evidence and as preventive action, by alternating their use. This approach has led to a significant increase in the seizure of immovable properties.

III. Provisions on organized crime in the criminal legislation of the countries of the Region, the EU and the USA

From the research conducted on the domestic criminal legislation of several EU member states, as well as countries from the Balkan region, such as Luxembourg, Finland, Norway, Serbia, Estonia, North Macedonia, Italy, the United States and Germany, it results that, in general, there is no clear definition of organized crime provided in the criminal legislation of these countries. Moreover, in some countries, there are no provisions even for organized criminal groups², while in other countries, such as North

1. Law no. 10 192, dated on 3.12.2009 is amended in 2014, with law no. 24/2014, On some amendments and addenda to law no. 10 192, dated on 3.12.2009, in 2017, with law no. 70/2017, On some amendments and addenda to law no. 10 192, dated on 3.12.2009, in 2019 with law no. 34/2019 and in 2020, with law no. 85/2020, On some amendments and addenda to law no.10192, dated on 3.12.2009, "For the prevention and combating of organized crime, trafficking, corruption, and other crimes through preventive measures against assets.", as amended. <https://mb.gov.al/wp-content/uploads/2024/10/LIGJ-PER-PARANDALIMIN-DHE-GODITJEN-E-KRIMIT-TE-ORGANIZUAR-Nr.-10-192-date-3.12.2009.pdf>

2. Estonia, Slovenia, Luxemburg, Hungary, do not have definitions of organized criminal

Macedonia, Norway, Finland, Serbia, and Slovakia, there are provisions regarding organized criminal groups or organized crime groups, which, in approximate terms concerning definitions and types of penalties, are similar to the definitions established by the United Nations Convention against Transnational Organized Crime. Additionally, there are countries like Lithuania, whose legal provisions are similar to those of our country. In the Italian Criminal Code, Article 416-bis addresses the “association of a mafia-type organization” (*associazione di tipo mafioso*), including organizations that use intimidation, subjugation, and a code of silence to carry out criminal activities.

The German Criminal Code, under article 129, defines a “criminal organization” as a group that aims to commit criminal offenses of significant importance. Meanwhile, in the United States, “organized crime” includes the activities of structured groups engaged in illegal activities for financial gain. The law known as RICO (Racketeer Influenced and Corrupt Organizations Act) is used to prosecute such organizations.

What is considered particularly important at this stage, based on this paper, the analysis of existing data and the decisions of the specialized investigative and adjudicative bodies regarding organized crime and corruption in the country, is precisely the understanding of the criminal offense and the criminal organization that commits it. This is crucial for reaching significant conclusions about the presence of organized crime in Albania, distinguishing between the different types of criminal organization and the offenses they commit, in order to develop a precise and well-understood criminal policy that can be properly implemented by law enforcement agencies, the judiciary, and society as a whole.

In a comparative analysis regarding criminal organizations and the assessment of where the evolution and treatment of criminal organization structures in our country currently stand in relation to what characterizes organized crime with transnational criminal networks, the distinction can be observed in:

-The number of participants involved, the wide international reach across the territories of foreign countries, the legal coverage of criminal activities through legitimate economic and social activities, the high level of organization, making it difficult to directly link the leadership of the organized crime group to the criminal acts committed, the influence on a groups, but criminal organisations

country's political, social and economic decision-making, the direct interest in securing and expanding markets and capital generated from criminal activities, the degree of responsibility attributed to members of the organized crime group.

IV. Conclusion

Although the constitutional legal framework, through the Justice Reform approved in 2016, provided for the establishment of specialized structures for organized crime, followed by law no. 95/2016 on the organization of these structures, for the purposes of this paper, it remains the position that these changes should also have been reflected in the Criminal Code and the Code of Criminal Procedure, particularly regarding the definition of organized crime, especially in the form of organized and transnational criminal groups, and the respective punitive measures against this very high form of criminal organization. This legal framework could and should be harmonized and reflected accordingly.

Although the UNTOC (Convention) itself does not provide a clear definition of organized crime, it does offer clarity regarding two constant elements within the broader framework of organized crime, the terms “organized criminal group” and “serious crime”, as described in the Convention. Nonetheless, the Convention provides sufficient flexibility to address a wide range of issues.

Albania does not have organized crime in the strict sense (such as the presence of a mafia-type organization with international reach headed by individuals of Albanian ethnicity), but rather structured criminal groups, operating in cooperation with organized crime.

Organized crime in Albania exists at a lower level, but it is constantly supported and influenced by international organized crime, particularly regional organized crime.

Likewise, the evidence and real uncovering of organized crime must go beyond its international or national scope, and must inevitably address its connections to political influences and the extent to which state authorities are involved in such criminal activities.

The fight against organized crime remains one of the priorities and challenges of our country. Albania continues to make efforts in this direction, however, much work remains to be done.

According to the European Commission's reports for 2019–2022, Albania

was consistently assessed as having “a low level of preparation” in the fight against organized crime.

Meanwhile, according to the European Commission’s 2024 Report¹, Albania is assessed as “between having some and a moderate level of preparation” in combating organized crime.

These reports highlight the ongoing challenges in areas such as asset recovery, criminal procedure reform, institutional independence, and cross-border intelligence sharing.

All the above analysis highlights the need for further amendments to the Criminal Code and the Criminal Procedure Code, in order to specifically define organized crime as a distinct criminal offense, particularly in the form of transnational criminal organizations or organized crime groups. This would ensure that the findings emerging from the aforementioned strategies and legislation are properly addressed and punished, effectively targeting this form of criminal activity.

It is also necessary to continue with quantitative and qualitative analysis of data on organized crime, including information about its members and victims, the progress made in apprehension and prosecution, and the prevention of its further development. Strategic analyses are needed to identify threats posed by organized crime and their involvement in legitimate markets and the economy, along with the methodologies for detection, strengthening of asset investigations, and the expansion of training for law enforcement agencies and judicial authorities, supported by UNODC and its structures, aiming at enhanced international cooperation and continuous professional development.

Bibliography

BBC, Cosa Nostra means “our thing” <https://www.bbc.com/news/world-europe-42794848>

BBC news, <https://www.bbc.com/news/magazine>

Convention on Legal Assistance in Criminal Matters https://spak.gov.al/wp-content/uploads/2024/08/konventa_evropiane_per_ndihme_juridike_

1. Progress Report Albania 2024, https://enlargement.ec.europa.eu/albania-report-2024_en last accessed on 30 April 2025

penale_803-1.pdf

Criminal Code of the Republic of Albania, as amended www.spak.al

Code of Criminal Procedure, as amended www.spak.al

Council of Europe (CoE), Directive 2024/1260 dated on 24 April 2024, “On the Recovery and Confiscation of Assets “.” <https://eur-lex.europa.eu/eli/dir/2024/1260/oj/eng>

Criminal legislations and constitutions of 17 countries of Europe, the Region and the USA

Cross-sectoral strategy against corruption 2024-2030 <https://amshc.gov.al/wp-content/uploads/2025/01/vendim-2024-12-26-859.pdf>

Constitution of the Republic of Albania www.president.al

Decision of the Constitutional Court no.86, dated on 30.12.2024 <https://www.gjykatakushtetuese.gov.al/wpcontent/uploads/2025/03/vend.8624.pdf>

DCM no. 91, dated on 12.2.2025 ON THE ADOPTION OF PRIORITY POLICIES DOCUMENT 2026–2028 <https://qbz.gov.al/eli/vendim/2023/02/22/88/59519cb2-2180-4e7e-9d91-68545a68e008>

European Commission Progress Report 2024 https://enlargement.ec.europa.eu/albania-report-2024_en

Europol EU SOCTA 2021 Assessment Report, Corruptive influence: the infiltration and undermining of Europe’s economy and society by organized crime. <https://www.europol.europa.eu/publications-events/main-reports/socta>

FBI, what we investigate <https://www.fbi.gov/investigate/transnational-organized-crime/history-of-la-cosa-nostra#:~:text=The%20sentencing%20was,ceremony%2C%20and%20members>

Fatjona Medini page 25, <https://globalinitiative.net/wp-content/uploads/2025/03/Fatjona-Mejdini-Cocaine-connections-Links-between-the-western-Balkans-and-South-America-GI-TOC-April-2025.pdf>

Global Initiative against transnational organized crime, <https://riskbulletins.globalinitiative.net/see-obs-001/sq/02-albanian-cannabis-moves-indoors.html#:~:text=SHP%C3%8BRNDAJE>

Global Cocaine Report 2023, https://www.unodc.org/documents/data-and-analysis/cocaine/Global_cocaine_report_2023.pdf,

Global organized crime index report 2023, <https://ocindex.net/Albania>

Global Initiative Index report [https://globalinitiative.net/analysis/ocindex-2023/International criminal legislation](https://globalinitiative.net/analysis/ocindex-2023/International%20criminal%20legislation) www.spak.al

Levin Center Home, <https://levin-center.org/what-is-oversight/portraits/valachi-hearings/>

Law no. 95/2016 “On the organization and functioning of institutions that fight corruption and organized crime”, as amended <https://spak.gov.al/wp-content/uploads/2023/04/ligj-2016-10-06-95-2016-perditesuar.pdf>

Law no. 9284, dated on 30.9.2004, “On the prevention and combating of organized crime”. <https://www.qbz.gov.al/eli/ligj/2004/09/30/9284/494a7a5a-26ed-415b-9a96-db442ddd2a40;q=Ligji%20nr.%209284,%20dat%C3%AB%2030.9.2004%20%E2%80%9CP%C3%ABr%20parandalimin%20dhe%20goditjen%20e%20krimit%20t%C3%AB%20organizuar%E2%80%9D>

Law no. 10 192, dated on 3.12.2009 “On the prevention and combating of organized crime, trafficking, corruption and other crimes through preventive measures against assets”, as amended <https://mb.gov.al/wp-content/uploads/2024/10/LIGJ-PER-PARANDALIMIN-DHE-GODITJEN-E-KRIMIT-TE-ORGANIZUAR-Nr.-10-192-date-3.12.2009.pdf>

Law no. 9917, dated on 19.5.2008 “On the prevention of money laundering and financing of terrorism”, as amended https://fiu.gov.al/wp-content/uploads/2024/02/Ligj_9917_perditesuar_2023-1.pdf

Ministry of Infrastructure and Energy Announcement, posted on 27.10.2023, <https://www.infrastruktura.gov.al/shqiperia-del-nga-lista-gri-e-pastrimit-te-parave/>

News <https://www.europol.europa.eu/media-press/neësroom/news/15-arrested-in-crackdoën-high-profile-albanian>

National strategy on prevention of money laundering <https://fiu.gov.al/legjislacioni/strategjia-kombetare-ppp-ft/>

National, bilateral, multilateral instruments www.spak.al

Parliament of Albania www.parlament.al

Parliament’s rules of procedure, as amended, www.parlament.al

Parliamentary Committee on Legal Issues, report May 2024, SPAK annual report for year 2023, www.parlament.al, <https://kuvendiwebfiles.blob.core.windows.net/webfiles/202406111354427194Komisioni%20i%20%20Ligjeve%2022.5.2024.pdf>

Report on human trafficking 2022 <https://unis.unvienna.org/unis/index.html>

Regional program for the South-East Europe countries https://www.unodc.org/documents/southeasterneurope//RPSEE-2024-2029/RPSEE_-_October_Public_Version_v2.0.pdf

Spak annual reports 2024, <https://spak.gov.al/wp-content/uploads/2025/04/Raporti-vjetor-SPAK-2024.pdf>

Special Parliamentary Committee on good governance, rule of law and anticorruption for 2030 Albania, www.masl.al, https://masl.al/wp-content/uploads/2024/11/Shtylla-II_K-II_Permbledhje-ekzekutive_botim.pdf

SPAK Strategy 2025-2027, www.spak.al,

Strategy against organized crime <https://ikrtk.gov.al/wp-content/uploads/2021/06/VKM-nr.1140-date-24.12.2020-PER-MIRATIMIN-E-STRATEGJISE-KUNDER-KRIMIT-TE-ORGANIZUAR-DHE-KRIMEVE-TE-RENDIA.pdf>

Transparency International, 2020_Report Examining StateCapture_English.pdf, Undue Influence on Law-Making and the Judiciary in the Western Balkans and Turkey <https://www.transparency.org/en/publications/examining-state-capture>

UN news, <https://www.unodc.org/> <https://news.un.org/en/news/topic/law-and-crime-prevention>, 14 November 2024, UN Neës Candice Welsch <https://news.un.org/en/story/2024/11/1156981#:~:text=UN%20News,perspective%20Human%20stories>

UN report on financial integrity https://factipanel.org/docpdfs/FACTI_Interim_Report_ExecutiveSummary.pdf

UNDOC Resolution <https://www.bing.com/ck/>

Undoc Strategy <https://www.unodc.org/unodc/strategy/index.html>

United Nations Office for Drugs and Crime <https://www.unodc.org/>

United Nations Convention against Transnational Organized Crime. <https://www.unodc.org/documents/treaties/UNTOC/Publications/TOC%20Convention/TOCebook-e.pdf>

THE TERMINATION OF SECURITY MEASURES IN CRIMINAL PROCEEDINGS: A NECESSITY FOR THE PROTECTION OF FUNDAMENTAL FREEDOMS

PhD(c) Gledis Nano¹

PhD(c) Endi Kalemaj²

Prof.Asoc.Dr. Ervis Çela³

Abstract

The termination of security measures is a fundamental aspect of criminal proceedings aimed at protecting the fundamental rights and freedoms of individuals. This occurs when the circumstances that initially justified the imposition of such measures no longer exist, including cases of acquittal, dismissal of criminal proceedings, or the expiration of legally prescribed time limits. One of the primary reasons for terminating these measures is the principle of proportionality and legal certainty, preventing unjustified restrictions on individual liberty.

This paper examines the legal framework and judicial practices concerning the termination of security measures in Albania, analyzing the relevant provisions of the Criminal Procedure Code and domestic jurisprudence. It further explores the impact of this process on the justice system, ensuring that the removal of security measures is not arbitrary but follows a fair and evidence-based approach.

The study presents key judicial decisions that have influenced the interpretation and application of these norms, highlighting issues arising from procedural delays and non-compliance with legal deadlines. Through

1. PhD candidate at the Faculty of Law (FDUT), University of Tirana, gledis.nano@gmail.com

2. PhD candidate at the Faculty of Law (UT), Specialist at the Albanian National Youth Agency, endikalemaj2000@gmail.com

3. Professor at the Faculty of Law, University of Tirana, erviscela@hotmail.com

an in-depth analysis, the paper aims to emphasize the importance of a fair legal process in safeguarding individual rights and preventing their violation through unjustified restrictions.

Keywords: *Security measures, termination, criminal procedure, individual liberty, proportionality, jurisprudence, etc.*

1. Introduction

The criminal process, as one of the most vital mechanisms of the rule of law, must ensure not only the prosecution of offenders but also the protection of the fundamental rights and freedoms of individuals. In this context, preventive measures represent temporary yet profound interferences with the personal liberty of the accused and, therefore, must always be justified, necessary, and proportionate. However, such measures cannot remain in force indefinitely; their termination becomes a legal and constitutional necessity once the circumstances that initially legitimized them no longer exist. This issue gains particular significance in the Albanian context, where procedural delays, the exceeding of statutory time limits, and the lack of effective judicial oversight over preventive measures have resulted in serious consequences for individuals and undermined public trust in the justice system. Numerous cases referred to in domestic judicial practice, as well as in the jurisprudence of the European Court of Human Rights, highlight the need for a more cautious and standardized approach in this area.

This paper aims to analyze the Albanian legal framework governing preventive measures and the circumstances under which they are extinguished, shedding light on the most frequent challenges encountered in practice and emphasizing the need for further improvement of procedural safeguards. Through an examination of relevant jurisprudence and the provisions of the Criminal Procedure Code, the objective is to encourage reflection on the importance of the proper and equitable application of these norms, in order to ensure not only legal certainty but also a fair and balanced justice system for all.

2. The Necessity of Terminating Preventive Measures

The termination of a preventive measure is directly linked to the safeguarding of individual rights and freedoms, particularly upon the conclusion of criminal proceedings. When the legal conditions and criteria justifying the imposition of such a measure no longer exist, it must be revoked. This principle assumes particular importance when the case is closed or when the individual is declared innocent. A preventive measure, as an instrument that restricts personal liberty, loses its purpose and validity the moment a final judicial decision resolves the case. The court may render a judgment of conviction, acquittal, or dismissal of the case. In particular, an acquittal decision under Article 388 of the Albanian Criminal Procedure Code mandates the immediate release of the detained individual and the removal of any other preventive measures.¹

The necessity of examining requests for the termination of such measures individually for each person is closely related to the proper implementation of judicial decisions and the respect for individual rights. Most commonly, an acquittal is granted when the existence of the criminal act or the defendant's involvement cannot be proven, including cases in which an individual fabricates a criminal offense in order to evade liability in specific circumstances.

In cases where the existence of the criminal act itself cannot be established, there remains doubt as to the very occurrence of the offense for instance, in situations where the cause of death cannot be determined with certainty. Under such circumstances, since any doubt must be interpreted in favor of the defendant, the individual is declared not guilty.² Likewise, when the criminal act exists but there is a lack of evidence linking it to the defendant, the court also declares the defendant's acquittal. This outcome depends on the careful and impartial assessment of evidence by the court, in accordance with Article 152 of the Albanian Criminal Procedure Code, which grants the judge the authority to form his or her conviction based on the free evaluation of the evidence.³ The judgment of acquittal must be well-reasoned and clearly reflect the application of the principle of the presumption of innocence. Meanwhile, pursuant to Article 387 of the

1. Ligji 7905/1995 Kodi i Proçedurës Penale i Republikës së Shqipërisë, ndryshuar (Kodi i Proçedurës Penale) Neni 388.

2. H. Islami, A.Hoxha, I.Panda, "Procedura Penale" Tiranë 2012, faqe 537.

3. Kodi i Proçedurës Penale i Republikës, Nenin 152.

Albanian Criminal Procedure Code, the court may decide to dismiss the case when criminal prosecution should not have been initiated, cannot be continued, or when the offense has been extinguished.¹

The court may issue such a decision at any stage of the judicial proceedings if any of the legal conditions for dismissal are verified for instance, when it is established that the defendant is below the age of criminal responsibility or has passed away during the course of the proceedings.² Failure to implement the court's decision in such cases constitutes a violation of the individual's constitutional rights, which guarantee liberty only in accordance with the law. When the court issues a decision of dismissal or acquittal in favor of the defendant, it must immediately order the removal of preventive measures, including the prompt release of the detained person, without waiting for the decision to become final. Such measures automatically cease to have effect upon the issuance of the final judgment.³

Criminal cases do not always conclude in court. They may be dismissed in situations where: the perpetrator cannot be identified; the perpetrator suffers from a severe illness; the act does not constitute a criminal offense under the Criminal Code; the injured party has not filed, or has withdrawn, a complaint; the defendant is below the age of criminal responsibility; the defendant was in a state of mental incapacity at the time the act was committed; the alleged act did not occur or it cannot be proven that it was committed by the defendant; or the act was committed under conditions of necessary defense.⁴ In such cases, the prosecutor orders the dismissal of the proceedings pursuant to Article 328 of the Albanian Criminal Procedure Code. The decision must be reasoned and duly communicated to both the injured party and the defendant, and it may be appealed before the district court. A preventive measure must be terminated not only when an acquittal or dismissal decision has been issued, but also when its prescribed duration has expired⁵. The current Criminal Procedure Code clearly defines the time limits and the method of their calculation under Article 250.

Effects of Preventive Measures: They commence from the moment of detention, arrest, or physical isolation of the individual. If the decision

1. Po aty, Neni 387.

2. Ligji 8417/1998 Kushtetuta e Republikës së Shqipërisë, ndryshuar neni 27 (1).

3. H. Islami, A. Hoxha, I. Panda, "Procedura Penale", Tiranë 2012, faqe 537.

4. Kodi i Proçedurës Penale i Republikës, Neni 328.

5. Po aty, Neni 250.

imposing a measure is notified while the defendant is already in pre-trial detention for another case, the time limits start from the date of notification. In cases involving multiple decisions for the same offense, the time limits begin from the execution of the first measure. For other measures that do not involve imprisonment, the period starts from the moment of notification. Exceeding these time limits renders the measure unlawful and constitutes a violation of the right to liberty. Judicial practice has highlighted instances in which these time limits were unjustly exceeded, underscoring the importance of respecting the prescribed durations and ensuring the immediate termination of preventive measures.

2.1 Cases of Termination

Preventive measures are terminated in instances where they lose their legal force. Article 261 of the Albanian Criminal Procedure Code specifies the circumstances under which preventive measures are extinguished, that is, when they cease to have effect.

The first case arises when an acquittal is issued or the case is dismissed by the prosecutor against the same person for the same act. Under these conditions, the criminal proceedings are concluded, and consequently all measures taken, including preventive measures, lose their validity. However, if the acquittal decision is overturned by the appellate court and the case is remanded for retrial, such annulment also affects the part of the decision that had invalidated the preventive measure, as confirmed by the Supreme Court in a practical case.¹ The second case concerns situations where the sentence is declared served or conditionally suspended. In such instances, as long as the convicted person complies with the legal requirements imposed for the conditional sentence, the prison arrest measure is not reinstated. A similar situation arises in the case of an amnesty covering the relevant sentence. The third case relates to the exceeding of the pre-trial detention period in relation to the sentence imposed. If the sentence is shorter than the duration of pre-trial detention, the preventive measure ceases, as there is no remaining sentence to be served. The fourth case occurs when a preventive measure is imposed for procedural purposes, such as securing or verifying evidence, and the deadlines for carrying out these actions have expired. Termination also occurs when the maximum periods of detention under

1. Kolegji Penal I Gjykatës së Lartë, Vendimi 110/2001

preventive measures, as provided in Articles 263 and 267, are reached.¹ The court is obliged to question the detained person within three days, and in the absence of conditions justifying the continuation of the measure, it must decide on its replacement or revocation.

In practice, sometimes after a final judgment has been rendered and executed, the Supreme Court may annul the decision and remand the case for retrial.² In such instances, the annulled decision no longer serves as a basis for the detention of the convicted person. If the preventive measure no longer exists, the defendant must be released immediately, as continued detention would be unlawful and unsupported by any current judicial act. The only exception occurs when the Criminal Chamber explicitly orders the reinstatement or modification of the preventive measure.

In this case, the annulled decision itself no longer constitutes a valid basis for the detention of the convicted person. If the preventive measure no longer exists, the defendant must be released immediately, as continued detention would be unlawful and unsupported by any current judicial act. The only exception arises when the Criminal Chamber explicitly rules on the reinstatement or modification of the preventive measure.

3. Summary of the Consequences of Terminating Preventive Measures

Article 262 of the Criminal Procedure Code provides for the consequences arising from the termination of preventive measures. In the first scenario, when an arrest loses its validity due to procedural or legal violations such as the mistaken detention of an individual, failure to respect deadlines for submitting a validity request, or the absence of legal grounds the immediate release of the arrested person is mandated.³ This order may be issued by the prosecutor through a reasoned decision or by the judicial police officer, who must immediately notify the prosecutor. If, within 48 hours from the moment of arrest or detention, the prosecutor does not submit a request for validation to the court, the measure automatically loses its effect and the individual must be released.⁴

During the hearing on the validation of the arrest and the imposition of

1. Kodi i Proçedurës Penale i Republikës, Neni 263 (4).

2. Po aty, neni 441, shkronja “ç”.

3. Po aty, neni 257: “Rastet e lirimit të menjëhershme të të arrestuarit ose të ndaluarit”.

4. Po aty, neni 258/1: “Kërkesa e vleftësimit të arrestimit ose ndalimit”.

a preventive measure, the court examines the legality of the prior action and the evidentiary basis.¹ Even if it is determined that the arrest was unlawful, the court may still impose a preventive measure on the same person, provided that the legal conditions and criteria are met. In such cases, the arrested individual remains at liberty during the hearing while the request for a preventive measure is being considered.

The second scenario envisaged by Article 262 concerns the termination of other preventive measures, including pre-trial detention, when these measures lose their effect due to the expiration of procedural deadlines. Pre-trial detention ceases, for example, when the time limits from the moment of its execution have elapsed and the relevant documents have not been submitted to the court, or when a decision at first instance or on appeal has not been issued within the prescribed time frames. In such cases, the court orders the immediate removal of the measure. Particular importance is attached to the moment of notification of the decision imposing the measure, as this notification marks the commencement of its effects, especially when the defendant is already in pre-trial detention for another offense.² In conclusion, the correct application of procedural provisions and the observance of deadlines are essential for the legitimacy of preventive measures. Failure to comply with these requirements not only infringes the rights of the defendant but also results in the termination of the measure and obliges the court to immediately suspend its effects. This underscores the necessity of efficient and prompt administration of procedural actions to prevent such occurrences.

4. Judicial Practice on the Termination of Preventive Measures

Acknowledging that the right to a fair trial is fundamental for maintaining a proper legal order and safeguarding the rights of individuals, judicial practice provides a crucial reflection of how these principles operate in practice. To illustrate the application of the law, one can examine case-by-case decisions of the courts, which often introduce innovations within the legal framework.

Courts frequently identify issues arising from statutory provisions and, based on their practical experience, provide reasoned explanations that

1. Po aty, neni 259 pika 4 dhe pika 5: “Seanca e vleftësimit”.

2. Po aty, neni 263: “Afatet e kohëzgjatjes së paraburgimit”.

address gaps and ambiguities in the law. Through such reasoning, courts offer solutions to the challenges they encounter in delivering decisions. While unified decisions seek to standardize interpretation, in many instances, judicial practice itself highlights or even generates difficulties in applying specific legal provisions. The innovations introduced by court practice are further refined by the Supreme Court through its unifying decisions, which resolve inconsistencies identified in prior judgments. By examining adjudicated cases, one can observe how specific legal provisions are applied in practice, emphasizing the importance of their correct and consistent implementation.

a. Decision Regarding the Request for Termination of the Preventive Measure of Xh.K.:

The Librazhd District Court, by its decision dated 28 October 2005, imposed the preventive measure of “pre-trial detention” in absentia on the defendant Xh.K., suspected of the criminal offense of “exploitation of prostitution under aggravating circumstances.”¹ On 26 April 2006, he was found guilty in absentia. Following his extradition from the United Kingdom on 17 November 2011, the applicant requested the termination of the preventive measure, relying on Articles 261/2 and 248 of the Criminal Procedure Code. The Elbasan Court granted the request, and the decision was upheld by the Durrës Court of Appeal. However, the Supreme Court rejected the request, reasoning that the lower courts had misapplied the criminal procedural law. According to the Supreme Court, at the moment of extradition, the sentence had been executed, not the preventive measure, and therefore Article 248 was inapplicable. The decision clarifies that, once the execution phase of the sentence has commenced, the review of preventive measures is no longer applicable, as they are considered to have expired. *The innovation brought by this decision is that it clarifies judicial practice concerning the interpretation and application of Article 248 of the Criminal Procedure Code with regard to the termination of preventive measures during the execution phase of a sentence. In this way, the court concludes the prolonged proceedings by issuing a final decision, providing reasoning based on the applicable legal provisions and the specifics of the case.*

b. Decision Regarding the Nullity of the Criminal Proceedings Against E.M.:

The defendant E.M. was investigated and tried in absentia. The Tropojë District Court convicted him for “aiding the perpetrator of a crime,” while the

1. Gjykata e Lartë, Vendimi 289/2013.

Shkodër Court of Appeal convicted him for “trafficking of motor vehicles in complicity.”¹ E.M. filed an appeal, and the Supreme Court annulled the previous decisions and remanded the case for retrial at first instance before a different panel of judges. The reasoning was based on violations of the procedural rules for notification of the trial, which rendered the criminal proceedings entirely invalid. The Court emphasized that, due to the failure to respect the notification procedures (Articles 140 and 143 of the Criminal Procedure Code), the defendant did not have a real opportunity to defend himself. This violated the right to a fair trial as guaranteed by Article 42 of the Constitution and Article 6(1) of the European Convention on Human Rights.

The decision consolidates previous judicial practice establishing that failure to comply with notification requirements results in the absolute nullity of the criminal proceedings. While this ruling did not introduce new principles, it reaffirmed the Supreme Court’s position that “non-compliance with notification rules results in the absolute nullity of the proceedings and of the final judgment” pursuant to Article 128(1)(ç) of the Criminal Procedure Code.

c. Decision on the Termination of the Preventive Measure Against A.L.:

A.L. was arrested in the city of Vlorë based on an international warrant issued by the Court of Rome for drug trafficking. The Vlorë District Court, by Decision No. 369 dated 10 September 2011, ordered the validation of the pre-trial detention for 40 days.² Upon the expiration of this period, the applicant requested the termination of the preventive measure. The District Court rejected the request, reasoning that the expiration of the period did not automatically terminate the measure. The Vlorë Court of Appeal, by Decision No. 273 dated 3 December 2011, granted the request. The Supreme Court dismissed the Public Prosecutor’s appeal, holding that, since no request had been made to extend the measure after the expiration of the period, the preventive measure had consequently lost its effect. The decision was based on Article 249, point 8 of the Criminal Procedure Code and confirmed that compliance with procedural time limits is essential for the legitimacy of preventive measures.

d. Decision on the Exceeding of the Pre-Trial Detention Period for G.V.:

In another case, the Vlorë District Court extended the pre-trial detention of the defendant G.V., even though the original detention period had

1. Gjykata e Lartë, Vendimi 295/2013.

2. Kolegji Penal i Gjykatës së Lartë, Vendimi 67/2012.

already expired and had been extended once before. The court’s reasoning was based on the claim that the criminal offense carried a high degree of dangerousness. The Supreme Court annulled this decision, emphasizing that the time limits for pre-trial detention constitute a procedural guarantee designed to protect the rights of the defendant and are strictly mandatory. The court cannot justify exceeding the detention period based on assessments of the dangerousness of the offense, as this would violate the right to a fair trial and open the door to potential abuses of personal liberty. This decision clarifies the Supreme Court’s approach regarding the strict observance of statutory time limits in preventive measure procedures. The ruling represents a correct interpretation of the law, highlighting the protection of the procedural rights of the defendant and the role of the court in enforcing these rights, thereby preventing irregularities that could undermine justice and infringe upon the rights of accused persons.

Analysis of the data from these rulings reveals that the majority of first-instance and appellate courts had not properly applied the criminal procedural law concerning the termination of preventive measures, leading to prolonged proceedings without a final resolution. Reviewing the Supreme Court’s decisions regarding requests for validation of arrest or detention, termination of preventive measures, and compliance with notification procedures to ensure a fair trial—as well as the calculation of the duration of imposed measures—shows that the lower courts frequently failed to observe the requirements set forth in Articles 261, 248, 140, 143, and 249 of the Criminal Procedure Code. These provisions govern the termination of preventive measures, the questioning of arrested persons, and the notification of the defendant upon release.

5. Guidelines and Examples from ECtHR Practice Regarding Certain Measures Taken to Ensure the Defendant’s Presence in Criminal Procedure

Deprivation of liberty, under Article 5 of the European Convention on Human Rights (ECHR), constitutes a significant interference with an individual’s right to freedom and requires the fulfillment of specific criteria. According to the ECtHR Guidance, in addition to the objective aspect of confining an individual in a restricted space for a non-negligible period, the deprivation also requires the absence of consent freely given

by the detained person. Determining whether a measure amounts to a deprivation of liberty requires an analysis of the specific circumstances, taking into account factors such as the type, duration, effect, and manner of implementation of the measure. Not every restriction qualifies as a deprivation of liberty.¹ Disciplinary measures during the execution of a sentence or routine checks at airports for customs procedures are not considered violations of Article 5. However, the State remains responsible when the deprivation of liberty occurs at the hands of private actors if it has allowed or failed to intervene to prevent the situation. To comply with Article 5, any deprivation of liberty must be in accordance with national law and international standards of the rule of law, legal certainty, justice, and protection against arbitrariness.

ECtHR Decisions Highlighting the Importance of Adequate Reasoning in Pre-Trial Detention Decisions. The judgments of the European Court of Human Rights (ECtHR) emphasize the importance of providing sufficient reasoning in decisions ordering pre-trial detention. The absence of legal justification, delays in executing release orders, or failure to assess less severe alternatives to detention are considered violations of Article 5. Cases such as *Assanidze v. Georgia*² illustrate that continued deprivation of liberty following a release order is unacceptable. Similarly, in *Giulia Manzoni*, an eleven-hour delay was deemed inconsistent with the Convention. The ECtHR has also found violations of Article 5 in cases where authorities failed to provide sufficient grounds for detention, as in *Mushegh Saghatelyan v. Armenia*³, or where courts unreservedly accepted the version of events presented by the police. Furthermore, in *Vasilevskiy and Bogdanov v. Russia*⁴, a violation was identified due to the absence of adequate compensation for unlawful detention, highlighting the importance of effective redress.

The case of *Selami v. North Macedonia*⁵ represents a severe example of violations of Articles 3 and 5, involving torture and unjustified deprivation

1. Gjykata Evropiane e të Drejtave të Njeriut, Udhëzuesi për nenin 5 të Konventës: E Drejta për Lirinë dhe për Sigurinë Personale, 2014, https://ks.echr.coe.int/documents/d/echr-ks/guide_art_5_alb f. 5.

2. *Assanidze v Georgia*, Application No 71503/01, § 198, ECHR 2004-II.

3. *Mushegh Saghatelyan V. Armenia*, Application No. 23086/08/

4. *Vasilevskiy and Bogdanov v Russia*, Applications nos. 52241/14 and 74222/14.

5. *Selami dhe të tjerë kundër Republikës së Maqedonisë*, Aplikimi nr. 78241/13, aktgjykimi i datës 1 mars të vitit 2018.

of liberty, underscoring the lack of an effective investigation and the failure to ensure legal protection.

Finally, in *Stollenwerk v. Germany*¹, the ECtHR noted a violation of the principles of adversarial proceedings and equality of arms during judicial proceedings. Collectively, these rulings confirm that any deprivation of liberty must be assessed according to high standards of legality, proportionality, and effective protection of fundamental rights.

6. Conclusions

The termination of preventive measures constitutes an essential mechanism for safeguarding the fundamental freedoms of individuals within a state governed by the rule of law. An analysis of both statutory provisions and domestic jurisprudence demonstrates clearly that maintaining proportionality and rigorously observing procedural deadlines are key to ensuring a fair and non-arbitrary process. Any delays or negligence in applying these provisions pose a risk to the protection of the right to liberty and personal security, rights enshrined not only in domestic legislation but also in international human rights conventions.

Through the examination of specific judicial cases, it is evident that judicial practice has played a dual role: on one hand, it has assisted in clarifying and harmonizing the application of the law; on the other hand, it has highlighted recurrent issues regarding the observance of deadlines and procedures by lower courts. These shortcomings not only undermine the integrity of the criminal process but also expose the state to international accountability.

The Supreme Court, through its unifying decisions, has sought to provide clear guidance on the application of Articles 261, 262, 248, and other relevant provisions of the Code of Criminal Procedure, particularly regarding the termination of preventive measures when deadlines expire, when a defendant is acquitted, or when proceedings are discontinued. Nevertheless, there remains a need for more consistent practice, especially at the level of trial courts, to prevent further non-uniform treatment or decisions that conflict with the fundamental right to a fair trial.

The practice of the European Court of Human Rights (ECtHR) underscores the necessity of adequate reasoning for preventive measures,

1. Gäfgen v Germany, Application no. 22978/05

the avoidance of prolonged pre-trial detention, and the obligation to consider less severe alternatives. The automatic termination of measures due to procedural time-limit violations, as observed in several examined cases, provides a crucial safeguard against abuse of the right to liberty.

In conclusion, ensuring the timely termination of preventive measures is not merely a procedural obligation; it is a fundamental requirement to protect personal freedom, enhance trust in the justice system, and prevent the criminal process from being transformed into an instrument of unjustified pressure or punishment. Aligning domestic legislation with judicial practice and international standards remains an ongoing challenge for our criminal justice system.

Bibliography

- Assanidze v Georgia, Application No 71503/01, § 198, ECHR 2004-II.
- Gäfgen v Germany, Application no. 22978/05
- High Court, Decisioni 289/2013.
- High Court, Decision 295/2013.
- European Court of Human Rights, *Guide on Article 5 of the Convention: The Right to Liberty and Security of Person*, 2014, https://ks.echr.coe.int/documents/d/echr-ks/guide_art_5_alb
- H. Islami, A.Hoxha, I.Panda, “Criminal Procedure” Tirana 2012, page 537.
- Criminal Chamber of the Supreme Court, Decision No. 110/2001
- Criminal Chamber of the Supreme Court, Decision No. 67/2012.
- Law No. 7905/1995, Criminal Procedure Code of the Republic of Albania, as amended (Criminal Procedure Code), Article 388.
- Law No. 8417/1998, Constitution of the Republic of Albania, as amended, Article 27(1).
- Mushegh Saghatelian V. Armenia, Application No. 23086/08/
- Selami and Others v. the Republic of North Macedonia, Application No. 78241/13, Judgment of 1 March 2018.
- Vasilevskiy and Bogdanov v Russia, Applications nos. 52241/14 and 74222/14.

INTERNATIONAL AND ALBANIAN STANDARDS ON THE RIGHT TO INFORMATION OF VICTIMS OF CRIME

Eda Gjoka¹
Ermira Manelli²

Abstract

The right to information in criminal proceedings is a constitutional right, and enjoys special legal protection based on important international acts. It extends in several directions, such as the right to be informed about the reasons for arrest/detention using simple language and timely information. Everyone has the right to have access to evidence, and to have sufficient information to realize an effective defense. The victim's right to information is not absolute, but can be limited in cases expressly defined by law.

In this article, the right to information of victims of crime will be analyzed from the perspective of international standards and Albanian legislation, from the moment of the criminal act until the conclusion of the criminal case and their compensation.

To define the term victim of crime, we will refer to Directive 2012/29/EU. This definition includes not only the person who has suffered a physical, mental or spiritual injury, but also the family members of the person who has lost their life as a result of a criminal offense.

Meanwhile, the Criminal Procedure Code does not provide a definition of the term "victim". The only definition is the one provided in the Juvenile

1. Phd (c), Head of the Permanent Teaching and Research Group of Legal Education/ Lecturer, Security Academy. E-mail: edagjk@gmail.com.

2. Prosecutor, at the First Instance Prosecutor's Office of General Jurisdiction in Elbasan. E-mail: ermirallacja@yahoo.com.

Criminal Justice Code. The definition is important for determining the moment when the victim status is obtained and to which persons this quality extends. In the absence of a definition of the term “Victim”, several different positions have resulted in the criminal process regarding the “victim-legal person” and “victim’s heirs”.

In compliance with these standards, the competent authorities must ensure that the victim has effective access to information, because only in this way can their access to justice be guaranteed.

Keywords: *right to information, victim, international standards, Albanian legislation*

“Being a victim at the hands of a criminal is an unforgettable nightmare. And then, becoming a victim at the hands of the criminal justice system is an unforgivable failure. It makes the criminal and the criminal justice system partners in crime.”

Robert Grayso

1. Introduction

The right to information in criminal proceedings is a constitutional right, and enjoys special legal protection based on important international acts. It extends in several directions, such as the right to be informed of the reasons for arrest or detention using plain language and timely information, the right to be informed of the accusation. Everyone has the right to have access to evidence, to respect the principle of equality of arms and to have sufficient information to carry out an effective defense.

In this paper, the right to information will be seen from the perspective of victims of crime, from the moment of committing the criminal act until the resolution of the criminal case.

To define the term victim of crime, we will refer to Directive 2012/29/EU in its article 2¹. This definition identifies as such not only the natural

1. Article 2 of Directive 2012/29/EU, entitled ‘definitions’, provides: 1. For the purposes of this Directive, the following definitions shall apply: (a) ‘victim’ means: a natural

person who has suffered an injury, whether physical, mental or spiritual, but also the family members of the person who has lost his life as a result of a criminal offense. This directive, in the case of the person who has lost his life, considers the family members of the victim, as it considers that they have suffered damage as a result of the death of that person. The Directive has also defined family members. For Directive 2012/29/EU, ‘child’ means any person under the age of 18.

The Criminal Procedure Code of the Republic of Albania does not provide any definition of the term victim. The only definition is the one provided for in the Juvenile Criminal Justice Code¹. But, despite the lack of a definition of the term ‘victim’ in the legislation, in judicial practice, Albanian courts have referred to international acts ratified by Albania, defining the victim as a person harmed by a criminal offence.

Victims of crime should receive sufficient information in a form that they can understand, to enable them to fully access their rights and to ensure that they are treated in a respectful manner. Such information should be on a regular basis during criminal proceedings and in relation to the progress of the case. For many reasons, victims may have difficulty understanding information provided in a standard, written form. In particular, victims may not understand the language in which the information is provided or there may be other factors such as the victim’s age, intellectual maturity and emotional state, literacy levels and any disabilities, for example

person who has suffered harm, including physical, mental or spiritual harm, or economic loss directly caused by a criminal offence; family members of a person whose death was directly caused by a criminal offence and who have suffered harm as a result of that person’s death; ‘family members’ means the spouse, the person who cohabits with the victim in a committed intimate relationship, in the same household on a stable and continuous basis, the direct lineal relative, the siblings and the dependants of the victim; ‘child’ means any person under the age of 18; “restorative justice” means any process which enables the victim and the offender, with their free consent, to participate actively in the resolution of matters arising from criminal offences with the assistance of an impartial third party; 2. Member States may introduce procedures: to limit the number of family members who may benefit from the rights set out in this Directive taking into account the individual circumstances of each case; and, in relation to paragraph (1) (a) (ii), to determine which family members have priority in relation to the exercise of the rights set out in this Directive.

1. Article 3, Law No. 37/2017 ‘Juvenile Justice Code’: “A minor victim” is any person under the age of 18 who has suffered verbal, physical or material harm as a result of a criminal offense.”

with vision or hearing, which may prevent a victim from understanding the information. Therefore, information should, as much as possible, be provided in a variety of formats to take these factors into account. The paper will also discuss the sources of the right to information of victims of trafficking in human beings in international law.

2. The right of the victim (of crime) to be informed

The position of the victim of crime has historically changed a lot. From the position when her rights were not protected by law, she was only recognized as a subject of crime and was used as a source of evidence, until now her rights have been fully equated with human rights in general. In function of this, many legal acts have been adopted and strengthened. However, the need to improve the legal status of victims of crime still remains very current.

The victim's first contact with the justice system is usually made through the police and this contact can continue during a significant part of the judicial process. Many steps of the procedure will depend on this contact regarding the protection of victims and their compensation, but also regarding more efficient work to prevent crime and victimization in society. The first interaction between the police and the victim is also essential in terms of how the victim will cope with the victimization and will be rehabilitated. In this regard, it is important that first aid and protection of persons in need is initially provided by state bodies and coordinated by them, here the role of the police is very important.

An important, but also quite delicate issue in the case of police proceedings is the questioning of victims. For this reason, international acts recommend that special care be taken and that the victim not be re-victimized. When questioning the victim should not be placed in the role of the accused, but several principles that coincide with the needs of the victims must be respected. In addition, it is important for the police to have close, but only professional, cooperation and, as far as possible, to create a relationship of trust with the victims of crime. This can at the same time ensure the cooperation and contribution of the victim in solving the case, because her data and information are irreplaceable during the investigation of the criminal case and the development of the criminal process as a whole. Article 3, together with Articles 4, 5, 6, 7 of Directive 2012/29/EU,

guarantee the right of victims of crime to be informed without delay of the rights provided for in this Directive. The information must be provided without delay by the first competent authority they contact, in plain and intelligible language, with the assistance of a trusted person who can help the victim better understand their procedural position. Article 4¹ of this Directive expressly provides for the obligation of the officials/competent authority that has first contact with the victim to inform them of their rights, which are set out in this provision. It is important to note that the information may vary depending on the specific needs that the victim may have, based on the type or nature of the crime.

Victims should receive sufficient information in a form they understand, to enable them to fully access their rights and to ensure that they are treated in a respectful manner. Such information should be available from the moment a victim makes a complaint about a criminal offence, as well as on a regular basis during criminal proceedings and in relation to the progress of the case. Sufficient detail should be provided to enable victims to make informed decisions regarding their participation in the

1. Article 4 of Directive 2012/29 provides: 1. Member States shall ensure that victims are provided with the following information, without undue delay, from the first contact with a competent authority in order to enable them to access the rights set out in this Directive, the type of support they can receive and from whom, including, where relevant, basic information on access to healthcare, any specialist support including psychological support and alternative accommodation; the procedures for lodging a complaint relating to a criminal offence and their role in relation to such procedures; and under what conditions they can obtain protection, including appropriate measures; and under what conditions they can have access to legal advice, legal aid and any other type of advice; and under what conditions they can have access to compensation; and under what conditions they are entitled to interpretation and translation services; if they are residents of a Member State other than the State where the criminal offence was committed, any special measures, procedures or arrangements available for the protection of their interests in the Member State where the first contact with the competent authority was made; the procedure available for exercising a complaint where their rights have not been respected by the competent authority when acting within the context of criminal proceedings; the contact details for communication about their cases; the restorative justice services available; and under what conditions the costs incurred as a result of their participation in criminal proceedings may be compensated. 2. The level or detail of the information referred to in paragraph 1 may vary depending on the specific needs and personal circumstances of the victim and the type or nature of the crime. Additional details may be provided at later stages depending on the needs of the victim and the relevance of such details at each stage of the proceedings.

proceedings and in particular when deciding whether to seek a review of the decision or not to prosecute the case. For many reasons, victims may have difficulty understanding information provided in a standard, written form. In particular, victims may not understand the language in which the information is provided or there may be other factors such as the victim's age, intellectual maturity and emotional state, literacy levels and any disabilities, for example related to vision or hearing, which may prevent a victim from understanding the information. Therefore, information should, as far as possible, be provided in a variety of formats to take these factors into account.

In addition to Directive 2012/29/EU, other sources of the right to information for victims of trafficking in human beings in international law are:

- **The United Nations Trafficking Protocol¹**, in Article 6(2) requires States Parties to ensure that their legal system contains measures that provide victims of trafficking with “appropriate information on judicial and administrative proceedings” and support the victim in expressing their concerns during criminal proceedings.

- **The European Convention on Action against Trafficking in Human Beings²**, in Article 12, point B, requires States Parties to take measures to provide assistance to victims of trafficking in human beings, which shall consist of “counseling and information, in particular concerning their rights and the services available to them, in a language that they understand.” Article 15(1) obliges States to ensure that victims have access to information on relevant and administrative procedures, from their first contact with the competent authorities, in a language they can understand.

- **Article 4 of the EU Framework Decision on the Representation of Victims in Criminal Proceedings** requires access to information on victims of trafficking in human beings from organisations providing support to them, on the services that these organisations provide, where and how to report the criminal offence, the procedures to follow, to be offered legal advice and/or assistance, to be informed about the right to compensation, and to be informed about the court's decision. Informing victims about criminal proceedings and their progress, and expressing their concerns and opinions at every stage of the proceedings, constitute

1. <https://www.infocip.org/al/?p=6512>

2. <https://rm.coe.int/16805d58a1>

basic principles of the United Nations on Justice.

- **Council of Europe Recommendation¹ (2006) 8** recommends ensuring access to information for victims, which will consist of information on services, legal procedures and the role of the victim in these procedures, information on the right of victims to be protected and to receive compensation from the perpetrator of the criminal offence or from the state, the provision of legal advice and assistance.

Regarding the Albanian legislation, the rights of the victim of a criminal offence are provided for in Article 58 of the Criminal Procedure Code which, given its content, constitutes a fundamental article for the rights of victims in the Criminal Procedure Code. On the other hand, this provision also provides for the obligation of the proceeding body to inform the victim immediately of the rights they enjoy. This information is not simply a formal act, but is a moment of procedural importance and as such is documented in an act/minute. What is important at this moment is the fact that the proceeding body must ensure that the victim has understood the rights recognized by the law, as this affects the effectiveness of their exercise before, during and after the conclusion of the criminal proceedings. This provision provides that the victim has the right to request information at any time on the status of the proceedings; to be acquainted with the acts and evidence; to be informed of the arrest of the accused and his release, under the conditions set out in this Code; to be notified of the non-initiation of criminal proceedings, of the dismissal of the case, of the commencement and conclusion of the trial on the merits. This provision also provides for the rights of the heirs of the victim, who have been explicitly granted the rights listed in letters 'a', 'e', 'ë', 'f', 'g' and 'j' of point 1 of Article 58 of the Criminal Procedure Code. Among other things, the heirs have the right to be informed of the arrest of the suspect for committing a criminal offense or of his release, as well as to be notified of the decisions not to initiate criminal proceedings, to dismiss the case, and to commence and conclude the trial. The Albanian legislator has also regulated the case when the victim does not have the capacity to act, by providing that her rights are exercised through the legal representative or guardian. The court is the guarantor of the effective exercise of the rights provided for and in accordance with the interests of the victim, proceeding with the appointment of a special guardian, when it establishes a conflict

1. <https://www.osce.org/files/f/documents/5/1/75930.pdf>

of interests between the victim or the legal representative or guardian.

The victim's right to information is specifically provided for in Article 279/a¹ of the Criminal Procedure Code, giving the victim an active role during the preliminary investigation. At this stage of the criminal proceedings, the victim has the right to request information on the progress of the proceedings, as well as to be acquainted with and receive copies of the evidence and acts contained in the prosecutor's file, a right that the legislator has limited only 'for legitimate reasons'. This legal provision (Article 279 of the Criminal Procedure Code) is related to the fact that the acts of the preliminary investigation are secret, until the defendant has become aware of them. The prosecutor of the case disposes of a decision for any search of the victim, refusing this request only in cases expressly provided for in the law (Article 279/a of the Criminal Procedure Code). This legal provision implies that the victim's right to information is not absolute, but may be limited in cases expressly defined in this provision, as well as in the event that the acts are covered by investigative secrecy, a principle expressly provided for in letter 'd' of the first paragraph of Article 58 of the Criminal Procedure Code.

3. (Mis)Definition of the term “Victim” and issues in the criminal process.

In Albanian criminal legislation, before the recent legal changes, there existed terminology such as “injured person” or “accusing injured party”, which is today known as the terminology “victim” or “accusing victim”. Meanwhile, the amendments to the Criminal Procedure Code, sanctioned by Law No. 35/2017, do not provide a definition for the victim². This fact

1. Article 279/a of the CPC provides: 1. For legitimate reasons, the victim, his/her legal representative or his/her defense counsel have the right to request information on the status of the proceedings, as well as to be acquainted with and receive copies of the acts and evidence contained in the prosecutor's file. 2. The prosecutor may refuse the request when: a) the interest in maintaining the confidentiality of the investigation exceeds the interest of the victim; b) the interest of the defendant exceeds the interest of the victim; c) the victim has not yet been questioned as a witness. 3. The victim, his/her legal representative or his/her defense counsel have the right to request information regarding the imposition, continuation, replacement or removal of security measures against the defendant, except when notification of these facts may endanger the life or health of the defendant.

2. Criminal Procedure Code of the Republic of Albania, amended by Law No. 35/2017,

makes one think that if the legislator had wanted to have such a specific definition, he would have approved the law in this version. We also encounter the term “victim” in the Criminal Code, where it mostly refers to criminal offenses related to the loss of the victim’s life¹. But even here, a definition of the meaning of the victim is not provided.

The precise definition of the term victim of crime is important because it determines the circle of persons who benefit from protection and enjoy procedural rights due to the damage they have suffered. Therefore, in our procedural legislation, it is important to clearly define the circle of persons who are considered victims, in order to avoid the possibility of misinterpretation or unreasonable expansion/narrowing of this circle of persons².

In the absence of a definition of the term “Victim”, several different positions have resulted in the criminal process regarding the “Victim-legal person” and “victim’s heirs”.

Civil law recognizes two forms of organization of a legal person: public and private legal persons³. For the purpose of studying this paper, we believe that this division is also valid for making a differentiation regarding the treatment of a legal person as a victim in a criminal process. Under these conditions, we believe that a private legal entity should assume the status of a victim in a criminal proceeding, while as for a public legal entity, such a thing is not considered necessary since it is the prosecution itself that represents the public interest.

i) The Joint Panels of the Supreme Court, among others, have previously accepted, after a unifying decision they have emphasized that: “... *The injured person is the holder of the legal interest protected by the criminal norm, depending on the type of criminal offense, the relationship and the legal good protected by criminal law. Thus, the injured person is a natural person who is injured in his body, injured in his health, injured due to the*

dated 30.03.2017.

1. Articles 48, 52/a, 79, 79/a, 79/b, 82, 303 of the Criminal Code of the Republic of Albania, (2018).

2. Thesis of the Diploma at the School of Magistrates “Redimensioning the Role of the Victim and Private Parties in the Criminal Process within the Framework of Legal Procedural Innovations”, written by Magistrate/Prosecutor Alba Dhima, Tirana 2018, p.17.

3. Article 24 of the Civil Code of the Republic of Albania, Publication of the Center for Official Publications, Tirana, March 2017.

violation of fundamental rights and freedoms, the violation and restriction of which is protected by the criminal norm, injured in his morals and that of his family, etc. The injured person may also be a legal entity whose direct property interests have been violated by the criminal offense in relation to the activity it exercises.”

Regarding the heirs of victims in the Criminal Procedure Code, the heirs of the victim are recognized with certain rights, but there is no definition of who will be considered the heirs of the victim for the purpose of the criminal process. The close relatives of the victim of the criminal offense have the quality of victim in the criminal process, which is not related to their being heirs and the issuance of the inheritance certificate, but is due to the damage they have suffered from the death of the relative as a result of the criminal offense. In this sense, the proceeding authority should not verify the circle of the heirs of the victim nor should it investigate the entire circle of the victim's family, but should proceed with the notification of family members according to priority order. In the event that another close relative who is considered a victim submits a request for information in the criminal process, then his rights as a victim must also be respected. The fourth point of Article 58 of the CPC expressly provides for the rights of the victim's heirs, which are more limited than those that the victim himself would have, due to their strictly personal nature and related to the victim's qualities. The victim's heirs have the right: to request criminal prosecution of the perpetrator; to be informed of the arrest or release of the perpetrator; to be notified of the non-initiation of proceedings, the dismissal of the case, the commencement and conclusion of the trial; to file an appeal in court against the prosecutor's decision not to initiate proceedings and the decision of the prosecutor or the judge of the preliminary hearing to dismiss the charge or the case; g) to request compensation for damage and to be admitted as a civil plaintiff in the criminal proceedings; j) to exercise other rights provided for by this Code.

When the victim's heir is a minor, the act is notified to the legal representative or guardian. This right stems not only from the Criminal Procedure Code but also from Articles 24, 16 and 34 of Law No. 37/2017 “Juvenile Criminal Justice Code”. Article 58/a of the Criminal Procedure Code provides that a minor victim has all the rights that an adult victim has, as well as several other rights related to his or her age status and which are specified as procedural guarantees for the minor victim during the criminal process. Minor victim among other things, he has the right to

be accompanied by a person he trusts; to maintain the confidentiality of personal data; to request, through a representative, that the trial be held without the presence of the public.

4. Procedural guarantees of the victim in the criminal process

The rights of the victim of a criminal offense have been raised to the level of a general principle in the Criminal Procedure Code, by adding Article 9/a with the following content: “During criminal proceedings, the victim has the rights provided for by this Code. Public bodies must guarantee that victims of a criminal offense are treated with respect for their human dignity and are protected from re-injury, during the exercise of the rights provided for by this Code.”

The Criminal Procedure Code, according to European standards, now refers to the person injured by a criminal offense only with the term victim. The Code does not define the term “victim”, while the definition is essential for determining the moment when the status of victim is acquired and to which persons this quality extends. However, it is important that the victim as a subject of criminal proceedings enjoys more rights than the injured person, whose position was regulated in the Criminal Procedure Code until the amendments to Law No. 99/2014, dated 31.07.2014. This is reflected not only in the multitude of rights provided for by this Code, for each of the victim categorizations, but also in the dimensions of the type of victim itself, by providing and establishing new guarantees not only for the victim of the criminal offense, the accusing victim and the complaining victim, but also for the minor victim, the sexually abused victim and the victim of human trafficking¹.

These rights are expressly sanctioned in Article 58 of the Criminal Procedure Code as amended by Law No. 35/2017, dated 30.03.2017 and the victim or his/her representative may exercise them throughout the criminal process. Regarding the stages of the criminal process, we will categorize them as follows:

Report: The victim has the right to file a criminal report for facts that come to their attention or that they feel violated.

1. Thesis topic at the School of Magistrates: “Redimensioning the Role of the Victim and Private Parties in the Criminal Process within the Framework of Legal Procedural Innovations”, written by Magistrate/Prosecutor Alba Dhima, Tirana 2018, p.34.

Decision to Dismiss: The complainant/complainant who can be considered a potential victim has the right to appeal this decision of the prosecution body

Investigation: The victim has the right to be informed about the progress of the investigation within the limits of investigative secrecy, to request the collection of evidence and to make other requests, according to the law.

Arrest in flagrante: Arrest in flagrante is made if the perpetrator is caught while committing a crime or immediately after committing it. The arrest is ordered by the court in a non-public hearing, based on the prosecutor's request.

Arrest validation hearing: The court evaluates the legality of the arrest in flagrante or the manner of implementing the arrest decision, not in a public hearing. The court may order the defendant to be detained, release him or impose another security measure.

Dismissal of the case: The victim has the right to appeal to the court the prosecutor's decision to dismiss the case [for a criminal offence]. The victim has the right to participate in the hearing on the consideration of the request to dismiss the case [for a crime].

Criminal Order: A criminal order is issued for a criminal offence by the prosecutor, who determines the penalty in the form of a fine. The criminal order must be approved by the court. Compensation to the victim is not part of the criminal order and the victim is not notified of the order

Pleaded Trial: For offences punishable by a maximum of 7 years, the defendant and the prosecutor may enter into a plea agreement and determine the amount of the sentence. The agreement must be approved by the court and, if the victim has filed a civil lawsuit, compensation is a mandatory part of it.

Preliminary hearing and trial hearing: The preliminary hearing judge examines the prosecutor's request to dismiss or refer the case to trial. Summoning the victim to the preliminary hearing is mandatory. The victim has the right to speak.

In all these stages, the victim has the right to choose a defense attorney and, where appropriate, to receive free legal aid in accordance with the legislation in force (Article 58/1/ç). This is a new provision that aims not only to guarantee an effective legal aid system for the victim but also her right to find legal support in order to avoid secondary victimization due to legal ignorance or financial inability to afford the costs of a defense

attorney. This is also a blanket provision that refers to the legislation on free legal aid, which defines the forms, conditions, procedures and rules for the organization and administration of legal aid guaranteed by the state, in order to protect the fundamental rights of the individual and his legitimate interests¹. These are basic rights for the development of due process, which were recognized by the criminal legal system up to the constitutional level² for the defendant but not for the victim of the criminal offense.

5. Conclusions and Recommendations

From the analysis of this paper, as a general conclusion we can underline that the current legislation of the Republic of Albania is to a considerable extent in line with international standards.

However, in Albanian legislation, in the field of victims' rights, still has room for improvements and some important interventions to meet every EU-related standard, with the aim of the most complete harmonization.

Albanian legislation guarantees support for victims of crime, both before, during and for a period of time after the end of criminal prosecution or regardless of their cooperation with justice. In this regard, this legislative approach aims to be comprehensive and to ensure the protection and reintegration of the victim of trafficking.

The Criminal Code of the Republic of Albania does not provide any definition of the term victim. Although there is a definition in Article 3 of the Criminal Justice Code for minors, this is insufficient. In order to avoid this vacuum, in judicial practice, Albanian courts have referred

1. Law No. 111/2017 "On State-Guaranteed Legal Aid" stipulates: "The following categories of victims are entitled to benefit from free primary and secondary legal aid: a) victims of domestic violence; b) victims of sexual abuse and victims of human trafficking; c) minor victims; ç) children living in social care institutions; d) children under guardianship who seek to initiate a process without the consent of their legal guardian or against their legal guardian; dh) persons who benefit from disability payments, in accordance with the legislation in force on social assistance and services, including persons who benefit from the status of blind person; e) persons who are subject to involuntary treatment in mental health service institutions, according to the provisions of the legislation in force on mental health; ë) persons who are subject to voluntary treatment in mental health service institutions for serious mental illnesses; f) persons who are beneficiaries of social protection schemes; g) persons who prove that they have insufficient income and assets, according to the criteria of the relevant law."

2. Article 31 of the Constitution of the Republic of Albania, amended by law no. 76/2016, dated 22.07.2016.

to international acts ratified by Albania, defining the victim as a person harmed by the criminal offense. The drafting of a framework law will, among other things, put an end to the uncertainties regarding the terms and their meaning.

The victim as a subject of criminal proceedings enjoys more rights than the injured person, whose position was regulated in the Criminal Procedure Code until the amendments to Law No. 99/2014, dated 31.07.2014. This is reflected not only in the multitude of rights provided for by this Code, for each of the victim categorizations, but also in the dimensions of the type of victim itself, providing and establishing new guarantees not only for the victim of a criminal offense, the accusing victim and the complaining victim, but also for the minor victim, the sexually abused victim and the victim of human trafficking.

The criminal procedural law provides for the right of the victim and at the same time the obligation of the competent authorities to inform the victim about the status of the proceedings, information that includes all updated and important data of the criminal case (especially in cases of arrest or release of the accused). This means that the competent authorities must ensure that the victim has effective access to information, because only in this way can the effective exercise of the victim's rights and their access to justice be guaranteed.

Bibliography

Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA

Directive 2011/36/EU of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA

United Nations Trafficking Protocol

European Convention on Action against Trafficking in Human Beings

EU Framework Decision on the Representation of Victims in Criminal Proceedings

Council of Europe Recommendation (2006) 8

Constitution of the Republic of Albania

Code of Criminal Procedure

Code of Justice Criminal Procedure for Juveniles, Law No. 37/2017

Civil Code

Law No. 111/2017 “On State-Guaranteed Legal Aid

Diploma Topic at the School of Magistrates “Redimensioning the Role of the Victim and Private Parties in the Criminal Process within the Framework of Legal Procedural Innovations”, worked by Magistrate/ Prosecutor Alba Dhima, Tirana 2018.

Unifying Decision No. 2, dated 20.06.2013 of the Joint Colleges of the Supreme Court.

Guidance Document from the Directorate of Justice

<https://www.infocip.org/al/?p=6512>

<https://rm.coe.int/16805d58a1>

<https://www.osce.org/files/f/documents/5/1/75930.pdf>

THE EVOLVING THREAT OF TECHNOLOGY-FACILITATED VIOLENCE IN ALBANIA: POLICIES, PROTECTIONS AND PREVENTION

Anisia Mandro¹

Abstract

In the global landscape, coordinated efforts have been undertaken to address the growing threat of cybercrime, including cyberviolence. This persistent and evolving phenomenon necessitates the development of comprehensive, evidence-based strategies that effectively respond to its multifaceted manifestations while safeguarding individuals' rights, dignity, and emotional, psychological and social well-being in digital environments. A proactive and integrated approach is essential. Fragmented and reactive measures are insufficient to ensure sustainable and systematic protections against the complex challenges posed by technology-facilitated harms.

The frameworks established by the Council of Europe on cybercrime and violence against women, along with their intersection, as well as the rulings of the European Court of Human Rights (ECtHR), form the foundational principles that inform the Albanian legal system and its judicial reasoning. As an EU candidate country, Albania is also guided by EU standards in shaping its legal responses.

There is need to strengthen Albania's legal framework to address emerging forms of technology-facilitated violence, including gender-based violence and violence in family relations. Enhancing mechanisms for monitoring and reporting such cases would significantly improve the capacity of relevant authorities to respond in a timely, efficient, and victim-centered manner. Increasing awareness of the risks associated with technology and online spaces, and promoting digital literacy are essential

1. LLM / PhD Candidate, Legal Consultant, anisiamandro@yahoo.com.

components of a comprehensive prevention strategy. Current research on technology-facilitated violence in Albania remains limited, particularly concerning its social and economic impact. The systematic collection and analysis of disaggregated data are necessary to inform evidence-based policy making and the design of targeted interventions.

Keywords: *cyberviolence, cybercrime, gender-based violence, international standards, law enforcement, prevention and protection, digital safety.*

I. Introduction

In recent years, Albania has undergone significant digital transformation. Internet penetration and the use of digital technologies has expanded across various sectors of society. This digital ‘enlargement’ has reshaped social interaction and participation, yielding considerable social and economic benefits.¹ However, it has also given rise to new and complex forms of technology-facilitated violence.²

Cybercrime, which includes criminal acts committed via or against information and communication technologies, is closely associated to cyberviolence. The latter encompasses a broad spectrum of harmful online behaviors, including online harassment, cyberstalking, and image-based abuse, unauthorized data access and violations of privacy. Collectively, these manifestations of digital harm pose significant threats to individual rights, personal safety, as well as physical well-being, while undermining victim’s capacity to participate fully in the democratic processes and social life.³

1. INSTAT. (2024). Statistics on the use of information technology. Available here. 86.2% of the population (16-74 years) use the internet, while 97.1% of family units have access to internet. The 2024 statistics show a slight difference compared to the data of 2023, with 83.1% of the population using the internet and 96.7 % family units have access to internet. See: INSTAT. (2023). Statistics on the use of information technology. Available here. [Accessed on 22.4.2025].

2. Interchangeably referred to as cyber violence.

3. Southern, Rosalyn. (2024). Does fear of harassment reduce women’s online political participation? Evidence from the British Election Study across three UK general elections. *European Journal of Politics and Gender*. Available here. [Accessed on 22.4.2025]; Council of Europe – Platform of Independent Expert Mechanisms on Discrimination against Women. (2022). The digital dimension of violence against women as addressed

The statistics paint a troubling picture of escalating cyberviolence in Albania, particularly affecting women, children, and marginalized communities, who are disproportionately targeted in digital spaces.¹ According to recent data from iSIGURT.al – the National Center for Safer Internet in Albania, 407 online incidents were reported in 2024, representing a significant 66.8 % increase in reported incidents compared to the previous year.² Notably, around 62% of complaints were submitted by girls, who also comprised the majority of victims in 47% of analyzed cases.³ Complementary data from the Albanian State Police recorded over 700 cybercrime cases for 2024, and only in January 2025 authorities had already recorded 35 new cases.⁴

The Albanian government, in response to these developments and in line with its commitments as a signatory to the Council of Europe's Budapest Convention on Cybercrime (Law No 8888/25.4.2002) and Istanbul Convention (Law No 104/2012), as well as its aspirations for European Union membership, has taken important steps to develop legal, policy and institutional frameworks aimed at preventing and responding to technology-facilitated violence. These efforts emphasize the state's duty to protect individuals from both conventional and emerging forms of violence.

Despite some legislative and policy advances, significant challenges remain. Fragmented institutional responses, existing gaps in legislation, limited public awareness of digital risks,⁵ and insufficient support services hinder effective prevention and handling. Incidents of cyberviolence in Albania have revealed not only personal consequences for victims, but

by seven mechanisms of the EDVAW Platform. p. 29. Available here. [Accessed on 22.4.2025].

1. UN Women – Albania. (2023). The dark side of digitalization: Technology-facilitated violence against women in Eastern Europe and Central Asia. Available here. [Accessed on 22.4.2025].; See also: Mandro, A. (2024). Unveiling the legal landscape: A comprehensive analysis of the legal framework addressing cybercrime and cyberviolence in Albania.

2. Tirana accounted for nearly half (48%) of all cases. See: The National Center for Safer Internet – Albania. (2025). National Cybersafe Report (January – December 2024). Available here. [Accessed on 22.4.2025].

3. *ibid.* Children as a group rank second, making up 15% of cases, while boys and adults account for approximately 12% each.

4. Albanian Times. (February 8, 2025). Online Harassment cases surge in Albania, police report. Available here. [Accessed on 22.4.2025].

5. Including lack of digital literacy skills.

also the broader societal costs of inaction – underscoring the need for a comprehensive, coordinated, and victim-centered approach to prevention and response. As digital technologies continue to evolve, so too must strategies employed to counter for cybercrime and violence – requiring adaptive policymaking, cross-sectoral collaboration, and a commitment among all stakeholders to upholding the fundamental rights and dignity for all citizens.

This paper seeks to analyze the adequacy of the current legal and institutional framework addressing technology facilitated violence, with a particular focus on cyberviolence and its intersection with domestic and gender-based violence. It provides an overview of the existing legal instruments and institutional mechanisms, and concludes with key recommendations for strengthening protections, enhancing enforcement, and fostering a safer and more inclusive digital environment for all.

The purpose of this paper, beyond its legislative analysis, is to serve as a catalyst for critical reflection and dialogue on the pressing phenomenon of cyberviolence and its far-reaching implications for individual well-being and collective human dignity in the digital age. As digital technologies become increasingly embedded in everyday life, it is necessary for urgent, multidimensional responses that this paper seeks to explore through legal, policy, and educational lenses.

II. An overview of international standards on technology-facilitated violence

The international community has developed a robust body of legal instruments and standards to address cybercrime and forms of technology facilitated violence, thereby providing normative frameworks that guide national responses.

Central to these efforts are the standards developed by the Council of Europe, which Albania, has ratified. Notably, the Council of Europe Convention on Preventing and Combatting Violence against Women and Domestic Violence (Istanbul Convention) and the Convention on Cybercrime (Budapest Convention) serve as foundational instruments for evaluating and advancing national progress in combating cyberviolence, as well as for identifying areas in need of improvement.

The Istanbul Convention outlines a comprehensive strategy build around four interdependent pillars – prevention, protection, prosecution and

coordinated policy-making to combat gender-based violence. Although the Convention does not explicitly reference digital or technology-facilitated forms of violence, GREVIO General Recommendation No. 1 clarifies that its provisions extend to the digital sphere, thereby eliminating any ambiguity regarding its applicability to online violence.¹ It is important to note that GREVIO considers the term violence against women in its digital dimension and the digital dimension of violence against women is comprehensive enough to comprise both online acts of violence and those perpetrated through technology, including technology yet to be developed. The Convention's provisions on psychological violence (Article 33), stalking (Article 34), and sexual harassment (Article 35) are directly applicable to technology-facilitated forms of abuse.

Albania's ratification of the Budapest Convention in 2002 imposes obligations to criminalize offenses committed against or via computer systems, to ensure the collection and preservation of electronic evidence, and to engage in international cooperation for investigating and prosecuting cyber-related offenses, including cyberviolence against women.² The First Additional Protocol **addresses the dissemination of racist and xenophobic content via computer systems, while the** Second Additional Protocol enhances provisions for cross-border cooperation and the sharing of electronic evidence.³ These mechanisms provide a legal infrastructure that can support coordinated action to address technology-facilitated violence, especially through the pillars of prosecution, prevention, victim protection, and international cooperation.

The intersection of the Istanbul and Budapest Conventions is particularly significant. While the Istanbul Convention represents the most comprehensive, legally binding human rights treaty addressing all forms of violence against women and domestic violence, the Budapest Convention is the leading international treaty specifically targeting cybercrime and electronic evidence. Their complementary nature makes them jointly

1. The Group of Experts on Action against Violence against Women and Domestic Violence (GREVIO). (2021). General Recommendation No 1 on the digital dimension of violence against women.; See also: Mandro, A. (2024).

2. Albania ratified the Budapest Convention with Law No 8888/2002. Available here. [Accessed on 22.4.2025].

3. Albania ratified the First Additional Protocol with Law No 9262/2004, and signed (February 2023) the Second Additional Protocol to the Convention on enhanced co-operation and disclosure of electronic evidence.

indispensable for addressing online and technology-facilitated violence against women.¹

At the European Union level, cyberviolence is addressed through a broader spectrum of legal instruments related to digital rights, cybersecurity, data protection, and the regulation of online platforms. Of particular relevance is the 2024 Directive on combating violence against women and domestic violence.² This Directive represents the first EU-wide legal instrument that criminalizes various forms of gender-based violence—physical, psychological, economic, and sexual—both online and offline. It also introduces crucial procedural measures, such as mechanisms for the removal of harmful online content, victim support services, and the documentation and prosecution of cybercrimes. It also provides definitions of violence against women and domestic violence.

The Parliamentary Assembly of the Council of Europe (PACE) has adopted several resolutions including Resolution 2144 (2017) on cyberdiscrimination and online hate, and Resolution 2177 (2017) on ending sexual violence and harassment in public spaces. These resolutions underscore the need for member states to address the gendered dimensions of online abuse and to ensure accountability mechanisms are in place.

From a broader human rights perspective, the UN Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) plays a foundational role. Through its General Recommendation No. 35, **the CEDAW Committee acknowledges the evolving nature of gender-based violence, specifically extending state obligations to include acts of violence occurring in digital environments. This expansion underscores the imperative to address emerging forms of harm facilitated by the internet and digital technologies.**³

1. See: Mandro, A. (2024). Unveiling the Legal Landscape: A Comprehensive Analysis of the Legal Framework Addressing Cybercrime and Cyberviolence in Albania. *Albanian Women Empowerment Network*.; See also Council of Europe. (2021). Protecting Women and Girls from Violence in the Digital Age – The relevance of the Budapest Convention on Cybercrime in addressing online and technology-facilitated violence against women. p. 5.

2. EU Directive 2024/1385 of the European Parliament and of the Council of 14 May 2024 on combating violence against women. Available here. [Accessed on 22.4.2025].; See also: A Union of Equality: Gender Equality Strategy 2020 – 2025.

3. Mandro, A. (2024). Unveiling the Legal Landscape: A Comprehensive Analysis of the Legal Framework Addressing Cybercrime and Cyberviolence in Albania. *Albanian*

Of additional relevance is the Council of Europe Recommendation CM/Rec(2019)1 **on preventing and combating sexism**, including online sexist hate speech.¹ The Recommendation warns of the escalating nature of online sexist content, which may culminate in severe forms of abuse – including sexual violence, loss of economic resources, and self-harm or suicide – and acknowledges the intersectional dynamics and power asymmetries that exacerbate these harms.

Together, these international and regional instruments provide Albania with a robust legal and policy framework for addressing cyberviolence. They reinforce a human rights-based, gender-sensitive, and victim-centered approach, essential for tackling the multifaceted and rapidly evolving nature of technology-facilitated abuse in the digital era.

III. The Spillover Effects of International Standards on Albania's Legislative and Policy Framework

For the purpose of this paper, the analysis focuses specifically on sexual harassment, online stalking, and psychological violence perpetrated through digital means, including the digital extension of domestic violence. The primary legal instruments under review are the Criminal Code, the Law on Measures against Violence in Family Relations, and the Law on Protection from Discrimination.² These frameworks are assessed in light of Albania's international commitments under the Istanbul Convention and the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW).

The Istanbul Convention requires States Parties to criminalize various forms of gender-based violence, including sexual harassment (Article 35), stalking (Article 34), and psychological violence (Article 33), whether

Women Empowerment Network.

1. Ibid.; See also text of the Recommendation (2019)1 available here. [Accessed on 22.4.2025].

2. A more detailed analysis of the Criminal Code and Criminal Procedure Code against the Budapest Convention – specifically Article 2 (illegal access), Article 3 (illegal interception), Article 4 (data interference), Article 5 (system interference), Article 6 (misuse of devices) and Article 9 (child pornography) – is available at: Mandro, A. (2024). Unveiling the Legal Landscape: A Comprehensive Analysis of the Legal Framework Addressing Cybercrime and Cyberviolence in Albania. *Albanian Women Empowerment Network (AWEN)*. The paper explores

committed offline or online. The Albanian Criminal Code, however, exhibits notable gaps in this respect. Although some existing provisions may be interpreted to encompass technology-facilitated violence,¹ the absence of explicit reference to digital forms in the text of the Criminal Code has limited legal clarity, enforcement consistency, and the capacity of institutions to adequately prevent and respond to such acts.

Article 108/a of the Criminal Code defines sexual harassment as actions of a sexual nature which infringe the dignity of a person, by any means or form – thus theoretically permitting an expansive interpretation to include digital conduct. However, the provision does not explicitly mention technology facilitated manifestations, such as non-consensual sharing of intimate images, cyberflashing, deepfake pornography, sextortion, or persistent unwanted sexualized communication via digital platforms. These omissions hinder legal clarity, enforcement, and victim protection.²

The issue of legal clarity and enforcement remains a matter of concern also noted by the international community. The Group of Experts on Action against Violence against Women and Domestic Violence (GREVIO), which monitors implementation of the Convention, in its 2024 Thematic Evaluation Report, notes that the digital aspects of domestic violence and violence against women are not treated in an integrated fashion with their non-digital equivalents.³

The definition of stalking under Article 121/a of the Criminal Code is narrow and primarily presumes physical proximity or action. It does not reflect the contemporary reality in which perpetrators use digital tools to

1. For example, Article 108/a on sexual harassment.

2. The report notes that municipalities report increased trends in cyber violence when managing, for example, cases of domestic violence. While the protection measure imposed by the court is prohibition of any form of harassment and violence on social networks, via telephones or any other form, yet, the absence of explicit legal grounding may result in inconsistent judicial outcomes and leaving the victims vulnerable to psychological distress and systemic impunity. The report also notes that all cases of digital domestic violence involve women and girls as victims, with the perpetrators being intimate partners, cohabitants or husbands. See: Report submitted by Albania pursuant to Article 68, paragraph 4 of the Council of Europe Convention on preventing and combating violence against women and domestic violence (1st thematic evaluation round). Received by GREVIO on 30 June 2023. Available here. [Accessed on 22.4.2025].

3. Council of Europe - The Group of Experts on Action against Violence against Women and Domestic Violence (GREVIO). Albania First Thematic Report – Building trust by delivering support, protection and justice. (2024). para. 60, p. 21.

monitor, harass, and control their victims. Online stalking may include behaviors such as the repeated sending of messages, GPS tracking, hacking into personal accounts, or monitoring social media activity. The Criminal Code would welcome a revision of the definition and forms of stalking.

Psychological violence, especially as perpetrated in digital spaces, is a particularly insidious and under-recognized form of abuse. It often constitutes an indispensable component of cyberstalking and technology-facilitated sexual harassment. Common tactics include monitoring social media accounts, reading private messages, impersonating the victim online, or threatening to distribute private content. Such abuse may also extend to economic control, such as withholding access to online banking.

This form of abuse may be further aggravated in domestic violence contexts, where the abuser leverages technology as a means of prolonged surveillance, manipulation, and isolation. The lack of clear legal definitions and tailored protective measures for technology-facilitated psychological violence within domestic abuse severely limits the ability of law enforcement, social services, and the judiciary to identify, respond to, and prevent such harm. The legislator must urgently recognize and address online psychological violence as a distinct and grave form of harm requiring targeted legal and institutional responses.

In addition to the Criminal Code, of relevance for the analysis is Law No 9669/2006 “On measures against violence in family relations”, as amended,¹ which stands as one of the most important national instruments for protecting victims of domestic and gender-based violence.

It is important that court-ordered protection measures recognize online coercive control and standardize the issuance and enforcement of digital contact prohibition. In the context of Albania, where institutional responses to domestic violence are increasingly intersecting with digital realities, the landmark case of the European Court of Human Rights *Buturugă v. Romania* offers a crucial precedent.² The Court linked digital abuse to broader patterns of domestic violence, emphasizing that technology-facilitated actions such as digital surveillance, coercive control, and online

1. Law No 9669 dated 18.12.2006, as amended by Law No 47/2018 dated 23.7.2018 and Law No 125/2020 dated 15.10.2020. Available here. [Accessed on 22.4.2025]. The Law is amended in line with Istanbul Convention and CEDAW.

2. European Court of Human Rights, *Buturugă v. Romania* (*Application no. 56867/15*). 11 February 2020. Available here. [Accessed on 22.4.2025].

threats are not separate from but rather integral to the continuum of abuse experienced by victims.

In light of the above, it is important that the national framework reflect the full spectrum of technologically-mediated abuse. The Law on measures against domestic violence needs to reflect advancements of technology-facilitated violence, and reflect GREVIO Recommendation No 1, which includes understanding cyber violence and training of relevant authorities involved in prevention and handling of cases.

The Law No 10 221/2010 on protection from discrimination, as amended, reflects important progress in harmonizing national anti-discrimination norms with EU standards. Article 1 extends protection on grounds including gender identity, sexual orientation, and sex characteristics, etc.¹ It recognizes sexual harassment as a form of discrimination² and defines it as unwanted behavior, verbal or non-verbal, of a sexual nature, which has the purpose or effect of violating the dignity of the person and creating an environment of intimidation, hostility, contempt, humiliation or offence.

Furthermore, the Law under Article 4, paragraph 8, defines hate speech as “any form of public expression, *by any means*, of promotion, incitement to denigration, hatred or defamation, any harassment, insult, negative stereotype, stigmatization or threat against a person or group of persons, as well as any justification of all forms of expression based on a non-exhaustive list of reasons, according to Article 1 of this law.” The choice of wording from the legislator (*by any means*) offers possibility of interpretation, and may be applicable to hate speech perpetuated by technological means.

Albania has also made considerable and positive efforts to develop a policy framework compatible with international standards.

In this regard, the National Cybersecurity Strategy 2020–2025 pays particular attention to children as a vulnerable group online. However, it does not include reference to gender-based cyber violence.³ In addition,

1. Article 1 of the Law No 10 221/2010. Available here. [Accessed on 22.4.2025].

2. Article 3, point 14 of the Law No 10 221/2010.

3. See Specific Objective 6.1 on strengthening the legal framework for increased online safety for children; Specific Objective 6.2 on preventing sexual abuse of children on the internet through increasing awareness and creating safe navigation spaces on the internet and Specific Objective 6.5 on strengthening inter-sectoral cooperation for ensuring children safety on the internet. See: The National Strategy on Cyber Security 2020 – 2025. Available here. [Accessed on 22.4.2025].

while the National Gender Equality Strategy 2021 – 2030¹ notes its relation to other national and international strategic policies, the Strategy does not specifically refer to or foresee specific measures to counter gender-based violence and domestic violence perpetuated by online and by means of technology. It however refers to the Strategic Development Goals, namely SDG 5 on Gender Equality and specifically in relation to the need for enhancing the use of enabling technology to promote women’s empowerment, and EU’s Gender Equality Strategy 2020 – 2025 and the Gender Action Plan (GAP III) 2021-2025.

Complementary strategies in the health sector—such as the National Strategy on Health and the Action Plan for Mental Health 2023–2026—acknowledge the importance of violence prevention and mental well-being. The Action Plan for Mental Health 2023 – 2026 recognizes mental health and personal well-being are at risk by a number of factors including, violence, social exclusion and bullying, however it does not engage directly with the digital dimension of harm.² The National Strategy on Health³ foresees awareness campaigns in schools aimed at preventing violence and e-addiction, but does not consider aspects of gender-based cyber violence.⁴

The effective implementation of Albania’s legal framework on technology-facilitated violence depends heavily on institutional coordination and the functionality of its referral mechanisms. Law No. 9669/2006 on measures against violence in family relations, as amended, is operationalized through a series of secondary legal acts, including Decision of the Council of Ministers (DCM) No 327⁵ dated 2 June 2021,

1. Strategjia Kombëtare për Barazinë Gjinore 2021–2030. Vendimi i Këshillit të Ministrave Nr. 400, datë 30.6.2021.

2. Mandro. A. (2024). Unveiling the Legal Landscape: A Comprehensive Analysis of the Legal Framework Addressing Cybercrime and Cyberviolence in Albania. *Albanian Women Empowerment Network (AWEN)*.; See Action Plan for Mental Health 2023 – 2026. p. 9.

3. Mandro. A. (2024). Unveiling the Legal Landscape: A Comprehensive Analysis of the Legal Framework Addressing Cybercrime and Cyberviolence in Albania. *Albanian Women Empowerment Network (AWEN)*.

4. The National Strategy on Health 2023 – 2030. Available here. [Accessed on 22.4.2025].

5. Approved by DCM No. 327, dated 02.06.2021, repealing DCM No. 334/17.2.2011, National Coordinated Referral Mechanism for reporting and handling the domestic violence cases and the rules of proceedings.

which sets standards for inter-institutional cooperation at the local level.

DCM No 327 establishes the Coordinated Referral Mechanism (CRM)¹ in each municipality, responsible for identifying, managing, and referring cases of domestic and gender-based violence. The CRM is built on a victim-centered approach and includes the position of the Domestic Violence Coordinator (DVC), who facilitates communication between institutions and ensures timely and appropriate service provision.

Despite its potential, the CRM system faces significant challenges. A number of municipal CRMs lack financial and human resources and specialist support services are not always equipped to address the specific psychological and technological dimensions of cyberviolence.² Moreover, uneven implementation across municipalities leads to disparities in victim support and protection. Education of all actors part of the Referral Mechanism needs to be ensured to increase awareness that gender-based violence and domestic violence does not only occur offline but also online; and provide them with the necessary tools to deal with such cases.

The Cybercrime Investigation Unit within the State Police's General Directorate remains the primary law enforcement body addressing crimes committed in digital spaces. Even though the Unit does not specialize in domestic violence and gender-based violence, GREVIO in its 2024 Thematic Report for Albania urges to integrate the work of cybercrime division into investigations by other branches of law enforcements working on such cases. To enhance investigative capacity, the unit requires advanced forensic tools, ongoing technical training,³ and closer cooperation with

1. Mandro. A. (2024). Unveiling the Legal Landscape: A Comprehensive Analysis of the Legal Framework Addressing Cybercrime and Cyberviolence in Albania. *Albanian Women Empowerment Network (AWEN)*. Available here. [Accessed on 22.4.2025].

2. See also: UN Women. Albania Country Gender Equality Brief 2020. (2020). Available here. [Accessed on 22.4.2025].

3. UNICEF. (2019). Faktori Web: Vlerësimi i kuadrit ligjor dhe gatishmërisë institucionale për trajtimin e abuzimit dhe shfrytëzimit seksual të fëmijëve në hapësirën kibernetike në Shqipëri. Available here. [Accessed on 22.4.2025]. The UNICEF study states that neither the police nor the prosecution is fully equipped with the infrastructure for the efficient investigation of cases. The Cybercrime Investigation Unit appears to lack capabilities to conduct active online surveillance, undermining their ability to initiate ex officio and proactive investigations. See for further information: Mandro. A. (2024). Unveiling the Legal Landscape: A Comprehensive Analysis of the Legal Framework Addressing Cybercrime and Cyberviolence in Albania. *Albanian Women Empowerment Network (AWEN)*. Available here. [Accessed on 22.4.2025].

prosecutors, judiciary and international network for cooperation.

A stronger partnership with the Information and Data Protection Commissioner would further ensure that privacy rights are upheld in the investigation and adjudication of cyberviolence cases, particularly in situations involving the unauthorized dissemination of personal data, or online surveillance. In light of the growing prevalence of cyber discrimination and harassment, the institutional mandates of both bodies should be expanded to incorporate cyber violence as a priority area, accompanied by the necessary technical training and legal interpretive guidance to respond effectively.

IV. The evolving threat of cyberviolence: final remarks and recommendations

The evolving threat of cyberviolence is tangible, has long lasting impact, with consequences that often extend beyond the initial incident. The persistent nature of digital content and the difficulty of holding perpetrators accountable only amplify the long-term impact, making cyberviolence a critical challenge for modern societies to address through legal, technological and educational measures.

Although the Albanian Criminal Code has made important progress in criminalizing certain categories of cybercrime, it remains insufficiently equipped to address the full spectrum of technology-facilitated gender-based violence and domestic violence. In particular, the legal framework lacks specific provisions criminalizing online sexual harassment, cyberstalking, and psychological abuse perpetrated through digital means. This legislative gap leaves victims – especially women and girls – vulnerable to persistent and often escalating forms of harassment, surveillance, and psychological harm, with limited avenues for redress or protection. Despite Albania's obligations under the Istanbul Convention¹ to ensure the criminalization of sexual harassment (Article 35), stalking (Article 34), and psychological violence (Article 33), current legislation fails to explicitly reflect the digital modalities through which these acts are increasingly committed.

1. For a more detailed analysis of the Albanian legal framework against Budapest Convention see: Mandro. A. (2024). Unveiling the Legal Landscape: A Comprehensive Analysis of the Legal Framework Addressing Cybercrime and Cyberviolence in Albania. *Albanian Women Empowerment Network (AWEN)*. Available here. [Accessed on 22.4.2025].

The absence of clear legal recognition not only hampers law enforcement and judicial intervention but also undermines the visibility and gravity of such violence in public discourse and policymaking.

A more comprehensive legal approach is required to ensure that digital forms of abuse are treated with the same seriousness as their offline counterparts, thereby offering victims effective protection and upholding Albania's international commitments to prevent and combat all forms of violence against women.

Apart, there is a pressing need for comprehensive, statistically representative research to examine trends in media consumption and digital literacy, particularly with respect to individuals' ability to critically assess and engage with online content. The lack of such data hampers our understanding of how digital environments shape social attitudes, interpersonal dynamics, and public discourse. In the absence of critical engagement, online media can contribute to the normalization of discriminatory narratives, the spread of hate speech, and the entrenchment of a culture of violence also in family settings. Evidence-based insight is therefore essential for informing targeted interventions in education, policy, and regulation that foster a safer and more inclusive digital sphere.

There is a critical need for comprehensive and context-sensitive research that systematically examines international good practices—legislative, policy-based, and institutional—in preventing and responding to technology-facilitated violence. Such research should not only identify successful models from comparative jurisdictions, but also evaluate their adaptability and relevance within the Albanian legal, institutional, and socio-cultural context. Drawing on transnational standards and promising practices can support the development of a more coherent, rights-based, and effective response to cyberviolence, while simultaneously strengthening institutional efficiency, accountability, and access to justice for victims. This endeavor can be meaningfully undertaken both by academic institutions—through interdisciplinary research, policy analysis, and public engagement—and by state institutions themselves as part of ongoing efforts to reflect, learn, and improve institutional practice. Cultivating a culture of evidence-based learning across sectors is essential to advancing a more resilient and responsive system that is attuned to the evolving dynamics of digital harm.

Education and strategic engagement with media actors constitute

essential entry points for addressing technology-facilitated violence and fostering a culture of respect, equality, and human dignity in digital environments. The media plays a pivotal role not only in shaping public discourse but also in setting societal norms around acceptable behavior online. By promoting accurate, ethical, and gender-sensitive reporting, the media can challenge harmful stereotypes, raise awareness of digital harms, and support prevention efforts. At the same time, strengthening digital literacy – particularly among young people and vulnerable populations – is critical to equipping users with the skills to navigate online spaces safely, recognize and report abuse, and access relevant support mechanisms. These efforts must be embedded within broader public education campaigns and media cooperation strategies that are rooted in human rights principles and informed by evidence-based research.

All relevant stakeholders involved in the prevention of and response to technology-facilitated violence must be systematically trained to recognize, address, and mitigate its impact. In tandem with law enforcement, judicial authorities, social workers, healthcare professionals, and media representatives – each of whom holds a distinct yet interdependent function – educators (school teachers) play an especially pivotal role in shaping the individual. Training for teachers must therefore go beyond technical knowledge, encompassing an understanding of the gendered nature of cyberviolence, its psychological effects, and the mechanisms available for support. Without such targeted and sustained investment in capacity-building of key actors, institutional efforts risk being fragmented, reactive, and insufficiently attuned to the complex realities of digital harm.

Ultimately, addressing the multifaceted challenge of technology-facilitated violence in Albania demands an integrated and sustained commitment – across law, policy, education, and research – that centers the rights and dignity of victims and ensures that no one is left behind in the evolving digital landscape.

THE CHALLENGES OF THE INTERNATIONAL CRIMINAL COURT AS A CORNERSTONE OF BUILDING A MORE JUST, PEACEFUL AND DEMOCRATIC WORLD

Phd. Erinda Ahmetaj

This paper aims to analyze the function and importance of the International Criminal Court in maintaining international order and promoting the principle of universal justice, while also highlighting the challenges and opportunities it faces in exercising its authority in a complex political and legal context. It is a cornerstone of building a more just, peaceful and democratic world, an instrument of international justice that finds its legal foundation in the Charter of the United Nations and international human rights conventions.

The International Criminal Court (ICC) is an institution established to prosecute and punish individuals for serious international crimes, such as war crimes, crimes against humanity, and genocide. Established in 2002, the ICC has played an important role in strengthening international justice and maintaining peace and security in the world. Despite this important role, the ICC faces numerous challenges that hinder it from fulfilling its mission.

The journey of international criminal justice is experiencing a moment of testing that will be decisive in affirming its effectiveness.

Controversies over the jurisdiction of the International Criminal Court¹ are very strong and do not foresee a future without obstacles for its consolidation.

Critics of the International Criminal Court² have pointed out its limited

1. M. Cherif Bassiouni (ed.), *The Pursuit of International Criminal Justice: A World Study on Conflicts, Victimization, and Post-Conflict Justice*, 2011

2. RJ Simpson / N. Luban *Oxford Handbook of International Criminal Law*, Oxford University Press, 2020. OUP Academic

impact on the effective creation of a “universal” criminal justice system, noting in particular the essentially African and Asian context of its restrictive interventions and the low number of convictions - and defendants - compared to the most widespread scenarios in which, unfortunately, it is not difficult to configure hypotheses for serious violations of the Statute of the International Criminal Court.

One of the theories that is undoubtedly supported is that it is not the International Tribunal that has highlighted an organizational and efficiency crisis, but that the reasons for the ineffectiveness of the ICJ justice system should be traced to the lack of cooperation and distrust of states, manifested in the concrete non-implementation or delay in the execution of arrest warrants.

Reports of atrocities that continue to occur in various crisis situations, in internal and international conflicts, with the emergence of new actors among the “warlords”, Private Military and Security Companies, should make us consider that, despite its limitations, the jurisdiction of the Court with its first convictions has nevertheless shown that it can represent a concrete obstacle for those responsible for crimes against humanity and war crimes, because their responsibilities, perhaps even with delay and not without difficulty, can always and in any case be pursued due to the principle of non-prescription of serious crimes within the jurisdiction of the ICC (Article 29 of the Rome Statute).

1. Challenges of the International Criminal Court and current obstacles in the execution of issued arrest warrants

States that have signed and ratified the Rome Statute, thus becoming members of the International Criminal Court (ICC), have a legal obligation to cooperate with the court, including executing arrest warrants issued by it. However, in practice, these arrest warrants are often not executed, for several main reasons:

a. Political reasons

Many countries avoid arresting important political or military leaders for strategic, diplomatic, or economic reasons. Arresting an influential person can disrupt diplomatic relations with other countries, provoke internal political tensions, and harm commercial or energy interests.

b. Lack of political will

Although legally obligated, some governments choose not to comply with ICC orders, to avoid involvement in international issues that are seen as sensitive or to preserve existing alliances.

c. Lack of enforcement mechanisms

The ICC has no police force of its own and relies on member states to enforce its decisions. If a state fails to cooperate, the ICC can report the case to the Assembly of States Parties or the UN Security Council, but it has no direct punitive powers.

ç. Questionable interpretation of immunity

Some states give priority to the immunity of heads of state, especially in cases where the defendants are incumbent leaders (such as presidents or prime ministers), even though the Rome Statute denies immunity for international crimes.

d. Fear of internal consequences

In some cases, governments avoid arresting wanted individuals to avoid causing internal unrest or political destabilization.

2. The Role of the Assembly of States Parties and the UN Security Council

The punitive measures that the Assembly of States Parties and the UN Security Council can take against states that do not cooperate with the International Criminal Court (ICC) are limited and depend largely on political will, not on a directly enforceable enforcement system. Here are the main ones:

1. Assembly of States Parties (ASP)

The Assembly is the supervisory body of the ICC, consisting of states that have ratified the Rome Statute.

Measures that can be taken:

- *Public scrutiny and diplomatic criticism:* A state may be publicly mentioned in hearings for non-cooperation, which could damage its international reputation.
- *Policy recommendations:* Statements may be issued requesting full cooperation and calls for improvement may be made.
- *Liability notice:* The ASP may decide that a state has violated its obligations under the Statute and request that this be officially documented.

- *Spread to other organs:* In cases of serious refusal, the matter may be referred for discussion to the UN Security Council, especially when a case has been referred to the ICC through the Council itself.
- The Assembly of States Parties has no power to impose binding economic or political sanctions.

2. UN Security Council

In cases where a case has been referred to the ICC by the Security Council (e.g. in the case of Libya or Sudan)¹), he has more power to influence.

Measures that can be taken:

1. Economic sanctions against non-cooperating states.
2. Arms embargo.
3. Travel ban for certain individuals.
4. Diplomatic or public pressure to fulfill obligations.
5. Referral to other UN bodies for further political or legal follow-up.

The effectiveness of these measures depends heavily on consensus among the permanent members of the Council, especially when there are major political interests or vetoes from countries such as Russia, China, the USA, etc. For example, in the case of Sudan, where President Omar al-Bashir² was the subject of an ICC arrest warrant, some states such as South Africa did not arrest him when he visited the country. The Assembly of States Parties condemned the non-cooperation, and the matter was reported to the Security Council – but no strong punitive measures were taken.

3. The efforts of the International Criminal Court to protect international order and security.

In recent years, the ICC has issued several arrest warrants against the most important leaders of the world's political sphere. The arrest warrants were issued against three Hamas leaders: Yahya Sinwar³, Ibrahim Al-Masri⁴ and Ismail Haniyeh, as directly responsible for the massacres of October 7, 2023, which cost over 1,200 victims and the capture of at

1. Resolution 1593 (2005) / adopted by the Security Council at its 5158th meeting, on March 31, 2005. <https://digitallibrary.un.org/record/544817?v=pdf>

2. <https://www.icc-cpi.int/darfur/albashir>

3. https://www.justice.gov/d9/2024-09/24_mag_438_hamas_leadership_complaint.pdf

4. <https://www.icc-cpi.int/news/situation-state-palestine-icc-pre-trial-chamber-i-issues-warrant-arrest-mohammed-diab-ibrahim>

least 245 hostages, as well as for Israeli Prime Minister Netanyahu and Defense Minister Gallant for the indiscriminate bombing and blockade of humanitarian aid, which have caused over 46,000 civilian casualties among the Palestinian population to date.

These arrest warrants were based on a series of statements, witnesses, documentary evidence in the form of video, audio and photographs, as well as satellite images that were verified for authenticity.

The ICC Prosecutor also recalls the principles of the effectiveness of the Court's jurisdiction over the Palestinian territories and the principle of "complementarity". On 5 February 2021, the Pre-Trial Chamber established the Court's criminal jurisdiction.¹on "the situation in the State of Palestine"²and this jurisdiction extends to Gaza and the West Bank, including East Jerusalem. Furthermore, the Court, in accordance with Article 12 of the Statute, has full jurisdiction over crimes committed by both nationals of States Parties and nationals of non-States Parties, provided that they are committed in the territory of a State Party (therefore extending also to Israel for acts committed in the Palestinian territories, as has been established for the Russian Federation, a non-State Party for war crimes committed in Ukraine, given that it has acceded to the Court).

On the principle of "complementarity" of Article 17 of the Statute the jurisdiction of national States prevails, according to which the Hague Criminal Court does not intervene if it is ensured that domestic proceedings are initiated within the States for the same facts. However, national authorities must engage in "independent and impartial" judicial proceedings, which "do not protect suspects and are not a farce": otherwise, they would resort to "lack of will" or "lack of capacity" which require the intervention of the Court.

The reference to the direct responsibility of leaders is important, because the war crimes and crimes against humanity investigated were committed "on a large scale", are part of a widespread and predetermined plan, and are therefore not configured as isolated facts, but as "individual criminal responsibility (leadership crime)", crimes committed by leaders - both of Hamas and of Israel - who will therefore be held responsible as co-perpetrators under Article 25 of the Statute, and for the "responsibility of commanders and other leaders" under

1. <https://www.icc-cpi.int/news/icc-pre-trial-chamber-i-issues-its-decision-prosecutors-request-related-territorial>

2. <https://www.icc-cpi.int/news/statement-icc-prosecutor-fatou-bensouda-respecting-investigation-situation-palestine>

Article 28, for their ordering or inaction and failure to exercise proper control or to permit unlawful conduct committed by subordinates.

Prosecutor Khan's decision focuses primarily on the grave responsibilities of Hamas leaders, especially the Al-Qassam military wing,¹ for "crimes against humanity" (Article 7 of the ICC Statute) and "war crimes" (Article 8), also in the context of "captivity" in the broad sense of the status of hostages: extermination; murder; taking hostages, rape and other acts of sexual violence; torture and other inhumane acts, cruel treatment. Beyond the technicality of the charges, the Hague Prosecutor focuses on the personal experience of the investigations, based on medical records, video and documentary evidence, as well as interviews with victims and survivors.²

Equally serious are the charges against Benjamin Netanyahu and Yoav Gallant.³ First of all, the legal analysis found that all the elements that constitute "war crimes" exist, such as: "starvation of civilians as a method of warfare" (Article 8, paragraph 2, letter b), "wilfully causing great suffering or serious injury to body or health" "cruel treatment". And again: intentional killing, murder; "intentionally directing attacks against a civilian population". We are also dealing with "crimes against humanity" such as: extermination and murder, committed "including in the context of deaths caused by starvation", persecution and other inhumane acts (Article 7).

The crimes committed by Israel were committed "as part of a widespread and systematic attack" against the Palestinian civilian population and "in accordance with State policy". The indictment therefore alleges "the imposition of a total siege on Gaza, which included the complete closure of three border crossings, as well as the arbitrary blocking of essential supplies, including food and medicine, as well as electricity and water supplies for prolonged periods. a "common plan to use starvation as a method of warfare" and to "collectively punish the civilian population of Gaza".

Also, in his statement, Prosecutor Khan underlined the importance of respecting the fundamental principles on which International Criminal Law operates. He stated that:

1. <https://www.icc-cpi.int/news/statement-icc-prosecutor-karim-aa-khan-kc-issuance-arrest-warrants-situation-state-palestine>

2. <https://www.icc-cpi.int/court-record/icc-01/18-346>

3. <https://www.icc-cpi.int/news/situation-state-palestine-icc-pre-trial-chamber-i-rejects-state-israels-challenges>

1) Israel, like all states, has the right to act to protect its population, however “this right does not exempt Israel or any other state from the obligation to respect international humanitarian law”;

2) Regardless of the military objective, “the means that Israel has chosen to achieve them in Gaza - namely, the intentional infliction of death, starvation, great suffering, and serious injury to the body or health of the civilian population - are criminal.”

Regarding Hamas, he stated that the Court has identified those who were “responsible for organizing and committing the atrocities of October 7”, as well as for “hostage-taking, a war crime under the Rome Statute”, because “burnings, rapes and murders cannot occur as if they were normal; children, men, women and the elderly cannot be taken from their homes and taken hostage, whatever the reason”.

As for Israel, he said, “Israel has clear obligations in relation to its war with Hamas: not only moral obligations, but also legal obligations, under the laws of armed conflict.” For those responsible for firing rockets at any home, school, hospital, church or mosque, “these places are protected and if there is any doubt that civilian property has lost its protected status, the aggressor must assume that it is protected. The burden of proof that this status has been changed lies with the shooter.” And again: Israel has a professional army, military lawyers and a system based on respect for international humanitarian law, so it will have to show that “every attack was carried out in accordance with the laws and customs of armed conflict,” starting with “correct application of the principles of ‘distinction,’ ‘precautionary measures,’ and ‘proportionality,’” and stopping “starving populations.”¹.

On March 17, 2023, the International Criminal Court announced that it had issued an arrest warrant on extradition charges for Vladimir Putin, the President of the Russian Federation, and the Commissioner for Children’s Rights, Maria Lvova-Belova.², for war crimes and crimes against humanity, including the illegal deportation of Ukrainian children from the occupied territories of Ukraine to the Russian Federation.

In March 2025, the ICC issued an arrest warrant for former Philippine

1. <https://www.icc-cpi.int/sites/default/files/CourtRecords/0902ebd180a0ebd9.pdf>

2. <https://www.icc-cpi.int/news/situation-ukraine-icc-judges-issue-arrest-warrants-against-vladimir-vladimirovich-putin-and>

President Rodrigo Duterte.¹, for crimes against humanity, including murder and torture during the anti-drug campaign.

The International Criminal Court has always been accused by its critics of initiating proceedings against the Western world². The delegitimizations also came from the West: the previous prosecutor Fatou Bensouda was accused of anti-Semitism by Netanyahu himself when she opened proceedings for alleged crimes committed by the Israeli army in the Palestinian territories. In fact, she had been the subject of an *executive order* on the freezing of assets and restrictive measures on entry into the US (the same ones adopted for terrorists) by President Trump due to the initiation of investigations into US soldiers for facts related to missions in Afghanistan and other crisis areas. Under Biden, the executive order was revoked, and US agencies had undertaken serious cooperative relations with the Prosecutor's Office itself in The Hague. Therefore, it seemed that at the International Criminal Court in The Hague - which has 125 member states (among the "non-party states" are the USA, China, Russia and Israel, but this is irrelevant if "universal" legal principles are affirmed) - important steps were being taken towards the affirmation of international criminal justice, especially with the issuance of arrest warrants against Putin and Russian generals for the war in Ukraine.

4. The case that involved Italy in the matter Najeem Osema Almasri Habish

The essence of the matter *Najeem Osema Almasri Habish*³ that has involved Minister Nordio in recent months is based precisely on the non-execution of the international arrest warrant that the Court issued on January 18, 2025. Given that the latter does not have its own police force, the real capacity of the Court to try the accused is based on the loyal cooperation of the member states in investigations and judicial proceedings.

In the case we are analyzing, on January 19, 2025, DIGOS (i.e. Division of General Investigations and Special Operations) of Turin, in execution of

1. <https://www.icc-cpi.int/news/situation-philippines-rodrigo-roa-duterte-icc-custody>

2. RJ Simpson / N. Luban Oxford Handbook of International Criminal Law), Oxford University Press, 2020.OUP Academic

3. <https://www.icc-cpi.int/news/situation-libya-icc-arrest-warrant-against-osama-elmasry-najeem-alleged-crimes-against-humanity>

the arrest warrant¹ of the International Criminal Court, proceeded with the arrest of the Libyan general.

Article 4 of Law 237/2012² stipulates that the execution of requests by the Court must be authorized by the Minister of Justice, through the Prosecutor General of the Court of Appeal of Rome. On the other hand, the DIGOS of Turin had executed the arrest warrant automatically, without waiting for the necessary instructions.

The fact that the arrest was carried out in a manner that was not in accordance with the procedure, however, does not automatically imply its illegality. In fact, as can be understood from the order by which the Rome Court of Appeal ordered Almasri's release on 21 January 2025, DIGOS had transmitted to the Ministry all the documents relating to the execution of the arrest warrant on the same date, 19 January 2025. Therefore, the Minister of Justice was de facto informed of his arrest and of his international execution. However, on the days 18-21 January no communication was received from the Ministry, which also did not notify the Court of Almasri's release and exclusion.

Therefore, as the National Association of Magistrates underlined in a note dated January 27, 2025, the decision to release and repatriate Almasr represents the result of a political assessment by the government, which, however, conflicts with the obligation to cooperate with the ICC authorities: more than the possible correctness of the arrest procedure, the ICC Prosecutor will have to assess the actual cooperation of the Italian authorities in the case of Almasr at the current level of the case.

Based on art. 87, paragraph 7, of the Rome Statute, the International Criminal Court may refer the matter to the Assembly of Member States or to the UN Security Council itself, since, as previously mentioned, it is Resolution 1970/2011 that has attributed to the International Criminal Court jurisdiction to try crimes committed in Libya in the context of the civil conflict.

Then, on February 6, 2025, the International Criminal Court in The Hague opened an investigation into the actions of the Italian government for "obstruction of the administration of justice under Article 70 of the Rome Statute" in relation to the case of General Almasri.³

1. <https://www.icc-cpi.int/news/situation-libya-icc-arrest-warrant-against-osama-elmasry-njeem-alleged-crimes-against-humanity>

2. https://cjad.nottingham.ac.uk/documents/implementations/pdf/Italy-Law_on_cooperation_with_the_ICC_2012_IT.pdf

3. <https://www.icc-cpi.int/court-record/icc-01/11-162>. Invitation to the Italian Republic

Conclusions

Despite these challenges, the International Criminal Court remains a key instrument for building a more just, peaceful and democratic world. It seeks to ensure the punishment of individuals for crimes that violate the dignity of humanity and therefore plays an important role in global efforts to maintain international peace and security. The Court, through its functioning, sends a powerful message that no individual is above the law and that the most serious crimes against humanity cannot go unpunished.

However, to ensure the effectiveness of international criminal justice and to avoid impunity for international crimes, it is essential that States Parties to the ICC not only harmonize their domestic procedures with international obligations, but above all never cease to cooperate with the Court, continuing to prosecute and prosecute persons accused of international crimes.

to provide submissions concerning its failure to surrender Osama Elmasry / Almasri Njeem to the Court following his arrest.

CHALLENGES OF PUBLIC SAFETY AND CRIMINAL INVESTIGATION IN THE DIGITAL AGE

Dr. Hasan Shkëmbi¹

Abstract

Technological advances and their use in the field of law enforcement have caused seismic shocks and major challenges in public safety and criminal investigation. This research explores the implementation and impact of digital technology innovations in public safety and criminal investigation, their revolutionary and transformative potential in the investigation and trial of criminal offenses, as well as ensuring the delicate balance during implementation to guarantee individual rights/privacy, within the framework of the laws in the country, according to the most advanced Western standards and practices. The paper addresses a gap by examining the institutional realities of technological innovation in policing and criminal investigation. It aims to identify the technological tools and methods used by law enforcement agencies, assess their effectiveness and understand the challenges they face in their implementation. The intersection of technology and criminal law today is a fascinating arena where innovation meets security and criminal justice. However, the adoption of digital technology by law enforcement and criminal investigation structures is required to be done in a responsible and legal manner to investigate and document crime, analyze the qualifying circumstances of crime in computer systems of national security, defense, police or any other IT system of critical importance. Innovative technologies today have driven a paradigm shift in security and criminal investigation, enabling a spectrum of proactive and investigative activities. Digital technology

1. Dr. Hasan Shkëmbi, lecturer in the Department of Criminal Law Program: Professional Master “Public Security and Order” LUARASI University, Tirana

*has made policing and criminal investigation structures more innovative, more proactive and efficient, enabling them with modern methods and techniques of investigation and management of public safety. The contribution of Digital Forensics in the identification, collection, analysis and presentation of digital evidence during judicial processes remains critical in the investigation. In this perspective, we attempt to discuss and provide a clear theoretical framework through the application of new technologies to identify and manage challenges in the field of security and proactive investigations as well as **to provide solid digital evidence** for a successful investigation and trial. In the following, we will highlight the necessity for continuous investment in technological advancements and training of law enforcement personnel and the need to adopt new technology in investigations. Finally, in addition to the findings, the paper provides insights and recommendations for policymakers, researchers and practitioners to exploit the full potential of technology in promoting safer societies and calls for the development of policies that balance technological benefits with ethical considerations, improving legislation, ensuring the protection of citizens' rights and increasing security measures.*

Keywords: *Digital forensics, digital footprints, evidence decryption, internet browser traces, crimes in the metaverse.*

1. Introduction

In this era of an increasing landscape of security threats and the sophistication of crime, digital technology has become a cornerstone of progress, bringing drastic transformations to many aspects of life, as well as the main driver of change in the field of public safety and criminal investigation. The integration of innovative technologies has reshaped every aspect of policing, from territory control, field police operations, criminal intelligence, crime investigation to strategic command centers, transforming traditional methods into an innovative, more dynamic, efficient and accountable approach. It is a fact that the use of technology has been an important part of police work and technological innovation has gone hand in hand with the evolution of police practice (Borrion, 2018)¹.

1. Borrion H (2018) Inxhinier. In: Wortley R, Sidebottom A, Tilley N et al. (eds) Routledge

The increasing shift of the gravity of modern crimes to the digital space presents new challenges for law enforcement and investigation, enabled by the sophisticated use of this technology by organized criminal groups. Today, when over 90% of reported crimes have a digital element, it is essential that policing and criminal investigation are required to adapt to the circumstances by implementing new technologies effectively to address these crimes in a timely manner.

Faced with this complex reality, the use of technological innovations in public safety and criminal investigation comes to the fore, offering a detailed perspective on policing strategies and tactics and modern investigative methods to guarantee sustainable public safety and solid and legal digital evidence. Researchers in the field have observed that multifunctional devices, which come with advanced capabilities, have completely changed the way law enforcement organizations interact with each other, obtain information and do their work (Rahul et al., 2015)

The basic hypotheses of this paper are: a) The implementation of digital technological innovations in security and criminal investigation increases the quality, effectiveness and efficiency of structures. b) New technology helps in collecting digital evidence and accelerating the legal process, from investigation to trial. c) The vacuum of the legal framework for some new digital crimes in the Criminal Code has brought challenges and difficulties in qualifying the offenses and their adequate punishment.

The increasing use of technological innovations in these areas raises several important questions such as: - How much has digital technology contributed to the increase in the performance of policing and criminal investigation? How should we create a policing model that balances technological innovations with security and criminal investigation? What is the role of Digital Forensics in the collection, analysis and presentation of solid evidence during judicial processes?. How will the balance between security and privacy be ensured in the digital world?

To answer these questions, the paper explores the role of technology in public safety and criminal investigation, its transformative potential and the delicate balance for individual rights and ethical implications that are necessary as well as issues within the legal framework in the country, drawing parallels with modern practices. It provides an overview of the benefits and challenges associated with the adoption of artificial

intelligence (AI) by security forces. In the following, the paper attempts to argue how rapidly developing digital technology and AI can contribute to increasing the efficiency, effectiveness and overall performance of law enforcement operations, criminal investigation while respecting ethical and legal standards.

The research uses the latest literature analysis and review methodology, case studies to examine the impacts of digital technological advances on modern policing practices and the examination and investigation of digital evidence. The findings are the product of a mixed method of observation, analysis and study from several theoretical and practical perspectives. They show that the use of technological innovations has had a game-changing impact on policing in terms of dramatically changing philosophies and strategies to prevent crime, respond to crime and improve public safety. The findings demonstrate that the use of technology in law enforcement has the potential to increase the quality of criminal investigations, digital evidence analysis and security monitoring. The findings contribute to a deeper understanding of how comparative legal studies can inform more coherent and equitable regulatory practices for the governance of cyberspace. Finally, the findings highlight a legal vacuum and the urgent need for regulations in the Criminal Code and the Criminal Procedure Code for criminal offenses related to online crimes, stalking, romantic fraud (false investment lure), cyberbullying and harassment etc.

2. Innovative Context

Technological advances today have taken on dizzying dimensions in many areas, affecting the entire economic, social and institutional life of countries. In this context, technology has played a critical role in public safety and criminal investigation thanks to advances and digital technological innovations. Especially in the last decade, the use of technological innovations in the field of public safety and investigation has caused seismic shocks. The digital era has brought innovations where surveillance cameras, drones and IoT sensors monitor security in our cities, providing real-time information. Mobile applications and GPS systems, in addition to tracking organized groups, connect individuals with emergency services in crisis situations. Predictive police algorithms help identify crime hotspots for proactive crime management.

The year 2018 marked the event for the use of AI in police, security and law enforcement by the UN and INTERPOL¹. AI in law enforcement is not a science fiction concept, but a reality that is reshaping the way law enforcement works. From predictive policing to facial recognition (2016), AI technologies have been used to help prevent crime, investigate, and policing in the community. Facial and vehicle recognition technology has been a game changer in identifying suspects. Another innovation is Metaverse in policing, which will become fully operational by INTERPOL in October 2022, through which it is intended to improve the fight against crime in the digital universe, the collection and preservation of evidence from virtual crime scenes, etc.

In this innovative landscape, the Albanian State Police, in the last decade, has gradually adapted to the transition to a new technological era by investing in and using advanced technologies. New technologies include: Body Cameras, standard equipment for most modern police officers, especially those on traffic patrol, directly connected to in-car video systems and the operations room. Police cars as a mobile office: equipped with in-car camera systems to record audio and video of every event that occurs, where both traffic and crime reports can be completed directly using standard field templates. Cameras in police vehicles record everything that happens during patrols or stops. Public Surveillance Cameras (CCTV-Closed Circuit Television). Thermal and Infrared Cameras for night. Covert Cameras for Special Operations, Portable Systems, Motion Radar for speed, Automatic Number Plate Recognition; GPS Location; Drones, etc. Increasing investment remains a touchstone².

3. The impact of technological innovations on public safety

Digital technology today has revolutionized the strategies and techniques in the way we approach public safety, increasing their reactive and investigative capabilities, e.g. now police officers can access databases just by using the application even remotely.

It is a fact that the extensive spread of new technology and digital innovation has resulted in a societal shift towards the digital pole, as a natural

1. Report “Artificial Intelligence and Robotics for Law Enforcement”. Interpol-UN Global Meeting “On the Opportunities and Risks of AI and Robotics for Law Enforcement, 2018

2. State Police Information, types of Cameras used by the Albanian State Police, date March 15, 2025

channel for communication, work, security, health, life, entertainment and much more. The synergy between technology and public safety has opened the doors for innovative strategies that not only protect lives and property, but also empower communities to actively participate in their own safety.

Digital technology offers police and other law enforcement organizations unparalleled opportunities to enhance their operational and supervisory, operational, management capabilities for public safety and road traffic, territory control, management of violent protests and crime investigation, compared to traditional methods.

Digital technological innovations today enable police to become both proactive and preventive, with a large amount of data available to help predict if, where, when and how crimes or violations of the law will occur and what preventive tactics will be used against them. These new tools and techniques should be implemented where possible, so that crime can be predicted and prevented in a very short time.

The application of digital technological innovations in policing such as big data analytics, AI, GPS tracking techniques, video and audio surveillance, etc. and digital forensics have had a dominant impact on the continuous improvement of crime prevention and control strategies and investigation and tracking in all aspects of security, transforming the landscape of police operations and criminal investigation.

The application of AI in policing and criminal investigation remains a major trend today. A recent study found that intelligent technologies such as AI can help cities reduce crime by 30 to 40% and reduce response times for emergency services by 20 to 35% (Deloitte,2018). The same study found that cities have begun to invest in real-time crime investigation, crowd management and gunshot detection. The AI Global Surveillance Index (AIGS) 2019 estimates that 56 out of 176 countries used AI for surveillance for secure city platforms. 5G networks can reduce emergency response times by up to 50% (Deloitte)¹ and play a crucial role in enhancing public safety and criminal investigation. Blockchain adoption in public safety is expected to increase by 60% by 2025 (MarketsandMarkets, 2024)².

1. <https://www2.deloitte.com/content/dam/Deloitte/cn/Documents/technology-media-telecommunications/deloitte-cn-tmt-empowering-smart-cities-with-5g-white-paper-en-200702.pdf>

2. <https://www.marketsandmarkets.com/Market-Reports/blockchain-technology-market>, Jul 2024

4. Key Challenges for Law Enforcement Agencies

As public safety agencies modernize to avoid critical situations, the journey towards technological adoption faces challenges such as: barriers to the latest digital technologies from limited funding, inflexible core systems, fragmented solutions, and skilled workforce challenges, etc. But the most important technology challenge facing policing is not so much about infrastructure or hardware, but about the mindset of leaders.

However, public safety agencies often struggle with the complexity of seamlessly integrating new systems into existing frameworks. Digital transformation is an ongoing and challenging process, but monolithic systems hinder agencies' ability to adapt. Public safety platforms must be flexible and future-proof or risk increasing system disruption and confusion.

As criminal tactics evolve and adapt to modern digital tools and platforms, agencies without up-to-date technology can find it increasingly challenging to combat sophisticated cybercrimes, track criminal activity online, or effectively investigate digital evidence. To forge a path to a secure, technologically advanced, and flexible future, law enforcement agencies need a strong technology partner. The lack of inter-institutional cooperation and information exchange has been an ongoing challenge in the field of law enforcement.

Continuous training and professional development are essential to ensure that officers are equipped with the necessary skills and knowledge to meet the challenges they face on the job. Even according to a survey conducted by Lexipol (2022),¹ the biggest challenge for law enforcement officers is recruiting and retaining personnel. New public safety technology needs to retain Millennial and Gen Z recruits for longer, helping them extend their professional careers. The challenge of reducing physical contact with the public and privacy concerns for police and citizens due to the excessive use of technology has an extraordinary challenging effect. In Western countries, there is currently a challenging debate in the media and public about how facial recognition technology should be used due to privacy concerns and profiling of suspects by the police.

1. <https://www.police1.com/2022-year-review/articles/what-officers-said-were-the-biggest-challenges-of-2022-and-why-leaders-should-pay-attention-5sKfxYONpjZMmmS6/>

Addressing these challenges is vital for safer, more accurate, and more effective law enforcement in public safety operations and criminal investigation.

5. Criminal Investigation and Challenges in the Digital Age

The contemporary criminal justice system is facing significant challenges related to cybercrime, given the rapid evolution of technology and internet usage.

5.1 Technological Innovations and the Impact on Criminal Investigation

Digital technology has had a significant impact on the criminal justice system, changing the standards and techniques for how investigations are conducted, evidence is collected, preserved and analyzed, and how courts make decisions based on solid evidence. The increasing use of new cyber forensic technologies such as: genetic identification technologies, biometrics, ballistics, nanotechnology, autopsy and radiology techniques, 3D printing techniques, voice and audio recognition technologies, illicit and enhanced (XR)¹ detection technologies, and other forms, have revolutionized criminal investigations by providing investigative officers with powerful tools to collect and analyze legal evidence.

One of the advancements in mobile forensics technology in 2025² is the development of improved techniques for recovering, decrypting, and extracting data from mobile devices, revolutionizing and accelerating investigations. Real-time monitoring and analysis of mobile devices has significantly transformed investigations in this period, providing essential insights into ongoing cases without compromising the integrity of an investigation. This proactive approach increases the efficiency of investigations by enabling immediate responses to potential threats or illegal activities.

New technology has also impacted the criminal justice system by changing the way courts operate. The development of criminal administration

1. Xavier Chango and al. Technology in Forensic Sciences: Innovation and Precision Technologies 2024, 12(8), 120;

<https://doi.org/10.3390/technologies.v12i8.120>; &(shkurt, 2025

2. The impact of advancements in mobile forensics on private investigations in 2025.

is undergoing a paradigm shift with the integration of advanced technologies such as “Virtual Criminal Justice”¹. Electronic filing systems, videoconferencing technology, AI, e-evidence, e-zoom trials, and even VR courtrooms have enabled courts to function more efficiently and without the need for parties to physically appear in court. The question that arises is: Should algorithms make decisions about people’s lives, or should these decisions be left to human judges and juries? The answer is that, despite the digital technological revolution in the criminal justice system, the main thing is that these decisions should be left to judges and jurists to decide according to the law.

5.2 Challenges between technological innovation and cybercrime

- The case of Albania

The rapid advancement of technology, despite its advantages, has also brought new challenges, especially in the dark world, significantly changing the crime landscape in the world and in Albania.

Cybercrime is now more sophisticated, global and has emerged as one of the most serious threats in the digital age, affecting individuals, organizations and governments around the world. These tactics destabilize societies, exploit critical infrastructures and create insecurity. Digital violence has taken on alarming proportions such as: cyber harassment and bullying, suicides, unauthorized use of personal data, digital gender violence, online fraud and manipulation, hate speech and online radicalization.

Hybrid threats, which combine conventional criminal methods with advanced digital strategies, pose significant risks. Crime vectors are increasingly shifting to the digital space, changing the methods, techniques, and scope of criminal investigations. Over 90% of cases today involve at least one digital element (Kinsman, Eric, 2025). Law enforcement agencies are seeing an exponential increase in cybercrime related to social media, the Internet, and AI. Referring only to the encrypted communications on the “EcroChat” platform seized and reviewed by the prosecuting authorities of the countries in Europe, it turns out that they enabled the arrest of 6558 people in 2024²

1. The network was launched in Maastricht during the Symposium on Virtual Criminal Trials in June 2023.

2. <https://www.europol.europa.eu/media-press/newsroom/news/dismantling-encrypted-criminal->

The increasing trend of cybercrimes is also observed in Albania, where according to official statistics of the State Police (2020-2024), criminal offenses in the field of cybercrime, in 2024 have increased 5 times compared to 2020. Dramatic increases have been recorded in crimes related to child pornography, by 14.7 times; forgery/computer interference by 5.0 times and fraud by 3.4 times for the same period (Tab.1).

Tab.1 Criminal offenses in the field of cybercrime 2020-2024
of the State Police ¹

Vitet	2020	2021	2022	2023	2024	Increase times: 2020-24
Computer fraud	58	77	140	135	196	3.4
Forgery and/ or computer tampering	172	332	285	540	867	5.0
Child pornography	10	120	120	91	147	14.7
Total	240	529	545	766	1210	5.04

According to the 2024 report of the General Prosecutor's Office, despite the increase in the number of cybercrime proceedings by 22.35% in 2023, compared to 2022, there was a decrease in the number of defendants sent to court by 5.88% for the same years², which in my opinion speaks of a problem that needs to be analyzed by the courts. Computer fraud through fraudulent call center schemes has turned Albania into an important point of "digital pyramids" for domestic and foreign organized criminal networks that exploit legal spaces, technology and free labor to commit massive computer fraud. In 2022, Albania was the victim of an Iranian cyberattack

encrochat-communications-leads-to-over-6-500-arrests-and-close-to-eur-900-million-seized.Vizituar më 29.01.2024.

1. Information of the Ministry of Public Security, Sector for Communication and Public Media, date, 25.03.2025

2. Annual report of the General Prosecutor's Office, 290 prot., dated 24.01.2024, on the state of crime, year 2023

that led to the temporary interruption of most online public services and financial damage. The largest increase in cybercrime in Albania began after 2022.

There was also an increase in cybercrime in the Tirana Region by 49.5% in 2024, compared to 2023. In particular, acts of computer fraud and child pornography have marked an alarming increase in 2024 compared to 2023, respectively 58.1% and 28.7%¹. Social media platforms today have become “traps” for cybercrime and killing machines for young victims, especially minors.

The epidemic of cyberbullying on social networks in Albania, especially on TikTok, has become a very worrying phenomenon, which has affected all age groups and especially adolescents and minors. According to a survey (2025), 46.6% of respondents think that children and adolescents have faced bullying mainly at school and social networks, but also in other environments². Most of the cases involve the publication of photos with offensive captions, intimate ones, or the opening of false addresses, denigration, and threats that in some cases have caused victims.

Case study 1:

Suicide of citizen Bedrie Loka, 41 years old from Durrës, mother of 4 children, after being denigrated on Tik Tok. The citizen in question passed away on January 3, 2023, one day after consuming fostoxin, who fell victim to bullying, anonymity on Tik Tok and the dysfunction of justice. After going through a year-long ordeal of harassment/humiliation on the social network, the 41-year-old decided to end her life. Her ordeal began in December 2022, when she sought protection in the house of law, reporting to the police what was being done to her on TikTok. The victim did not know that the author of this online nightmare lived in Italy. The police say that the deceased's report has been forwarded to the prosecutor's office. The City Durrës incident sheds light on the dangers of virtual life, where anyone can fall victim to cruel attacks, which can lead to tragedy.

Interviews with several leaders and specialists of cybercrime investigation structures reveal several problems: Insufficient professional

1. Tirana DPQ. Annual analysis of the Sector for the investigation of cybercrimes, year 2025.

2. Report TV survey in collaboration with Eduard Zaloshnje, December 2024

capacities of the relevant structures, lack of specialized and updated training, lack of sophisticated technological equipment¹.

A key factor remains the outdated criminal and procedural legislation, especially for online media where there are loopholes for these crimes. Technical difficulties are presented by some websites and online platforms that allow the deletion of messages, while others keep them temporary (Instagram, Snapchat), the use of fake profiles or VPNs to hide traces, etc. Finally, police reports and the prosecutor's failure to register some cases of online crimes do not stop the illegality because they are classified as minor offenses that do not require the arrest of abusers. The role of social workers, school psychologists, security officers, and educational staff is tepid and they need training in this area.

6. Challenges for investigating cybercrimes

Cybercrime today represents several critical challenges for modern legal systems, requiring a comprehensive understanding of its nature, scope, legal implications and intelligent and rapid criminal investigation responses. Among the challenges we mention:

A) Challenges of criminal law in a new digital reality

In the new context, traditional criminal law has faced unprecedented challenges, which require continuous adaptation of its principles and tools. The fact is that the Digital Age is shaking the foundations of traditional criminal law and is forcing legislators and legal practitioners to rethink these foundations that are based on principles established for centuries, such as the territoriality of criminal offenses or the materiality of evidence, while preserving individual freedoms in an increasingly connected world. In this context, legislators have had to adapt traditional criminal offenses to digital ones. Some experts are calling for the creation of a genuine "Digital Criminal Law", separate from traditional criminal law, which would allow for the consideration of the specificities of VP in cyberspace and the faster adaptation of legislation to technological developments. This approach raises questions regarding the overall coherence of the criminal system and the risk of creating an extraordinary law. The debate remains open today

1. Interview with the head of the Cybercrime Investigation Sector at the Tirana Police Department, April 2025

at the Conference..? Researchers believe that the current international legal framework seems outdated to deal with cybercrime, which requires a normative and institutional reform, including a new convention or joint judicial mechanisms (Schultz & Ridi, 2021).

Referring to current changes and challenges, legal systems are gradually beginning to adapt, with the emergence of new concepts such as that of the “Virtual Crime Scene”, making it possible to link a criminal offense committed online or in other forms to a certain territory. In this context, the issue of digital evidence becomes central¹. Courts now have to deal with intangible evidence, such as connection logs or metadata and other evidence of this nature. Clearly, these sui generis criminal offences aim to fill the gaps in criminal law in the face of new forms of digital crime. But this development requires increased training for magistrates and investigators in the specifics of digital

B) The challenge of legal qualification of cybercrimes

The legal qualification of cybercrimes poses numerous challenges for investigators and judges that depend heavily on the ability to collect, analyze and evaluate digital evidence as well as its elements. Between new cybercrimes and adaptations of classic criminal offences, the legal landscape of cyberspace is becoming more complex. The remote alteration or deletion of digital evidence, its chain of custody, its manipulation, its admissibility and the complexity of computer systems make the assessment of evidence a bit delicate and at the same time its legal qualification.

The technical nature of criminal offences and the rapid development of new technologies complicate the task of magistrates. It is common for several definitions of new cybercrimes to be applied to the same case through a detailed analysis of the 4 constituent elements of each offence. For example, in the case of “cyber attack”, the subject of the crime can be any person who enters the IT system in an unauthorized manner and attacks it, i.e. the crime is committed directly. The qualifying circumstances here are when the crime is committed intentionally in critical infrastructure and when these violations are qualified due to high social risk, which are assessed in each specific case by the court.

On the other hand, the growth of artificial intelligence (AI) poses new challenges in the legal qualification of criminal offences, e.g., some countries,

1. L'évolution du droit pénal face aux cybercrimes : défis et adaptations juridiques à l'ère numérique <https://cerclede droit.be/levolution-du-droit-penal-face-aux-cybercrimes-defis-et-adaptations-juridiques-a-lere-numerique/>, vizituar me 11.4.2025

such as the Baltics like Estonia, are already considering the creation of a specific legal status for AI, paving the way for new forms of criminal liability. Therefore, legal qualification requires a specialization of legal officers involved in the criminal justice system, through the creation of specialized centers within the courts and continuous training for legal professionals, judicial police officers in digital matters.

C) Use of Artificial Intelligence (AI) and Legal Challenges

The challenges associated with the misuse of AI are quite complex, especially due to its sophistication and the lack of specific rules for its use in the context of cybercrime. Existing regulations often do not cover new cyber situations, thus reducing the effectiveness of law enforcement. While prostitution that occurs in the physical world is more or less legally restricted, that which occurs virtually is even more of a gray area. Metaverse identity theft can occur with a perpetrator hacking into an individual's account and then pretending to be them (e.g., through their avatar with a similar appearance, difficult investigation. Or "virtual murder" and physical assault leading to permanent damage to the avatar (e.g. for violent video games) etc., or "virtual sexual assault" can take the form of suggestive touching of the victim's avatar, sexual acts on her/his avatar, pose challenges. Tax violations in the Metaverse, money laundering, cryptocurrencies, etc. create difficulties)¹.

Deepfake and evidence manipulation via AI to create false cases, manipulation of facts, a challenge to the authenticity of evidence (Babale Case). The reliability of algorithms when used to analyze evidence can raise issues about its transparency and credibility.

D) Use of fake profiles or anonymity

Bullies often use fake profiles or VPNs to hide their tracks. The anonymity offered by the Internet makes it difficult to identify and catch cybercriminals. Techniques such as encryption, the use of virtual private networks (VPNs) and dark networks (Dark Web), the use of fake addresses further complicate the task of tracing criminal activities to their source. Many cyberattacks are carried out by groups that use complex tactics to protect their tracks. Kidflix, one of the largest pedophilia network platforms in the world, was seized in April 2025,

1. Identity, crimes, and law enforcement in the Metaverse. Humanities & social sciences communications, 12(1), Art. 194.<https://researchportal.helsinki.fi/en/publications/identity-crimes-and-law-enforcement-in-the-metaverse>

after an international “Stream” operation from 35 countries, including Albania, against the sexual exploitation of children, 1393 suspects and 79 arrests, including one Albanian¹.

E) Admissibility of legal evidence in court.

Evidence must be authentic, intact, and used lawfully. Digital forensic analysts must attest to its authenticity. Challenges in this area include the large volume of digital evidence, its integrity, and its chain of custody, which take time to analyze, such as data from smartphones, social media, and other sources, placing a heavy burden on investigators and complicating the investigative process. Preservation of digital evidence is an important aspect of ensuring authenticity, traceability, and auditability in trials (R.Mayer, 2014)². Dilemma: How to ensure due process in the face of the easily manipulated nature of digital evidence?

F) Challenges in implementing new investigative techniques:

Remotely obtaining computer data and digital traces, in order for investigators to access information stored on remote servers or in encrypted spaces, and data barriers from Internet service providers, make investigations difficult. The use of the technique of infiltrating secret agents into encrypted spaces on the Internet is important and many Western countries successfully implement this special technique. Most of the tracking of criminals is done online. Cybercrime requires specialized technical expertise to search for scientific evidence (Biasiotti et al. 2018, 1997) The use of modern technology and methods for collecting information and tracking cybercriminals from digital forensics for online investigations on the Internet is a key factor in presenting the case and evidence in court.

G. Challenges in International Jurisdictional Issues of Investigation

Cybercrime often crosses international borders, creating jurisdictional challenges or so-called jurisdictional dilemmas for law enforcement. The

1. <https://www.notiones.eu/2025/05/13/largest-operation-in-europe-hitting-paedophile-crime-the-polish-police-have-involved-11-countries-in-the-operation/>

2. The preservation of digital evidence and its admissibility in the court. Article in International Journal of Electronic Security and Digital Forensics·January,2017: <https://www.researchgate.net/publication/>, vizituar, 13.2.2025

place where the crime occurs is different from that of the offender, which challenges the principle of territoriality. Determining which country has the authority to prosecute, which laws apply, and how to extradite suspects are complex issues that hinder the prosecution of cybercrimes.

Case Study 2, On a dispute between the US government and Microsoft (2018)¹ “On access to a user’s email data stored on servers outside the US. One of the main challenges was that the data was stored in Ireland, US law had no direct effect on these servers. So, privacy and users’ rights were violated: Old law versus modern technology: The search warrant was issued under the Stored Communications Act (SCA) of 1986, a law that was not designed to address data issues in the Cloud. Congress passed the Clarifying Lawful Overseas Use of Data (CLOUD) Act in 2018.

The international legal framework appears difficult to deal with digital crime and its impact remains “somewhat diluted by the lack of participation of several major countries (China & Russia), which requires its adaptation, or joint judicial mechanisms.

H) Challenges in international cooperation in investigations

The transnational dimension of cybercrimes often makes enhanced international cooperation essential. Slow responses from foreign authorities, obstacles between national legal systems, translation delays and bureaucracy for extraditions or legal assistance can hinder real-time investigations.

I) Challenges to protecting privacy and constitutional freedoms

Social media algorithms can filter, censor or favor certain content without transparency. Other laws restrict expression in the name of “cybersecurity”, “national security” or “fighting disinformation”. The essence of the data privacy vs. digital freedom dilemma lies in how to strike the right balance between protecting individual privacy and enabling the constitutional freedoms that define the digital age? Data protection laws (such as the GDPR in Europe) limit how authorities can collect and use personal information.

1. <https://www.justice.gov/atr/case-document/file/504276/dl>, vizituar, 9.4.2025

7. Comparative perspective of national and international

legislation on cybercrimes

Through this comparative perspective we aim to analyze the existing Albanian legal framework, compared to some Western countries and the need for its approximation and harmonization with contemporary international standards to face the challenges presented.

7.1 Cyber legal framework - between development and limitations (Analysis)

Albanian cyber legislation is regulated through these main acts: Law No. 7895, dated 27.1.1995 “Criminal Code”, as amended; Albanian Criminal Code, as amended, Law No. 8888, dated 25.4.2002 “On the ratification of the Convention on cybercrime”, Law No. 9918, dated 19.05.2008 “On electronic communications in the Republic of Albania”, as amended. Law No. 2/2017 “On Cybersecurity” regulates the legal bases for the protection of networks and information systems, is an attempt to align with Directive 2013/40/EU. In addition, there are specific laws covering electronic communications, data protection and electronic signatures, etc. Albania is a party to the Budapest Convention on Cybercrime (2001) and has recently signed the Second Additional Protocol to the Convention on Cybercrime on enhanced cooperation and discovery of electronic evidence (2023)¹.

Through an analysis of our cyber legal framework, we note that: First, in Law No. 7895, dated 27.1.1995 “Criminal Code”, as amended, a limited number of 17 cyber criminal offenses are provided for or about 50% less than reality, creating a large legal vacuum.

Secondly, the failure to foresee some dangerous criminal offenses such as: cyberbullying, cyberstalking and harassment, online hate speech and incitement to violence, etc., have caused serious consequences and major social and psychological trauma and victims among minors, making it difficult to adequately characterize these offenses as well as to impunity for the perpetrators.

Thirdly, the legislative technique of formulating articles in narrative form and without paragraphs according to the subdivision of offenses seems somewhat irrational and creates legal dilemmas in the characterization and

1. On February 27, 2023, the Second Additional Protocol to the Convention on Cybercrime (CETS224) was signed at the Council of Europe.

interpretation of offenses and penal measures.

Fourth, the naming of all the titles of the articles and the text of the law with the old term “Computer Crime” is not in line with the new cyber reality and new crimes, additional conventions and protocols, other laws of the country as well as Western legislation.

Fifth, the wording in the text of the law: In Article 108 of the Criminal Code, paragraph 4 “Indecent Acts”; Article 108/a “Sexual Harassment”; Article 117 of the Criminal Code, “Pornography; Article 265 of the Criminal Code, “Incitement of hatred or strife”... expressed in the words... “by any means or form”, does not qualify the computer/cyber form of committing the offense, but leaves it implicit and creates legal dilemmas.

Sixth, the emergence of digital cryptocurrencies and the lack of a legal definition pose new challenges for digital criminal investigation, which requires the provision of new specific offenses, such as cryptocurrency laundering, and the adaptation of seizure and confiscation procedures to these dematerialized assets.

Finally, the penalties for some cybercrimes appear disproportionate in relation to the importance and consequences of the offenses, which may violate the rights of suspects, groups of people or society as a whole (such as fraud, forgery and interference in the computer network).

7.2 Approach to harmonizing Albanian cybercrime legislation with Western legislation

From the comparative perspective of the Albanian legal framework with that of several EU countries and the United Kingdom, diversity results in terms of harmonization of the legal framework, provision and legal punishment measures for several cybercrime offenses.

Regarding harmonization, Albanian legislation in the fight against cybercrime is partially aligned with EU legislation¹. Albania has a complete strategic framework (2020-2025) in the field of the fight against cybercrime. Law no. 25 /2024 “On Cybersecurity”, partially aligned with Directive (EU) no. 2022/2555, but with fragmented implementation, needs executive power. Contrary to our legal framework, the EU has legislation with a more sophisticated approach, information exchange and proactive prevention. According to the latest assessment of EU experts, Albania is still

1. Bektashi, G. Analysis of Albania’s obligations in the accession process with a focus on the fight against cybercrime. Albanian Law Journal, August 2024, p.7

in the phase of consolidating institutions and implementing mechanisms. The existing legal framework for the fight against digital crime and other components of legal remedies against it are still under development. There are still efforts in this area¹.

The comparative analysis shows that the provisions of the Criminal Code and the Criminal Procedure Code are not complete and appropriate for the new digital environment and the growing trend of cybercrimes. In terms of investigation, Albania does not have a legal framework for the infiltration of agents in the digital space for these crimes. In contrast, the EU uses advanced, sophisticated mechanisms, special techniques (authorized infiltration of digital undercover agents). The legislation is partially aligned with the EU legal framework also in relation to the fight against child sexual abuse, including online. In terms of harmonization, the Albanian legislation in the fight against cybercrime, results partially aligned with the EU legislation².

Albanian inter-institutional cooperation is still developing and faces coordination challenges. The structure is more centralized and less sophisticated. Albania is still in the phase of consolidating institutions and implementing mechanisms, when Western institutions are more coordinated and well-funded. There is no online communication service structure.

7.3 Comparative approach of Albanian and Western cybercrime legislation

Regarding the legal framework of Albania compared to that of EU countries, referring to comparative data (Tab. 2), it results that, while all EU countries have provided legislation adapted to the new environment for the fight against cybercrime, the approaches and punishment measures vary between countries: For example, France and Great Britain provide for harsher punishments for crimes of cyberattacks on critical infrastructure, while Italy has provided for milder punishments, but has improved legislation on new crimes such as cyber blackmail. Albania, in comparison with some EU countries, has provided for more severe punishment measures. The French SREN Act (21 May 2024) aims to further regulate

1. Ibid

2. Bektashi, G. Analysis of Albania's obligations in the accession process with a focus on the fight against cybercrime. Albanian Law Journal, August 2024, p.7

the digital space, focusing on three main areas: the protection of citizens, especially minors; ensuring European economic and digital sovereignty; and adapting French law to European regulations, such as a duty of care on online platforms to protect children under 13 from provocative and seductive content¹. In contrast, Albania has no legal provisions on bullying and some other humiliating or provocative forms of protecting minors from abuse on online platforms and social networks.

Regarding child pornography on the Internet, France has banned by law the publication, distribution or possession of materials containing minors, which leads to up to 5 years in prison and a €75,000 fine and up to 10 years in prison for platform managers; while Italy has treated it as a serious crime and distributors, possessors face harsh criminal penalties that increase from 6-18 years in prison and a fine of exploitation of minors. Laws in Britain strictly prohibit child pornography and provide for up to 10 years in prison for possession or distribution², as does Germany, which provides for up to 10 years in prison, with penalties increased for distribution or production.

The new “Internet Safety Act” in Britain (January 2025) further expands the protective framework for minors, imposing a duty of care on online platforms to protect children under 13 from provocative and seductive content. Germany has adopted a detailed legal framework to seriously address new cybercrimes, providing for tough penalties to protect citizens and digital infrastructure from growing threats in cyberspace. The country focuses on data protection and has moderate penalties for relevant violations³.

Albania still does not have a complete legal framework for cybercrime as analyzed above, as well as for the regulation or an institution for monitoring the criminal activity of bullying.

In the United Kingdom and France, cybercrimes such as “hacking”, “cyber fraud”, “DDoS attacks” and “cyber bullying” are treated seriously and provide for various penalties according to the relevant legislation (see table 2).

1. Loi SREN “ S  curiser et r  guler l’espace num  rique en France” 21 mai 2024

2. Low Protection of Children Act 1978

3. Strafgesetzbuch - StGB), Neni 202a StGB, Neni 263a StGB, Neni 303b StGB

Tab. 2
Comparative approach of Albanian and Western cybercrime legislation

Krimi	Shqipëria	Franca	Italia	Britania e Madhe	Gjermania
Child pornography on the internet	Pornographic materials, punishment up to 2 years, provision-p. 3-10 years in prison; recruitment of children 5-10 years., article 117 (not in cyberspace)	Punishment of up to 5 years in prison and a fine of up to €75,000 for minors and up to 10 years for platform managers.	Sentence from 6-18 years and fine from 25,822 to 2222 Eu for those who exploit minors.	Sentence of up to 10 years in prison under the Protection of Children Act 1978.	Sentence up to 10 years in prison.
Cyber fraud	6 months-6 years; in bp. and with serious consequences, from 5-15 years. Is there no provision for the banking system? Sentence up to 10 years in prison.	Article 323-3 of the Criminal Code (LOPMI): penalty of up to 5 years in prison and a fine of up to €75,000.	Article 640-ter of the C.C.; sentence from 6 months to 3 years in prison and a fine from €51 to €1,032.	Sentences vary depending on the specific circumstances. Maximum 5 years	Article 263/a of the Criminal Code: punishment of up to 5 years in prison or a fine.
Falsification of computer data	Sentence from 6 months to 6 years; by the administrator with repetition 3-10 years	Sentenced to 3 years in prison and a 100,000 euro fine.	Sentence: 6 years and a fine of 600 to 3000 Eur.	Up to 2 years in prison, £5,000	Article 269 of the Criminal Code: Punishable by imprisonment for up to 5 years or a fine
Unauthorized interference with computer data	Fine or imprisonment from 3 to 10 years, while in the SK systems from 3-10 years in prison, Article 192/b.	Article 323-3 of the Criminal Code: penalty of up to 5 years in prison and a fine of up to €75,000.	Article 615-ter of the Criminal Code: sentence of up to 3 years in prison.	Up to 2-10 years in prison	Article 303/a of the C.C. Code: penalty of up to 5 years in prison or a fine.
DDoS attacks	They are not provided for in the specific law.	Punishment: 2 years in prison and a fine of up to €60,000; if it causes damage, the penalty causes serious damage, up to 5 years in prison & €150,000	The penalty is 3 years in prison; if it causes damage, the penalty is up to 5 years in prison.	Penalty of up to 10 years imprisonment and/or fine. Computer Misuse Act 1990	Article 303b StGB: up to 5 years in prison or a fine.
Unauthorized interference in cyber systems	From 3 - 10 years, in the SK systems, from 7-15 years in prison, article 293/b of the C.C	Up to 2 years / €60,000	Up to 2 years in prison and a fine of up to €10,329.	Up to 10 years in prison	Article 202/a of the C.C.: penalty of up to 3 years in prison or a fine.
Abuse of intimate image	They are not provided for in the law.	Up to 2 years in prison / €60,000	Up to 6 years in prison	Up to 6 months/ £5,000	Imprisonment for a term not exceeding one year or a fine.
Cyberstalking	They are not provided for in the specific law.	Up to 2 years in prison/ 30,000€	Up to 4 years in prison	Up to 5 years in prison	Up to 3 years in prison/ fine
Cyberbullying	They are not provided for in the specific law.	Mental health impairment: up to 1 year in prison and a fine of up to 15,000 euros. In serious cases: those who are present and do penalties may be harsher	Threat/harassment: imprisonment (from 1-7 years), to 15,000 euros. Those who are present and do not intervene: from 6 months-3 years. Parental responsibility. Under 14 years old	- Sending offensive/ threatening messages: up to 2 years in prison and/or fine.	- Insult 1 year imprisonment or fine. Defamation up to two years imprisonment or fine.

Referring to some other EU countries, it is noted that some criminal offenses are not specifically provided for, but are provided for in similar forms, such as: in Poland and Spain there is no specific criminal provision for cyberbullying; in Portugal, Slovenia and Croatia there is no specific provision for cyber harassment. Sweden, although it does not have a specific definition of cyberbullying in its Criminal Code, nevertheless has similar provisions in its Criminal Code that criminalize offensive acts when they occur online (e.g. defamation, contempt, unauthorized invasion of privacy). In Slovakia, cyberbullying is addressed by an amendment to the Criminal Code of 27 May 2021, which defines it as ‘dangerous online bullying’, mainly under § 360/b on dangerous electronic bullying (cyberbullying)¹.

1. Cyberbullying among young people: Laws and policies in selected Member States, – June 2024

The modern criminal law system is based on the principle that crimes should be punished with sentences commensurate with their seriousness and that justice should be administered objectively and impartially.

8. Criminal Law vs. AI: Tool or Threat?

The criminal justice system is undergoing an unprecedented transformation with the digitalization of evidence and the emergence of artificial intelligence (AI) in the administration of justice. The collection, processing, and evaluation of digital evidence must adhere to fundamental principles to ensure that technology serves as a tool, an ally, and not as a source of injustice or threat. Already, existing legal concepts are being challenged by the emergence of new technology, and especially AI. The rise of AI in the commission of crimes raises the question of the criminal liability of autonomous systems. The development of the “Metaverse” and virtual worlds may require the prediction of new specific crimes. The increasing use of quantum technologies is likely to challenge current cryptography systems and consequently data security, which requires investments in new technologies, advanced training. The international legal framework seems difficult to cope with digital crime and its impact remains “somewhat diluted by the lack of participation of some large countries that are now malign actors (China & Russia), which requires its adaptation, or joint judicial mechanisms. There is a need for reviews and changes in international conventions.

a) AI as a tool in the service of criminal justice:

AI is already part of advanced investigative practices. Through the analysis of big data (big data), monitoring of security cameras with facial recognition and algorithms that identify suspicious behavior, law enforcement agencies have a new arsenal for the fight against crime¹. AI helps to predict the probability of recidivism and to assist courts in making decisions on punishment or parole.

b) AI as a threat to the principles of criminal law:

- Algorithms can be biased: the lack of algorithmic transparency (black box problem) makes decision-making uncontrollable by the defendant or the court. Massive use can violate privacy, jeopardizing the principle of

1. Mittelstadt, B. et al. (2016). “The Ethics of Algorithms: Mapping the Debate”. Big Data & Society, Vol. 3(2).

proportionality and individual freedom.

- AI can be used for repressive purposes, especially in countries with weak institutions or a lack of democratic control (autocratic).

AI cannot replace human judgment. Its use in criminal law must be regulated to avoid bias, arbitrary decisions and lack of transparency. If a criminal decision is influenced by an erroneous AI, who is responsible? The programmer, the user, or the institution that authorized the use? Current criminal legislation does not provide clear answers to these situations. Legal dilemma and lack of legal framework: criminal liability in the context of AI lacks a clear legal framework to regulate the use of AI in criminal justice. For this we refer to the main principles of criminal law.

a) The principle of personal criminal liability

The evolution of the very classical legal concepts such as: criminal offenses “guilt”, “damage” or “risk” are being challenged by the digital reality, where the damage can be non-material and the cause not human, but digital – what about the punishment? Traditional criminal law is based on the principle of personal guilt — no one can be held criminally liable without being proven guilty beyond reasonable doubt (*dolo* or *culpa*). In this sense: AI cannot bear criminal liability, because it does not have legal personality, consciousness, or free will. Liability falls on the natural or legal person who caused the criminal consequence through the use or control of AI.

b) Concrete possibilities of liability

- AI programmer (programming, use of AI for manipulation, or flagrant negligence). The EU regulation (AI Act, 2024) classifies the use of AI in justice as a “high-risk application”, forcing the programmer to respect high security standards.

- Operator: If he misuses AI, provides incorrect data, or does not respect internal instructions for use, he can be held liable for negligence in the exercise of his duty, etc.

- Public official/decision-maker (has not exercised his/her legal discretion and causes harm (e.g., unjust punishment). Liability can also extend to the level of state institutions if AI is implemented through public contracts.

8.1 The Future: Debate on “Distributed Liability”

In more complex cases, where there is interaction between many actors (programmers, users, contractors, supervisors), the concept of distributed liability is being discussed. In this case, the role of each is analyzed according to the level of control, purpose, and foreseeability of the consequence. The role of AI in criminal law should be accompanied by legal guarantees, transparency, and institutional control.

Perhaps the creation of new legal categories will be required, such as “algorithmic negligence” or “irresponsible use of technology”. AI has no legal personality, without consciousness, it is neither a pure tool nor an inevitable threat, but a reality that requires careful management.

Should there be ethical and legal limits for the use of AI in criminal proceedings (which carries the risk of profiling, freedoms, discrimination or algorithmic bias especially in public settings)? The role of AI in criminal law must be accompanied by legal guarantees, transparency, and institutional control. Evidence obtained through AI must meet strict standards of legality, transparency, integrity and authenticity¹.

How will states cooperate for effective criminal prosecution, when both digital evidence and perpetrators are located in different countries and some very “aggressive” cyber countries such as China, Russia.. are not part of international conventions? The need to regulate cybercrime on a global scale by international law and cyber conventions.

Conclusions

The digital transformation of society has brought new challenges to public security, creating new spaces for criminal activities, such as cybercrime, data trafficking, online fraud and the spread of extremist ideologies on social networks.

Traditional criminal investigation is often unsuitable for dealing with digital crimes, due to their decentralized, anonymous and cross-border nature. This creates difficulties in collecting and using digital evidence in accordance with legal standards. Some experts are calling for the creation of a genuine “Digital Criminal Law”, separate from traditional criminal law, which would allow for the specifics of VP in cyberspace to be taken

1. Wischmeyer, T. (2020). Artificial Intelligence and Transparency: A Blueprint for Improving the Regulation of AI. German Law Journal, 21(1), 49–72.

into account and for legislation to be more quickly adapted to technological developments.

Technical capacities and human resources in law enforcement agencies are often insufficient, both in terms of technological expertise and in the use of advanced methods of data analysis and artificial intelligence in the investigation.

There is a lack of a unified legal approach to investigating digital crimes, with many countries facing normative gaps, procedural ambiguities and a lack of international harmonisation, which hinders effective cross-border cooperation. Harmonising cybercrime legislation for Albania and around the world is a significant challenge for the international community, as inconsistencies can lead to difficulties in investigating transnational cybercrime.

The tension between ensuring public safety and respecting fundamental rights, such as privacy, freedom of expression and the protection of personal data, poses a fundamental challenge for criminal legislation and its implementation in the digital age. Balancing constitutional rights with investigative needs is an ongoing challenge, particularly in relation to privacy and freedom of expression.

Modernising criminal investigation structures and strengthening technological capacities in the judicial police and prosecution, through continuous training, specialised equipment and the integration of technology experts into the investigative process. Draft and update criminal legislation and criminal procedure, in particular to criminalize all forms of child sexual abuse online in order to specifically address digital crimes, clearly define the competences of investigative authorities and guarantee the validity of electronic evidence in court. Establish special units for cybercrimes and digital security protection, which will operate in a coordinated manner with existing public security and criminal justice structures.

Develop clear protocols for the preservation, analysis and use of digital evidence, respecting international human rights standards and the principles of due process. Promote inter-institutional and international cooperation, through bilateral/multilateral agreements, information exchange networks and participation in international platforms for the fight against cybercrime. Implement democratic control and oversight measures, to prevent the abuse of new technologies by state authorities and

to maintain the balance between the public interest and individual rights. Strengthening oversight institutions and building professional capacities in the justice, police and prosecution services and involving civil society and the public in discussions on the use of technology in the criminal justice system.

References

- Law No. 7895, dated 27.1.1995 “Criminal Code”, as amended;
- Law No. 7905, dated 21.3.1995 “Criminal Procedure Code of the Republic of Albania”, as amended.
- Law No. 8888, dated 25.4.2002 “On the ratification of the Convention on Cybercrime”, Law No. 2/2017 “On Cybersecurity”
- Law No. 9918/2008 “On Electronic Communications” (amended by Law No. 102/2012, dated 24.10.2012; No. 107/2018, dated 20.12.2018; No. 92/2019, dated 18.12.2019, amended Law No. 9887, dated 10.3.2010, “On the Protection of Personal Data”, amended by No. 48/2012 and No. 120/2014.
- EU Regulation on Artificial Intelligence (AI Act 2024)
- General Data Protection Regulation (GDPR) – EU, Article 22: Automated individual decisions, including profiling Council of Europe Convention on Crime cyber, 23 November 2001
- Convention on Artificial Intelligence, Human Rights, Democracy and the Rule of Law – Council of Europe (2024) Directive (EU) 2019/713 of the European Parliament and of the Council of 17 April 2019 on combating fraud and counterfeiting of non-cash means of payment
- National Cyber Security Strategy 2020-2025 and action plan with Council Decision no. 1034 dated 24.12.2020
- Council of Europe (2021).
- Artificial Intelligence and Criminal Law Responsibility. Strasbourg: CoE, 2024.
- European Parliament resolution of 6 October 2021 on artificial intelligence in criminal law and its use by police and judicial authorities in criminal matters
- European Commission (2021). Proposal for a Regulation laying down harmonised rules on artificial intelligence (Artificial Intelligence Act). Brussels.

- Mittelstadt, B. et al. (2016). "The Ethics of Algorithms: Mapping the Debate". *Big Data & Society*, Vol. 3(2).
- Eleni Kosta (2018). Artificial Intelligence and the Rule of Law. In: *European Journal of Law and Technology*.
- UNODC(2021).Use of AI in Criminal Justice:Opportunities and Challenges. United Nations Office on Drugs& Crime.
- Wachter, S., Mittelstadt, B., & Floridi, L. (2017). "Transparent, Explainable, and Accountable AI for Criminal Justice". *Philosophy & Technology*, Vol. 31.
- Authority for Information on Documents of the Former State Security (2023). *Wiretapping and Privacy in the Digital Age*.
- European Court of Human Rights (2018). *Big Brother Watch and Others v. The United Kingdom – Application of Mass Surveillance and Protection of Privacy*.
- Borrion H (2018) *Inxhinier*. In: Wortley R, Sidebottom A, Tilley N et al. (eds) *Routledge Handbook of Crime Science* Oxfordhire, MB: Routledge, 167–178.
- Rahul, A., Krishnan, G., Krishnan, U. H., & Rao, S. (2015). Near Field Communication (NFC) Technology: A Survey. *International Journal on Cybernetics & Informatics*, 4(2), 133-144. <https://doi.org/10.5121/ijci.2015.4213>
- Surveillance and Predictive Policing Through AI.<https://www.deloitte.com/an/en/Industries/government-public/perspectives/urban-future-with-a-purpose/surveillance-and-predictive-policing-through-ai.html>, 20.03.2025
- Schultz, Thomas & Ridi, Nadia *Cybercrime and International Law*. Oxford University Press. (2021).
- Lt. Eric Kinsman, Commander, "Crime and Code: The Benefits and Challenges of Using AI in Law Enforcement Investigations". New Hampshire internet crimes against children task force, January 10, 2025
<https://www.europol.europa.eu/media-press/newsroom/news/dismantling-encrypted-criminal-encrochat-communications-leads-to-over-6-500-arrests-and-close-to-eur-900-million-seized>. Vizituar më datë 29.01.2024.
- Zilka, M., et al. (2023). *Exploring Police Perspectives on Algorithmic*

Transparency: A Qualitative Analysis of Police Interviews in the UK in EAAMO '23: Proceedings of the 3rd ACM Conference on Equity and Access in Algorithms, Mechanisms, and Optimization Association for Computing Machinery

Musai, Ilir. (2020). E drejta penale – Aspektet moderne dhe sfidat bashkëkohore. Tiranë: UET Press.

Wischmeyer, T. (2020). Artificial Intelligence and Transparency: A Blueprint for Improving the Regulation of AI. German Law Journal, 21(1), 49–72.

TRANSNATIONAL CUSTOMS CRIMES AND EXPORT CONTROL OF DUAL-USE GOODS LEGAL AND INSTITUTIONAL CHALLENGES IN THE FRAMEWORK OF INTERNATIONAL SECURITY

Admir ABRIJA¹, PhD Candidate

Faculty of Law, University of Tirana

Email: abrija@gmail.com

Municipality of Tirana: CEO, Tirana DC

Abstract

In an era of rapidly developing technologies and interconnected global trade, the illicit export of dual-use goods and technologies that can be used for both civilian and military purposes, has become a key dimension of transnational customs crime. This paper analyzes the legal, institutional, and operational challenges posed by such criminal activities, with a particular focus on the tension between national customs systems and international export control regimes. Based on international legal instruments, including EU Regulation (EU) 2021/821 and the United Nations Security Council Resolutions, the study examines how these frameworks function to prevent the spread of sensitive materials.

The research is further supported by the author's practical experience in law enforcement within the customs system, as well as by professional training undertaken in the United States, France, Italy, and other countries. These insights allow for concrete analyses of weaknesses in customs

1. **Admir ABRIJA** is a second-year PhD candidate at the Faculty of Law, University of Tirana. For over a year, he has served as the CEO of "Tirana Development Corporation" sh.a., a company with 100% public ownership. Mr. Abrija has over 25 years of experience in public administration. He has held various positions within the Ministry of the Interior, the Ministry of Finance, as Prefect of Tirana, the Ministry of Infrastructure and Energy, the Ministry of Justice, and the Municipality of Tirana, among others

inspections, risk management, and inter-institutional cooperation. The paper argues that current enforcement mechanisms remain fragmented and often under resourced, particularly in developing or transitional countries with emerging economies. The study concludes with proposals for political and legal reforms aimed at strengthening transnational cooperation and enhancing the role of customs authorities in detecting and prosecuting these complex crimes, which pose a serious threat to both international security and national sovereignty.

Keywords: *transnational crime, dual-use goods, export control, customs law, international cooperation, criminal prosecution, national security.*

I. Introduction

In an increasingly globalized world, where economic borders are fading and technology advances at a rapid pace, threats to international security no longer originate solely from state actors, but also from complex criminal networks operating beyond national jurisdictions. One of the most sensitive areas in this context is that of dual-use goods, technologies, or components that can be utilized for both civilian and military purposes, including the development of weapons of mass destruction¹ (WMDs).

Export control over such materials represents one of the most delicate challenges for customs authorities and criminal justice systems as a whole. Efforts to prevent their trafficking or unlawful exportation are closely tied to law enforcement, foreign policy, and the maintenance of both international and national order. In this framework, transnational customs crimes, which include serious violations of export and import regulations, require a distinct legal and institutional approach².

The aim of this paper is to critically analyze the legal and practical challenges related to the prevention and prosecution of customs crimes involving the export of dual-use goods. Emphasis is placed on the

1. *Regulation (EU) 2021/821 of the European Parliament and of the Council of 20 May 2021 setting up a Union regime for the control of exports, brokering, technical assistance, transit and transfer of dual-use items*, Official Journal of the European Union, L 206, Publications Office of the European Union, Luxembourg, 2021, p. 1–461.

2. Reuter, Peter. *Transnational Crime: Economic, Political and Social Perspectives*, Oxford University Press, Oxford, 2014, p. 15.

difficulties faced by customs authorities in identifying and intercepting such activities, as well as on the fragmented nature of legislation and international cooperation in this field. Moreover, the paper seeks to offer a practical contribution, drawing on the author's institutional experience and an analysis of the international legal framework, with the objective of formulating recommendations for strengthening control and investigative mechanisms.

This discussion gains particular relevance in light of recent global challenges, where rising geopolitical tensions and the misuse of technology for malicious purposes have made the issue of sensitive exports one of the most critical topics in global security today¹.

II. Theoretical and Conceptual Framework

2.1 Transnational Customs Crime: Definition and Typologies

Transnational crime is generally defined as a criminal act committed in more than one country or one that produces consequences beyond the borders of a single jurisdiction². In the customs domain, such crimes encompass a wide range of criminal offenses that violate border control laws and international trade regulations, including smuggling, false declarations, prohibited imports or exports, and evasion of customs duties.

At the core of this paper's analysis lies a particularly sensitive subcategory of transnational customs crime: the unlawful export of dual-use goods. These items pose a significant risk to global security, as they can be exploited for the construction of chemical, biological, nuclear, or advanced conventional weapons³.

2.2 Dual-Use Goods: Definition and Classification

According to European Union legislation (Regulation (EU) 2021/821), dual-use goods are software, or technologies that can be used for both

1. European Commission. *Strategic Export Controls: Ensuring Security and Competitiveness in a Changing World*, Brussels, 2021.

2. Philipp, Christiane. *Transnational Organized Crime and International Law*. Oxford University Press, 2015, p. 12.

3. Daniel H. Joyner, *International Law and the Proliferation of Weapons of Mass Destruction*, Oxford University Press, 2009, p. 87.

civilian and military purposes¹. These include laboratory equipment, electronic components, precision machinery, information technology, and sensitive materials that may be applied in the defense sector or in the development of WMDs.

The list of such items is regularly updated at the international level and requires exporters to obtain specific licenses, often involving complex verification procedures and technical classification processes².

2.3 International Legal Framework and Control Instruments

The export control of dual-use items is supported by a complex legal and institutional architecture that includes:

- Regulation (EU) 2021/821, which establishes a unified control system for EU Member States;
- The Australia Group, the Missile Technology Control Regime (MTCR), and the Wassenaar Arrangement, as multilateral initiatives for information sharing and coordination of export control policies;
- UN Security Council Resolutions, particularly those related to the prohibition of the proliferation of weapons of mass destruction (UN 1540).

Nevertheless, the implementation of these norms faces serious difficulties in countries that are not part of the EU or have not developed internal protection mechanisms, as well as in places where customs authorities are poorly equipped or where inter-institutional cooperation is lacking.

III. Practical Implementation Challenges

The effective enforcement of the export control system for dual-use items encounters several practical challenges related to legal and institutional aspects, as well as to the technical and human resource capacities of customs authorities. These challenges become even more complex when crime takes on a transnational dimension, involving international trafficking networks, shell companies, or the use of indirect

1. Regulation (EU) 2021/821 of the European Parliament and of the Council of 20 May 2021 setting up a Union regime for the control of exports, brokering, technical assistance, transit and transfer of dual-use items, *Official Journal of the European Union*, L 206, 11.6.2021, pp. 1–461.

2. European Commission, *Dual-use export controls: A key tool to ensure international security and competitiveness*, Brussels, 2021.

routes to circumvent control regimes.¹

3.1 Lack of Technical Expertise in Customs Authorities

One of the major challenges is the accurate identification of dual-use goods during customs inspection procedures. In many cases, these goods are not easily distinguishable from regular goods, as their classification requires specialized knowledge in fields such as engineering, chemistry, or information technology. As a result, the lack of trained human resources hinders the identification and interdiction of prohibited shipments.²

3.2 Fragmented Legislation and Insufficient Harmonization

Although there are significant international instruments, they are not applied uniformly across all countries. Many developing nations, including those in the Western Balkans, have not yet fully aligned their national legislation with international standards and often lack specific criminal provisions for the illegal export of dual-use items.³

3.3 Lack of Advanced Risk Management Systems

Modern risk management systems are essential for the intelligent targeting of high-risk shipments. In many cases, customs operate based on traditional controls, without using data analysis algorithms, economic intelligence networks, or proactive risk-based approaches. This makes it easier for criminal networks to exploit system loopholes.⁴

3.4 Weak Inter-Institutional and International Cooperation

Crimes involving sensitive materials often occur in contexts where effective coordination between state institutions is lacking, such as between customs, prosecution, intelligence services, or export licensing authorities. Moreover, international criminal and administrative cooperation is not

1. Daniel H. Joyner, *International Law and the Proliferation of Weapons of Mass Destruction*, Oxford University Press, 2009, pp. 85–102.

2. European Commission. *Commission Staff Working Document – Evaluation of Regulation (EC) No 428/2009*, SWD(2020) 45 final, Brussels, 2020.

3. Klotz, Audry, and Cecelia Lynch. *Strategies for Research in Constructivist International Relations*, M.E. Sharpe, 2007, p. 120

4. European Commission. *Dual-use export controls: A key tool to ensure international security and competitiveness*, Brussels, 2021.

always prompt or direct, which allows criminal networks to operate efficiently.¹

3.5 Use of Masked Structures and Indirect Routes

A common strategy to evade control is the use of shell companies, unknown intermediaries, or export through third countries that lack a strong control regime. These mechanisms make investigation and prosecution more difficult, especially in the absence of mutual agreements for information exchange and legal assistance.²

3.6. Lack of Internal Compliance Program

An Internal Compliance Program (ICP) helps companies proactively manage export control risks by establishing clear procedures for classifying goods, screening customers, and ensuring compliance with laws. It reduces the likelihood of violations, supports faster licensing decisions, and demonstrates a company's commitment to responsible trade—enhancing its reputation, protecting against penalties, and facilitating smoother interactions with authorities. ICP platform, while provided by EXBS program in 2022, has yet to be capitalized on by the private sector that is unaware this platform exists.

3.7. Lack of Public-Private Sector Outreach

A lack of private sector outreach is a common and critical weakness in many export control systems, particularly in the Western Balkans where awareness and compliance culture are still developing. Companies often remain unaware of their legal obligations, leading to widespread unintentional non-compliance and an increased risk of unauthorized exports of dual-use goods or sensitive technologies. Without guidance or support, businesses fail to develop internal compliance programs, overlook red flags in transactions, and avoid international trade due to fear or confusion. This weakens national enforcement efforts, erodes trust between industry and government, creates regulatory blind spots, and undermines the country's credibility in international nonproliferation regimes and global trade systems.

1. Interpol. (2022). *Operational and Strategic Threat Assessment Report*, Lyon

2. Transparency International. *Weapons Export Controls and Corruption Risks*, 2020.

IV. Case Studies and International Practices

To better understand the nature and challenges of transnational customs crime related to the export of dual-use materials, it is essential to examine real life cases that have emerged in recent years. These cases not only expose systemic weaknesses in customs and criminal control frameworks but also demonstrate the need for effective international cooperation.

4.1 The “Prohibited Telescope” Case, Germany, 2019

In 2019, German authorities investigated a company attempting to export a high-precision telescope to a Middle Eastern country. The equipment was classified as a dual use item, as it could be used for astronomical purposes but also for guiding ballistic missiles. The case was successfully handled through cooperation between customs, intelligence services, and the Federal Office for Economic Affairs and Export Control (BAFA).¹ This case highlights the importance of integrating technical analysis with legal control.

4.2 Recurring Cases in the Western Balkans

Reports from the EU and international organizations have highlighted that countries in the Western Balkans are often used as transit routes for sensitive technologies destined for end-users in countries with weak control regimes.² Despite efforts to align with the *acquis communautaire*, many cases reveal delays in real time notifications, lack of information sharing, and insufficient operational coordination between regional customs authorities.

4.3 The Role of Interpol and Europol

Organizations such as Interpol and Europol have established specialized units for investigating crimes related to the proliferation of dual use materials. Europol in particular supports member states through intelligence analysis, shared databases, and joint punitive operations. However, for these structures to function successfully, high readiness and effective capacity from participating customs authorities are necessary.³

1. Federal Office for Economic Affairs and Export Control (BAFA), Annual Report 2019, Germany.

2. European Commission, *Annual Enlargement Package – Western Balkans Report*, Brussels, 2021.

3. Europol, *Weapons and Explosives Crime Threat Assessment*, The Hague, 2022.

4.4 Lack of Transparency and Reporting in Some Eastern European Countries

According to a study by the Stockholm International Peace Research Institute (SIPRI), some Eastern European states do not regularly report on denied exports due to dual-use concerns.¹ This lack of transparency undermines the overall control system. SIPRI recommends enhancing transparency and systematically sharing information at regional and global levels.

4.5 The Case of Albania and Support through the EXBS Program

In recent years, Albania has made efforts to improve its legal and institutional framework for controlling exports of dual-use materials in line with EU requirements and international trade security standards. Nevertheless, the country still faces many challenges in practical implementation and capacity building, particularly at customs points and in support structures.

A key element in strengthening export controls has been the support provided through the Export Control and Related Border Security (EXBS) Program, implemented by the U.S. Department of State.² This program has delivered specialized training for customs officers, border police, and other law enforcement agencies, contributing to:

- Raising professional awareness of dual-use goods;
- Strengthening technical knowledge and providing logistical support for identifying these materials in the field;
- Harmonizing control and interdiction procedures with international best practices;
- Promoting inter-institutional cooperation, including coordination with the Ministry of Defense and the Ministry for Europe and Foreign Affairs.

Trainings provided by EXBS, combined with Albania's participation in frameworks such as the Australia Group and the Wassenaar Arrangement (through regional cooperation), have gradually improved the country's

1. SIPRI, *National Transparency in Arms Export Controls: Comparing Reporting*.

2. U.S. Department of State, *Export Control and Related Border Security Program – Overview and Impact*, Washington D.C., 2022.

approach to the export of sensitive goods.

Nevertheless, challenges remain in criminal enforcement and the prosecution of suspicious cases, as in-depth investigations and judicial decisions that establish legal precedent are often lacking. This underscores the need for interdisciplinary training of prosecutors, customs officers, and intelligence agents, as well as for strengthening case reporting and analysis systems. In addition, inconsistent licensing practices and weak post-license monitoring need to be addressed not only in Albania, but in the entire Western Balkans.

V. Recommendations

1. Strengthening the national criminal framework

The inclusion of specific provisions in the Criminal Code regarding violations related to the export of dual-use goods, clearly sanctioning actions that pose a threat to national and international security.

2. Capacity-building for customs and investigative authorities

Training customs officials, prosecutors, and investigators in the technical fields of identifying dual-use goods, as well as equipping them with advanced technology for scanning, data analysis, and risk management.

3. Creation of specialized inter-institutional units

Establishing joint units between customs, police, prosecution, and defense agencies to coordinate the investigation and prevention of prohibited exports.

4. Alignment with international standards and improvement of transparency

Harmonizing legislation with EU regulations and actively participating in international networks such as the Wassenaar Arrangement, Australia Group, and MTCR. In addition, imposing public reporting obligations on denied exports and identified cases would mark substantial progress in this field.

5. Use of information technology and economic intelligence

Developing integrated systems for analyzing exporter profiles, tracking

goods movements, and ensuring compliance with export licenses, based on advanced data analytics and real-time information exchange. Standardize end-use/r checks across the region and adopt electronic licensing systems with traceability and audit capabilities.

6. Continued cooperation with international programs

The support provided by the EXBS program to Albania is essential and should be expanded to include more components of criminal investigation and strategic risk management within the customs system. Other EU programs (such as EU P2P) that address similar concerns should be invited to focus on the strengthening of export control regulations.

VI. Conclusion

Transnational customs crime in the field of dual-use exports is not merely an administrative or commercial issue; it is a serious threat to international order and national security. Only through a coordinated, integrated approach based on law, technical expertise, and international cooperation can these challenges be effectively addressed.

This paper aims to shedding light on the existing problems and offering concrete recommendations that may contribute to strengthening the fight against this specific type of transnational and cross-border crime.

THE CHALLENGE OF CRIMINAL LAW IN ENSURING A SAFE DIGITAL ENVIRONMENT

Msc. Gloria Lleshanaku,
Dr. Ermira Tafani
Prof.Assoc.Dr. Arbër Gjeta¹

Abstract

In the era of digital transformation, cybercrimes pose a serious threat to individual, institutional, and national security. Criminal activities in cyberspace are becoming increasingly sophisticated, threatening not only individuals and businesses but also national security and the global economy.

In this context, this paper aims to analyze the typology of cybercrimes, their impact on digital security, and the legal challenges that states face in confronting these threats. Numerous cases of cyber-attacks, data theft, financial fraud, and other illegal activities carried out through virtual spaces highlight the complexity of this issue. Based on this situation, the study, through legal analysis and comparisons with international practices, emphasizes the importance of establishing a strong legal and technical framework to ensure a safer digital environment. By employing empirical and comparative research methods, the study underscores the need to develop both technical and legal standards to guarantee the highest possible level of digital security.

In conclusion, the study finds that, although the Criminal Code of the Republic of Albania provides measures and sanctions for offenses such as cybercrime and threats to digital security, the rapid pace of technological development

1. University “Aleksandër Xhuvani”, Elbasan, Faculty of Business and Law
lleshanakugloria@gmail.com
arber.gjeta@uniel.edu.al
miratafani@yahoo.com

requires an updated approach and greater harmonization between national and international legal mechanisms and technological advancements.

Keywords: *Cybercrime; Digital Security; Digital Space; Criminal Liability.*

1. Introduction

In the last decades, the transformation of society from a traditional system into a digitalized reality has brought significant benefits to both the private and public sectors, as well as to individual and institutional life. However, alongside the positive aspects of technological development, everyone faces the risk of being exposed to virtual pathways that are difficult to trace and may produce harmful consequences for society as a whole. Cybercrimes, which times ago occurred rarely or not at all, now represent a constant threat to individual, institutional, and state security. Therefore, protection against these threats falls within the scope of criminal law, the most important mechanism for safeguarding the values of the legal order, which must evolve coherently with the pace of cybercriminal activity to ensure a safer digital environment. Creating a secure digital environment is not a simple process, as digital crime is universal, it knows no borders, states, or jurisdictions. For this reason, the investigation, collection of digital evidence, and criminal prosecution of offenders is a complex process that, every now and then, exceeds the capacities of individual states. Consequently, it is nearly impossible for any single country to fight alone in the battle against digital crime, making cooperation between two or more states essential for the prevention and combat of this phenomenon. In this context, the paper aims to highlight the importance of the interaction between digital security and criminal law by analyzing the capacity of the latter to address the challenges posed by digital crime.

2. The Role of Criminal Law in Ensuring a Safe Digital Environment

2.1 The Legal Definition of Cybercrime

Cybercrimes are dangerous products of the digital age. These unlawful and socially harmful acts are committed through technology, computer networks, and digital systems. In this way, such offenses, by surpassing all filtered security systems, have the potential to access and misuse

personal data and information. Defining a universal concept of cybercrime is highly complex, as this term encompasses a variety of criminal offenses of different natures, all sharing a common element: the use of a computer or computer device¹. Cybercrime lacks a unified definition even in international acts, including one of the most important, the Convention on Cybercrime (Budapest Convention)². Nevertheless, cybercrimes are recognized as offenses in criminal law³, as they meet the general criteria that define a criminal act under legislation, namely: a) Cybercrimes are human acts that violate the law. Although they are carried out through computer devices and digital systems, these acts are committed by human beings. As long as such actions harm moral and social values and legal relationships, they are illegal and therefore punishable. b) Cybercrimes are socially dangerous acts. These crimes pose significant risks, as they may compromise personal and confidential data, individual property, and, most importantly, the integrity of various entities both natural and legal persons. c) Cybercrimes embody criminal intent and action. Perpetrators of these offenses, due to the specific nature of the crimes, generally possess specialized digital knowledge necessary to execute them. For this reason, the degree of danger posed by these acts is high, as they result from well-thought-out, deliberate, and structured criminal intent. d) Cybercrimes infringe upon economic and moral interests through illegal digital intrusions. As a result of such intrusions, online transactions across many social spheres are endangered. Likewise, all electronically stored personal data of individuals are at risk. Confidentiality, authenticity, digital security, and integrity have become the main targets in today's digital era.

2.2 The Historical Development of Cybercrime

Technological developments since the 1950s and 1960s have profoundly influenced lifestyles and social structures, bringing not only benefits but also new challenges including cybercrime⁴. Initially, hacking had an

1. "La nuova criminalità informatica. Evoluzione del fenomeno e strategie di contrasto," Domenico V., *Rivista di Criminologia, Vittimologia e Sicurezza*, 2007, Italy, pp. 46–54.

2. Article 1 of the Convention on Cybercrime (Budapest Convention), available at: <https://www.coe.int/en/web/cybercrime/the-budapest-convention>, last accessed April 3, 2025.

3. Mëngjesi, S., *Bazat e Doktrinës së së Drejtës Penale*, Botimet Morava, Tirana, 2016, p. 100.

4. Chadd, K. *The History of Cybercrime and Cybersecurity, 1940–2020*, 2020.

experimental character, as students tested the limits of computer systems without malicious intent. However, over time, system intrusions became more organized and caused increasingly evident consequences. The 1970s marked the first thefts of computer codes and the emergence of the concept of “social engineering”, through which individuals were deceived into revealing confidential information. During the 1980s and 1990s, as technology advanced and the first computer viruses such as “Elk Cloner” appeared, organized groups began to emerge with the intent of damaging various systems¹. Among the most well-known viruses was “Brain”, created by two brothers in Pakistan. In this period, international authorities such as those in the United States started taking legislative measures to combat these phenomena, enacting laws such as, the Computer Fraud and Abuse Act. In the 1990s and 2000s, with the expansion of internet use, cybercrimes became more widespread and organized, encompassing fraud, system intrusions, and data theft². One of the earliest techniques to emerge was phishing, where users were tricked into revealing personal information such as passwords or banking data. Phishing soon became a common method to block online services and inflict significant financial losses on businesses and individuals. After 2000, with further technological advancement, cybercrimes became increasingly complex and sophisticated. Various states began to use technology for espionage and cyber warfare. A historic moment in this evolution was the emergence of the Stuxnet virus, which was used to sabotage Iran’s industrial systems marking a new stage in state-level cybercrime. This period underscored the strategic importance of digital security and the need for international cooperation in combating cybercrime.

In the decade from 2010 to 2024, as technological dependency intensified, cybercrimes escalated significantly³. Specialized structures such as the European Cybercrime Centre (EC3) and the Joint Cybercrime Action Taskforce (J-CAT) within Europol were established. Similarly, Interpol created the Global Complex for Innovation, a center for developing

Available at: <https://cybersecurityventures.com/the-history-of-cybercrime-and-cybersecurity-1940-2020/>, last accessed April 20, 2025.

1. Kumar, R. *Criminology -The Discipline and Dimensions*, Centrum Press, 2022, New Delhi, p. 1362.

2. *Internet Organised Crime Threat Assessment (IOCTA)*, Europol, Publications Office of the European Union, 2021, Luxembourg, p. 8.

3. Latifi, V. *Kriminalistika, Libri Shkollor*, Prishtina, 2009, pp. 336–347.

methods of investigating digital crimes. In the present era, with the rise of artificial intelligence and automation, methods of financial fraud and data theft have become more advanced. New platforms such as the dark web and technologies like block chain present new challenges for cyber security and criminal law. In Albania, cybercrimes emerged later due to slower technological development. Nevertheless, the country has consistently undertaken measures to ensure digital security and combat cybercrime. Initially, the Criminal Code did not include specific provisions addressing cyber offenses, but such provisions were later added through Law No. 1023, dated November 27, 2008¹. Today, Albanian criminal legislation is more consolidated and increasingly aligned with contemporary international standards.

2.3 Characteristics of Cybercrimes

Cybercrimes are committed through various forms, tools, and methods; however, they share several common features, including:

The existence of a digital system - Unlike traditional crimes, the environment in which cybercrimes occur is the virtual space. Interference within this space can be easily exercised through the use of information technology and electronic devices.

Unauthorized access to digital systems- For access to digital systems to be considered illegal, it must involve entering systems in which access to codes, data, files, or any other digital element occurs without authorization from the rightful subject or system owner.

An unlimited virtual space (the place of the crime) - While other crimes are judged based on the physical location of their commission or the place where their consequences occur, cybercrimes are universal and more complex. This complexity arises from the fact that the “place” where such crimes occur is a borderless virtual space without defined geographical boundaries.

Difficulty of identification - The protection of personal data ensures that much of the information in the digital space remains confidential as a guarantee for users. However, the evolution of digital systems has made it easy for many actors to build “masking schemes” by anonymizing

1. Law No. 1023, dated November 27, 2008, “On Some Additions and Amendments to Law No. 7895, dated January 27, 1995, the Criminal Code of the Republic of Albania,” as amended.

themselves to evade legal responsibility for the harm they cause. Cybercrimes can cause substantial damage to both natural and legal persons. Such damages may include monetary losses through fraud or forgery, breaches of personal data, damage to image or reputation, or the violation of other legally protected rights. The use of computers as instruments for committing crimes may take the form of financial misuse, the creation and dissemination of viruses, theft of information from computer systems, and other similar offenses¹.

3. Legal Liability and Challenges in Criminal Prosecution

3.1 Determining Jurisdiction in the Digital World

Security is a crucial global component of the rule of law. The need to protect against digital and computer-related risks transcends borders, just as cybercrime itself does. Cybercrimes do not recognize territorial boundaries; they are often concealed, masked, or intentionally misidentified, creating significant challenges regarding which state, legislation, or judicial mechanism has the authority to prosecute them. International criminal law addresses these issues through five guiding principles: 1) The Principle of Territoriality; 2) The Principle of Active Nationality; 3) The Principle of Passive Nationality 4) The Principle of Protection of State Interests 5) The Principle of International Justice². All these principles are based on the key element of territorial space. However, situations may arise where the perpetrator is in a different location from the victim or the site of the consequence. Additionally, the location of the software or server may be entirely separate from both the perpetrator and the victim. Such circumstances not only provide numerous opportunities for offenders but also create significant challenges for law enforcement agencies³. A notable case illustrating jurisdictional complexity is Federal Court Decision No. 173158/95, Bavaria v. Somm⁴. Felix Bruno Somm, a Swiss citizen residing

1. Gordon, S., & Ford, R. (2006). On the Definition and Classification of Cybercrime. *Journal in Computer Virology*, Heidelberg, pp. 13-20.

2. Mëngjesi, S., Bazat e Doktrinës të së Drejtës Penale, Botimet Morava, Tirana, 2016, p. 50.

3. Clough, J., The Council of Europe Convention on Cybercrime: Defining ‘Crime’ in a Digital World, *Criminal Law Forum*, Heidelberg, 2012, p. 23.

4. Bavaria v. Somm, Federal Court Decision No. 173158/95, 1998. Available at: https://ciaotest.cc.columbia.edu/olj/ijclp/ijclp_1/ijclp_1k.html, last accessed April 12, 2025.

in Germany and serving as director of an IT services company, was accused of accessing pornographic materials containing violent content involving minors and animals. Although Somm was Swiss and the materials were stored on servers in the United States, the German court asserted jurisdiction, citing his residence in Germany. This case demonstrates the application of the territoriality principle, whereby a state exercises sovereign authority within its own territory. Jurisdictional issues are also addressed in the Budapest Convention on Cybercrime, which establishes important rules for determining jurisdiction when cases involve multiple states' interests¹. The Convention applies the principle of territoriality, stating that digital crimes occurring within a state's territory are to be adjudicated under that state's laws and courts. It also recognizes nationality-based jurisdiction, allowing states to prosecute crimes committed by or against their nationals, even if the acts occur outside their territory. This key instrument of international criminal law provides a general framework for jurisdiction, giving states the necessary space to determine applicable jurisdiction. Articles 2 and 3 of the Convention guarantee states the right to apply jurisdiction they consider most appropriate or to make reservations regarding the application or non-application of specific jurisdictions. This approach allows any jurisdiction that does not conflict with domestic law or accepted principles of criminal law. However, the possibility of jurisdictional conflicts between states cannot be excluded. Article 23, paragraph 5 of the Convention addresses "conflicting jurisdiction" and stipulates that the parties "shall consult". This language not only encourages states to find common ground to facilitate prosecution and adjudication but also mandates cooperation and the selection of the most effective alternatives.

3.2 Determining the Place of the Crime for Legal Liability

Cybercrimes occur in a virtual environment, which often makes it challenging to determine the location where the offense was committed. When the perpetrator's location, the victim's location, and the server location, which is used to commit the crime, are all different, the question arises: which of these should be considered the place of the criminal act? This is one of the greatest challenges in administering justice and assigning

1. Article 23, Budapest Convention on Cybercrime. Available at: <https://www.coe.int/en/web/conventions/full-list>, last accessed April 5, 2025.

legal responsibility.

According to doctrine, the place of the crime is generally considered to be either the location where the act or omission occurred or the place where its consequences are materialized¹. Typically, the location can be identified through methods such as the user's IP address, login location, or other electronic records, often requiring personal data, including the user's address. However, the situation is complicated by technological developments that allow users to disguise their location, for instance, through Virtual Private Networks (VPNs) to appear as if they are in a different country or to gain additional services. This capability facilitates anonymity, making cybercrimes easier to commit while complicating accurate identification and the determination of proper jurisdiction. In many countries, including Albania, the use of VPNs is currently being evaluated for restrictions, especially after the closure of applications like TikTok. While VPN use is legal, it becomes punishable when used as a tool in committing unlawful cyber acts. Some countries allow VPN use freely², while others, such as the United Arab Emirates, restrict it for illegal purposes, imposing strict penalties. North Korea is an extreme example, where VPN use is tightly controlled and allowed only for select individuals. Due to the ability of perpetrators to anonymize or change their locations, many courts have opted to consider the victim's location as the place of the crime. An illustrative case is *Lauri Love v. United States*, CO/5994/2016³. Lauri Love, a British activist, was accused of attacks on secure systems, including the U.S. Department of Defense, and the theft of sensitive data. He used a network of distributed servers located in multiple countries, making it difficult to determine the exact location of his actions. Despite being accused in the U.S., Love was extradited from the UK because establishing the precise location of the cyber "residence" of the crime was extremely challenging. Another landmark case highlighting these challenges is *United States v. Microsoft Corp*⁴. The U.S. government

1. Mëngjesi, S., *Bazat e Doktrinës të së Drejtës Penale*, Botimet Morava, Tirana, 2016, p. 46.

2. Available at: <https://nordvpn.com/blog/are-vpns-legal/>, last accessed April 9, 2025.

3. *Lauri Love v. United States*, Court Decision No. CO/5994/2016, 2018. Available at: <https://www.judiciary.uk/wp-content/uploads/2018/02/lauri-love-v-usa.pdf>, last accessed April 10, 2025.

4. *United States v. Microsoft Corp*, 2018. Available at: <https://www.justice.gov/atr/us-v-microsoft-courts-findings-fact>, last accessed April 10, 2025

issued a subpoena requesting data stored on Microsoft servers in Dublin, Ireland, as part of a drug trafficking investigation. Microsoft refused, arguing that U.S. law lacked extraterritorial power. This case illustrated a major digital security issue: the conflict between national sovereignty and the international nature of technology and data protection. To address this, the Clarifying Lawful Overseas Use of Data (CLOUD) Act was enacted, allowing U.S. authorities access data stored abroad under specific conditions, ultimately resolving the jurisdictional challenge.

3.3 International Cooperation as a Challenging Promoter in Ensuring Digital Security

International cooperation for preventing and combating cybercrime is closely linked to the global nature of these offenses, requiring coordinated actions among all states and the establishment of international standards for the protection of computer systems. Effective cooperation enhances the detection and prevention of cybercriminal acts¹. Cooperation among states is both the most critical mechanism and the greatest challenge in combating a phenomenon that transcends territorial boundaries and in ensuring digital security.

In the field of cybercrime, international cooperation is extensively regulated by the Budapest Convention on Cybercrime². The Convention sets out general principles for state cooperation, extradition agreements, general rules on mutual legal assistance, and the regulation of spontaneous information sharing. According to the Convention, states should engage as fully as possible in criminal investigations and proceedings, while respecting domestic laws and international criminal law. One of the primary forms of cooperation is extradition agreements³. Many states have established bilateral or multilateral extradition treaties, such as those between the U.S. and the U.K.; France and Germany; and the U.S. and Albania. Extradition for cybercrimes requires meeting certain legal conditions, including the existence of an extradition treaty, dual criminality of the offense, and

1. Gercke, M., National, Regional, and International Legal Approaches in the Fight Against Cybercrime, Council of Europe Publishing, Strasbourg, 2008, pp. 7–14.

2. Chapter 3, Budapest Convention on Cybercrime, available at: <https://www.coe.int/en/web/conventions/full-list>, last accessed April 10, 2025.

3. Bassiouni, M., International Extradition: United States Law and Practice, Oxford University Press, New York, 2014, pp. 34–70.

ensuring the integrity of the accused¹.

The states, while retaining the freedom to act, must demonstrate cooperation by facilitating mutual prosecution and investigation, whether or not they are a direct party to the case. Another form of cooperation is spontaneous information sharing². When a state obtains information during its investigations that is relevant to another state, it may voluntarily share it without a prior formal request or an existing treaty. In practice, however, this can be challenging. A notable example is the case of Aleksei Burkov³, a Russian hacker accused of advanced credit card fraud in Israel. Russia requested his extradition in 2015, but Israel extradited him to the U.S. in 2020, where he was convicted. Russia criticized the action, claiming that its citizen had been “hunted” by foreign authorities. This situation illustrates how state sovereignty can prevail over the principle of cooperation, potentially creating tensions instead of ensuring a secure digital environment.

4. Applicable Law in the Republic of Albania on Combating Cybercrime

4.1 Cyber Offenses Defined in Albanian Criminal Legislation

In the Republic of Albania, cybercrime is currently addressed within the Criminal Code, though the offenses are not grouped in a single dedicated section but are spread across various sections. Digital systems play a crucial role across numerous social sectors, as they contain data on individuals and assets, whose integrity and authenticity must be protected. Unauthorized access to computer data or exceeding authorized access, whether partially or fully is punishable under Albanian law⁴. This provision aims to safeguard the privacy, integrity, and confidentiality of digital records.

Another criminal offense is interference with computer systems, which occurs through inserting, damaging, altering, deleting, or suppressing data⁵.

1. Article 24, Budapest Convention on Cybercrime, available at: <https://www.coe.int/en/web/conventions/full-list>, last accessed April 10, 2025.

2. Article 26, Budapest Convention on Cybercrime.

3. Aleksei v. United States, Court Decision No. 1:15-cr-00245-TSE, May 8, 2020. Available at: <https://www.justice.gov/usao-edva/united-states-v-aleksei-burkov>, last accessed April 11, 2025.

4. Article 192/b, Criminal Code of the Republic of Albania.

5. Article 293/c, Criminal Code of the Republic of Albania.

Unlike unauthorized access, this offense is dependent on the consequence or harm caused to qualify as a crime. The tools used to commit cybercrimes are primarily technological devices, which are also protected under law. Article 293(c) criminalizes the misuse of computer devices through production, possession, sale, or any other form of deployment if intended for committing criminal acts. Certain forms of cybercrime relate to the distribution of materials that incite genocide or crimes against humanity¹. While freedom of expression is protected, distributing such criminal content is prohibited, as it reflects deliberate criminal intent. Examples include sharing pornographic materials² and racist or xenophobic content via computer systems³.

The author of such acts consciously engages in producing, distributing, advertising, selling, or importing this material. Both intent and awareness are critical elements evaluated case by case by courts. The digitalization of Albanian society and widespread use of social media have highlighted cybercrimes such as racially or xenophobically motivated insults via computer systems. Article 119/b of the Criminal Code states: “Deliberate public insult through computer systems based on ethnicity, nationality, race, or religion constitutes a criminal offense punishable by fine or imprisonment of up to two years.” Similarly, Article 84/a addresses serious threats via computer systems due to ethnic, racial, or religious affiliation, punishable by fines or imprisonment up to three years. Computer systems also facilitate illegal surveillance, and violating privacy. Protecting private life is a fundamental legal guarantee under Article 8 of the European Convention on Human Rights, ratified by Albania⁴.

Computer fraud is another widespread cybercrime, often executed through fake profiles. For instance, in *Drew v. United States*⁵, a 14-year-old girl committed suicide due to harassment by fake social media profiles impersonating her friends. Article 143/b of the Criminal Code criminalizes altering, deleting, or manipulating computer data for unjust economic gain. Protecting data authenticity from unauthorized modification, deletion,

1. Article 74/a, Criminal Code of the Republic of Albania.

2. Article 117, Criminal Code of the Republic of Albania.

3. Article 119/a, Criminal Code of the Republic of Albania.

4. Article 293/a, Criminal Code of the Republic of Albania.

5. *Drew v. United States*, Court Decision No. Cr-08-582-G, Nov. 17, 2009. Available at: <https://www.justice.gov/sites/default/files/oip/legacy/2014/07/23/11-17-2009-us-v-lori-drew.pdf>, last accessed April 12, 2025.

or falsification is a legal guarantee for users to feel secure within digital systems. Article 186/a, classifies unjust interventions that compromise data authenticity as computer falsification, punishable under Albanian law. By codifying these acts as criminal offenses, the legislation ensures they are prohibited and subject to sanctions.

4.2 Initiatives Undertaken by the Albanian State to Prevent and Reduce Cybercrime

The Constitution of the Republic of Albania guarantees the establishment of a rule-of-law state where fundamental rights and freedoms of individuals are protected¹. Within this framework, defending against cybercrime has become one of the major modern challenges, especially given the massive increase in technology use and dependence on digital systems across both public and private sectors. According to data published by the State Police and the National Agency for Information Society (AKSHI), over 1,200 cyber incidents were reported in 2023 only, representing a 30% increase compared to 2022². These incidents include attacks on state institutions, leaks of personal data, online financial fraud, and disruptions of critical systems. In response, the Albanian state has implemented a range of legal initiatives and international cooperation efforts aimed at strengthening defensive and punitive capacities against cybercrime. The national legal framework relies on several key acts: The Albanian Criminal Code, including Article 7/j and other relevant provisions, establishes criminal liability for cyber offenses for both Albanian and foreign nationals. Law No. 25/2024 on Cyber security aims to create strong structures and mechanisms for protecting and responding to cyber incidents. Council of Ministers Decision No. 783, dated 18.12.2024, established the National Authority for Cyber security (AKSK), a key institution for monitoring, coordinating, and providing technical assistance during cyber incidents. Albania has also demonstrated clear commitment to international instruments, including: Ratification of the Budapest Convention on Cybercrime in 2002 (Law No. 8888), the fundamental international instrument in this field, and subsequently the Second Additional Protocol in 2022, which deepens international cooperation and the investigation

1. Article 15, Constitution of the Republic of Albania.

2. Report: Governance of Cybersecurity in Albania, 2023. Available at: <https://aksk.gov.al/wp-content/uploads/2024/05/Raport-i-Qeverisjes-Kibernetike-Kombetare-2023.pdf>, last accessed April 11, 2025.

of electronic evidence; Directive 2002/58 on e-Privacy, which ensures digital privacy protection. Strategically, the Albanian government adopted the National Cyber security Strategy 2020-2025¹ through the Decision of Council of Ministers No. 1084², setting clear objectives in education, institutional coordination, protection of critical infrastructure, and response to threats. A notable partnership with the American company Jones Group International³ which provides technical assistance and training in three key areas: risk scanning, development of defense strategies, and human capacity building. In a world where cyber-attacks can paralyze entire state systems, threaten citizens' rights, and compromise national digital sovereignty, strengthening legal instruments and international cooperation is essential. However, significant challenges remain related to the fact that the Albanian judicial system still lacks specialized sections for cybercrime investigation and adjudication. Establishing these sections will require continuous training and specialization of all relevant structures to ensure effective justice in the highly technical and delicate field of digital security and cybercrime.

5. Conclusions and Recommendations

In international criminal law, there is no legal definition of cybercrime. As a result, its conceptualization is the primary challenge faced by criminal law and its enforcement. The evolution of cybercrimes in the modern era challenges criminal law on a daily basis in terms of coherence and prevention of cyber phenomena. The very nature of cybercrime a crime occurring in a virtual space that is unlimited and easily anonymized makes it difficult to determine the place of commission and, consequently, the applicable jurisdiction. Although there are different theories and numerous legal regulations in international instruments regarding the determination of the place of commission and jurisdiction, the situation is practically difficult to resolve, since the need for international cooperation in ensuring digital

1. Action Plan 2024–2025, National Cybersecurity Strategy 2020–2025. Available at: <https://aksk.gov.al/strategjia-kombetare-per-sigurine-kibernetike/>, last accessed April 13, 2025.

2. VKM No. 1084, December 24, 2020, On the Approval of the National Cybersecurity Strategy and Action Plan 2020–2025.

3. Agreement with Jones Group International for Strengthening Digital Security Systems in Albania. Available at: <https://www.infrastruktura.gov.al/firmoset-marrevshja-per-forcimin-e-sigurise-se-sistemeve-dixhitale-ne-vend/>, last accessed April 13, 2025.

security comes into conflict with the concept of sovereignty, for which states usually make no compromises. Nevertheless, states have found common ground through the creation of bilateral or multilateral agreements and the ratification of important legal instruments representing international criminal law standards in the field of cybercrime. Albania has followed a similar path, where, although the fight against cybercrime started somewhat later, it has progressed rapidly, and the instruments and initiatives undertaken are considerable. However, the continuous increase of cybercrimes in Albania shows that adopting laws alone is not sufficient; effective enforcement, the development of technical and professional capacities, and a culture of digital security within society are also required. This would involve focusing specifically on three key areas: a) Establishing a legal definition of cybercrime; b) Positioning cybercriminal offenses according to their classification in a separate section of the Criminal Code, as is done for other criminal offenses; c) Developing specialized units and sustainable human resources for the prevention, prosecution, and adjudication of cybercrime within the structures of judicial authorities. Effectively confronting cybercrime requires an integrated, harmonized, and sustainable approach among legislation, institutions, and society, and only in this way can criminal justice prevail in the digital era.

References:

- “Aleksi v. United States,” Case No. 1:15-cr-00245-TSE, 08.05.2020, retrieved from <https://www.justice.gov/usao-edva/united-states-v-aleksi-burkov>, last accessed 11 April 2025.
- Are VPNs Legal? Country Guide for 2025, Markuson D., 2024, retrieved from <https://nordvpn.com/blog/are-vpns-legal/>, last accessed 9 April 2025.
- Action Plan 2024-2025 of the National Cybersecurity Strategy 2020-2025, retrieved from <https://aksk.gov.al/strategjia-kombetare-per-sigurine-kibernetike/>, last accessed 13 April 2025.
- Albania’s Agreement with the American Company “Jones Group International,” retrieved from <https://www.infrastruktura.gov.al/firmoset-marreveshja-per-forcimin-e-sigurise-se-sistemeve-edixhitale-ne-vend/>, last accessed 13 April 2025.

- Bassiouni M., International Extradition: United States Law and Practice, Oxford University.
- Bavaria v. Somm, Case No. 173158/95, 1988, retrieved from https://ciaotest.cc.columbia.edu/olj/ijclp/ijclp_1/ijclp_1k.html, last accessed 12 April 2025.
- Case No. Cr-08-582-Gw, 17.11.2009, retrieved from <https://www.justice.gov/sites/default/files/oip/legacy/2014/07/23/11-17-2009-us-v-lori-drew.pdf>, last accessed 12 April 2025.
- Constitution of the Republic of Albania, 21.10.1988. Full List of European Conventions, retrieved from <https://www.coe.int/en/web/conventions/full-list>, last accessed 15 April 2025.
- Gercke M., National, Regional and International Legal Approaches in the Fight Against Cybercrime, Council of Europe Publishing, 2008, Strasbourg, pp. 7-14.
- Gordon S., Ford R., "On the Definition and Classification of Cybercrime," 2006, Journal in Computer Virology, Heidelberg, pp. 13-20.
- Clough J., "The Council of Europe Convention on Cybercrime: Defining 'Crime' in a Digital World," Criminal Law Forum, Heidelberg, 2012, p.23.
- Directive 2002/58 "On e-Privacy," retrieved from <https://eur-lex.europa.eu/eli/dir/2002/58/oj/eng>, last accessed 14 April 2015".
- Drew v. United States," Press, 2014, New York, pp. 34-70.
- Domenico V., "La nuova criminalità informatica. Evoluzione del fenomeno e strategie di contrasto," Rivista di Criminologia, Vittimologia e Sicurezza, 2007, Italy, pp. 46-54.
- Decision of the Council of Ministers No. 783, 18.12.2024, retrieved from <https://www.kryeministria.al/newsroom/vendime-te-miratuara-ne-mbledhjen-e-keshillit-te-ministrave-date-18-dhjetor-2024/>, last accessed 14 April 2025.
- Europol, Internet Organised Crime Threat Assessment (IOCTA), Publications Office of the European Union, 2021, Luxembourg, p.8.
- Kumar R., Kumar Criminology - The Discipline and Dimensions, Centrum Press, 2022, New Delhi, p.1362
- Mëngjesi S., Foundations of Criminal Law Doctrine, Morava Publications, 2016, Tirana, p.100.
- Latifi V., Criminalistics, 2009, Libri Shkollor, Prishtina, pp. 336-347.

- “Lauri Love v. United States,” Case No. CO/5994/2016, 2018, retrieved from <https://www.judiciary.uk/wp-content/uploads/2018/02/lauri-love-v-usa.pdf>, last accessed 10 April 2025.
- Law No. 25/2024 “On Cybersecurity,” retrieved from <https://qbz.gov.al/eli/ligj/2024/03/21/25/8eec2e4f-c9bb-42a9-ac23-feffc86318e?q=P%C3%ABr%20Sigurin%C3%AB%20Kibernetike>, last accessed 15 April 2025..
- “On Cybercrime,” Budapest Convention (Council of Europe), No. 180, retrieved from <https://www.coe.int/en/web/cybercrime/the-budapest-convention>, last accessed 15 April 2025.
- Criminal Code of the Republic of Albania, 27.01.1995.
- Report “Governance of Cybersecurity in Albania,” 2023, retrieved from <https://aksk.gov.al/ep-content/uploads/2024/05/Raport-i-Qeverisjes-Kibernetike-Kombetare-2023.pdf?>, last accessed 11 April 2025.
- “United States v. Microsoft Corp,” No. 98-1232, 2018, retrieved from <https://www.justice.gov/atr/us-v-microsoft-courts-findings-fact>, last accessed 10 April 2025.

CHILD SOLDIERS IN INTERNATIONAL CRIMINAL LAW – THE HISTORICAL CONTEXT AND THE NEED FOR GLOBAL COOPERATION

Irena Staka¹

Abstract

This paper addresses the issue of child soldiers within the framework of international criminal law, highlighting the importance of protecting their rights as a particularly vulnerable group. It begins by offering a historical and legal perspective on the concept of child soldiers, examining international instruments aimed at eradicating this practice and ensuring the fundamental rights of minors affected by armed conflicts.

It then discusses the Rome Statute of the International Criminal Court (ICC) as the most significant contemporary instrument that defines and penalizes the recruitment, use, or involvement of children in combat operations as a war crime. A key section of the paper focuses on the “Lubanga” case, the first case prosecuted before the ICC for the recruitment and exploitation of child soldiers. The study assesses the importance of this precedent in promoting individual accountability for crimes against children and setting a higher legal and moral standard for their protection.

Lastly, it provides a comprehensive analysis of the practical and legal challenges to preventing and punishing this offense, focusing on the roles of states, international organizations, and civil society. The paper aims to underscore the need for expanded international cooperation at the legal and political levels, to ensure effective protection of children and to strengthen mechanisms for preventing any form of their exploitation in

1. PhD (c), Coordinator, Criminal Law Sector, Criminal and Civil Law Directorate, General Directorate of Codification and Harmonization of Law, Ministry of Justice, irenastaka1@gmail.com.

armed conflicts. At the same time, it emphasizes the necessity of involving experts in the policy-making process, in order to establish the most complete protective framework for minors involved in conflict situations.

Keywords: *child soldiers, Rome Statute, International Criminal Court, war crimes, international cooperation, protective mechanisms.*

I. Introduction

Known as the future and greatest potential of a nation, the issue of child soldiers remains one of the most complex challenges in the field of international law and human rights. Despite international efforts to put an end to this practice, child soldiers continue to be used in various conflict zones, illustrating the complexity of enforcing the law in such situations. Although the International Military Tribunals of Nuremberg and Tokyo did not include specific crimes against children in their jurisdiction, subsequent international courts have dealt with cases where children are the direct object of violence and mistreatment.

This paper focuses on the fundamental principles of children's rights, their inclusion within the international criminal justice system as well as on the various international crimes committed by them, relying on the relevant legal framework and jurisprudence. At the core of the international legal framework stands the Rome Statute of the International Criminal Court, which criminalizes the recruitment and use of children in armed conflicts. This paper examines the provisions of the Rome Statute, together with one of the most important judicial practices, the landmark Lubanga case, which highlighted the gravity of such acts and set a precedent for the prosecution of those responsible. By placing key cases, such as the Lubanga decision at the International Criminal Court, within a broader historical narrative, the study shows how legal standards have gradually been strengthened, while gaps in implementation persist.

The paper argues that effective prevention of this practice cannot rely on criminal prosecutions alone. It requires ongoing global cooperation that includes, among other things, information sharing and long-term social reintegration. Only through such a coordinated approach can the international community turn legal prohibitions into real protection for some of the most vulnerable victims of war.

II. The Evolution of the Concept of Child Soldiers in International Law

Referring to international humanitarian law that regulates conduct in armed conflicts, the issue of child soldiers first arises in the two Additional Protocols to the 1977 Geneva Conventions, but however, the criminalization of the phenomenon of child soldiers came much later¹. Additional Protocol I focuses on international armed conflicts, while Additional Protocol II focuses on non-international armed conflicts². Both protocols provide special protection for children by prohibiting the recruitment and use of children under the age of 15 in hostilities³. This prohibition represents one the most important measures for protecting children from direct involvement in armed conflicts, as they are considered incapable of participating in them. On the other hand, the protocols also provide for the protection and release of children who have been unlawfully used in warfare, giving them the opportunity to reintegrate into society and to undergo rehabilitation following the traumatic experiences of war.

Following these legal developments, the Convention on the Rights of the Child, adopted by the United Nations in 1989, is the most important international instrument defining and protecting the rights of children worldwide. The Convention is legally binding on countries that have ratified it, namely 196 countries, making it one of the most universally accepted human rights treaties in the world. Article 1 of the Convention defines the term “*child*” and establishes a clear framework regarding the age up to which individuals are considered as such and are protected by the provisions of this treaty. As per above, a child is every human being under the age of 18, unless under the law applicable to the child, majority is attained earlier⁴.

The Convention establishes a broad set of rights for children, including the right to protection from abuse, exploitation, and neglect, as well as the right to education, health care, and participation in cultural and social life. The Convention does not directly define a child soldier, but addresses the

1. Mellace, L, *I bambini soldato: un inquadramento giuridico del fenomeno*, March 2024, p. 7.

2. Gašparić, A, *Liability and protection of child soldiers under international criminal law*, p.121, <https://doi.org/10.25234/dosd/31538..> .

3. Article 77, First Additional Protocol and Article 4, Second Additional Protocol.

4. Article 1, Convention on the Rights of the Child (1989)

recruitment of children in armed conflicts. It also requires States to take all feasible measures to ensure that children under the age of 15 are not recruited into armed forces and do not participate in hostilities¹. Article 38 of the Convention emphasizes the great need for States to protect children from the effects of war and ensuring that they are not exposed to violence or exploitation during such conflicts. Furthermore, this provision requires States to take active steps to prevent the recruitment of minors into military groups or armed forces.

Article 38 is one of the most important parts of the Convention, as it has served as the foundation for other international protocols and is directly linked to the Optional Protocol to the Convention on the Involvement of Children in Armed Conflict. The Optional Protocol builds upon the principles established in Article 38 but goes beyond the general prohibition of the Convention by raising the minimum age for the recruitment of children to 18 years². The Protocol requires State Parties to ensure that children under the age of 18 are not forcibly recruited into national armed forces and prohibits the involvement of children in hostilities, regardless of whether recruitment is carried out by state or non-state armed groups. This provision is essential for the protection of children's rights, as it prohibits their recruitment even in internal armed conflicts. It is important to note that, until the adoption of the Optional Protocol, the legal framework governing international armed conflicts was still in a stage where, under the Fourth Geneva Convention and First Additional Protocol, persons between the ages of 15 and 18 who were recruited into the armed forces of a State were no longer entitled to protection from the effects of hostilities as members of the civilian population.³

The Cape Town Principles stand as a key international document alongside the Convention on the Rights of the Child and the Optional Protocol to the Convention on the Involvement of Children in Armed Conflict. Developed in 1997 during a meeting held in Cape Town, South Africa, they set out essential guidelines for addressing the recruitment and use of child soldiers. These principles were created in response to the growing use of children in armed conflicts and provide a framework for protecting children from

1. Article 38, Convention on the Rights of the Child (1989).

2. Article 1, Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict.

3. Greijer, S. (2013). *The crimes of recruiting and using children in armed conflict (doctoral thesis)*. Florence, European University Institute, p. 48.

recruitment into armed forces and armed groups. Although the Cape Town Principles are not legally binding, they have played a crucial role in influencing international efforts made to combat the use of children as soldiers. The principles begin by recognizing that a child soldier is any person under the age of 18 who is associated with an armed force or armed group in any capacity, including as a combatant, cook, porter, messenger, or for sexual purposes. They emphasize the importance of preventing the recruitment and use of children in armed forces or groups, encourage all parties involved in a conflict to adopt national legislation and take proactive measures to ensure that children are not involved in hostilities.

One of the key recommendations of the Cape Town Principles is that the minimum age for recruitment into any armed force or group should be 18 years, consistent with the standards set out in the Optional Protocol to the Convention on the Rights of the Child. In addition, the principles underline the need for the demobilization and reintegration of children who have been recruited as soldiers. It is essential that these children receive the necessary support for their rehabilitation. Support that consists of access to education, psychological care, and training from professionals to help them successfully reintegrate into society. The principles also emphasize the importance of holding accountable those responsible for the recruitment or use of children in conflict. In doing so, they encourage governments and international bodies to take action to ensure that perpetrators of such violations face justice.

Other key instruments addressing the issue of child soldiers include: the Rome Statute of the International Criminal Court (1998), Convention 182 of the International Labor Organization (ILO) concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labor (1999), the African Pact on the Rights and Welfare of African Children (1999), particularly Article 22, the Geneva Conventions (1949) and General Article 3 and Additional Protocol I and Additional Protocol II (1977), the Paris Principles and Guidelines on Children Associated with Armed Forces or Armed Groups (2007), and several United Nations Security Council resolutions.¹

1. Luz Estella. N, *Child Soldiers and the Duty of Nations to Protect Children from Participation in Armed Conflict*, 2015, p.34.

III. The Rome Statute and the International Criminal Court

For the first time in human history, in July 1998, 120 states decided to accept the jurisdiction of a permanent international criminal court to prosecute perpetrators of the most serious crimes committed on their territory or by their nationals, following the entry into force of the Rome Statute on 1 July 2002¹. The Rome Statute closed the gap in the legal system by defining the crimes that fall under the jurisdiction of the International Criminal Court, specifically, the crime of genocide, crimes against humanity, war crimes, and the crime of aggression² and after much discussion and disagreement, the issue of the crime of recruiting children in armed conflicts was resolved. This is because the International Criminal Court has general jurisdiction to prosecute crimes committed by individuals, while ad hoc courts, created to fulfill specific functions, have always had limited jurisdiction, both in terms of time and territory, and were established after the crimes they were to adjudicate had ended.³

Article 8 of the Rome Statute sanctions the recruitment, use and active participation of children under the age of 15 in hostilities as a war crime. This marks the first time that a Statute for an international jurisdiction has included this offense and the first time that this crime has been equated with other war crimes, such as intentional killings, torture, and deliberate attacks on civilians.⁴

Article 8(2)(b)(xxvi) criminalizes the recruitment of children under the age of 15 in international armed conflicts and is of particular importance because it covers international conflicts, which are not limited to wars between States, but can also include conflicts between States and non-State armed groups, which are recognized as international conflicts under international law. This gives the provision a broad scope, covering all forms of child involvement in warfare and ensuring their protection from exploitation and the consequences of armed conflict. At the same time, Article 8(2)(e)(vii) addresses non-international armed conflicts, stipulating that the recruitment or enlistment of children under 15 or their

1. International Criminal Court, *Understanding the International Criminal Court*, The Hague, Netherlands.

2. Article 5, The Rome Statute of the International Criminal Court.

3. Mellace, L, *I bambini soldato: un inquadramento giuridico del fenomeno*, March 2024, p. 712.

4. Greijer, S., Op. cit., note 8, p. 165.

use to participate directly in hostilities also constitutes a war crime. In such cases it is more difficult to monitor and enforce international norms, as the conflict occurs within a single State. Therefore, this provision serves as an essential safeguard to ensure that children are not unlawfully drawn in hostilities, regardless of the nature of the conflict.

The crime of recruiting child soldiers includes several important elements that must be present to commit such a criminal offense; a) the perpetrator recruited or enrolled one or more persons in the national armed forces or used one or more persons to participate directly in hostilities b) this person or these persons were under the age of 15 years c) the perpetrator knew or should have known that this person or these persons were under the age of 15 years d) the act occurred in the context of an international armed conflict and was related to it d) the perpetrator was aware of the factual circumstances that established the existence of an armed conflict¹.

During the drafting of the Statute, an interpretative note was added to clarify the meaning of the terms “use” and “participation”. It specifies that these terms are intended to cover both direct participation in hostilities and active involvement in military activities linked to combat such as reconnaissance, espionage, sabotage, and the use of children as couriers, messengers, or in military checkpoints.²

IV. “Lubanga” Case

Lubanga was one of many African commanders who played a role in the seemingly endless conflicts in the eastern part of the Democratic Republic of Congo (DRC), which at times involved numerous paramilitary groups and the national armies of Uganda, Rwanda, and the DRC.³ In January 2007, Thomas Lubanga became the first individual ever to be charged with war crimes for recruiting and registering children under the age of fifteen

1. Elements of Crimes, International Criminal Court (ICC), art. 8(2)(b)(xxvi) (Sept. 9, 2002), http://www.icc-cpi.int/NR/rdonlyres/9CAEE830-38CF-41D6-AB0B-68E5F9082543/0/Element_of_Crimes_English.pdf.

2. Mezmur, B, *Children at both ends of the gun: Towards a comprehensive legal approach to the problem of child soldiers in Africa*, South Africa, 2005, p. 11.

3. Kurth, M, *The Lubanga Case of the International Criminal Court: A Critical Analysis of the Trial Chamber's Findings on Issue of Active Use, Age and Gravity*, Goettingen Journal of International Law 5 (20[^]3) 2, 431-453.

to participate in hostilities during the 2002–2003 civil war¹.

Lubanga was accused of recruiting and using children under the age of 15, sending them to fight on the front lines of armed conflicts, as well as using them in other military tasks such as spies, messengers, and support in military operations². Specifically, in accordance with Article 25(3)(a) of the Statute of the International Criminal Court, the basis for the individual criminal responsibility of Mr. Lubanga Dyilo was three distinct types of war crimes. ³: *a) enlisting children under the age of fifteen in armed groups; b) recruiting children under the age of fifteen into armed groups; and c) using children under the age of fifteen to actively participate in hostilities.*

During the trial, the prosecution presented extensive evidence, including testimony from survivors of the conflict and former child soldiers who testified about how they had been forcibly recruited and used to fight. On 14 March 2012, he was found guilty and sentenced to 14 years in prison⁴. This was a landmark moment, as it was the first conviction by the International Criminal Court for war crimes related to the recruitment of child soldiers. His sentence, while criticized as being too low, clearly demonstrated the court's commitment to ending the exploitation of children in warfare and to holding accountable those leaders who use them for military purposes. In this case, the prosecution emphasized the importance of command responsibility, arguing that even if Lubanga had not directly carried out the recruitment of children, he had full control over his army and was responsible for its actions. This served as an important affirmation of a fundamental principle of international law, that military leaders are accountable for the actions of their subordinates, even if they did not directly participate in the crimes.

Despite the fact that the court's decision was supported and had a great impact, the case also faced criticism for not addressing all of the crimes committed during the war, as the use of child soldiers was just one of the many violations that took place during the conflict. This has led to calls for a broader treatment of crimes involving children, including killing, sexual violence, and other exploitation of children during war.

1. Nagle, L., *Child Soldiers and the Duty of Nations to Protect Children from Participation in Armed Conflict*, April 2014, p. 24.

2. *The Prosecutor v. Thomas Lubanga Dyilo*, ICC-01/04-01/06.

3. Aksar, Y., *The Case of Thomas Lubanga Dyilo: The Implementation of a Fair and Public Trial at the Investigation Stage of International Criminal Court Proceedings*, Ankara Bar Review, 2009/2, p. 82-83.

4. The sentencing judgement of Mr. Lubanga, 2012.

V. Interpreting the Terms “Enlisting” and “Conscripting” in the Context of War Crimes

The distinction and interpretation of the terms recruitment and registration began to take shape with the decision in the Lubanga case, where the Trial Chamber noted that the recruitment and registration of children under the age of 15 and their use to actively participate in hostilities constitute three different crimes.¹ The Chamber also, in the same decision, found that the jurisprudence of the Special Court for Sierra Leone (SCSL) guides the interpretation of the relevant provisions of the Rome Statute, due to the compatibility of the wording in Article 8(2)(e)(vii) of the Rome Statute and Article 4(c) of the SCSL Statute.

The Rome Statute uses the terms “*conscripting*” and “*enlisting*” instead of the single term “*recruitment*”. According to the Chamber, these represent two distinct forms of recruitment, while “*enlisting*” relates more to voluntary recruitment². In this context, the Chamber emphasized that this distinction was also made by Judge Robertson in his separate opinion annexed to the judgment delivered by the Appeals Chamber of the Special Court for Sierra Leone on 31 May 2004, in the case of Prosecutor v. Sam Hinga Norman.³ Accordingly, enlisting is considered a “*voluntary*” act, while conscripting is recruitment using violence. In other words, the consent of the child cannot serve as a valid defense on the part of the accused. The Court, based on expert evidence, also stressed that children under the age of 15 are not capable of giving informed consent when they join an armed group. Furthermore, the Court underlined that “*active participation in hostilities*” includes direct participation in combat, as well as other activities that are related to indirect participation. The essential common feature of these activities is the support that the child provides to combatants, making them a target in the conflict and exposing them to danger. Any determination of what constitutes “*active participation*” can only be made on a case-by-case basis.

Finally, the Chamber determined that the offences of enlisting and conscripting are continuous in nature – referred to by some courts as a “*continuous crime*” and by others as a “*permanent crime*”. The unlawful

1. Barbanègre. M, Mushiata. G, Regue. M, *Case Against Thomas Lubanga*, ICTJ Briefing, May 2014, p.5.

2. *The Prosecutor v. Thomas Lubanga Dyilo*, ICC-01/04-01/06, para. 246.

3. Op. cit., note 22.

act of enlisting or conscripting children under the age of fifteen persists for as long as the children remain within the armed groups or forces and, consequently, ceases to be committed when these children leave the groups or reach the age of fifteen.¹

VI. Demobilization and Reintegration of Child Soldiers

To achieve justice, recruited children must be disarmed, demobilized, rehabilitated and reintegrated into society. New recruitment must be prevented, and there must be made efforts to return these children to their families.² The process of demobilization and reintegration of child soldiers is critical to addressing the long-term consequences of their involvement in armed conflict. This process aims not only to remove children from armed forces and groups, but also to ensure their successful reintegration into society as healthy and productive individuals. This process itself includes physical, psychological, educational and social support for children, as well as addressing the underlying factors that led to their recruitment. Demobilization means the formal and controlled removal of child soldiers from the military or an armed group³ and is a process that takes place through a programme that involves the safe collection and transport of children from conflict areas, their registration and the provision of immediate protection and care. Generally, staff members of child protection agencies (UNICEF) or their partner organisations welcome the children and accompany them to special reception camps, where they are disarmed (if they have weapons) and where they are formally released from the army or armed groups.⁴ Once child soldiers have been demobilized, the next key phase is reintegration, where the focus shifts to helping children return to their communities and rebuild their lives. Reintegration includes support in various forms such as psychological support, education and vocational training, economic reintegration; and return and community reintegration. Successful reintegration programmes often depend on coordination between international organisations, local governments and affected communities. The United Nations, for example,

1. Op. cit., note 22, para. 248.

2. Greijer, S., Op. cit., note 8, p. 118.

3. Cape Town Principles, Definitions.

4. Disarmament, demobilisation and reintegration (DDR) of child soldiers, Bonn International Center for Conversion.

has developed frameworks and guidelines for the demobilisation and reintegration of child soldiers, including the Cape Town Principles and the Paris Principles. These highlight the need for a child centred approach that prioritises the best interests of children, while also ensuring that they are not re-used by armed groups.

VII. Conclusions

The use of children as soldiers has had a profound impact on the violation of children's rights, underlining the need for a coordinated and long-term approach to protect them from this exploitation. To achieve an effective solution and prevent this phenomenon, it is essential that States and international organizations cooperate closely and coordinate their efforts. This cooperation should include the development of common policies, training and support for security forces, and the provision of assistance for the demobilization and reintegration of children who have been used in war. Only through continuous and well-organized cooperation can the protection of children from abuse and exploitation be ensured and real protection be created for those who are most vulnerable during periods of war. One of the main recommendations is to raise the minimum age for the recruitment of children into armed forces to 18 years, in full compliance with the Optional Protocol to the Convention on the Rights of the Child. Raising the minimum age would provide stronger protection for children and strengthen international standards for the protection of their rights.

Furthermore, it is necessary to improve international monitoring and control systems to ensure that children are not recruited and used in war. This can be achieved through the exchange of information between States and international organizations and the use of advanced technologies to monitor conflict zones. States should engage in the control and prosecution of non-state armed groups to prevent the recruitment of children, thereby strengthening law enforcement.

An important aspect is also the reintegration of children who have been used in war, by providing opportunities for their rehabilitation. Demobilization and reintegration programs should be comprehensive and financially supported by States and international organizations. This process should provide support for education, health care and vocational opportunities for children, helping them to reintegrate into civilian life and

return to society without further consequences.

This paper has examined various aspects of children's rights in the context of armed conflict and the role of international law in protecting them from violent and exploitative use. The Rome Statute, as a key international legal instrument, and the Lubanga case have been used to highlight legal efforts to criminalize the recruitment and use of children in war. This study has also shown that, despite efforts made so far, law enforcement has faltered due to the challenges of the nature of conflicts and the great difficulties faced by international communities in prohibiting and preventing this practice.

Bibliography:

Conventions and Treaties

1. Convention on the Rights of the Child (1989).
2. Additional Protocol I and Additional Protocol II of the Geneva Conventions.
3. Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict.
4. The Rome Statute of the International Criminal Court.

Articles and Publications

1. Mellace. L, *I bambini soldato: un inquadramento giuridico del fenomeno*, March 2024, p.7.
2. Gašparić. A, *Liability and protection of child soldiers under international criminal law*, *Dijete i obitelj u suvremenom društvu* (Child and Family in Contemporary Society), 1(2), 119–135, p.121, <https://doi.org/10.25234/dosd/31538>.
3. Luz Estella. N, *Child Soldiers and the Duty of Nations to Protect Children from Participation in Armed Conflict*, 2015, p.34.
4. Mezmur. B, *Children at both ends of the gun: Towards a comprehensive legal approach to the problem of child soldiers in Africa*, South Africa, 2005, p. 11.
5. Kurth. M, *The Lubanga Case of the International Criminal Court: A Critical Analysis of the Trial Chamber's Findings on Issue of Active Use, Age and Gravity*, Goettingen Journal of International Law 5

- (20³) 2, 431-453.
6. Nagle. L, *Child Soldiers and the Duty of Nations to Protect Children from Participation in Armed Conflict*, April 2014, p. 24.
 7. Aksar. Y, *The Case of Thomas Lubanga Dyilo: The Implementation of a Fair and Public Trial at the Investigation Stage of International Criminal Court Proceedings*, Ankara Bar Review, 2009/2, p. 82-83.
 8. Barbanègre. M, Mushiata. G, Regue. M, *Case Against Thomas Lubanga*, ICTJ Briefing, May 2014, p.5.
 9. International Criminal Court, *Understanding the International Criminal Court*, The Hague, Netherlands, ISBN No. 92-9227-365-5
 10. Greijer, S. (2013). *The crimes of recruiting and using children in armed conflict (doctoral thesis)*. Florence, European University Institute, p. 48.
 11. International Criminal Court, *Understanding the International Criminal Court*, The Hague, Netherlands
 12. Elements of Crimes, International Criminal Court (ICC), art. 8(2)(b) (xxvi)(Sept.9,2002),http://www.icc-cpi.int/NR/rdonlyres/9CAEE830-38CF-41D6-AB0B-68E5F9082543/0/Element_of_Crimes_English.pdf.

Case Law

1. The Prosecutor v. Thomas Lubanga Dyilo, ICC-01/04-01/06.

THE JUDICIARY'S CONFRONTATION WITH COMPLEX FINANCIAL CRIMES: CHALLENGES IN DETECTING, INVESTIGATING, AND ADJUDICATING SOPHISTICATED MONEY LAUNDERING SCHEMES

Renis Sheshi¹
Kevin Treska²

Abstract

This article analyzes the challenges faced by law enforcement and judicial institutions in confronting complex financial crimes, particularly money laundering. In the era of financial globalization and digital transformation, money laundering schemes have evolved into increasingly sophisticated forms, creating significant obstacles for responsible authorities at a global level.

The study initially focuses on analyzing international practices and strategies in combating money laundering, with special emphasis on countries with advanced systems. Through examining institutional approaches, investigative methods, and procedural techniques used in various jurisdictions, the article identifies best practices and international standards in this field.

Subsequently, the article assesses the legal and institutional framework in Albania, highlighting specific challenges and the gap between the current system and international best practices. The analysis identifies key difficulties in investigating, prosecuting, and adjudicating money laundering cases in the Albanian context.

In conclusion, based on lessons learned from international experiences,

1. Magistrate, Judge, Lezha Court of First Instance of General Jurisdiction. Email: renissheshi@yahoo.com

2. Executive Masters, Head of the International Agreements Sector, Ministry of Finance. E-mail: Kevin.Treska@financa.gov.al

the article presents specific recommendations for adapting successful practices to the Albanian reality. These recommendations focus on improving the legal framework, strengthening institutional capacities, and enhancing international cooperation for a more effective response to complex financial crimes.

Keywords: *money laundering, international practices, legal framework, law enforcement institutions, international cooperation, financial crime, legal reform, Albania.*

Chapter 1: Introduction.

Money laundering has emerged as a central enabler of modern organized crime, allowing illicit profits from corruption, drug trafficking, fraud, cybercrime, and terrorism to be absorbed into the legitimate financial system. In recent years, laundering schemes have grown exponentially in complexity, often spanning multiple jurisdictions and deploying advanced technologies ranging from shell company networks and nominee arrangements to crypto-assets, AI-driven payment rails, and deep-web obfuscation tools. These developments have dramatically increased the scale, sophistication, and societal impact of financial crime.

According to Europol's 2023 *Financial and Economic Crime Threat Assessment*, more than 70% of criminal networks operating in the EU engage in money laundering, frequently leveraging digital channels and cross-border platforms.

Yet despite decades of anti-money laundering (AML) legal reforms, the rates of conviction and illicit asset recovery remain strikingly low. As one scholar observes, global enforcement presently interdicts well below 1% of criminal proceeds, prompting the label of AML as “the world’s least-effective policy experiment”.¹

This gap between proliferating financial crime and minimal disruption of illicit flows raises critical questions about institutional performance, legal architecture, and the capacity of the judiciary to deliver effective justice in complex financial cases.

The judiciary, as the final arbiter in the AML enforcement chain,

1. Ronald F. Pol, “Anti-Money Laundering Effectiveness: Assessing Outcomes or Ticking Boxes?” *Journal of Money Laundering Control* 21, no. 2 (2018): 216.

plays a pivotal yet often underexamined role in this landscape. While extensive literature exists on AML legislation, regulatory compliance, and financial intelligence operations, far less attention has been devoted to the practical challenges courts face in processing, interpreting, and adjudicating high-stakes money laundering prosecutions. Courts today are routinely confronted with terabytes of data, multi-year evidentiary trails, intricate legal constructs, and contested expert testimony – often in proceedings that strain their institutional design and resources. This article addresses that analytical gap. It explores the specific ways in which courts are constrained legally, procedurally, and institutionally when detecting, investigating, and adjudicating sophisticated laundering schemes. Through a cross-phase examination grounded in empirical research, legal analysis, and institutional reports, the discussion maps key friction points in the enforcement lifecycle and offers recommendations for reform.

The structure of the article is as follows. Chapter 2 outlines the conceptual and legal background of money laundering, tracing its definitional evolution and doctrinal foundations, and situating the judiciary within the broader AML framework. Chapter 3 analyzes the structural, technological, and human constraints that undermine effective detection and investigation of laundering schemes. Chapter 4 focuses on the courtroom, detailing evidentiary, procedural, and institutional bottlenecks that impede successful adjudication. Chapter 5 synthesizes these findings to propose legislative, procedural, and technological reforms aimed at enhancing judicial effectiveness. Finally, Chapter 6 concludes by identifying priority reforms and suggesting areas for future empirical research.

Chapter 2: Conceptual and Legal Background

The complexity of modern money laundering schemes has significantly evolved over the past four decades, paralleling the rise of transnational criminal networks, technological innovation, and increasingly sophisticated methods of financial subterfuge. Central to understanding the judiciary's role in confronting such crimes is a clear grasp of the phenomenon's definitional scope and the multilayered legal framework erected to suppress it. This chapter maps that background by unpacking the key definitional contours of money laundering, tracing its doctrinal

and statutory evolution across jurisdictions, and situating the judiciary's institutional role within the expanding AML architecture.

Doctrinal Definitions and the Expanding Scope of Money Laundering

The term “*money laundering*” initially referred to the process of disguising the origins of funds derived from narcotics trafficking, but it has grown into a concept covering nearly all forms of criminal proceeds and associated concealment mechanisms. As Muhammad Saleem observes, “*The global AML framework is constantly developing and expanding, efforts have been made to regularly revise and widen the criminalization of offences to money laundering.*”¹

Accordingly, the predicate offenses of money laundering now span a broad range of crimes, from corruption and trafficking to environmental crime and cyber-fraud. This expansion is reflected in the successive enlargement of predicate offense lists in national and international law. Initially focused on drug money under the 1988 U.N. Vienna Convention, most jurisdictions' laundering laws now encompass proceeds from virtually any serious crime, as well as related offenses like terrorist financing and tax evasion.² Such changes in the legal landscape significantly alter both prosecutorial strategy and judicial analysis, requiring courts to grapple with ever-broader underlying criminal conduct in money laundering cases.

The Evolution of Legal Frameworks: From FATF to the EU Directives

The international response to money laundering has been spearheaded by the Financial Action Task Force (FATF), which issued its first 40 Recommendations in 1990. These standards have become the cornerstone of the global AML regime. The FATF's risk-based approach mandates that countries identify and mitigate AML/CFT risks based on their unique exposure profiles, rather than simply applying uniform measures³

1. Muhammad Saleem Korejo, Ramalinggam Rajamanickam, and Muhamad Helmi Md. Said, “The Concept of Money Laundering: A Quest for Legal Definition,” *Journal of Money Laundering Control* 24, no. 4 (2021): 725–736, <https://doi.org/10.1108/JMLC-05-2020-0045>.

2. Eurojust. *Eurojust Report on Money Laundering*. Luxembourg: Publications Office of the European Union, 2022. <https://www.eurojust.europa.eu/sites/default/files/assets/eurojust-report-money-laundering-2022.pdf>.

3. Financial Action Task Force. *International Standards on Combating Money Laundering*

Regionally, the European Union has translated FATF principles into binding law through a series of Anti-Money Laundering Directives (AMLDs). From the 1st AMLD in 1991 focused narrowly on drug proceeds and financial institutions, to the 4th and 5th AMLDs in the 2010s, the scope expanded dramatically to cover sectors such as real estate, art trade, cryptocurrency exchanges, and to mandate beneficial ownership transparency.¹

This progressive expansion of AML legislation has not been without tension. Observers have noted that ever-increasing surveillance and information-sharing powers (for example, the 4th AMLD's broad mandates for inter-FIU cooperation) can conflict with fundamental rights, particularly privacy and data protection.²

Differences in national legal systems' definitions and approaches further complicate international collaboration, hampering the creation of a unified front against money laundering. Indeed, even within the EU's ostensibly harmonized framework, a 2021 task force report found persistent fragmentation in AML rules and supervision, leading to calls for the creation of a centralized EU AML authority to ensure consistency.³

These systemic gaps are not merely legislative, they also manifest at the judicial enforcement stage, where national courts must interpret and apply evolving AML norms in high-stakes, cross-border cases.

The Albanian Context

Albania has in recent years undertaken significant steps to align its AML/CFT framework with European Union standards, in light of the country's EU accession process. Albanian law now provides a comprehensive legal framework that includes a broad definition of criminal activity and an “all-

and the Financing of Terrorism & Proliferation: The FATF Recommendations. Paris: FATF, 2012. Updated March 2022. <https://www.fatf-gafi.org/en/publications/Fatfrecommendations/Fatf-recommendations.html>

1. Mitsilegas, Valsamis, and Niovi Vavoula. “The Evolving EU Anti-Money Laundering Regime: Challenges for Fundamental Rights and the Rule of Law.” *Maastricht Journal of European and Comparative Law* 23, no. 2 (2016): 261–293. <https://doi.org/10.1177/1023263X1602300204>.

2. Ibid.

3. CEPS & ECRI Task Force. *Anti-Money Laundering in the EU: An Overview of the Legal Framework and Roadmap for Reform*. Brussels: CEPS & ECRI, 2020. https://www.ecri.eu/sites/default/files/tfr_anti-money_laundering_in_the_eu.pdf.

crimes” approach to money laundering under the Criminal Code.¹

This means that virtually any indictable offense can serve as a predicate crime for money laundering, reflecting the expanded international definition.

The country has also adopted sector-specific AML/CFT laws, such as those establishing a registry of beneficial owners of legal entities and a register of bank accounts, to increase financial transparency. A risk-based approach has been institutionalized, obligating banks and other reporting entities to identify, assess, and mitigate their risks of money laundering. In short, Albania’s legal doctrine defines money laundering in expansive terms and has incorporated the core global standards in its statutory framework. However, according to the European Commission’s 2024 Albania Report, Albania remains only partially aligned with the EU AML acquis.² In parallel, international assessments have raised persistent concerns about Albania’s vulnerabilities.³

In conclusion, while Albania has established a robust legislative framework to combat money laundering, persistent structural vulnerabilities and partial alignment with EU standards underscore the need for continued reform and effective implementation to bridge the gap between formal compliance and substantive enforcement, that will be examined in later chapters.

Chapter 3: Detection and Investigation Challenges

Detecting and investigating complex money laundering schemes represent a central chokepoint in the global AML architecture. While legal frameworks and compliance obligations have expanded considerably in recent decades, on-the-ground investigative outcomes often fail to match the scale and sophistication of illicit financial flows. This chapter explores

1. Criminal Code of the Republic of Albania, Article 287.

2. European Commission. *Albania 2024 Report: Commission Staff Working Document Accompanying the Communication on EU Enlargement Policy*. Brussels: European Commission, October 30, 2024. SWD(2024) 690 final. https://neighbourhood-enlargement.ec.europa.eu/system/files/2024-10/SWD_2024_690_final_Albania_report.pdf.

3. U.S. Department of State, Bureau for International Narcotics and Law Enforcement Affairs. *International Narcotics Control Strategy Report, Volume II: Money Laundering*. Washington, DC: U.S. Department of State, March 2022. <https://www.state.gov/wp-content/uploads/2022/03/22-00768-INCSR-2022-Vol-2.pdf>.

the principal challenges confronting AML enforcement actors including Financial Intelligence Units (FIUs), compliance officers, law enforcement agencies, and prosecutors, through an analysis of systemic, institutional, and cognitive limitations. These upstream difficulties inevitably impact the cases that eventually reach the judiciary.

Data Volume and the “Crying Wolf” Dilemma

One of the most significant obstacles in AML enforcement is the exponential rise in suspicious activity reports (SARs), which can dilute actionable intelligence. Banks and other institutions, under strict liability to report any suspicions, often err on the side of over-reporting. In the Italian context, for example, researchers found that the high incidence of false positives in the earlier rule-based reporting system was counterproductive. It flooded FIUs with low-quality reports and wasted resources.¹

This phenomenon is sometimes termed the “*crying wolf*” effect. Rather than improving detection, indiscriminate reporting buries the signal in the noise, as genuinely suspicious patterns are lost amid defensive, low-threshold filings. The shift to a risk-based reporting approach in the late 2000s was meant to address this by focusing on higher-quality alerts, yet the trade-off between deterrence and accuracy persists.²

In practice, many compliance departments still produce an overwhelming volume of SARs to shield themselves from regulatory criticism in “defensive reporting”. This contributes to an avalanche of data for investigators to sift through. The result is that FIUs and financial crime units struggle to triage and identify truly critical leads, undermining effective detection at the earliest stage.

Institutional Fragmentation and FIU Disparities

FIUs stand at the heart of AML systems, functioning as the central hubs for financial intelligence collection and dissemination. However, substantial variation in their institutional design and powers has hindered effective international collaboration.

McNaughton’s comparative study of FIUs in ten countries reveals a pronounced West–East divide: FIUs in Western Europe (e.g. Denmark,

1. Lucia Dalla Pellegrina, Giorgio Di Maio, Donato Masciandaro, and Margherita Saraceno, “Are Bankers ‘Crying Wolf’? Type I, Type II Errors and Deterrence in Anti-Money Laundering: The Italian Case,” *Italian Economic Journal* 9, no. 2 (2023).

2. Ibid.

the Netherlands, Luxembourg) tend to be administrative bodies focused on intelligence analysis, whereas those in Eastern Europe (e.g. Estonia, Lithuania, Poland) often have law enforcement status with investigative authority. Despite decades of efforts to harmonize FIU models, these structural differences persist, leading to functional fragmentation that criminals can exploit by jurisdiction-shopping.¹

In addition to McNaughton's findings, analyses further underscore that cooperation between FIUs in the EU takes place under a fragmented and complex legal framework, which raises significant challenges for the rights to privacy and data protection. In particular, uncertainty about whether exchanges of information should occur under criminal law or data protection regimes has impeded swift collaboration.² These asymmetries and legal frictions mean that even when suspicious transaction information is generated, it may not flow readily across borders to support investigations.

Moreover, transnational laundering operations frequently exploit procedural and jurisdictional blind spots. Differences in evidentiary standards and banking secrecy laws can prevent intelligence gathered in one country from being admissible in another. A piece of financial evidence that is perfectly legal for an FIU to share might still be deemed inadmissible in court if proper mutual legal assistance (MLA) channels are not followed. The lack of standardized MLA procedures often results in protracted delays and fragmented investigative efforts.

Eurojust's analysis highlights persistent challenges in cross-border cooperation due to non-harmonized legal frameworks. Variations in evidence request formats and rules on digital evidence often delay judicial collaboration. The Annual Report 2022³ identifies barriers in accessing electronic evidence across jurisdictions, while the SIRIUS EU Digital

1. Katarzyna J. McNaughton, "The Variability and Clustering of Financial Intelligence Units (FIUs): A Comparative Analysis of National Models of FIUs in Selected Western and Eastern (Post-Soviet) Countries," *Journal of Economic Criminology* 2 (2023): 100036.

2. Foivi Mouzakiti, "Cooperation between Financial Intelligence Units in the EU: Challenges for the Rights to Privacy and Data Protection," in *Assets, Crimes and the State: Innovation in 21st Century Legal Responses*, ed. Katie Benson, Colin King, and Clive Walker (London: Routledge, 2020), 38–51.

3. Eurojust. Annual Report 2022. The Hague: European Union Agency for Criminal Justice Cooperation, 2023. <https://www.eurojust.europa.eu/publication/annual-report-2022>.

Evidence Situation Report 2022 ¹ underscores that such fragmentation significantly hampers successful prosecutions in cybercrime cases.

Taken together, these structural and legal issues demonstrate that detection challenges are not merely technical; they are deeply tied to the institutional framework governing financial surveillance and cross-border evidence gathering.

Human and Cognitive Factors in Risk Assessment

Beyond institutional shortcomings, AML detection is also hindered by the human element, the cognitive biases and expertise gaps of compliance professionals and investigators.

A recent empirical study by Ogbeide et al. (2024) used surveys and interviews with nearly 1,500 AML risk assessment experts and found that many rely heavily on their organization's established risk frameworks, sometimes at the expense of independent judgment.

Personal biases (such as preconceived notions about what suspicious behavior looks like, or fear of liability for failing to report) can skew assessments. In some cases, this leads to over-classifying innocuous transactions as high-risk, while truly novel or subtle laundering techniques go unnoticed a cognitive analogue to the “crying wolf” problem. The study proposed a new decision framework to better integrate expert intuition with analytical tools, aiming to reduce bias and improve the identification of genuinely high-risk activities. ²

The implication for enforcement is that improving detection is not only about more data or stricter laws, but also about better training and decision support for the people on the front lines of AML compliance. Without enhancing the quality of human analysis, even the best technological systems can produce misleading results or overwhelm investigators with false leads.

1. Eurojust and Europol. *SIRIUS EU Digital Evidence Situation Report 2022: Criminal Justice Access to Electronic Evidence in the European Union*. The Hague: Eurojust, 2022. <https://www.eurojust.europa.eu/publication/sirius-eu-digital-evidence-situation-report-2022>.

2. Ogbeide, Henry, Mary Elizabeth Thomson, Mustafa Sinan Gönül, Dilek Önköl, Sanjay Bhowmick, and Abdullahi Usman Bello. “Rethinking Experts’ Perceptions in Money Laundering Risk Assessment.” *European Journal on Criminal Policy and Research*, June 24, 2024. <https://doi.org/10.1007/s10610-024-09586-w>.

Expertise Gaps and Investigative Resource Constraints

The capacity of enforcement institutions to investigate sophisticated laundering often lags behind the evolving complexity of these crimes. The sheer scale of illicit financial flows can overwhelm agencies that lack specialized financial investigators or technology.

The capacity of institutions to investigate sophisticated money laundering schemes often lags behind the evolving complexity of these crimes. Europol's 2023 report, *The Other Side of the Coin*, highlights that nearly 70% of criminal networks operating within the European Union employ some form of money laundering to fund their activities and conceal assets. Moreover, over 80% of these networks exploit legal business structures to facilitate their operations, underscoring the pervasive role of money laundering across sectors and the critical function of legitimate business fronts in masking criminal activities.¹

In the Western Balkans, the situation is particularly acute. A 2024 report, noted that financial institutions are highly vulnerable due to weaknesses such as limited regulatory oversight, high corruption, and cash-intensive economies, all exacerbated by the rapid rise of cryptocurrencies and digital platforms outpacing existing controls.² Such vulnerabilities mean that investigators face an expanding threat canvas without commensurate expansion in tools or manpower.

Even when red flags are identified, tracing complex chains of transactions which often involve offshore companies or virtual currencies, demands specialized forensic skills that many law enforcement agencies are still developing.

A Europol–Interpol joint report in 2022 (cited by Eurojust) observed significant operational challenges in cross-border cases. Such difficulties being proving the underlying predicate offenses, tracing crypto-assets across decentralized ledgers, and unmasking the beneficial owners behind shell companies. Further complicating matters is the lack of harmonized

1. Europol. *The Other Side of the Coin: An Analysis of Financial and Economic Crime in the EU*. 2023. <https://www.europol.europa.eu/publications-events/publications/other-side-of-coin-analysis-of-financial-and-economic-crime>

2. Kocani, Dardan. *Dirty Money: Assessing the Vulnerability of Financial Institutions in the Balkans to Illicit Finance*. Global Initiative Against Transnational Organized Crime, 2024. <https://globalinitiative.net/wp-content/uploads/2024/11/Dardan-Kocani-Dirty-money-Assessing-the-vulnerability-of-financial-institutions-in-the-Balkans-to-illicit-finance-GI-TOC-November-2024.pdf>

standards for handling digital evidence; for example, one country's investigators might collect electronic banking records in a format or via a process that another country's courts will not accept.¹

Chapter 4: Adjudication Challenges in Money Laundering Cases

Despite decades of legislative reform and improved international cooperation, the courtroom remains a critical weak link in the global AML regime. While increasingly sophisticated laundering schemes are being detected and investigated, convictions and asset recoveries in many jurisdictions remain alarmingly low. This chapter examines the challenges that arise at the adjudication stage of money laundering cases, with a focus on European and Western Balkans contexts. These challenges range from evidentiary complexities and legal standards for culpability, to limitations in judicial expertise and systemic issues affecting trial fairness and efficiency.

Evidentiary Complexity and the Mens Rea Hurdle

Money laundering prosecutions are inherently complex due to the clandestine and multi-layered nature of the financial transactions involved. Prosecutors must prove not only that assets are the proceeds of criminal activity, but also that the accused had knowledge or intent regarding the illicit origin of those assets. Establishing this mens rea (criminal intent) is particularly challenging when sophisticated laundering techniques are specifically designed to obscure the money's source.

A 2024 MONEYVAL review highlighted that, despite strengthened regulations, many member states struggle to achieve positive results in prosecuting and convicting perpetrators of money laundering.²

Comprehensive legal frameworks and broad powers to prosecute exist on paper, but real-world outcomes are hampered by the difficulty of proving intent and linking laundered funds to predicate crimes, especially in transnational cases where evidence of the original offense may be located abroad.

Indeed, judges and prosecutors often hesitate to pursue standalone

1. Eurojust. *Eurojust Report on Money Laundering*. October 2022. <https://www.eurojust.europa.eu/sites/default/files/assets/eurojust-report-money-laundering-2022.pdf>

2. Council of Europe, *MONEYVAL Annual Report 2023* (Strasbourg: Council of Europe, 2024), <https://rm.coe.int/moneyval-annual-report-2023-eng/1680b2aa79>

money laundering charges without a prior or simultaneous conviction for the predicate offense.

A study by the Dutch Anti-Money Laundering Centre (AMLC) indicates that, despite legal provisions allowing for standalone money laundering prosecutions, judges and prosecutors often rely on securing convictions for predicate crimes before pursuing money laundering charges. This approach is primarily due to the complexities involved in proving intent and establishing the illicit origin of funds without a prior conviction for the underlying offense.¹

Many legal systems allow courts to draw inferences about illicit origin from the absence of any legitimate explanation for a defendant's wealth. However, courts must carefully avoid shifting the burden of proof to the accused. The European Court of Human Rights confronted this issue in *Zschüschen v. Belgium*, where it upheld a domestic money laundering conviction in the absence of a prior predicate conviction, so long as the national court relied on strong circumstantial evidence and did not violate the presumption of innocence.²

Still, in practice, prosecutors tend to feel more secure when a predicate offense is established, and any ambiguity in the provenance of assets can lead to acquittals or charges being dropped.

The transnational character of complex laundering schemes further complicates evidentiary matters. Critical evidence often resides in foreign jurisdictions or is hidden behind layers of corporate secrecy in offshore havens. This geographical dispersion creates major hurdles for timely evidence collection and admissibility. Lengthy delays in obtaining mutual legal assistance (if a foreign authority is slow to execute a request) can stall proceedings and even risk running out the clock on statutes of limitation. In the Western Balkans, a recent trial-monitoring project by OSCE, found that prosecutors “rarely obtain the necessary data in due time” in money laundering cases, with mutual legal assistance requests languishing and only limited interim asset seizures taking place.³

1. Anti-Money Laundering Centre (AMLC). *Money Laundering: The Indirect Method of Proof*. April 2019. <https://www.amlc.eu/wp-content/uploads/2019/04/Money-Laundering-the-Indirect-Method-of-Proof-2019.pdf>.

2. European Court of Human Rights. *Zschüschen v. Belgium*, no. 23572/07, decision of May 2, 2017. Accessed April 25, 2025. <https://hudoc.echr.coe.int/eng?i=002-11638>

3. Organization for Security and Co-operation in Europe, *Trial Monitoring of Organized Crime and Corruption Cases in the Western Balkans 2021–2024: Regional Analysis*

Judicial Capacity and Expertise

The complexity of money laundering cases demands substantial financial crime expertise from judges and court staff, yet this expertise is often lacking. An OSCE report on trial monitoring in the Western Balkans (2024) highlighted significant resource and knowledge gaps in the judiciary, noting that courts “face material and human resources challenges, especially in terms of specialized experts for financial investigations”¹

In many countries, money laundering cases are handled by generalist judges who may not be well-versed in forensic accounting, international banking practices, or the nuances of emerging technologies like cryptocurrency. Albania, for example, currently has no judicial body exclusively dedicated to money laundering. The Special Structure Against Corruption and Organized Crime (SPAK), established in 2019, focuses primarily on high-level corruption and organized crime, handling money laundering only as an adjunct to those cases.²

Standalone money laundering offenses still go to the ordinary prosecution offices and courts, which may lack the specialized expertise needed for complex financial cases. This structural gap underscores the need for either dedicated financial crime benches or intensive training programs to equip judges with the necessary skills.

Beyond expertise, sheer caseload and resource constraints can undermine adjudication. Courts can be overwhelmed by the volume of evidence in a single complex laundering trial often involving dozens of bankers’ boxes (or their digital equivalent) of transaction records, corporate documents, and expert reports. Judges must assimilate and evaluate this material without the aid of the kind of analytical software tools that investigators might use, often working under tight trial schedules. Without adequate support (such as financial analysts attached to courts or court-appointed experts who can distill complex data), the risk of judicial error or oversimplification of issues rises. There is also a psychological hurdle. Judges may be inclined to give defendants the benefit of the doubt when faced with convoluted financial arrangements that are hard to unravel, potentially leading to more

(Vienna: OSCE, 2024), <https://www.osce.org/files/f/documents/5/b/572836.pdf>.

1. Organization for Security and Co-operation in Europe. *Trial Monitoring of Organized Crime and Corruption Cases in the Western Balkans 2021–2024: Regional Analysis*. Vienna: OSCE, 2024. <https://www.osce.org/files/f/documents/5/b/572836.pdf>.

2. Criminal Procedure Code of the Republic of Albania, Article 75/a.

lenient outcomes or an overreliance on plea bargaining.

In response to these issues, some countries (for instance, Italy and Spain) have begun to establish specialized financial crime court sections or designate certain judges to handle complex AML cases.^{1 2} This approach could be emulated elsewhere to improve competence and consistency in adjudication.

Balancing Efficiency with Procedural Fairness

A further challenge is balancing the imperative to streamline lengthy financial trials with the obligation to respect defendants' procedural rights. Money laundering trials can be protracted affairs, given the need to trace funds and call multiple expert witnesses. However, protraction can itself violate the right to a trial within a reasonable time, as protected by instruments like Article 6(1) of the European Convention on Human Rights. Courts therefore must manage these cases tightly to prevent undue delays. This can include setting firm schedules, curtailing dilatory tactics by the defense, and pressing investigators to expedite MLA processes. At the same time, courts must be cautious in how they handle evidentiary presumptions. As mentioned, some jurisdictions allow presumptions that unexplained wealth is illicit, which can ease the prosecutorial burden in theory. But such presumptions must be applied in a way that doesn't effectively force the defendant to prove innocence, which would violate due process.

The Zschüschen decision illustrates this balance: the Strasbourg court signaled that convictions can rest on circumstantial evidence of illicit origin such as a defendant's inability to provide a credible lawful source, so long as the national court's reasoning is rigorous and the defendant had an opportunity to challenge the evidence.³

Thus, judiciaries must navigate between efficiency and fairness: pushing

1. European Commission. *The Italian AML-CFT Institutional System*. Brussels: European Commission, 2023. https://commission.europa.eu/document/download/94d90bd1-6fa2-4d7e-b960-cf047785b4bd_en?filename=Additional+documentation+Italy_The+Italian+AML-CFT+institutional+system.pdf.

2. European Union. *Evaluation Report on the Fifth Round of Mutual Evaluations: Spain*. Brussels: European Union, 2019. <https://www.eumonitor.eu/9353000/1/j9vvik7m1c3gyxp/vj5k5jvxbkyd>.

3. European Court of Human Rights. *Zschüschen v. Belgium*, no. 23572/07, decision of May 2, 2017. Accessed April 25, 2025. <https://hudoc.echr.coe.int/eng?i=002-11638>

cases forward and using logical inferences about criminal conduct, yet ensuring that defendants' rights (to adversarial proceedings, to present evidence, etc.) are not compromised in the rush to conclude complex cases.

Conviction Rates and Asset Recovery Outcomes

The ultimate measures of success in adjudicating money laundering are conviction rates and the effectiveness of asset recovery (confiscation). Across Europe, hundreds of money laundering prosecutions are launched annually, yet many jurisdictions struggle to secure convictions in proportion to the scale of the problem, and the amounts confiscated from convicted launderers remain relatively small.¹

For example, Serbia saw an increase in new money laundering investigations and indictments in 2022, but the number of first-instance and final convictions actually fell, and the tool of extended confiscation (seizing not just direct proceeds but related assets) is reportedly not applied systematically.²

Albania likewise lacks a robust track record of final convictions or significant asset seizures in laundering cases, according to EU progress reports. Even when major predicate crimes are prosecuted, the follow-up laundering charges or financial seizures often do not materialize in court.³

An OSCE monitoring report of courts in the Western Balkans observed that prosecutors seldom obtain necessary financial evidence in a timely manner and rarely request asset freezing or confiscation during the trial process, evidence that asset forfeiture powers are still “under-utilised” in the region.⁴

Shortcomings in confiscation are particularly problematic because depriving criminals of their profits is a primary goal of AML enforcement. Yet, as noted earlier, estimates consistently show that only around 1% of criminal proceeds are ultimately confiscated in the EU. A Europol study

1. Council of Europe, *MONEYVAL Annual Report 2023* [Strasbourg: Council of Europe, 2024]

2. European Commission, *Serbia 2023 Report*. Brussels: Directorate-General for Neighbourhood and Enlargement Negotiations, 2023. https://neighbourhood-enlargement.ec.europa.eu/serbia-report-2023_en.

3. European Commission. *Albania 2023 Report*. Brussels: Directorate-General for Neighbourhood and Enlargement Negotiations, 2023. https://neighbourhood-enlargement.ec.europa.eu/albania-report-2023_en.

4. OSCE, *Western Balkans Trial Monitoring Report 2024* [Vienna: OSCE, 2024]

of 2010–2014 found that merely 1.1% of estimated criminal profits were effectively recovered by authorities.¹ The European Commission’s 2022 impact assessment echoed this figure, warning that a ~1% confiscation rate is far too low to deter organized crime. The Commission’s own asset-recovery strategy has stressed that aggressive confiscation is “the most effective way to fight organised crime”.² Academic analyses reach similarly bleak conclusions: Ronald F. Pol finds that global interdiction rates sit “well below one per cent,” branding AML the “world’s least-effective policy experiment”³

From the judiciary’s perspective, however, ordering confiscation can be complicated if the link between assets and specific crimes is not crystal clear or if third parties claim rights to the assets. Courts in some cases err on the side of caution, leaving money on the table that could have been forfeited. Additionally, legal frameworks may not always empower judges to confiscate assets from complex schemes (for instance, assets held by shell companies where beneficial ownership is tricky to prove).

Chapter 5: Recommendations

Addressing the deficiencies in detecting, investigating, and adjudicating complex money laundering (ML) schemes requires a suite of coordinated reforms that are not only legislative, procedural, institutional, but also technological in nature. The following recommendations are grounded in the challenges identified in the preceding chapters and emphasize practical steps that could be implemented within EU and Albanian contexts (as well as other jurisdictions). Each proposal seeks to align the legal and institutional framework with the operational realities of combating sophisticated financial crime, with a view toward enhancing the judiciary’s effectiveness as a key stakeholder in AML enforcement.

Legislative Reforms

First, lawmakers should consider adapting procedural timelines and evidentiary rules to better accommodate the complexity of modern money

1. Europol, *Criminal Asset Recovery in the EU* [The Hague: Europol, 2016]

2. European Commission, *Fighting Organised Crime: Freezing and Confiscating the Proceeds of Crime* [Brussels: European Commission, 2022]

3. Pol, Ronald F. “Anti-Money Laundering: The World’s Least Effective Policy Experiment? Together, We Can Fix It.” *Policy Design and Practice* 3, no. 1 (2020): 73–94. <https://doi.org/10.1080/25741292.2020.1725366>.

laundering cases. Rigid statutory time limits on investigations and trials may need to be extended for financial crimes that involve long evidence trails across borders. For instance, in Albania and many other countries, money laundering offenses are subject to the same general statutes of limitation as ordinary crimes, which can impede the full pursuit of protracted, multi-jurisdictional cases. Extending these limitations would give prosecutors and courts the necessary breathing room to handle drawn-out evidence gathering without risking dismissal on technical timing grounds.

Additionally, legislators should mandate more transparency in financial transactions to pre-empt evidentiary obstacles. This includes requiring near-real-time disclosure of changes in beneficial ownership of companies and imposing sanctions for non-compliance. As discussed in Chapter 2, opacity in beneficial ownership remains one of the most exploited vulnerabilities in hiding criminal assets. Aligning national laws with FATF standards, for example by creating central registries of beneficial owners and ensuring they are updated promptly, would close many loopholes that launderers currently abuse.

Finally, procedural laws should be updated to explicitly recognize and admit digital evidence in money laundering trials. Blockchain records, forensic accounting analyses, and other electronic data should be clearly admissible under law, so that courts can focus less on their acceptance and more on the weighing of their substance. Harmonizing standards for digital evidence will also improve prosecutorial clarity and judicial confidence when confronted with novel evidentiary formats in court.

Institutional Capacity-Building.

Strengthening the capacity of the judiciary to handle complex financial crimes is imperative. As noted earlier, generalist judges may struggle with labyrinthine financial flows and intricate expert testimony. One effective approach involves establishing specialized anti-money laundering (AML) panels or chambers within the judiciary. By appointing judges with focused expertise in financial crime adjudication, the courts can cultivate a core group of jurists proficient in navigating the complexities inherent in such cases.

Even absent a new institutional structure, targeted training is essential. National judicial training institutes should provide mandatory courses for judges and prosecutors on money laundering and terrorist financing cases.

These could include real-case simulations, modules on linking predicate offenses to laundering, techniques for assessing complex circumstantial evidence of intent, and familiarization with digital asset tracing. To supplement domestic training, international knowledge-sharing networks can be extremely valuable. Regional “judge-to-judge” forums, perhaps under the auspices of the EU or Council of Europe, could allow judges to discuss thorny issues, exchange best practices, and even develop informal cooperation channels for cross-border cases.

It may also be beneficial to bridge the gap between the judiciary and financial intelligence units. Short-term secondment programs where judges spend time embedded within an FIU (in a learning capacity) could greatly enhance understanding. Judges would gain insight into how financial intelligence is collected and analyzed before it reaches the courtroom, demystifying some of the complexities that later appear as evidence. This kind of exchange would also build personal contacts and mutual respect between the analytical and judicial branches of AML enforcement, smoothing the translation of intelligence into evidence.

Technological Investment

Given the data-intensive nature of modern financial crime cases, judiciaries must leverage technology to avoid being overwhelmed. One recommendation is the funding of AI-assisted document review tools for use by prosecutors and courts, under “human-in-the-loop” protocols. For example, machine learning algorithms could quickly organize and summarize bank records, flagging suspicious transactions and clustering related entities together. These tools should never replace human judgment, but they can dramatically reduce the manual burden of sifting through terabytes of financial data.

Additionally, courts should consider setting up secure digital platforms essentially, electronic trial bundles for financial cases. Instead of bringing physical folders into court, all evidence can be stored in a searchable database that the judge and parties can access during proceedings. This makes it far easier to locate a document amid thousands (by keyword search, for instance) when a question arises in court.

Chapter 6: Conclusion

This article has traced the persistent and multidimensional obstacles facing the judiciary in the fight against complex financial crimes, particularly money laundering. Beginning with the definitional and legal evolution of the AML framework, it charted how legislative expansion, from the early FATF standards to the EU Directives and national reforms has not been matched by equivalent judicial capacity or operational coherence.

The analysis of detection and investigation revealed systemic issues that predetermine courtroom difficulties: data saturation caused by over-reporting, institutional fragmentation among FIUs, limited forensic capacity, and jurisdictional misalignments in cross-border cooperation. These gaps weaken the integrity of the evidence chain, compromising downstream prosecutions before they ever reach a judge.

In adjudication, the judiciary faces its own unique set of challenges. Judges struggle to manage massive volumes of complex digital evidence, assess conflicting expert analyses, and uphold fair trial guarantees under increasingly aggressive AML measures. Conviction and confiscation rates remain disproportionately low despite high investigative activity due to evidentiary complexity, procedural delays, and the lack of judicial specialization.

Three priority reforms emerge from this analysis. **First**, extend and tailor legal timeframes and evidentiary rules for money laundering cases, especially those with international dimensions. This would ensure that complex investigations and trials are not unfairly curtailed and that digital and financial evidence is fully admissible and utilized. **Second**, create specialized judicial capacities, whether through dedicated chambers or intensive training and networking to cultivate expertise in financial crime adjudication. A relatively small investment in judicial human capital can yield substantial improvements in how effectively courts handle these cases. **Third**, invest in technology and analytical support for the judiciary. By embracing AI tools for evidence management and fostering better visualization of financial data in trials, courts can significantly reduce the friction of understanding complex fact patterns. These reforms, while not exhaustive, would address many of the friction points identified across the enforcement lifecycle.

The broader insight is clear, unless institutional blind spots are addressed from detection through adjudication, enforcement efforts will continue

to fall short in disrupting sophisticated laundering operations. It is not enough for legislatures to pass ever-stricter AML laws or for regulators to impose ever-heavier compliance burdens on banks. The implementation ecosystem particularly within courts must be strengthened and modernized to actually produce results. Otherwise, the AML regime risks remaining a “*paper tiger*” formidable in theory, but feeble in impact.

Future empirical research should focus on measuring the effectiveness of reforms that are being implemented. For instance, where specialized financial crime court units have been established, do they achieve higher conviction rates or faster case resolution than before? Do judges who undergo focused AML training demonstrate different decision patterns (such as willingness to infer illicit origin from circumstantial evidence) compared to those who have not? Comparative studies of countries that use advanced analytics in court versus those that rely on traditional paper trials could provide insight into best practices.

In conclusion, the judiciary can and must become a more effective partner in the global fight against financial crime. Legal mandates and investigative prowess alone will not suffice if court proceedings remain a weak link. Through targeted reforms and continuous feedback between policymakers, investigators, and judges, the gap between the promise of AML laws and the reality of outcomes can be narrowed. Only by fortifying the judiciary’s capabilities will the cycle of complex money laundering from detection to conviction and asset recovery achieve the intended deterrent effect and uphold the rule of law against ever-evolving financial crimes.

Bibliography

- Anti-Money Laundering Centre (AMLC). *Money Laundering: The Indirect Method of Proof*. April 2019. <https://www.amlc.eu/wp-content/uploads/2019/04/Money-Laundering-the-Indirect-Method-of-Proof-2019.pdf>.
- CEPS & ECRI Task Force. *Anti-Money Laundering in the EU: An Overview of the Legal Framework and Roadmap for Reform*. Brussels: CEPS & ECRI, 2020. https://www.ecri.eu/sites/default/files/tfr_anti-money_laundering_in_the_eu.pdf.

- Council of Europe. *MONEYVAL Annual Report 2023*. Strasbourg: Council of Europe, 2024. <https://rm.coe.int/moneyval-annual-report-2023-eng/1680b2aa79>.
- Criminal Code of the Republic of Albania*, Article 287.
- Criminal Procedure Code of the Republic of Albania*, Article 75/a.
- European Commission. *Albania 2023 Report*. Brussels: Directorate-General for Neighbourhood and Enlargement Negotiations, 2023. https://neighbourhood-enlargement.ec.europa.eu/albania-report-2023_en.
- European Commission. *Albania 2024 Report: Commission Staff Working Document Accompanying the Communication on EU Enlargement Policy*. Brussels: European Commission, October 30, 2024. SWD(2024) 690 final. https://neighbourhood-enlargement.ec.europa.eu/system/files/2024-10/SWD_2024_690_final_Albania_report.pdf.
- European Commission. *Fighting Organised Crime: Freezing and Confiscating the Proceeds of Crime*. Brussels: European Commission, 2022.
- European Commission. *Serbia 2023 Report*. Brussels: Directorate-General for Neighbourhood and Enlargement Negotiations, 2023. https://neighbourhood-enlargement.ec.europa.eu/serbia-report-2023_en.
- European Commission. *The Italian AML-CFT Institutional System*. Brussels: European Commission, 2023. https://commission.europa.eu/document/download/94d90bd1-6fa2-4d7e-b960-cf047785b4bd_en?filename=Additional+documentation+Italy_The+Italian+AML-CFT+institutional+system.pdf.
- European Court of Human Rights. *Zschüschen v. Belgium*, no. 23572/07, decision of May 2, 2017. Accessed April 25, 2025. <https://hudoc.echr.coe.int/eng?i=002-11638>.
- European Union. *Evaluation Report on the Fifth Round of Mutual Evaluations: Spain*. Brussels: European Union, 2019. <https://www.eumonitor.eu/9353000/1/j9vvik7m1c3gyxp/vj5k5jvxbkyd>.
- Europol. *Criminal Asset Recovery in the EU*. The Hague: Europol, 2016.
- Europol. *The Other Side of the Coin: An Analysis of Financial and Economic Crime in the EU*. The Hague: Europol, 2023. <https://www.europol.europa.eu/publications-events/publications/other-side-of-coin-analysis-of-financial-and-economic-crime>.

- Eurojust. *Annual Report 2022*. The Hague: European Union Agency for Criminal Justice Cooperation, 2023. <https://www.eurojust.europa.eu/publication/annual-report-2022>.
- Eurojust. *Eurojust Report on Money Laundering*. Luxembourg: Publications Office of the European Union, 2022. <https://www.eurojust.europa.eu/sites/default/files/assets/eurojust-report-money-laundering-2022.pdf>.
- Eurojust and Europol. *SIRIUS EU Digital Evidence Situation Report 2022: Criminal Justice Access to Electronic Evidence in the European Union*. The Hague: Eurojust, 2022. <https://www.eurojust.europa.eu/publication/sirius-eu-digital-evidence-situation-report-2022>.
- Financial Action Task Force. *International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation: The FATF Recommendations*. Paris: FATF, 2012. Updated March 2022. <https://www.fatf-gafi.org/en/publications/Fatfrecommendations/Fatf-recommendations.html>.
- Kocani, Dardan. “Dirty Money: Assessing the Vulnerability of Financial Institutions in the Balkans to Illicit Finance.” Global Initiative Against Transnational Organized Crime, 2024. <https://globalinitiative.net/wp-content/uploads/2024/11/Dardan-Kocani-Dirty-money-Assessing-the-vulnerability-of-financial-institutions-in-the-Balkans-to-illicit-finance-GI-TOC-November-2024.pdf>.
- Korejo, Muhammad Saleem, Ramalingam Rajamanickam, and Muhamad Helmi Md. Said. “The Concept of Money Laundering: A Quest for Legal Definition.” *Journal of Money Laundering Control* 24, no. 4 (2021): 725–736. <https://doi.org/10.1108/JMLC-05-2020-0045>.
- McNaughton, Katarzyna J. “The Variability and Clustering of Financial Intelligence Units (FIUs): A Comparative Analysis of National Models of FIUs in Selected Western and Eastern (Post-Soviet) Countries.” *Journal of Economic Criminology* 2 (2023): 100036.
- Mitsilegas, Valsamis, and Niovi Vavoula. “The Evolving EU Anti-Money Laundering Regime: Challenges for Fundamental Rights and the Rule of Law.” *Maastricht Journal of European and Comparative Law* 23, no. 2 (2016): 261–292. <https://doi.org/10.1177/1023263X1602300204>.
- Mouzakiti, Foivi. “Cooperation between Financial Intelligence Units in the EU: Challenges for the Rights to Privacy and Data Protection.” In *Assets, Crimes and the State: Innovation in 21st Century Legal*

- Responses*, edited by Katie Benson, Colin King, and Clive Walker, 38–51. London: Routledge, 2020.
- Ogbeide, Henry, Mary Elizabeth Thomson, Mustafa Sinan Gönül, Dilek Önköl, Sanjay Bhowmick, and Abdullahi Usman Bello. “Rethinking Experts’ Perceptions in Money Laundering Risk Assessment.” *European Journal on Criminal Policy and Research*, June 3, 2024. <https://doi.org/10.1007/s10610-024-09586-w>.
- Organization for Security and Co-operation in Europe. *Trial Monitoring of Organized Crime and Corruption Cases in the Western Balkans 2021–2024: Regional Analysis*. Vienna: OSCE, 2024. <https://www.osce.org/files/f/documents/5/b/572836.pdf>.
- OSCE. *Western Balkans Trial Monitoring Report 2024*. Vienna: OSCE, 2024.
- Pellegrina, Lucia Dalla, Giorgio Di Maio, Donato Masciandaro, and Margherita Saraceno. “Are Bankers ‘Crying Wolf’? Type I, Type II Errors and Deterrence in Anti-Money Laundering: The Italian Case.” *Italian Economic Journal* 9, no. 2 (2023).
- Pol, Ronald F. “Anti-Money Laundering Effectiveness: Assessing Outcomes or Ticking Boxes?” *Journal of Money Laundering Control* 21, no. 2 (2018): 216.
- Pol, Ronald F. “Anti-Money Laundering: The World’s Least Effective Policy Experiment? Together, We Can Fix It.” *Policy Design and Practice* 3, no. 1 (2020): 73–94. <https://doi.org/10.1080/25741292.2020.1725366>.
- U.S. Department of State, Bureau for International Narcotics and Law Enforcement Affairs. *International Narcotics Control Strategy Report, Volume II: Money Laundering*. Washington, DC: U.S. Department of State, March 2022. <https://www.state.gov/wp-content/uploads/2022/03/22-00768-INCSR-2022-Vol-2.pdf>.

FINANCIAL CRIMES AND MONEY LAUNDERING

PhD(c) Anisa Pali¹

Abstract

Financial crimes and money laundering are closely interconnected due to the nature of illicit activities and the need to obscure the origin of illegal proceeds. Financial crimes often generate funds that must be “laundered” in order to avoid attracting the attention of law enforcement authorities and to enable their use without exposing their unlawful source. This paper examines the latest trends in financial crimes, with a particular focus on the increasing prevalence of money laundering and the ways in which national laws and policies have adapted to address these challenges. In a period when financial crimes are becoming increasingly sophisticated and transnational largely due to rapid technological developments Albania has witnessed a rise in money laundering activities, often linked to corruption, tax evasion, and other illicit activities that economically harm the country and heighten risks to national security. The paper analyzes recent legislative measures and reforms to existing institutional structures, including the implementation of recommendations issued by the Financial Action Task Force (FATF) and the incorporation of international regulations in the field of anti-money laundering. Through an examination of legal developments and new policy initiatives such as increased transparency in the financial and real estate sectors, the identification and tracking of suspicious sources of financing, and the strengthening of international cooperation this paper aims to provide a comprehensive overview of ongoing efforts to combat financial crimes and money laundering. It also evaluates the challenges and opportunities

1. PhD(c) Anisa Pali Faculty of Law and Political Sciences “Aleksandër Moisiu” University of Durrës, Albania

associated with the implementation of these reforms, as well as the extent to which they may influence the future control and prevention of money laundering, ultimately contributing to a safer and more stable financial environment for the country.

Keywords: Financial crimes, Cybercrime, money laundering, legal measures.

Introduction

In recent years, Albania has witnessed a significant rise in financial crimes, which have assumed increasingly sophisticated forms as a result of market globalization and rapid technological developments. Financial crimes encompass a wide range of illicit activities aimed at securing economic benefit, including money laundering, financial fraud through modern pyramid-type schemes (such as online scams, fictitious investment platforms, and the illicit use of cryptocurrencies), tax evasion, corruption, forgery of financial documents, smuggling, and other unlawful activities across various sectors of the economy. Emerging trends in Albania indicate that financial crimes are shifting progressively toward the digital domain, involving the use of cryptocurrencies, electronic payment systems, and online platforms to conceal the origin of illicit funds.

Over the past decade, technological advancements have fundamentally reshaped the landscape of financial crime, introducing new and complex challenges for law enforcement and regulatory institutions. Virtual currencies, digital assets, fintech platforms, and electronic identity systems have created new channels for transferring value often characterized by high levels of anonymity and the absence of regulated intermediaries thereby heightening the risks of financial abuse, money laundering, and terrorist financing.

The increased reliance on decentralized technologies and the rapid expansion of cyberspace have made coordinated international action indispensable. This includes enhanced institutional cooperation as well as the harmonization of legal and regulatory frameworks, with the aim of preventing loopholes that may be exploited by criminal networks.

Within this context, cybercrime particularly the use of cryptocurrencies

for financial offences and money laundering has emerged as a central global concern. Sophisticated malware attacks, botnets, ransomware incidents, and the exploitation of virtual wallets reveal a high degree of complexity, automation, and cross-border reach, making investigation and asset tracing increasingly challenging. Growing awareness and the adoption of regulatory policies such as the European Union's MiCA, NIS2, DORA, and CRA frameworks, as well as legislative developments in jurisdictions such as the United Kingdom have aimed to establish reliable mechanisms for the oversight, freezing, and confiscation of virtual assets.

In Albania, progress in harmonizing national legislation with international standards and strengthening the capacities of key authorities, such as SPAK, has led to the seizure and confiscation of crypto wallets valued in the millions of euros. Nevertheless, the country still lacks a clear and dedicated legal framework for the management and treatment of crypto-assets. International practice highlights both the complexity of integrating technical procedures into legal processes and the continued need to address remaining regulatory gaps.

This article seeks to analyze the latest trends in financial crime in the digital era, the measures undertaken within the European Union and Albania, and the existing practices and challenges related to the seizure of crypto-assets and the absence of secure custodial wallets. It offers an integrated overview of the need for more effective legal and regulatory policies within an increasingly digitalized financial environment.

Methodology

This research employs a qualitative approach through comprehensive document analysis. The study examines legal texts, scholarly articles, and official institutional reports related to the measures undertaken at the international level in combating financial crimes particularly those involving cryptocurrencies and other digital instruments closely linked to money laundering activities.

1. Risks of Financial Crime, Cybercrime, and Money Laundering in the Digital Era

The global landscape of money laundering and terrorist financing is undergoing rapid transformation driven by digitalization, the international

integration of markets, and the increasing sophistication of financial crime. Virtual currencies, digital assets, fintech platforms, and electronic identity systems have created new channels for the transfer of value often characterized by high levels of anonymity and the absence of regulated intermediaries thereby amplifying risks of abuse. The cross-border nature of these technologies necessitates global regulatory harmonization and close institutional cooperation, as emphasized by FATF, the OECD, and Europol, in order to avoid regulatory gaps that may be exploited by criminal networks.¹

Despite ongoing reforms, financial crimes continue to threaten economic stability, institutional integrity, and the rule of law. The migration of criminal activities into cyberspace and the use of decentralized technologies increasingly complicate detection and investigation, heightening the risk of impunity. In this context, the National AML/CFT Strategy 2024–2030 underscores the need for an integrated approach based on advanced risk analyses, the adoption of emerging technologies, and sustained cooperation at both the domestic and international levels.²

The latest IOCTA report indicates that cybercrime is becoming increasingly aggressive and confrontational, encompassing high-tech offences, data breaches, and sexual extortion. Within the framework of the EMPACT 2022–2025 program, cybercrime constitutes one of the European Union’s top priorities, as it presents a growing threat to states with advanced digital infrastructures and online payment systems.³

Financial data alongside other categories of sensitive information remain the primary target of perpetrators of these offences, with a marked increase in security breaches and fraud incidents. The activity of cybercriminals is multidimensional, encompassing the use of botnets, the creation of backdoors, hacking forums, bulletproof hosting services, cryptocurrency laundering, online scams, and social engineering. This landscape reflects a continuous expansion of the cyber-threat spectrum, demanding advanced security mechanisms and robust international cooperation to address these

1. Ministry of Finance, *National Strategy for Anti-Money Laundering 2024–2030*, Tirana, 2024.

2. Ministry of Finance, *National Strategy for Anti-Money Laundering 2024–2030*, Tirana, 2024.

3. Cyber-attacks Europol <https://www.europol.europa.eu/crime-areas/cyber-attacks>, accessed 17 November 2025.

challenges effectively.¹

High-tech crimes encompass a wide range of sophisticated tools and techniques designed to compromise information systems. Malware, in its various forms, is employed to infiltrate devices, exfiltrate data, or cause operational damage. Botnets exploit compromised devices to launch DDoS attacks, distribute spam, or facilitate other illicit activities, while rootkits enable attackers to obtain privileged and covert access to systems.²

Other forms include self-replicating worms, trojans that disguise themselves as legitimate software, and file infectors that compromise executable files. Backdoors and Remote Access Trojans (RATs) grant perpetrators remote control over targeted devices, allowing for surveillance and the execution of commands. Meanwhile, scareware, spyware, and adware manipulate users through deceptive notifications, covert data collection, and behavioural monitoring.³

Ransomware, on the other hand, restricts access to devices and demands payment for restoring functionality. A particular variant, known as police ransomware, employs the insignia of law-enforcement agencies to lend false authority to its coercive messages. ⁴Ransomware is defined as a category of malicious software that encrypts data on infected systems with the purpose of digitally extorting victims into making financial payments.⁵

In terms of dissemination methods, ransomware typically spreads through common intrusion techniques such as phishing emails, system function reconfiguration, and file encryption.⁶ However, it represents a distinct form of cyber-enabled abuse, differing from other malware types

1. Cyber-attacks Europol <https://www.europol.europa.eu/crime-areas/cyber-attacks>, accessed 17 November 2025.

2. Cyber-attacks Europol <https://www.europol.europa.eu/crime-areas/cyber-attacks>, accessed 17 November 2025.

3. Cyber-attacks Europol <https://www.europol.europa.eu/crime-areas/cyber-attacks>, accessed 17 November 2025.

4. Cyber-attacks Europol <https://www.europol.europa.eu/crime-areas/cyber-attacks>, accessed 17 November 2025.

5. Nori Katagiri (2024) From prepaid cards to bitcoin: How did ransomware hackers adopt cryptocurrencies?, *Journal of Cyber Policy*, 9:2, 239-255, DOI: 10.1080/23738871.2024.2435956, <https://doi.org/10.1080/23738871.2024.2435956>

6. Michael P. Fischerkeller, Emily O. Goldman, Richard J. Harknett, Oxford University Press, 2022, **Cyber Persistence Theory: Redefining National Security in Cyberspace**, 64-65, https://books.google.al/books?id=zrVoEAAAQBAJ&source=gbs_navlinks_s

in that it involves negotiation with victims and the direct extraction of funds.¹

Ransomware groups readily embraced the emergence of virtual currencies in the financial market, swiftly adopting them as instruments for payment and money laundering both to complicate traceability and to exploit them as lucrative targets in their own right.²

An increasing number of governments are now prohibiting ransom payments and imposing mandatory reporting obligations, contributing to a decline in the proportion of victims who pay, which fell to 29% by the end of 2023.³

These developments reflect a substantial rise in the complexity and automation of cybercrime, underscoring the need for advanced defensive strategies and continuous institutional preparedness. Given the diverse and rapidly evolving nature of cyber-enabled crime, Europol and its partners must rely on a coordinated, adaptable and continuously innovative response. In this context, the European Cybercrime Centre (EC3) plays a pivotal role in strengthening law-enforcement capabilities and safeguarding EU citizens and institutions. Through its annual IOCTA report, EC3 guides the operational priorities of EMPACT in combating cybercrime.⁴

A key component in this architecture is the Joint Cybercrime Action Taskforce (J-CAT), which coordinates intelligence-led operations and cross-border investigations. These structures have enabled significant interventions, including the dismantling of the Ramnit botnet, joint operations against malware attacks originating from Ukraine, and the neutralisation of criminal forums distributing malware, botnets and advanced exploits.⁵

1. Nori Katagiri (2024) From prepaid cards to bitcoin: How did ransomware hackers adopt cryptocurrencies?, *Journal of Cyber Policy*, 9:2, 239-255, DOI: 10.1080/23738871.2024.2435956, <https://doi.org/10.1080/23738871.2024.2435956>

2. Nori Katagiri (2024) From prepaid cards to bitcoin: How did ransomware hackers adopt cryptocurrencies?, *Journal of Cyber Policy*, 9:2, 239-255, DOI: 10.1080/23738871.2024.2435956, <https://doi.org/10.1080/23738871.2024.2435956>

3. Cyber-attacks Europol <https://www.europol.europa.eu/crime-areas/cyber-attacks>, accessed 17 November 2025

4. Cyber-attacks Europol <https://www.europol.europa.eu/crime-areas/cyber-attacks>, accessed 17 November 2025

5. Cyber-attacks Europol <https://www.europol.europa.eu/crime-areas/cyber-attacks>, accessed 17 November 2025

Taken together, these achievements highlight the importance of international cooperation and integrated approaches in effectively countering financial crime facilitated through cryptocurrencies in an increasingly digitalised economy.

2. Measures Undertaken in the EU and Recent Legislative Developments in Albania

Hackers and ransomware groups, driven by strong financial incentives, have increasingly embraced advanced technologies to enhance the effectiveness of their attacks and to exploit the advantages offered by cryptocurrencies including the convenience of rapid payments, opportunities for money laundering, and the ease with which cryptocurrency systems themselves can be compromised. The convergence of ransomware and cryptocurrencies emerged largely in the absence of an effective legal governance framework for virtual transactions.¹

The European Union (EU), through an extensive regulatory architecture for data protection and the security of critical infrastructure, has also adopted specific legislation targeting crypto-assets, aiming to strengthen consumer trust and stimulate the development of alternative forms of payment. In 2023, the EU approved the Markets in Crypto-Assets Regulation (MiCA) to enhance transparency, reporting obligations, authorization procedures, and supervisory mechanisms concerning the issuance and trading of new token forms, such as electronic money tokens. The regulation is being implemented through consultative phases and staged enforcement beginning in 2024.² The European Commission's Blockchain Observatory and Forum has contributed significantly to accelerating the development of the blockchain ecosystem across the EU.³

Moreover, the European Central Bank is advancing plans for introducing

1. Nori Katagiri (2024) From prepaid cards to bitcoin: How did ransomware hackers adopt cryptocurrencies?, *Journal of Cyber Policy*, 9:2, 239-255, DOI: 10.1080/23738871.2024.2435956, <https://doi.org/10.1080/23738871.2024.2435956>

2. Nori Katagiri (2024) From prepaid cards to bitcoin: How did ransomware hackers adopt cryptocurrencies?, *Journal of Cyber Policy*, 9:2, 239-255, DOI: 10.1080/23738871.2024.2435956, <https://doi.org/10.1080/23738871.2024.2435956>

3. Markets in Crypto Assets Regulation (MiCA) <https://www.esma.europa.eu/esmas-activities/digital-finance-and-innovation/markets-crypto-assets-regulation-mica>, accessed 17 November 2025

central bank digital currencies (CBDCs), such as a digital euro, to provide consumers with alternative payment structures while preserving accessibility and financial inclusion.¹

Similarly, the General Data Protection Regulation (GDPR) entered into force in 2018, establishing a unified standard for data protection across the EU.²

In January 2023, the Network and Information Security Directive (NIS2) entered into force.³ NIS2 establishes a harmonized legal framework for safeguarding cybersecurity across 18 critical sectors throughout the European Union. It also requires Member States to develop national cybersecurity strategies and to cooperate closely with EU institutions on cross-border response and enforcement.⁴

The Digital Operational Resilience Act (DORA),⁵ a regulation adopted by the European Union and entering into application in 2025, seeks to enhance the digital resilience of the financial sector by defining robust requirements for risk mitigation. DORA ensures that banks, insurance companies, investment firms, and other financial entities are capable of withstanding, responding to, and recovering from ICT (Information and Communication Technology) disruptions, such as cyberattacks or system failures.⁶

The Cyber Resilience Act (CRA), which entered into force in December 2024 and will become fully applicable in December 2027, sets mandatory cybersecurity requirements for hardware and software products marketed within the EU. Its objective is to reduce product vulnerabilities, ensure manufacturers' accountability throughout the entire lifecycle, increase transparency regarding product security, and strengthen the resilience of the European digital market while enhancing protection against cyber

1. International Monetary Fund 2022; European Central Bank 2022

2. GDPR EU <https://gdpr.eu/what-is-gdpr/>, accessed 17 November 2025.

3. NIS 2 Directive <https://digital-strategy.ec.europa.eu/en/policies/nis2-directive>, accessed 18 November 2025

4. NIS 2 Directive <https://digital-strategy.ec.europa.eu/en/policies/nis2-directive>, accessed 18 November 2025

5. Digital Operational Resilience Act Dora(DORA) https://www.eiopa.europa.eu/digital-operational-resilience-act-dora_en, accessed 18 November 2025

6. Digital Operational Resilience Act Dora(DORA) https://www.eiopa.europa.eu/digital-operational-resilience-act-dora_en, accessed 18 November 2025

threats.¹

At the international level, beyond legal measures, the use of Chainalysis as a leading blockchain data platform by law enforcement agencies has played a pivotal role in major cryptocurrency investigations and seizures. Chainalysis has facilitated the tracing, seizure, and restitution of illicit assets to victims, and has supported crime-prevention efforts through close cooperation with global law enforcement authorities.²

Cryptocurrencies are transforming the global economy by opening new markets and increasing economic integration; however, their development requires enhanced trust and transparency. Chainalysis contributes significantly in this regard by providing investigative and compliance tools that support effective regulation, auditing, and monitoring of blockchain-based activities. Through these solutions, the platform enables financial institutions, businesses, and public authorities to preserve market integrity and to foster the secure development of the digital economy.³

Global Cases of Cryptocurrency Seizures:

Case 1: Terrorism Financing by Hezbollah and Iran's Quds Force (2023).

In 2023, Israel's National Bureau for Counter-Terror Financing (NBCTF) seized approximately USD 1.7 million in cryptocurrencies linked to Hezbollah and the Iranian Quds Force. The operation relied on Chainalysis analytics to trace the illicit flows and identify associated wallets.⁴

Case 2: Operation Endgame (2024).

In 2024, the Dutch Fiscal Information and Investigation Service (FIOD), supported by Chainalysis and Tether, dismantled the illicit cryptocurrency exchanges Cryptex and pm2btc. The operation resulted in the seizure of

1. Cyber Resilience Act : The clock is ticking for compliance <https://www.whitecase.com/insight-alert/cyber-resilience-act-clock-ticking-compliance>, accessed 18 November 2025

2. Asset Seizure and Cryptocurrency: How Chainalysis Creates Opportunities for Self-Sustaining Law Enforcement <https://www.chainalysis.com/blog/cryptocurrency-asset-seizure/>, accessed 19 November 2025

3. Company Chainalysis <https://www.chainalysis.com/company/>

4. Asset Seizure and Cryptocurrency: How Chainalysis Creates Opportunities for Self-Sustaining Law Enforcement <https://www.chainalysis.com/blog/cryptocurrency-asset-seizure/>, accessed 19 November 2025

approximately EUR 7 million in cryptocurrencies used for large-scale money laundering.¹

Case 3: Operation Spincaster (2024).

This multinational operation targeted a broad spectrum of cryptocurrency-related fraud schemes, including approval fraud and “pig-butcher” scams. Chainalysis coordinated investigative activities across six countries, generating more than 7,000 investigative leads and enabling the seizure of approximately USD 162 million in illicit cryptocurrency assets.²

In Albania, the earliest and most relevant measures adopted to date in relation to virtual assets and anti-money laundering include:

- Law No. 9917/2008 “On the Prevention of Money Laundering and Terrorist Financing,” as amended;³ Decision No. 665 of 12.11.2025 “On the Designation of Supervisory Authorities”; Decision No. 668 of 12.11.2025 “On the Form, Method, and Procedure for Reporting Data by Licensing and Supervisory Authorities.”
- Law No. 95/2016 “On the Organisation and Functioning of Institutions for Combating Corruption and Organised Crime.”⁴ General Instruction No. 1093 of 11.11.2024 “On Administrative and Procedural Measures for Conducting Financial and Asset Investigations within the Special Structure Against Corruption and Organised Crime (SPAK).”⁵
- Law No. 157/2013 “On Measures Against the Financing of Terrorism,” as amended by Law No. 63/2023.⁶
- Law No. 112/2020 “On the Register of Beneficial Ownership,” as amended by Law No. 6/2022.⁷

1. Asset Seizure and Cryptocurrency: How Chainalysis Creates Opportunities for Self-Sustaining Law Enforcement <https://www.chainalysis.com/blog/cryptocurrency-asset-seizure/>, accessed 19 November 2025

2. Asset Seizure and Cryptocurrency: How Chainalysis Creates Opportunities for Self-Sustaining Law Enforcement <https://www.chainalysis.com/blog/cryptocurrency-asset-seizure/>, accessed 19 November 2025

3. National Strategy for Anti-Money Laundering 2024-2030.

4. National Strategy for Anti-Money Laundering 2024-2030.

5. Annual Report 20224 SPAK

6. National Strategy for Anti-Money Laundering 2024-2030.

7. National Strategy for Anti-Money Laundering 2024-2030.

- Law No. 10192/2009 “On the Prevention and Combating of Organised Crime and Trafficking Through Preventive Measures Against Assets,” as amended (the “Anti-Mafia Law”).¹
- Law No. 34 of 4 July 2019 “On the Administration of Seized and Confiscated Assets.”²
- Law No. 10193 of 12.03.2009 “On Jurisdictional Relations with Foreign Authorities in Criminal Matters,” as amended by Law No. 97/2021.³
- Law No. 66/2020 “On Financial Markets Based on Distributed Ledger Technology.”⁴
- Law No. 29/2023 “On Income Tax,” which also incorporates definitions of “*virtual assets*” and “*virtual asset mining*.”⁵

In Albania, the implementation of **FATF Recommendation 15** on “new technologies and virtual asset service providers” remains an area requiring further development. The responsible institutions have initiated efforts to harmonise the legal framework and strengthen operational capacities, supported by technical assistance from the joint Council of Europe–European Union project (AEC-AL). The Joint Group (ICRG/FATF) evaluation report underscores the need for increased investment in human and technological resources to address emerging threats, including cybercrime and virtual assets. These recommendations have been formally endorsed by Albanian authorities and incorporated into the corresponding national action plans aimed at strengthening the AML/CFT system.⁶

The **Special Anti-Corruption and Organised Crime Structure (SPAK)** has intensified cooperation with EU Member States, Europol, and Eurojust, participating in numerous international law-enforcement operations and achieving notable progress in the seizure and confiscation of assets linked to organised crime. SPAK has strengthened its credibility among regional and international partners by concluding cooperation agreements with the United Kingdom’s and Northern Ireland’s National

1. National Strategy for Anti-Money Laundering 2024-2030.

2. National Strategy for Anti-Money Laundering 2024-2030.

3. National Strategy for Anti-Money Laundering 2024-2030.

4. Law No. 66/2020 “On Financial Markets Based on Distributed Ledger Technology.”
https://amf.gov.al/pdf/ligje/Ligji66-2020_2.pdf

5. DPT <https://www.tatime.gov.al/c/6/70/tatimi-mbi-te-ardhurat>

6. National Strategy for Anti-Money Laundering 2024-2030.

Crime Agency (NCA), as well as memoranda of understanding with the Spanish Prosecutor General's Office and the Special Prosecutor's Office of Montenegro.¹

In 2024, SPAK finalised a consolidated strategic framework aligned with international standards and the recommendations of national institutions and EU bodies. Particular priority was devoted to financial and asset investigations, including those involving cryptocurrency transactions, through strengthened capacities within the financial investigation sector and the development of specialised procedural guidelines, supported by international expertise.²

4. The Criminal Process Concerning Cryptocurrencies in Albania, the EU, and the United Kingdom

Crypto-assets, including Bitcoin, NFTs, and other blockchain-based funds, constitute a significant component of the global financial system. However, they are also increasingly exploited for criminal purposes, such as money laundering, terrorist financing, and drug trafficking.³

In Albania, according to the 2024 annual report and as previously noted SPAK succeeded during 2024 in seizing and confiscating a diversified portfolio of assets. These included real estate, monetary values, business shares, and cryptocurrency wallets, with a total value of approximately €65.5 million, of which €28.7 million (43.8%) were seized assets and €36.7 million (56.2%) were confiscated assets.⁴

The seizure and confiscation of these assets were carried out pursuant to the Criminal Code, the Anti-Mafia Law, and the normative act known as OFL.

Despite the progress made in adapting the domestic legal framework where digital wallets, virtual assets, and related concepts are already recognized, particularly under Law No. 66/2020 *On Financial Markets Based on Distributed Ledger Technology* and Law No. 29/2023 *On Income Tax*, which explicitly regulates “virtual assets” and the “mining or generation of virtual assets” it must be emphasized that the criminal process

1. Annual Report 20224 SPAK

2. Annual Report 20224 SPAK

3. Crypto Wallet Freezing Orders and the Fight Against Crime https://www.2harecourt.com/2025/06/11/crypto-wallet-freezing-orders-and-the-fight-against-crime/#_ftn2

4. Annual Report 20224 SPAK

in Albania still lacks a clearly articulated legal integration specifically addressing cryptocurrencies.

Another critical challenge is the absence of a state-managed digital wallet infrastructure for the secure storage of seized cryptocurrencies. This regulatory gap represents an urgent legal and institutional priority.

Meanwhile, in EU Member States many of which remain in a transitional phase the international regulatory framework governing cyber-activities continues to be constrained by legal gaps and limited practical enforcement. Although states have agreed that international law applies to cyberspace, it has not yet been effectively operationalized to counter ransomware attacks or the misuse of financial technologies.¹

Key instruments of international humanitarian law and human rights law do not contain terms such as “cyber,” “ransomware,” or “crypto”, creating a landscape of normative uncertainty. There is no unified international framework defining the legal nature of virtual currencies used in cyberattacks, which facilitates the misuse of digital payments and benefits states that fail to take adequate measures against illicit financial activities. Consequently, the responsibility for regulation falls largely on individual states, resulting in significant divergences in national approaches.²

In judicial practice, the Supreme Court of Italy overturned the seizure of €120,600 in Bitcoin, holding that cryptocurrencies cannot be seized “by equivalence.” The Court’s reasoning emphasized the lack of a clear legal basis, the fact that Bitcoin is not legal tender and is highly volatile, as well as the nature of the seizure, which targeted the crypto-asset itself rather than the concrete proceeds of the criminal offence. This decision underscores the challenges associated with treating crypto-assets within the frameworks of seizure and confiscation measures.³

Meanwhile, the United Kingdom amended the *Proceeds of Crime Act*

1. Nori Katagiri (2024) From prepaid cards to bitcoin: How did ransomware hackers adopt cryptocurrencies?, *Journal of Cyber Policy*, 9:2, 239-255, DOI: 10.1080/23738871.2024.2435956, <https://doi.org/10.1080/23738871.2024.2435956>

2. Nori Katagiri (2024) From prepaid cards to bitcoin: How did ransomware hackers adopt cryptocurrencies?, *Journal of Cyber Policy*, 9:2, 239-255, DOI: 10.1080/23738871.2024.2435956, <https://doi.org/10.1080/23738871.2024.2435956>

3. *Bitcoin wallet cannot be seized by equivalent under Italian law* (Cass. 1760/25) Cass. pen. sec. III, ud. Nov. 20, 2024 (dep. Jan. 15, 2025), no. 1760 January 2025, *Italian Supreme Court* <https://canestrinilex.com/en/readings/bitcoin-cannot-be-seized-by-equivalent-under-italian-law-cass-176025>

2002 through the **Economic Crime and Corporate Transparency Act 2023**. As part of these reforms, effective from April 2024, **Crypto Wallet Freezing Orders (CWFOs)** were introduced, enabling law enforcement authorities to rapidly freeze and seize crypto-assets where there are reasonable grounds to suspect that they constitute recoverable property or are intended for unlawful activity. Applications are examined by the Magistrates' Court and may result in asset freezes of up to two years, with the possibility of extension to three years.¹

Crypto Wallet Freezing Orders (CWFOs) encompass: Applications for a crypto-asset wallet freezing order; Issuance of the freezing order; Variation and discharge of the order; Applicable exemptions; Restrictions on proceedings and available legal remedies.²

Conclusions

- Financial crime and money laundering have evolved significantly, increasingly shifting toward digital technologies including cryptocurrencies, fintech platforms, and ransomware attacks which renders tracing and investigation substantially more complex.
- Albania has made notable progress in aligning its national legislation with international standards (including laws on cryptocurrencies, digital financial markets, and measures against money laundering and terrorist financing). Nevertheless, important legal gaps remain, particularly the absence of a national digital wallet for the storage of seized cryptocurrencies, as well as the need for further integration of crypto-related terminology and provisions within the criminal law framework.
- The integration of advanced technological tools into investigative practice such as the use of Chainalysis has demonstrated the critical importance of crypto-asset tracing for the seizure and recovery of illicit funds, thereby enhancing the effectiveness of financial and investigative procedures.
- Harmonizing international and domestic legal terminology, including

1. Crypto Wallet Freezing Orders and the Fight Against Crime https://www.2harecourt.com/2025/06/11/crypto-wallet-freezing-orders-and-the-fight-against-crime/#_ftn2

2. Proceeds of Crime Act 2002

<https://www.legislation.gov.uk/ukpga/2002/29/part/5/chapter/3D/crossheading/freezing-of-crypto-wallets>

explicit incorporation of terms such as “cyber,” “ransomware,” and “crypto” into the legal framework, is essential to ensure clarity for authorities dealing with digital attacks and virtual transactions.

- Strengthening awareness and transparency is imperative. Financial institutions, fintech service providers, and the general public must be adequately informed about the risks associated with cryptocurrencies and the mechanisms available to prevent misuse and money laundering.

Reference

- Nori Katagiri (2024) From prepaid cards to bitcoin: How did ransomware hackers adopt cryptocurrencies?, Journal of Cyber Policy, 9:2, 239-255, DOI: 10.1080/23738871.2024.2435956 <https://doi.org/10.1080/23738871.2024.2435956>
- Redefining National Security in Cyberspace, By Michael P. Fischerkeller, Emily O. Goldman, Richard J. Harknett, 2022.
- Ministry of Finance, National Strategy for Anti-Money Laundering 2024–2030, Tirana, 2024,
- Cyber-attacks Europol <https://www.europol.europa.eu/crime-areas/cyber-attacks>, accessed 17 November 2025.
- Nori Katagiri (2024) From prepaid cards to bitcoin: How did ransomware hackers adopt cryptocurrencies?, Journal of Cyber Policy, 9:2, 239-255, DOI: 10.1080/23738871.2024.2435956, <https://doi.org/10.1080/23738871.2024.2435956>
- Coveware 2024, <https://www.coveware.com/blog/2024/1/25/new-ransomware-reporting-requirements-kick-in-as-victims-increasingly-avoid-paying>, accessed 17 November 2025
- Markets in Crypto Assets Regulation (MiCA) <https://www.esma.europa.eu/esmas-activities/digital-finance-and-innovation/markets-crypto-assets-regulation-mica>, accessed 17 November 2025
- International Monetary Fund 2022; European Central Bank 2022
- GDPR EU <https://gdpr.eu/what-is-gdpr/>, accessed 17 November 2025.
- NIS 2 Directive <https://digital-strategy.ec.europa.eu/en/policies/nis2-directive>, accessed 18 November 2025

- Digital Operational Resilience Act Dora(DORA) https://www.eiopa.europa.eu/digital-operational-resilience-act-dora_en, accessed 18 November 2025
- Cyber Resilience Act : The clock is ticking for compliance <https://www.whitecase.com/insight-alert/cyber-resilience-act-clock-ticking-compliance>, accessed 18 November 2025
- Asset Seizure and Cryptocurrency: How Chainalysis Creates Opportunities for Self-Sustaining Law Enforcement <https://www.chainalysis.com/blog/cryptocurrency-asset-seizure/>, accessed 19 November 2025
- Bitcoin wallet cannot be seized by equivalent under Italian law (Cass. 1760/25) Cass. pen. sec. III, ud. Nov. 20, 2024 (dep. Jan. 15, 2025), no. 1760 January 2025, Italian Supreme Court <https://canestrinilex.com/en/readings/bitcoin-cannot-be-seized-by-equivalent-under-italian-law-cass-176025>
- Crypto Wallet Freezing Orders and the Fight Against Crime https://www.2harecourt.com/2025/06/11/crypto-wallet-freezing-orders-and-the-fight-against-crime/#_ftn2
- Proceeds of Crime Act 2002 <https://www.legislation.gov.uk/ukpga/2002/29/part/5/chapter/3D/crossheading/freezing-of-crypto-wallets>
- Annual Report 20224 SPAK
- Kodi Penal I RSH, https://www.drejtësia.gov.al/wp-content/uploads/2017/11/Kodi_Penal-1.pdf
- Proceeds of Crime Act 2002
- <https://www.legislation.gov.uk/ukpga/2002/29/part/5/chapter/3D/crossheading/freezing-of-crypto-wallets>
- Law No. 66/2020 “On Financial Markets Based on Distributed Ledger Technology. https://amf.gov.al/pdf/ligje/Ligji66-2020_2.pdf

THE EUROPEAN “BARNAHUS” MODEL OF CHILD-FRIENDLY JUSTICE

Maend Kullaj, Atty., MSc.¹

Abstract

Barnahus refers to the European model of child-friendly justice that brings together all the relevant professionals in a single interdisciplinary center. Pioneered by the Icelandic government mainly to treat child victims and witnesses of violence, abuse, and exploitation, especially sexual, the model has now been promoted by both the Council of Europe and the European Union and has been successfully implemented in some European countries. Barnahus serves as a friendly common house where the police officer, prosecutor, judge, lawyer, social worker, doctor, and psychologist work and cooperate with and for the child. This article unveils the standards of the Barnahus model of services for ensuring the best interests of the child and preventing secondary victimization, and assesses the opportunities for a theoretical implementation of Barnahus in Albania, which in fact, for years has been the initiative of civil society organizations. On the other hand, the article also presents challenges impeding the implementation of the Barnahus model, according to states, like the cost, lack of coordination and training, or infrastructure. This article also comes ahead of the first amendments to the Code of Criminal Justice for Minors, planned by the end of 2025, related to some procedural rights of the minor. The article concludes by supporting and proposing the institutionalization of the Barnahus model by the Albanian State, which has yet to express any real interest in the model's

1. Maend Kullaj, Attorney; Legal Researcher; Assistant Lecturer, Faculty of Social Sciences, Albanian University.

E-mail: m.kullaj@albanianuniversity.edu.al.

implementation, finally going from a “criminal” justice regime to making reality a “child-friendly” one.

Keywords: *Barnahus; European; child-friendly justice; secondary victimization; Albania*

Introduction

The sensitive treatment from professionals of victims of violent crime, especially child victims, holds a key importance for ensuring proper legal and rehabilitation processes for them. This also means that child victims and witnesses should not have to repeat their version of events from office to office each time it is required – once for the police officer, once for the defense lawyer, for the prosecutor, judge, doctor, social worker, and so on, because instead of helping the process, it may repeatedly traumatize the victim.

Countries have made their modest efforts to introduce a more friendly approach to juvenile justice, based on international standards from the UN, the Council of Europe and the EU. A more innovative approach is gaining appeal across Europe, whose effectiveness is now acknowledged and promoted even by these international organizations.

This is in reference to the “Barnahus” model, pioneered by Iceland in 1998, from which the model takes its name – the “Children’s House”. Initially inspired by the American private centers for child protection (Child Advocacy Centers) with their interdisciplinary teams that coordinated efforts for the friendly interviewing of child sexual violence victims, Iceland transformed the model by institutionalizing it as a public service with the child at the center.

Barnahus’ benefits were felt further into Europe, and today, over half of Council of Europe member states apply Barnahus or Barnahus-type services, also owing to initiatives such as the “PROMISE” projects. Denmark and Slovenia, in particular, have institutionalized the model through special laws.

In the Albanian case, significant steps in 2017 were the adoption of the Code of Criminal Justice for Minors and Law no. 18/2017 “On the Rights and Protection of the Child” in line with international standards, but as the European Commission points out in the 2024 progress report, since

that time, there has been no progress on child-friendly justice. However, where the state has been idle, civil society has acted, and so since 2019, integrated services have been offered by the National Center for Protection of Children and Youth from Sexual Violence, known as Barnahus Albania.

As Barnahus continues to develop and improve as a concept through the approaches of different countries, by also including the treatment of child perpetrators, it is necessary to emphasize the need for institutional support in its implementation, because only in this way could the aim to improve the infrastructure and services of the juvenile justice system be achieved.

Barnahus model standards for child-friendly justice

During the three decades from the idea's conception, the best practices of countries have enabled standard-setting and establishing of fundamental principles for Barnahus implementation. According to a major 2023 mapping study of the model by the Council of Europe, Barnahus is described as “a public institution or entity where multidisciplinary and interagency services for children collaborate in the same safe and child-friendly premises to secure the right of the child to access to justice and, where applicable, to co-ordinate parallel criminal, civil and administrative proceedings.”¹

Unpacking this non-exhaustive definition reveals several Barnahus standards. The main characteristics of the Barnahus model include:

- 1) being a public institution;
- 2) that offers public one-stop-shop interdisciplinary and interagency services for the child;
- 3) within the same safe and child-friendly premises.

The first and perhaps the most important feature, established since the Icelandic Barnahus, pertains to the institutionalization of services, offering them as *public* services.² This feature “is based on the conviction that meaningful and long-term results can only be ensured if the Barnahus

1. *Barhanus: a European Journey – Mapping study on multidisciplinary and interagency child-friendly justice models responding to violence against children in Council of Europe member states*, Susana Greijer and Daja Wenke, Council of Europe, 2023, n.p., p. 98, <https://rm.coe.int/barnahus-a-european-journey-mapping-study-on-multidisciplinary-and-int/1680acc3c3> (Accessed 30 April 2025).

2. *Ibid.*, p. 15.

is integrated into a broader State system.”¹ While acknowledging the important role of non-governmental organizations and civil society actors in supporting Barnahus and similar services, “without the commitment of the State, at national, regional or local level, the Barnahus model is inconceivable as a sustainable *modus operandi*.”²

The Barnahus interdisciplinary approach and especially its interagency one aim to facilitate the legal process, while at the same time ensuring that the child receives the necessary support and treatment,³ giving particular attention to avoiding secondary victimization at all times. To guarantee a coordinated response, at the core, the model follows the “one door” principle,⁴ bringing together all the professionals involved.⁵ This means that professionals should come to the child and not the opposite, and in this sense, Barnahus are often figuratively described as containing four rooms: the criminal investigation room, protection room, physical health room, and mental health room along with a roof on top representing knowledge.⁶ Notably, the approach follows the golden rule that the child, regardless of the outcome of the legal process, must be in a better position at the conclusion of the process than at its start,⁷ and this may be achieved by maintaining a balance for the child in entering from one room to the next.⁸ The guiding principle at all times is the best interests of the child. A sort of “hybrid organization” is established with Barnahus,⁹ which admittedly requires a common special legislation to exercise its activity. However, as will be shown further on, different countries have opted for different methods in reflecting the same standards.

1. *Ibid.*

2. *Ibid.*, p. 5.

3. *The Barnahus Model Across the Broader European Context – Position Paper*, Anna Markina, Andreas Kapardis and Svenja Heinrich, Psychoanalytic Institute for Social Research, 2021, Italy, p. 7, <https://www.iprs.it/wp-content/uploads/2021/09/The-Barnahus-Model-COMPLETE.pdf> (Accessed 30 April 2025).

4. Or “under-one-roof”, “one-stop-shop” principles.

5. Markina, Kapardis and Heinrich, *Position Paper*, pp. 3, 7.

6. *Ibid.*, p. 7.

7. *Ibid.*

8. *Collaborating Against Child Abuse: Exploring the Nordic Barnahus Model*, Susanna Johansson et al. (Eds.), Palgrave Macmillan, 2017, Switzerland, https://doi.org/10.1007/978-3-319-58388-4_12.

9. Markina, Kapardis and Heinrich, *Position Paper*, p. 8.

The third feature related to the safe and child-friendly premises is paramount for preventing secondary victimization and encouraging the child to be more forthcoming in the interview. In this sense, Barnahus envisions creating a safe space for disclosing violence and therefore premises are designed to be child-friendly, with a noticeable preference for localization in residential areas as opposed to more formal, office-like or agency-typical locations, including for medical examinations.¹ The model's evolution is also observed in the way of a more inclusive target group of children eligible to receive services,² by offering them not only to victims of sexual violence but also for other forms of violence;³ recently, there is even a push to include children in conflict with the law in the scheme.⁴

The main incentives for advocating in favor of Barnahus services by state include: a more effective protection of child victims and/or witnesses and a more effective implementation of international standards (eleven states); as well as a more effective prosecution in criminal proceedings involving children as victims and/or witnesses, accompanied by better prevention of violence against children (eight states).⁵

Implementation of the model could also open the way to international cooperation between Barnahus services, particularly at the bilateral level in the context of obligations arising from the Lanzarote Convention as regards child victims of sexual violence.⁶

Challenges in adopting the Barnahus model

Despite how ideal these standards may appear, they have admittedly not been embraced equally by all states. The CoE study has also identified the challenges impeding Barnahus implementation in some states, based on

1. "Implementing the Nordic Barnahus Model: Characteristics and Local Adaptions", Susanna Johansson et al., In: Johansson et al. (Eds.), *Collaborating*, p. 7, https://doi.org/10.1007/978-3-319-58388-4_1.

2. Markina, Kapardis and Heinrich, *Position Paper*, p. 9.

3. *Barnahus Quality Standards*, Olivia Lind Haldorsson and Child Circle, Council of the Baltic Sea States Secretariat and Child Circle, 2020, n.p., p. 54, <https://barnahus.eu/wp-content/uploads/2025/01/PROMISE-Barnahus-Quality-Standards.pdf> (Accessed 30 April 2025).

4. Greijer and Wenke, *Barhanus: a European Journey*, p. 16.

5. *Ibid.*, p. 44.

6. Greijer and Wenke, *Barhanus: a European Journey*, p. 94.

their self-assessment.¹ Key challenges may be grouped as follows:

- difficulty securing sufficient budget (eight states);
- difficulty organizing appropriate multidisciplinary and interagency cooperation (seven states);
- difficulty in even understanding the concept of Barnahus or Barnahus-type services (six states);
- difficulty adopting or revising legislation to establish such services (six states);
- difficulty sharing personal data of the child between the stakeholders involved (six states);
- difficulty guaranteeing sustainability of the services (six states); and
- lack of agreement on the most suitable premises (five states).

Some of these challenges are present even during the model's implementation, and in a few instances, they have even led to the discontinuation of certain Barnahus.² During implementation, other challenges include insufficient staffing (one state) and difficulty finding adequate professional structures to conduct interviews, evaluations and investigations (three states).³

A significant concern to highlight is related to the sharing of data between different actors, since information and documents concerning child victims are generally considered confidential or part of investigation secrecy, and under these circumstances, other authorities are often considered third parties with limited access to this information.⁴ In some cases, the power dynamics have even led to the exclusion from participation of Barnahus coordinators and social workers,⁵ in a sense defeating the very purpose of the concept.

Despite these challenges, states admittedly are not under any obligation or strict deadline for the prompt setting up of Barnahus. On the contrary, "laying down the steppingstones for a more integrated child protection system can eventually lead to a fully-fledged system of Barnahus."⁶ The saying "Rome wasn't built in a day" is particularly fitting in this case.

1. *Ibid.*, pp. 91-3.

2. *Ibid.*, pp. 92-3.

3. *Ibid.*, p. 92.

4. *Ibid.*

5. Johansson et al., *Collaborating*, p. 262.

6. Greijer and Wenke, *Barhanus: a European Journey*, p. 93.

Comparative view of state approaches to the Barnahus model

After Iceland, Barnahus was embraced throughout the Scandinavian peninsula and Nordic countries quickly turned into the representatives of this contemporary model of child-friendly justice, whose experience then also inspired Western Europe. What is special is that the expansion of the idea from state to state was accompanied by continuous developments and adaptations – it didn't remain rigid – and could be viewed as “a continuous transformation of ideas rather than simple copying or imitation”.¹

Based on the survey data up until January 2023,² from the 46 Council of Europe member states, only Azerbaijan, Bosnia-Herzegovina, Italy, and Serbia have not undertaken public commitments related to the Barnahus model. The vast majority of states already apply the model, starting from Serbia in 2006 and recently to five states in 2022. As for the remaining, either Barnahus-type services are offered, or are in the process of being established (five states), but there are also states whose government has expressed interest in implementing the model (Belgium, Montenegro, North Macedonia and Türkiye).

Among the states with Barnahus fully in place, the majority only have one such facility at the national level, with the exception of Sweden with 34 and the Netherlands with 24 facilities at the local level, while Spain is expected to set up 16 additional Barnahus.³ However, it has been rightly emphasized that, rather than the number, the quality of services is more important.^{4 5} This holds true even for expanding the pool of professionals involved in Barnahus services, since a more pressing challenge related to quality is recruiting enough professionals to offer these services and their special training.⁶

The basis for establishing Barnahus or Barnahus-type services is the national legal framework, through adopting special laws (Denmark and Slovenia) or within the existing legislation on child protection. It is interesting to point out the fact that, in Iceland's case, despite being the very place where the Barnahus idea was conceived, up until 2022,

1. Johansson et al., *Implementing*, p. 4.

2. Greijer and Wenke, *Barhanus: a European Journey*, p. 42.

3. *Ibid.*, p. 45.

4. *Ibid.*, p. 46.

5. Haldorsson and Child Circle, *Quality Standards*.

6. Greijer and Wenke, *Barhanus: a European Journey*, p. 5.

Barnahus was not specifically mentioned in Icelandic legislation.¹

Slovenia should be singled out regarding its comprehensive law on Barnahus, adopted unanimously in 2021. Titled “Child Protection in Criminal Proceedings and Comprehensive Treatment of Children in the Children’s House Act”, it begins with the principle of protecting the best interests of the child, classifies the service as public and the Children’s House as a public institution (Article 4) with its bodies, including the Slovenian government as both founder and primary funder (Part II), as well as other procedural guarantees.

As regards the frequency of hearing or interviewing the child, figures clearly demonstrate that even with the presence of Barnahus or Barnahus-type services across states, child victims and/or witnesses of crime participating in the proceedings get interviewed repeatedly in different phases of the proceedings, albeit it is also acknowledged that in some circumstances this may be in the best interests of the child.² Interviewing the child, as well as any other service in the framework of Barnahus, ideally requires them to be offered by professionals with specialist training for working with children, but the study data indicate that only 20 states apply this condition.³

Lastly, survey data also indicate differences with regard to the beneficiaries of Barnahus services. 96 percent of states treat child victims of sexual violence as the initial and most vulnerable group, followed by 71 percent for every form of violence, 68 percent for child trafficking victims, and 54 percent include *suspected* victims of these crimes. Worth mentioning is that half the states also offer services to non-offending parents of the child victim, provided that the parents are not involved in the committed offense.⁴ In Slovenia, the Children’s House Act also foresees offering comprehensive treatment, *mutatis mutandis*, to the child against whom criminal proceedings are conducted.

It is important to acknowledge however, that the institutional framework, target groups, scope and reach of these services are in constant evolution, and this is the reason why setting a fixed definition for the Barnahus model has not been possible in the European context.⁵

1. *Ibid.*, p. 46.

2. *Ibid.*, pp. 72-3.

3. *Ibid.*, p. 59.

4. Greijer and Wenke, *Barhanus: a European Journey*, p. 54.

5. *Ibid.*, p. 5.

The Albanian case

In the framework of the Justice Reform, Albania adopted, among others, the Code of Criminal Justice for Minors and the Law on the Rights and Protection of the Child, the two main acts that principally refer to and draw from the UN Convention on the Rights of the Child and other international standards.

Important commitments were undertaken in 2022 in the form of two key strategic documents: the National Agenda on the Rights of Children 2022-2026 and the Crosscutting Strategy on Justice for Minors 2022-2026 (SJM 2022-2026),¹ along with its Action Plan and Passport of Indicators. SJM 2022-2026 in particular, improved significantly compared to the preceding one of 2018-2021, after experience with alternative diversion measures and the role of the Probation Service, specialized sections for minors in courts and prosecution offices, and child protection units, notably makes mention of the Barnahus model, in the course of the noticable emphasis that this strategy places on international standards of child-friendly justice.

Concerning the implementation of the previous objective for strengthening cooperation between juvenile justice system institutions, challenges are indicated in expanding “professional communities” at the local level for treating children in conflict with the law, such as those in the municipalities of Berat, Gjirokastra, Puka and Shkodra. Further on, under specific objective 4.1 of SJM 2022-2026: “Expanding monitoring capabilities of children in conflict with the law, through diversion from prosecution/conviction.”, it is noted that UNICEF and Save the Children organization, in collaboration with these municipalities, have identified two community centers that “could be used to facilitate diversion measures for some minors and that these premises could also be used as meeting places for children in conflict/contact with the law and different professionals that manage their cases, placing in Berat and Gjirokastra the steppingstones of the Barnahus concept.”² This preemptive commitment from the Albanian State to include children in conflict with the law as recipients of future Barnahus services is noteworthy.

An Albanian model cannot not include child victims, and so the

1. Decision of the Council of Ministers of the Republic of Albania no. 892, dated 27.12.2022.

2. *Ibid.*, p. 39.

following is stated explicitly: “Implementing the *Barnahus* model for treating child victims of sexual violence is a model that needs to be assessed and depending on the findings, it is recommended to implement it more broadly.”¹ In truth, research on Barnahus is not lacking, and furthermore, it is not clear why the Albanian State has not contributed with more data apart from national researchers in the CoE study, since Albania is mentioned very sparsely in it, while at the same time being categorized as a state in the process of setting up Barnahus and offering similar services.²

Noteworthy from the Action Plan are the measures under specific objectives 3.2: “Child-friendly services for all children offered in accessible premises for them.”, and 3.3: “Standardized support services, accessible by all children.”, the latter with measures such as allocating interdisciplinary trained human resources (lawyers, psychologists, social workers, doctors, bailiffs) to offer child-friendly justice services for children in institutions that work with and for the child, and establishing a group of psychologists and social workers as part of

the structure of justice institutions to assist the child in every process they are part of.³ Such measures derive from legal obligations of the institutions responsible, both at central and local level, under the provisions of Law no. 18/2017 “On the Rights and Protection of the Child” on the “setting up and proper functioning of an integrated child protection system, for the prevention and efficacious response on their protection, through multidisciplinary, multi-agency, and coordinated child-centered services.”. In this instance, it seems as though the Barnahus model is being described precisely. Worth mentioning is the fact that Albania comes from some experience with integrated public services in the ADISA counters, which used to offer a wide range of one-stop-shop services, but were later closed and replaced with the online *e-Albania* portal.

While the objectives of SJM 2022-2026 are promising, they still have not moved beyond strategic commitments, similar to the cases of Luxembourg and North Macedonia.⁴ The implementation of SJM 2022-2026 is now nearing its term, and no concrete developments have been produced toward

1. *Ibid.*, p. 19.

2. Greijer and Wenke, *Barhanus: a European Journey*, p. 42.

3. Decision of the Council of Ministers of the Republic of Albania no. 892, dated 27.12.2022, pp. 65-9.

4. Greijer and Wenke, *Barhanus: a European Journey*, p. 91.

adopting the Barnahus model. This has justifiably been seen as a lack of progress toward child-friendly justice from the European Commission in the 2024 Albania Report.¹ As a response to this EU observation, Albania plans to introduce the first amendments to the Code of Criminal Justice for Minors by the end of 2025, for the purposes of harmonizing the EU *acquis* on some aspects of the child's procedural rights. While this is a commendable initiative, even with this draft law, no priority has been given to introducing the Barnahus model in the Albanian system. Law no. 18/2017 remains unchanged as well.

As the state sits in contemplation, the model has been embraced since September 2019 by the renowned non-governmental organization, Child Rights Centre Albania (CRCA/ECAPT Albania), through establishing the National Center for Protection of Children and Youth from Sexual Violence or simply Barnahus Albania, which is also a member of the PROMISE network. This may be considered as the first serious effort by civil society to implement the Barnahus model in Albania, in line with all international standards.

Barnahus Albania represents the first integrated service in the country that brings under the same roof community, psychosocial and legal services.²

Barnahus Albania's activity is mainly based on a case referral mechanism owing to collaboration with actors involved in the system. According to the data of the established Database of Barnahus Albania Cases, during the period 2019-2023, 66 cases have been addressed, referred mainly by the social protection and media sectors, followed by police.³ These cases consist of suspected or verified crimes.

While the attention is rightly placed on sexual violence, which alone makes up 26 percent of cases, Barnahus Albania also covers other forms of violence in 74 percent of cases, led by pluralities of violence and followed

1. *Albania 2024 Report*, SWD(2024) 690 final, European Commission, 30.10.2024, Brussels, p. 40, https://enlargement.ec.europa.eu/document/download/a8ecc3f9-b2ec-4cb1-8748-9058854dbc68_en?filename=Albania%20Report%202024.pdf (Accessed 30 April 2025).

2. *Sexual Violence against children in Albania: What does the case analysis tell us?*, Borjana Dine and Altin Hazizaj, Barnahus Albania, July 2023, Tirana, p. 5, <https://www.crca.al/wp-content/uploads/2023/09/Sexual-Violence-against-children-in-Albania-What-does-the-analysis-of-cases-tell-us.pdf> (Accessed 30 April 2025).

3. Dine and Hazizaj, *Sexual Violence*, pp. 7-8.

by psychological violence, physical violence and negligence.¹ The Center also extends its services to the parents of the child victims and children in conflict with the law.²

As for the specific services benefited over the years from Barnahus Albania, they include services before and after the violence is confirmed.

Before confirming the violence, social services have been offered in 64 cases, police services in 51 cases, followed by medical, legal and mental health services, while in two instances no psychosocial services were provided (**Figure 1**).³

Figure 1: *Services benefited before violence is confirmed*

No service provided	2
Medical / Health Services	33
Mental health services	3
Educational services	30
Social Services	64
Police services	51
Legal / Judicial Services	30

Source: Barnahus Albania

After children have acquired victim status, they have benefited from a wide range of services in the framework of Barnahus Albania, where psychological services have always been present.⁴

Lastly, worth noting are the services on training and expertise offered by Barnahus Albania for the professionals involved with child-friendly justice, pertaining to specialization as a mandatory legal condition.

For a civil society level initiative, it must be commended for the standards and the interdisciplinary coordination achieved in quite a number

1. *Ibid.*, p. 9.

2. *Ibid.*, p. 5, 12.

3. *Ibid.*, p. 10.

4. *Ibid.*, p. 11.

of cases, thereby providing the stepping stones for a contemporary service that could then be adapted quite well at the state level. Nevertheless, the institutionalization of the model remains a crucial element for its effectiveness, and for this reason, it stands to reason for the Albanian State to take without hesitation concrete steps toward Barnahus implementation.

Conclusion

Barnahus began as a utopic Nordic idea that very quickly took shape and now represents the most contemporary European model of child-friendly justice, supported by international organizations and implemented successfully in dozens of states, each with its own contribution to this ever-evolving model. Designed from the outside as a child-friendly house with rooms for the child to enter and get an array of public services, Barnahus follows an integrated approach that is focused on the best interests of the child, whether a victim or perpetrator.

Embracing the model has not been without challenges, mainly facing budgeting hurdles, a lack of coordination, and even difficulties grasping the Barnahus concept. Nevertheless, a modest benefit is better than nothing at all, and so the impact from undertaking gradual measures until building the full model should not be overlooked.

Approaches naturally differ from state to state, and this is acceptable as long as the final common aim is improving child-friendly justice services. Having one Barnahus, twenty-one, or thirty-one is immaterial compared to the quality of services offered. Establishing Barnahus by law is viewed as a good practice that offers guarantees, and Slovenia stands out with its comprehensive Children's House Act.

In the case of Albania, while the existing special legal regimes for the protection of children and criminal justice for minors are commended for reflecting international standards, the state has been reminded that the progress has stalled. Even long-term commitments undertaken by strategic documents, including the recognition of the Barnahus model, risk amounting to mere window dressing, absent concrete initiatives. At this rate, apart from the formal designation, in practice the Albanian State is still a long way from replacing the "criminal" justice regime with the "child-friendly" one.

On the other hand, the role of civil society in support of the model is very prominent in Albania. The Barnahus Albania initiative, even with modest means, for six years has been preparing the groundwork for embracing the model at the national level, with specialized experience in offering trusted interdisciplinary and inter-agency services, from social to legal ones, for child victims of all forms of violence, their families, but also for children in conflict with the law.

With the conviction that the model will continue to expand, this experience and other best practices must now be used by the Albanian authorities to promptly legally integrate Barnahus as an important part of the state infrastructure, a necessary element for uncovering the real potential of this unique model, where justice is given in the home the child enters.

References

- Albania 2024 Report*, SWD(2024) 690 final, European Commission, 30.10.2024, Brussels, https://enlargement.ec.europa.eu/document/download/a8eec3f9-b2ec-4cb1-8748-9058854dbc68_en?filename=Albania%20Report%202024.pdf (Accessed 30 April 2025).
- Barhanus: a European Journey – Mapping study on multidisciplinary and interagency child-friendly justice models responding to violence against children in Council of Europe member states*, Susana Greijer and Daja Wenke, Council of Europe, 2023, n.p., <https://rm.coe.int/barnahus-a-european-journey-mapping-study-on-multidisciplinary-and-int/1680acc3c3> (Accessed 30 April 2025).
- Barnahus Quality Standards*, Olivia Lind Haldorsson and Child Circle, Council of the Baltic Sea States Secretariat and Child Circle, 2020, n.p., <https://barnahus.eu/wp-content/uploads/2025/01/PROMISE-Barnahus-Quality-Standards.pdf> (Accessed 30 April 2025).
- Collaborating Against Child Abuse: Exploring the Nordic Barnahus Model*, Susanna Johansson et al. (Eds.), Palgrave Macmillan, 2017, Switzerland, https://doi.org/10.1007/978-3-319-58388-4_12.
- Decision of the Council of Ministers of the Republic of Albania no. 892, dated 27.12.2022, “On approving the Crosscutting Strategy on

- Justice for Minors 2022-2026, the Action Plan and the Passport of Indicators”.
- “Implementing the Nordic Barnahus Model: Characteristics and Local Adaptions”, Susanna Johansson et al., In: *Collaborating Against Child Abuse: Exploring the Nordic Barnahus Model*, Johansson et al. (Eds.), https://doi.org/10.1007/978-3-319-58388-4_1.
- Law no. 18/2017 “On the Rights and Protection of the Child”.
- Law no. 37/2017 “Code of Criminal Justice for Minors”.
- Sexual Violence against children in Albania: What does the case analysis tell us?*, Borjana Dine and Altin Hazizaj, Barnahus Albania, July 2023, Tirana, <https://www.crcal.al/wp-content/uploads/2023/09/Sexual-Violence-against-children-in-Albania-What-does-the-analyses-of-cases-tell-us.pdf> (Accessed 30 April 2025).
- The Barnahus Model Across the Broader European Context – Position Paper*, Anna Markina, Andreas Kapardis and Svenja Heinrich, Psychoanalytic Institute for Social Research, 2021, Italy, <https://www.iprs.it/wp-content/uploads/2021/09/The-Barnahus-Model-COMPLETE.pdf> (Accessed 30 April 2025).

CRIMINAL JUSTICE FOR MINORS

Krist Manxharaj¹

Abstract

Juvenile criminal justice is a specific field of the legal system which aims to address juvenile offenses by balancing the need for rehabilitation and the protection of minors. This study examines the criminal sentencing of juveniles in the city of Berat over a five-year period of time, analyzing the factors influencing juvenile delinquency, the types of offenses committed, and the punitive measures applied. By means of an empirical approach that combines statistical analysis and interviews with justice professionals, this study aims to identify the key tendencies and assess the effectiveness of punitive and rehabilitative policies. The findings indicate that the socio-economic and family factors play a crucial role in the juvenile involvement in criminal activities. This study also explores legal approaches and international practices in juvenile justice, focusing on the standards set by the United Nations Convention on the Rights of the Children and national legal frameworks. The research suggests that a justice system centered on education and reintegration, rather than harsh punishment, is more effective in reducing juvenile crime. Human rights in general, and the children's rights in particular, are among the most sensitive aspects of a democratic society. In recent years, the interest in recognizing and enforcing these rights has grown, becoming an integral part of training programs and monitoring efforts by various non-governmental organizations operating in the field of human rights. Given their age, physical immaturity, and intellectual development, it is precisely this category which requires special protection from the state. This principle is also enshrined in the preamble of the United Nations Convention on the Rights of the Child.

*"The future of a nation is directly measured by the present condition of its youth."*²

1. Lawyer, Police Inspector at DVP Berat

2. John F. Kennedy

Introduction

Today, the protection of minors constitutes one of the main directions of social policies in the Republic of Albania.

The Constitution of the Republic of Albania, as the fundamental legal document, enshrines in its articles the special protection of minors, but it also guarantees many rights enjoyed by all citizens, which must be equally enjoyed, in particular, by the category of minors.

The legal reforms in Albania after 1991 brought about a true revolution in this field, shifting the center of gravity from the protection of the former state to the protection and respect of human rights, particularly the rights of the child.

For this reason, the Convention on the Rights of the Child was adopted by the United Nations General Assembly in 1989, becoming the primary instrument and global objective for ensuring children's well-being. Indeed, the Convention on the Rights of the Children is one of the most widely accepted legal and political documents by many governments, serving as evidence that the respect for children's rights has become a key objective for them.

Every child, regardless of race, culture, religious belief, gender, or age, has rights, and it is the duty of the state to guarantee their respect, as required by the child's minor status. For this reason, the Republic of Albania ratified the Convention on the Rights of the Children on February 27, 1992. Since then, domestic law has undergone significant changes to adapt to the articles of this convention and to complete the legal framework with new laws and policies in line with international commitments. In addition to efforts to improve the legal framework, the state is also making continuous efforts to implement these legal policies through the establishment of protective structures for this category. However, much remains to be done.

The rapid pace of society development, along with various socio-economic factors, creates conditions for the emergence of criminal behavior. Today, modern society is facing a serious problem: the rise of criminality.

A portion of this criminality involves juvenile delinquency, as a distinct form of it. In recent times, minors are increasingly becoming victims of criminal activities. Due to many factors related to age, mental, and psychological development, it is essential that juvenile delinquency be

treated separately from adult crime, in order to ensure the implementation of necessary and appropriate measures aimed at preventing its occurrence.

Our legislation is placing increasing importance on the special treatment of minors. Within this framework, I present the purpose of this study, which is precisely the examination of Albanian legislation regarding minors as subjects of criminal proceedings, specifically in the context of being the authors of criminal offenses.

Historical overview of the legal treatment of minors. International legal instruments for their protection

Legal Definition of the Term “Minor”. Historical Overview.

In today’s world, we are often surrounded by the terms “child” or “minor,” and we hear them being used in different contexts, including linguistic, literary, psychological one, and so on. In this material, the term will be used in the context of criminology and penology. The term reminds us of a person who has not yet reached adulthood and is not fully aware of the actions they perform. This is also the grammatical meaning of the word: “A minor is considered a person who has not yet reached the age of maturity, and is not yet in full control of themselves or accountable for their actions.”¹ The “Convention on the Rights of the Child” defines as a minor any person under the age of 18, except when the age of majority is reached earlier according to the national legislation². Similarly, referring to the United Nations Rules for the Protection of Juveniles Deprived of Their Liberty, a young person is defined as “any person under the age of 18.”³ The minor is considered an active participant in various aspects of life because the Convention on the Rights of the Children itself granted them a different status by recognizing them as subjects of rights, rather than as direct beneficiaries of parental protection. Recognizing them as subjects in the criminal legislation, the term “minor” is used, which specifically refers to those individuals who, at a young age, commit criminal offenses. In this context, the term “minor” is closely related to the phenomenon of criminality. By criminality as a social phenomenon, we refer to the entirety of criminal acts committed over a specific period, in one or several

1. The Albanian Language Dictionary, Tirana 1980, page 1151

2. Article 1 of the “Convention on the Rights of the Child”

3. Rule 11(a) of the “Rules for the Protection of Juveniles Deprived of Their Liberty”

particular places.¹ A state built on the democratic principles of the rule of law is distinguished by the priority given to the fight against any criminal behavior, ensuring peace and general well-being, the humanization of methods for enforcing criminal decisions, and specifically its attitude toward minors in the criminal process. Juvenile delinquency is not a new phenomenon that emerged in modern times, but rather a phenomenon that has existed since ancient times and has had its own characteristics in different periods of historical development. Looking at the historical treatment of minors in the legal context, we notice that it dates back early, with the codification of Justinian, where a legal distinction was made between minors and adults, with the age of fourteen being set as the legal boundary. Later, in the dark ages of the Middle Ages, until the 16th century, the distinction in the treatment of minors was negligible, until the second half of the 17th century, when penal legislations began to modernize and codify. This special treatment toward minors expanded in various countries during the 18th century, receiving significant development during the period of industrialization. In the 20th century, the greatest achievements in juvenile justice and the legal treatment of minors were marked, but especially in recent decades, the treatment of minors has become a matter of primary importance, with particular emphasis on the well-being of minors everywhere in the world.

The criminal behaviors of minors have increased in number as a result of the development of social relations, but they have always been present in human society. Society has always used various forms and means to prevent them. The punishment of minors by criminal law during the one-hundred-year period of our state has not been influenced by the historical, political, and economic developments through which human society has passed from 1912 to the present day. In 1912, with the proposal of Ismail Qemali, the delegates decided that:

“Albania shall henceforth be free and independent, under a Provisional Government.”²

The Proclamation of the Independence of Albania, on November 28, 1912, was the culmination of a long historical process, the crowning of the uninterrupted wars of the Albanian people to free themselves from Ottoman invasion, but also the beginning of the process of forming an independent

1. Criminology, Vasilika Hysi 2006

2. “The History of the State and Law in Albania”, University Press, Tirana, 2007

and sovereign Albanian state that would continue to develop with further efforts against external and internal hostile forces. This government would also seek recognition from the Great Powers, a recognition that came through the second decision of the Conference of Ambassadors, on July 29, 1913¹. After the solemn act of declaring independence, the sovereignty of the government from a territorial standpoint was quite limited. Although a series of reforms were carried out in legislation, in the criminal domain, the Ottoman penal law² was still in force, with respect for the Albanian customary law... “until various laws required by the newly created status were completed, the Ottoman legislation would remain in force in its entirety, respecting, as far as possible, the customs of the country.” In the Ottoman Penal Code, the punishment of minors and the determination of penal measures are addressed in the fourth part of this code, “Cases that exclude or not directly merit punishment,”³ and specifically according to Article 40, it states: “...those who, in committing the offense, have not reached the age of thirteen years, are considered not to be judged and are not responsible for the crime they commit, but by a decision of the criminal court, they are handed over to their parents or guardians after taking a pledge or sent to an educational institution to be confined and trained for a period of time until they reach maturity.”⁴ If during this period of time, minors who committed any crime and were under the age of fifteen, those responsible for their care were fined up to 100 (one hundred) lira. A great achievement of the government of Vlora and the Assembly was that, in a short period, they began to create and develop the new criminal justice system. Thus, the Law of Jurisprudence was approved on May 10, 1913⁵; this date is celebrated today as Albanian Justice Day. Despite the efforts, the work of building a legal framework was still hindered by civil conflicts. In 1914, the state administration arrived in Durrës and handed over the royal crown to King Wilhelm Vidi. During this time, the country’s first constitution, known as the “Organic Statute of Albania,”⁶ was also approved. Up to this point, there could be no talk of a criminal policy

1. “Public International Law”, Arben Puto

2. “The Penal Code of the Ottoman Empire, Tirana 1924, National Library S 12/46 D”

3. “The Penal Code of the Ottoman Empire, Tirana 1924, pages 8-13”

4. “The Penal Code of the Ottoman Empire, Article 40”

5. “Ismet Elezi, The Law of Jurisprudence ‘Legal Life’ no. 2, 2007, pp. 4-18”

6. ‘The Albanian Question in International Acts’, Tirana 1987, p. 594

aimed at preventing crime control, let alone the importance of addressing minors in the criminal process.

During the years 1920-1928, special criminal laws were enacted. At the same time, customary criminal law (the codes) was in effect, especially in the mountainous areas of the country in the North and South of Albania. Criminal law experienced rapid development precisely during the reign of King Ahmet Zog, when the first Criminal Code for our country was approved. Some provisions of this code emphasized the legal treatment of minors.

Criminal process against minors as authors of criminal acts

Criminal process against minors as authors of criminal acts. When we address the issue of the criminal process against minors, we are naturally clear about the fact that it refers to that category of individuals who fall within the age group of 14 to 18 years and are responsible before the material criminal law. In Albania, there is no specific criminal legislation for minors. Various laws protect the interests of minors in conflict with the law. The guarantees of a regular criminal process for minors are reflected in the Constitution, the Criminal Code, and the Criminal Procedural Code. Some of the provisions of the Constitution regarding the guarantees of the criminal process, and especially the special protection for minors, are: the right to life; the right not to be subjected to torture, inhuman or degrading punishment or treatment; the right not to be deprived of liberty, except in cases provided by law; the right to be informed of the charges in the language of the minor; the presumption of innocence principle; the right to private defense or, in cases of economic inability, the provision of free defense, notification of relatives, etc. The Constitution defines the cases in which the liberty of minors can be restricted:

- In the case of their supervision for educational purposes or,
- Accompanying a minor to the competent authority.

The procedural treatment of this category of individuals has been and remains one of the most frequently referenced points in our criminal procedural legislation. This reference has been made, based on the fundamental principles of human freedoms and rights in a wider meaning of the word, as well as on the principles of freedoms and rights of minors in the criminal process. Seen from the perspective of human freedoms

and rights, which permeate the entirety of our criminal or constitutional legislation, this issue holds significant importance for Albanian civil society at its current stage of development.

The Criminal Process in General Terms

The criminal process, in the general sense of the word, is quite broad. When speaking of the criminal process, it encompasses in both space and time the entirety of procedural actions undertaken against a person—from the moment they are declared a defendant until the final judgment is issued against them. In this sense, I would express that the procedural treatment of minors, in terms of procedural criminal law and from a chronological perspective, can be divided into three phases:

1. Firstly, the phase of the minor's criminal procedure during the investigation of the case by the prosecuting authority, which in the sense of procedural criminal law is the Prosecutor's Office¹.
2. Secondly, the phase of the procedure concerning minors during the trial of a case by judicial authorities.
3. Thirdly, the phase of executing the sentencing decision, including the facilities provided by legal provisions for the execution of the sentence for this age group.

In this chapter, I will elaborate on each phase of the criminal procedure to analyze the path the criminal process takes with minors, enriching this material with practical examples and court decisions.

The Concept of the Minor in the Criminal Context To better understand the criminal process involving a minor as the author of a criminal offense, it is essential to understand the legal status of the minor from a criminal law perspective—as an active subject of the criminal offense. The criminal law of the Republic of Albania recognizes both natural persons and legal entities as subjects of criminal offenses². **The Physical Subject of a Criminal Offense** The physical subject of a criminal offense is understood to be the human being, the natural person, who has reached the age of criminal responsibility and is legally accountable. According to the provisions of the Penal Code, only individuals—whether Albanian citizens, foreign

1. Article 24 of the Albanian Code of Criminal Procedure

2. Law No. 9754, dated 14.06.2007, "On the Criminal Responsibility of Legal Persons"

nationals, or persons without citizenship—bear criminal responsibility, provided they have reached the legally required age for such responsibility.

The Penal Code establishes two age thresholds for criminal responsibility:

a) For crimes, the person must have reached 14 years of age;

b) For criminal misdemeanors, the person must have reached 16 years of age. Thus, juvenile age begins once the person has reached 14 years old, which is the minimum threshold from which criminal responsibility begins, and it ends when the person turns 18 years old, which is the maximum limit of juvenile status. But what is meant by criminal responsibility? The basis for holding a person criminally responsible lies in the existence of both objective and subjective elements which constitute the structure (or figure) of the criminal offense as defined by criminal legislation—elements that are sufficient for criminal liability. If even one element of the criminal offense is missing, criminal prosecution cannot begin, or if it has already begun, it must be terminated. One of the essential components of a criminal offense is the subject (the person responsible). Holding someone criminally liable carries significant political, social, and legal weight, as it involves the protection of fundamental human rights and freedoms and contributes to the strengthening of the rule of law. Given the specific condition of a minor's personality, the unique structure of juvenile delinquency, and society's special approach to juvenile offenses, the criminal responsibility of minors has a particular meaning, content, and importance. It is directly tied to the age of the individual at the time of committing the offense and to their mental maturity and ability to understand the significance of their actions or inactions, as well as to control them—that is, to distinguish between what is lawful and what is unlawful. The actions or inactions of minors who have not yet reached the age of criminal responsibility occur without full intent or awareness, and therefore do not result in criminal liability.

Even for those aged 14 to 18, who fall under the legal definition of juveniles, the court evaluates, in each individual case, the level of maturity and ability to understand and control their behavior.

The current conditions of societal development make it possible for a person who has reached the age of 14 at the time of committing a criminal offense to have sufficient and broad knowledge and to understand what constitutes a crime and what does not. For criminal misdemeanors, the law

requires that the person must have reached the age of 16 at the time of the offense. This distinction is made based on the understanding that the nature and seriousness of a misdemeanor are not as immediately apparent as those of a crime. Therefore, raising the minimum age to 16 takes into account the expectation that a person at that age is capable of understanding that they are committing a misdemeanor and of controlling their actions or omissions. For example, a 14-year-old minor can understand that theft or homicide are crimes, but may not yet comprehend the misdemeanor nature of defamation. Upon reaching the age of 16, their awareness develops further, and a 16-year-old minor is generally able to understand that defamation is an unlawful act, which constitutes a misdemeanor and is punishable by law. The evaluation of whether a minor has reached the necessary level of maturity to understand and control their behavior is closely linked to the personality of the juvenile subject. This assessment considers various factors, such as:

- The type of criminal offense committed (e.g., theft, assault, etc.);
- Whether the offense was a first-time offense or a repeated act;
- The role of the family and social environment in shaping the minor's behavior;
- Insights into the minor's character;
- Whether the minor suffers from any mental illness, etc.

The determination of age is done through the verification of documents (such as the birth certificate, family certificate, school records, etc.). In this way, the Court of Appeals overturned the decision of the District Court, which had found V. guilty of a criminal misdemeanor, while based on the verification of the documents, he had not yet reached the age of 16.

Persons who have not reached the age of 14 cannot be held criminally responsible, but educational measures may be taken against them. Among Albanian legal experts, there are opinions in favor of raising the age of criminal responsibility for crimes from 14, as currently provided by our legislation, to the age of 16¹, also based on the fact that the "Convention on the Rights of the Child" does not specify a minimum age for criminal responsibility in its Article 40.

Experts do not emphasize the development of a minor's voluntary

1. "The Juvenile Justice System, its present and its perspective, pages 28-29, National Library, p. 242.d.31"

awareness, but rather the conditions and treatment of minors in pre-detention and prison facilities. Practice has shown that there are problems with minors who are offenders but have not reached the age of criminal responsibility, and against whom no alternative educational measures have been taken, as prescribed by the Penal Code (Article 46). Increasing the age limit for criminal responsibility would thus increase the number of minors—offenders under the criminal responsibility age—while also increasing the number of minors who are untreated in educational institutions. The lack of a system of non-penal, educational measures that should be applied to minors, and the widespread juvenile delinquency within this age group, do not justify raising the age for the initiation of criminal responsibility.

Given the current state of the social protection system, raising this age limit for the start of criminal responsibility could encourage minors in the 14-16 age group to commit various crimes, and would not serve a penal policy aimed at reducing delinquency among these minors. Despite the fact that minors in this age group can commit crimes with significant social danger, Article 46 of the Penal Code still does not require the court to apply educational measures for minors who are not criminally responsible. This is left to the discretion of the court. Criminal policy at this stage of the justice system in Albania should focus not on raising the age for the start of criminal responsibility but on implementing alternative punishments for those minors who have reached the age of criminal responsibility, always when the court deems that the minor, at the time of committing the crime, had the ability to understand and evaluate their behavior. In the future, when social care services and the appropriate infrastructure for treating minors are secured, the possibility of raising the age for the initiation of criminal responsibility may be considered.

Sentencing of Minors in the City of Berat during the period 2020-2024.

The data analyzed were obtained from the Prosecution Institution at the Court of First Instance of General Jurisdiction. The data covers the period from 2020 to 2024.

MINOR CONVICTS YEAR 2020 Form nr. 3																					
Article	Convicted minors									Punishment measure											
	Convicted	Acquitted	Dismissed	TOTAL	Females	Repeat offenders (general)	Repeat offenders (same offense)	Without education	With education	With fine	Up to 2 years	2-5 years	Application of art. 39	Restriction of liberty	Application of art. 59/a	Application of art. 63	Full Release of specific obligations	Mandatory treatment (art. 46)	5-10 years	10-25 years	Total
a	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21
134	1	0	0	1	0	0	0	0	0	0	0	1	0	0	0	1	0	0	0	0	1
TOTAL	1	0	0	1	0	0	0	0	0	0	0	1	0	0	0	1	0	0	0	0	1

According to the tables, in 2020, it is shown that 1 minor was involved in a criminal act of theft. The year 2020 was a pandemic year, and for this reason, the data obtained from this period do not reflect the real trend of young people committing criminal acts. During this period, the restriction of daily activities of the population generally reduced crime rates, and as a consequence, also reduced juvenile delinquency. It is noted that only 1 minor was prosecuted and sentenced. Continuing with the analysis of the figures for the next three years, we will assess the relevance of the year 2020 in this study.

MINOR CONVICTS YEAR 2021 Form nr. 3																					
Article	Convicted minors									Punishment measure											
	Convicted	Acquitted	Dismissed	TOTAL	Females	Repeat offenders (general)	Repeat offenders (same offense)	Without education	With education	With fine	Up to 2 years	2-5 years	Application of art. 39	Restriction of freedom	Application of art. 59/a	Application of art. 63	Full release of specific obligations	Mandatory treatment (art. 44)	5-10 years	10-25 years	Total
	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21
99	1	0	0	1	0	0	0	0	0	0	1	0	0	0	0	0	0	0	0	0	1
130/a	1	0	0	1	0	0	0	0	0	0	1	0	0	1	0	0	0	0	0	0	2
134	3	0	0	3	0	0	0	0	0	0	2	0	0	0	2	1	0	0	0	0	5
278	1	0	0	1	0	0	0	0	0	0	0	0	0	0	0	1	0	0	0	0	1
291	3	0	0	3	0	0	0	0	0	0	3	0	0	0	0	2	0	0	0	0	5
Total	9	0	0	9	0	0	0	0	0	0	7	0	0	1	2	1	0	0	0	0	14
Midemeanor	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Total Kv	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
TOTAL	9	0	0	9	0	0	0	0	0	0	7	0	0	1	2	1	0	0	0	0	14

In 2021, in Berat County, 14 criminal cases were processed by the prosecutor's office involving minors, which were sentenced and investigated by the Berat Prosecutor's Office as follows:

- 1 criminal offense under Article 99 of the Penal Code – “Causing suicide” – 1 sentenced
- 2 criminal offenses under Article 139/a of the Penal Code – “Domestic violence” – 1 sentenced
- 5 criminal offenses under Article 134 of the Penal Code – “Theft” – 3 sentenced
- 1 criminal offense under Article 278 of the Penal Code – “Unlawful possession and production of weapons” – 1 sentenced
- 5 criminal offenses under Article 291 of the Penal Code – “Driving vehicles irregularly” – 3 sentenced

- A total of 14 minors were prosecuted for criminal offenses, and 9 were sentenced.

MINOR CONVICTS YEAR 2022 Form nr. 3																						
Article	Convicted minors										Punishment measure											
	Convicted	Acquitted	Dismissed	TOTAL	Females	Repeat offenders (general)	Repeat offenders (same offense)	Without education	With education	With fine	Up to 2 years	2-5 years	Application of art. 39	Restriction of freedom	Application of art. 59/a	Application of art. 63	Fulfillment of specific obligations	Mandatory treatment (art. 46)	5-10 years	10-25 years	Total	
	a	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21
134	1	0	0	1	0	0	0	0	0	0	1	0	0	0	0	1	0	0	0	0	2	
TOTAL	1	0	0	1	0	0	0	0	0	0	1	0	0	0	0	1	0	0	0	0	2	
				0																		

In 2022, it is reported that 1 person was sentenced for the criminal offense under Article 134 of the Penal Code – “Theft.”

MINOR CONVICTS YEAR 2023 Form nr. 3																					
Article	Convicted minors									Punishment measure											
	Convicted	Acquitted	Dismissed	TOTAL	Females	Repeat offenders (general)	Repeat offenders (same offense)	Without education	With education	With fine	Up to 2 years	2-5 years	Application of art. 39	Restriction of freedom	Application of art. 59/a	Application of art. 63	Fulfillment of specific obligations	Mandatory treatment (art. 46)	5-10 years	10-25 years	Total
a	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21
88	1	0	0	1	0	0	0	0	0	0	0	0	0	0	1	0	0	0	0	0	1
134	1	0	0	1	0	0	0	0	0	0	0	0	0	0	1	0	0	0	0	0	1
283	1	0	0	1	0	0	0	0	0	0	0	0	0	0	0	1	0	0	0	0	1
290/2,3,4	1	0	0	1	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1
291	3	0	0	3	0	0	0	0	0	0	0	0	0	0	1	2	0	0	0	0	3
Total	7	0	0	7	0	0	0	0	0	0	0	0	0	0	5	2	0	0	0	0	7
Misdemeanor																					
242	1	0	0	1	0	0	0	0	0	0	0	0	0	0	0	1	0	0	0	0	1
Total Kv	1	0	0	1	0	0	0	0	0	0	0	0	0	0	0	1	0	0	0	0	1
TOTAL	8	0	0	8	0	0	0	0	0	0	0	0	0	0	5	3	0	0	0	0	8
				0																	

In 2023, in the County of Berat, 8 criminal cases were processed by the prosecutor’s office involving minors, for which they were sentenced and investigated by the Prosecutor’s Office of Berat as follows:

- 1 criminal offense under Article 88 of the Penal Code – “Intentional serious bodily injury,” 1 sentenced
- 1 criminal offense under Article 134 of the Penal Code – “Theft,” 1 sentenced
- 1 criminal offense under Article 283 of the Penal Code – “Production and sale of narcotics,” 1 sentenced
- 1 criminal offense under Article 290 of the Penal Code – “Violation of road traffic regulations,” 1 sentenced
- 3 criminal offenses under Article 291 of the Penal Code – “Driving vehicles irregularly,” 3 sentenced
- 1 criminal offense under Article 242 of the Penal Code – “Disobedience to an order from a police officer,” 1 sentenced
- A total of 8 minors were prosecuted for criminal offenses, and 8 were sentenced.

MINOR CONVICTS YEAR 2024																					
Form nr. 3																					
Article	Convicted minors									Punishment measure											
	Convicted	Acquitted	Dismissed	TOTAL	Females	Repeat offenders (general)	Repeat offenders (same offense)	Without education	With education	With fine	Up to 2 years	2-5 years	Application of art. 39	Restriction of freedom	Application of art. 59/a	Application of art. 63	Fulfillment of specific obligations	Mandatory treatment (art. 46)	5-10 years	10-25 years	Total
a	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21
278	1	0	0	1	0	0	0	0	0	0	0	0	0	0	0	1	0	0	0	0	1
283	3	0	0	3	0	0	0	0	0	0	0	0	0	0	3	0	0	0	0	0	3
291	4	0	0	4	0	0	0	0	0	0	0	0	0	0	0	4	0	0	0	0	4
Total	8	0	0	8	0	0	0	0	0	0	0	0	0	0	3	5	0	0	0	0	8
Misdemeanor																					
Other	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Total Rv	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
TOTAL	8	0	0	8	0	0	0	0	0	0	0	0	0	0	3	5	0	0	0	0	8

In 2024, in the County of Berat, 8 criminal cases were processed by the prosecutor's office involving minors, for which they were sentenced and investigated by the Prosecutor's Office in Berat City as follows:

- 1 criminal offense under Article 278 of the Penal Code – “Unlawful possession and production of weapons,” 1 sentenced
- 3 criminal offenses under Article 283 of the Penal Code – “Production and sale of narcotics,” 3 sentenced
- 4 criminal offenses under Article 291 of the Penal Code – “Driving vehicles irregularly,” 4 sentenced
- A total of 8 minors were prosecuted for criminal offenses, and 8 were sentenced. The data provided by the Prosecutor's Office indicates the following:

1. The isolation period due to the pandemic led to a noticeable decrease in the number of criminal offenses committed by young people (1 criminal offense).
2. In 2021, a significant increase was observed in the number of young people involved in criminal acts. This increase following the pandemic year could be linked to the trend that, after social isolation, there is a higher inclination to find economic resources (due to dependencies or economic demands) or to compensate for the desire to engage in illegal youth activities. This is evidenced by the following criminal offenses:
 - o 2 cases of domestic violence
 - o 5 cases of theft
 - o 5 cases of driving vehicles irregularly
 - o 1 case of unlawful possession of weapons.

These criminal activities are closely related to the age trends and the socio-economic context of the families.

3. In 2023, a 40% decrease in the number of criminal offenses was observed, reducing delinquency trends, which was reflected in 2024 with the same level of incidence of criminal activities among minors. Therefore, in these two years, there has been a constant number of minors involved in criminal acts (8 cases).
4. Minors continue to commit the same range of criminal offenses: theft, involvement with narcotics, driving vehicles without a license and in violation of traffic rules.

Recommendations

To increase the effectiveness of juvenile criminal justice and ensure the protection of the best interests of minors, I do recommend:

- Approval of a juvenile criminal law in line with international standards for minors in conflict with the law.
- Revision of the Criminal Procedure Code regarding deadlines for criminal proceedings against minors, by approving new amendments to this Code.
- Drafting a concrete action plan for the prevention of juvenile delinquency, by utilizing opportunities provided by the community, social organizations, foundations, schools, and institutions to prevent legal intervention.
- Deepening criminological studies on the causes and prevention of juvenile crime.
- Unification of the legal and psychological assistance for minors throughout all stages of criminal proceedings.
- The National Chamber of Advocacy, as a specific and legal body for managing legal aid, in cooperation with the Ministry of Justice, should take measures for the specialization of lawyers for minors. Special priority should also be given to lawyers providing primary legal aid.
- Relevant authorities should ensure the involvement of psychologists during the questioning of minors and in the drafting of comprehensive reports on their psychological condition. A selection procedure, eligibility criteria, and a managed and monitored list of professionals should be established.
- Just as special sections have been created in courts and prosecution

offices for juvenile justice reform, this reform should also extend to police services, with the specialization of judicial police officers in child psychology.

- Prosecutorial and judicial sections for juveniles should conduct faster investigations and apply special trial procedures to limit the pre-trial detention time of minors.
- Regarding security measures, the Criminal Procedure Code should define a minimum age under which the “arrest in prison” measure cannot be imposed on minors. Alternatively, this decision could be left to a commission of psychological experts who assess the minor’s maturity—or ideally, exclude minors entirely from this measure.
- Educational measures applicable to minors should be expanded, and the criteria for their determination should be clearly set out in the Penal Code, ensuring that the best interest of the child is explicitly sanctioned.
- Extend the category of individuals eligible for educational measures to include youth aged 18–21, based on recommendations from the Council of Europe and constitutional obligations for special protection of young people.
- For alternative medical measures concerning individuals who have reached the age of criminal responsibility and are drug users, appropriate legal amendments should be made, and relevant medical and educational institutions for minors should be defined.
- The juvenile criminal justice system should be more oriented toward alternatives to imprisonment, rather than incarceration.
- Concrete measures should be taken to make alternative sentencing applicable, considering the probation service’s personality report on the minor during judicial evaluation.
- Strengthen cooperation between the Probation Service and criminal justice authorities, not only during the execution of alternative sentences but throughout the entire criminal proceeding, including investigation and trial phases.
- With the establishment of the Mediation Service, reconciliation-based solutions should be applied more frequently—where permitted by law—to normalize relationships between minors and victims, and to support the reintegration of minors into society.
- Improve infrastructure in all institutions where minors serve

sentences, taking the Kavaja institution as an example, to provide proper educational conditions and build similar institutions in the future.

- Establish juvenile courts that will handle all matters involving minors, both civil and criminal.
- Provide ongoing training for all judges, prosecutors, judicial police officers, police staff, prison and detention personnel, as well as probation and mediation officers, on international standards for treating children in conflict with the law, domestic legal acts, and the psycho-social characteristics of minors.
- Reassess the age of criminal responsibility in the Penal Code, accompanied by strategies developed by expert groups to establish the necessary institutions as well as social, public, and private services.

CHILD PROTECTION IN THE METAVERSE: LEGAL CHALLENGES AND PREVENTION OF VIRTUAL CRIMES

Atty. MSc. Iris Shehaj¹

Abstract

The improvement of children's online safety is currently a global priority, especially with the rapid development of new technologies and the increased use of virtual spaces like the "metaverse", where children are exposed to a range of threats such as cybercrimes, sexual harassment, bullying, explicit sexual activities, drugs, gambling, insults, and harassment based on race, sexuality, and gender. Furthermore, the metaverse can be used by extremist groups as a tool for recruiting and radicalizing children. The metaverse is a concept that represents a virtual world where individuals can engage in activities and interactions similar to those in the real world or where users have the opportunity to create and customize avatars, creating a virtual world that can be very different from what they experience in their physical lives. This article aims to identify and analyze the challenges and threats children face in the metaverse, as well as highlight the need for a legal framework that addresses the shortcomings of existing legislation, anonymity, and the interaction between the physical and virtual worlds. A key legal challenge is the attribution of responsibility to individuals who may engage in criminal activities within the metaverse while keeping their identity hidden behind avatars. Should a person be held legally accountable for criminal actions committed in the metaverse, and what are the implications when such actions result in criminal consequences in the real world? This article further examines the

1. Atty. MSc. Iris Shehaj, Legal Officer, Legal Researcher, SCiDEV Center.
E-mail:irisshehaj1@gmail.com

legal and regulatory framework of the European Union, with particular focus on the Digital Services Act (DSA) as a framework for protecting young users. In conclusion, the article aims to contribute by providing recommendations for legal policies that prevent and punish virtual crimes.

Keywords: *Metaverse, Virtual World, Avatar, Online Child Safety, Virtual Crimes*

Introduction

The term “metaverse” first appeared in 1992 in Neal Stephenson’s science fiction novel “Snow Crash”, which describes it as a successor to the Internet based on virtual reality, where people use digital avatars to explore the online world, often as a way to escape a dystopian reality.¹

After three decades, when Mark Zuckerberg announced in October 2021 that Facebook would now be known as Meta, he brought the concept of the metaverse back into public attention. Google, Microsoft, and many other tech companies are also investing in the metaverse.² Many elements of the metaverse already exist in the video game industry, such as: Roblox, Minecraft, The Sandbox, Horizon Worlds, etc.

However, there is still no definitive definition of what will be considered the metaverse. Based on many reviewed studies, it can be said that the metaverse is a concept that represents a virtual world, where individuals can engage in activities and interactions similar to those in the real world, through the technologies of extended reality (XR), virtual reality (VR), augmented reality (AR), mixed reality (MR) and blockchains.

In this digital space, users have the opportunity to create and customize avatars, through which they can engage in activities such as gaming, socializing, learning, working, etc., or by creating a virtual world that may

1. *The Metaverse, Extended Reality and Children*, UNICEF, May 2023, Florence, Italy, p. 9,

<https://www.unicef.org/innocenti/media/756/file/UNICEF-Innocenti-Rapid-Analysis-Metaverse-XR-and-children-2023.pdf> (accessed 30.04.2025).

2. *Policing in the metaverse: what law enforcement needs to know*, Europol, Publications Office of the European Union, 2022, Luxembourg, p. 5,

<https://www.europol.europa.eu/cms/sites/default/files/documents/Policing%20in%20the%20metaverse%20-%20what%20law%20enforcement%20needs%20to%20know.pdf> (accessed 30.04.2025).

be very different from what they might experience in their physical life, but offers the user an experience that feels “real”, usually through the use of virtual reality headsets or glasses.

The metaverse can serve as a tool to teach children about historical facts like dinosaurs and the pyramids in Egypt, thus combining learning with entertainment. Another example is the use of virtual reality in museums, offering children the opportunity to interact and express their creativity.

However, while the metaverse offers opportunities, it also presents a series of risks and challenges for children, such as their exposure to inappropriate content, harassment, online abuse, cyberbullying, data theft, privacy issues, etc. The metaverse can also have negative effects on a child’s physical and mental health. Children can become isolated from the real world and lonely, have anxiety problems, as well as other effects such as dizziness, fatigue, vision problems, and nausea.¹

Since crimes in the virtual world have only recently begun to exist, the laws of various states mainly focus on the physical world, on what is physically tangible, leaving the virtual world unprotected against technological developments.

The metaverse as a dangerous space for children

Crimes committed in the metaverse are classified as “cybercrimes”, which are already criminalized by many jurisdictions, and “fantasy crimes”, which are generally not criminalized, but whose physical world counterparts generally are, such as sexual harassment, sexual abuse, etc.²

Let us consider two hypothetical scenarios as an example: (1) a child is sexually assaulted by strangers in the physical (real) world and (2) a child’s avatar, their digital identity, is sexually assaulted online by strangers in the virtual space.

Many might argue that the nature of the act is not the same as long as there are no physical consequences, but nevertheless, the commission

1. *Protecting children in virtual worlds (the metaverse)*, Maria Niestadt, EPRS, April 2024, p. 1,

[https://www.europarl.europa.eu/RegData/etudes/ATAG/2024/762294/EPRS_ATA\(2024\)762294_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/ATAG/2024/762294/EPRS_ATA(2024)762294_EN.pdf) (accessed 30.04.2025).

2. “Identity, crimes, and law enforcement in the Metaverse”, Hua Xuan Qin, Yuyang Wang, Pan Hui, *Humanities and Social Sciences Communications* 12:194, 12 February 2025, np, p. 4, <https://doi.org/10.1057/s41599-024-04266-w>.

of this act, on the other hand, causes the child psychological trauma; he/she is also confronted with inappropriate content that can harm the child's development, morality and emotional state. Additionally, in the metaverse, virtual sexual crimes may take the form of suggestive touching and sexual acts directed at the victim's avatar.

In a recent BBC investigation, a journalist posing as a 13-year-old girl witnessed sexual harassment, sexual content, racist insults and rape threats in the virtual world. Given this, it seems clear that the concept of the metaverse could be particularly attractive to child sexual abusers and exploiters.¹

In 2024 in Britain, the avatar of a girl under the age of 16 was sexually assaulted by several other avatars, an incident that was described as virtual gang rape. The police officer in charge of the case said: "There is an emotional and psychological impact on the victim that is longer-term than any physical injury."² Although there have been reports of "virtual rape" over the years, this case made headlines around the world after it became the subject of a police investigation.³

The question of whether virtual rape is "real rape" dates back at least to 1993, when the *Village Voice* published an article by Julian Dibbell about "a rape in cyberspace." The report showed how people behind avatars who were sexually assaulted in a virtual community felt emotions similar to those of victims of physical rape.⁴

However, some experts suggest avoiding the term "virtual rape" and using "meta-rape" instead. They argue that the term "meta-rape" better describes the nature and extent of the harm experienced, primarily by women, and recognizes the seriousness of the abusive behaviors.⁵ Another

1. "The Metaverse, Online Sexual Exploitation and Sexual Abuse of Children – a new challenge for today's global society?", Katarzyna Staciwa, *Kwartalnik Prawo Nowych Technologii* 4, 2022, Poland, p. 46, <https://www.weprotect.org/wp-content/uploads/08-Staciwa-PNT-042022.pdf> (accessed 30.04.2025).

2. "A girl was allegedly raped in the metaverse. Is this the beginning of a dark new future?", Nancy Jo Sales, *The Guardian*, January 5, 2024, n.p., <https://www.theguardian.com/commentisfree/2024/jan/05/metaverse-sexual-assault-vr-game-online-safety-meta> (accessed 30.04.2025).

3. "From Virtual Rape to Meta-rape: Sexual Violence, Criminal Law and the Metaverse", Clare McGlynn, Carlotta Rigotti, *Oxford Journal of Legal Studies*, 8 April 2025, p. 2, <https://doi.org/10.1093/ojls/gqaf009>.

4. Jo Sales, *op. cit.*, note 7.

5. McGlynn & Rigotti, *op. cit.*, note 8, p. 9.

incident occurred in 2021 when a game simulating an explicit sexual experience was discovered on Roblox, featuring a naked man wearing only a dog collar and a lead. Despite Roblox's ongoing efforts to improve its content filtering mechanisms, other instances of inappropriate content have continued to occur. Most recently, a 3D pornographic game called "No Mercy" that featured content such as violence, incest, blackmail, and non-consensual sexual acts, allowed players to control a character who rapes, tortures, and kills women, including family members as a form of punishment.¹ Fortunately, after a series of strong public reactions, the game has now been removed from the platform.

Identity theft in the metaverse is another concerning issue, as there are currently no measures to prevent a user from creating an avatar in the metaverse that duplicates a person's identity and likeness or from stealing an existing avatar. To better illustrate this, here is a hypothetical case in a series called "CSI: NY" where a dead woman was found who resembled an online avatar called Venus in a meta-world called "Second Life". Through Second Life's data, the police were able to identify their victim. Meanwhile, the victim's avatar continued to appear active in the virtual game, which meant that the avatar had been hacked by someone else who pretended to be the victim and carried out malicious acts against other users. In this case, the question arises as to what will be done if certain individuals commit criminal acts in the metaverse while hiding behind avatars. Should a person be held legally responsible for criminal acts committed in the metaverse, such as identity theft, and what happens when these acts lead to real-life consequences, as in the case mentioned above, where the person was killed?

Although states still lack clear laws regulating the metaverse, this does not mean avoiding responsibility. The fact that the acts occur in a digital environment does not prevent prosecution; if the perpetrator is identified through IP addresses, login data or cooperation with platforms, the individual who commits the crime using a virtual avatar can be held criminally liable. Hiding behind an avatar does not eliminate the crime, but only complicates the investigation. On the other hand, when acts in the

1. "What Is 'No Mercy'? Controversial Game Glorifying Rape Taken Down By Steam", Abhinav Singh, NDTV, 19 April 2025, n.p., <https://www.ndtv.com/feature/what-is-no-mercy-controversial-game-glorifying-rape-taken-down-by-steam-8204748> (accessed 30.04.2025).

metaverse cause real consequences, then they will be treated by the law in the same way as traditional crimes. Identity theft can also be used in some cases to carry out cyber attacks, such as “phishing” by convincing victims to download something or click on a link.

Criminals can intrude on users’ online privacy by tracking their movements, activities, interests, and personal information. Such data can be used for purposes like cyberbullying, stalking, or harassment. Even defamation of a virtual avatar can have a negative impact on an individual’s identity and reputation in the real world.¹

The metaverse is also being used by extremists and terrorists to recruit young people and spread propaganda. In addition, there are studies that suggest that video games can serve to provide criminals with additional knowledge, such as mission planning and tactics to prepare for military operations.²

The criminal behind the avatar: Investigation efforts in the metaverse

Investigation in the metaverse is the process of collecting data and digital evidence from virtual environments. This process requires the use of technical tools to track the identity of users and preserve evidence. For this reason, law enforcement agencies must be prepared to:

- 1) access data from VR headsets and haptic devices;
- 2) recover evidence from the metaverse infrastructure;
- 3) acquire data from the third-party metaverse service providers;
- 4) train first responders, forensic specialists, and the entire criminal justice system.³

Forensic evidence in the metaverse world falls into two categories: the first consists of physical evidence obtained from the use of virtual and

1. *Metaverse: a Law Enforcement Perspective*, White Paper, Interpol, January 2024, n.p., p. 15,

https://3fe6744d-95c2-4732-a88a-118155491396.usrfiles.com/ugd/9c6f35_56a7478a5cf04a7d90f211536ebe0432.pdf (accessed 30.04.2025).

2. “Risks of the Metaverse: A VRChat Study Case”, Laura Ortiz, *The Journal of Intelligence, Conflict, and Warfare* 5(2), 24 November 2022, p. 55, <https://doi.org/10.21810/jicw.v5i2.5041>.

3. Interpol, *op. cit.*, note 12, p. 16.

augmented reality tools, such as glasses, gloves, headsets, etc., and the second includes digital evidence obtained from the virtual world of the metaverse.

Investigations in the metaverse face a number of challenges, including: the lack of a legal and regulatory framework, issues of accountability and anonymity, concerns about privacy violations, and difficulties in assessing evidence.¹

The lack of a legal framework tailored to the metaverse makes it difficult to effectively criminalize illegal activities within this space.² Furthermore, due to the fact that the servers where the data is stored may be located in states different from those where the consequences of the actions occur, it becomes challenging to determine jurisdiction and the applicable law. Additionally, the collection of large amounts of personal data for investigative purposes may violate the privacy of individuals. Another challenge is the lack of physical evidence, which makes it difficult to investigate and document the facts. In some cases, even digital evidence on certain metaverse platforms that are designed to store data only temporarily can be deleted or altered before being retrieved by investigators.³ Anonymity and identity verification are also another challenge that was mentioned during the case study analysis. Users in the metaverse often operate in an anonymous or pseudonymous manner with avatars that have been given random nicknames, making it difficult to identify their real world identities.⁴ Another challenge related to the metaverse is that a single individual may use multiple avatars simultaneously to carry out illegal activities, spreading digital footprints and making it difficult to track their actions. Europol underlines that “suspending an account may just lead to

1. “Investigating Forensic Evidence in Metaverse: A Comparative Analytical Study”, Ramy El-Kady. In: *Forecasting Cyber Crimes in the Age of the Metaverse*, Hossam Nabil Eishenraki (Red.), IGI Global, November 2023, np, Abstract, https://www.researchgate.net/publication/376171241_Investigating_Forensic_Evidence_in_Metaverse_A_Comparative_Analytical_Study (accessed 30.04.2025).

2. “Metaverse policing: A systematic literature review of challenges and recommendations”, Milind Tiwari et al., *Computers in Human Behavior* 166:108591, Elsevier, 2025, p. 7, <https://doi.org/10.1016/j.chb.2025.108591>.

3. Interpol, op. cit., note 12, p. 17.

4. *Digital Forensics for Investigating the Metaverse*, Dr. Giannis Tziakouris & Dr. Nadhem AlFardan, Cisco Blogs, 26 June 2024, n.p., <https://blogs.cisco.com/security/digital-forensics-for-investigating-the-metaverse> (accessed 30.04.2025).

someone opening another, while finding a perpetrator in the physical world and enforcing the law where they live may be a big challenge as well.”¹

However, the metaverse also offers numerous opportunities for the development of new investigative methods and professional training of law enforcement. Virtual training and investigations using VR headsets can also lead to a reduction in physical assets and costs. Furthermore, the metaverse creates opportunities for international cooperation between law enforcement agencies by overcoming geographical barriers and facilitating the exchange of knowledge and best practices. It can also be used for the virtual reconstruction of crime scenes, providing a visual method for analyzing the facts and circumstances of a criminal case. In this regard, Interpol has taken an important step by creating its first metaverse, designed for law enforcement agencies worldwide for activities such as training courses in forensic investigation and other policing capabilities.²

The EU’s role in the legal regulation of the Metaverse: The Digital Services Act

In recent years, the European Commission has funded research and innovation in virtual world technologies through the Horizon 2000, Horizon Europe and Creative Europe programmes. In July 2023, the Commission also adopted a strategy on Web 4.0 and virtual worlds to secure the digital environment.³ The strategy defines the virtual world as a continuous and immersive environment based on 3D and extended reality (XR) technologies. More recently, the European Commission has also been drafting a code of conduct on age-appropriate design, which

1. “Virtual worlds, real risks: exploring user safety in the metaverse under the Digital Services Act”, Noémie Krack, Jean de Meyere, *Proceedings of the International Congress Towards a Responsible Development of the Metaverse*, 13-14 June 2024, Alicante, Spain, p. 16, <https://catedrametaverso.ua.es/wp-content/uploads/2024/10/Virtual-worlds-real-risks-exploring-user-safety-in-the-metaverse-under-KRACK-DE-MEYERE.pdf> (accessed 30.04.2025).

2. “INTERPOL launches first global police Metaverse”, 20 October 2022, India, <https://www.interpol.int/News-and-Events/News/2022/INTERPOL-launches-first-global-police-Metaverse> (accessed 30.04.2025).

3. “Towards the next technological transition: Commission presents EU strategy to lead on Web 4.0 and virtual worlds”, European Commission, 11 July 2023, Strasbourg, https://ec.europa.eu/commission/presscorner/detail/en/ip_23_3718 (accessed 30.04.2025).

will be supported by the regulatory framework provided in the Digital Services Act (DSA) as well as in accordance with the EU Audiovisual Media Services Directive (AVMSD) and the General Data Protection Regulation (GDPR).

In 2024, the European Parliament (EP) adopted two resolutions on the virtual world. The first focuses on the challenges and risks associated with them. It highlights the potential of virtual worlds to promote children's rights online, particularly regarding education, empowerment, and participation through games. These tools can help develop skills such as cooperation, communication, critical thinking, innovation and self-confidence. The resolution further highlights the need for research on the impact of virtual reality and other emerging technologies. It underlines the potential risks of early exposure and excessive screen time for children, which may affect their well-being and physical, psychological and social development. The resolution also stresses the importance of increasing the level of protection of children in the virtual world against various risks, including but not limited to abuse, harassment, exposure to violent, sexual, racist and pornographic content.¹ The second resolution deals with civil, commercial and intellectual property law issues related to the virtual world.²

The European Parliament has stressed that the privacy and data protection framework also applies to the metaverse and has called on the Commission to ensure compliance with the existing legal framework for companies and entities operating in the metaverse. Additionally, the EP has also called for the GDPR to be reviewed and updated, as it fails to address some of the challenges newly presented by the metaverse.³

1. European Parliament resolution on the virtual world – opportunities, risks and policy implications for the single market, (2022/2198(INI)), 17 January 2024, https://www.europarl.europa.eu/doceo/document/TA-9-2024-0032_EN.html (accessed 30.04.2025).

2. European Parliament resolution on the policy implications of the development of the virtual world – civil, company, commercial and intellectual property law issues (2023/2062(INI)), 17 January 2024, https://www.europarl.europa.eu/doceo/document/TA-9-2024-0029_EN.html (accessed 30.04.2025).

3. *Metaverse: Opportunities, risks and policy implications*, Tambiama Madiega et al., EPRS, June 2022, n.p., p. 6. https://www.europarl.europa.eu/cmsdata/268589/eprs-briefing-metaverse_EN.pdf (accessed 30.04.2025).

Article 8 of the GDPR stipulates that the processing of the personal data of a child shall be lawful where the child is at least 16 years old. Whereas in cases where the child is below the age of 16 (or lower depending on the member state), such processing shall be lawful only if and to the extent that consent is given or authorised by the holder of parental responsibility over the child.

Security is also a key element in EU documents. It is included in the European Declaration on Digital Rights and Principles for the Digital Decade. The declaration focuses on increasing safety and protection in the digital environment, especially for children and young people. Particular attention, the Declaration continues, will be given to the protection of children from all crimes committed or facilitated by digital technologies. Furthermore, the declaration provides protection for children from harmful and illegal content, exploitation, abuse, profiling and unlawful targeting.

A very important EU legal document is the Digital Services Act (DSA). The main objective of the DSA is to protect the rights of all internet users, including children, and ensure that they have less exposure to illegal content.¹

The DSA provides the first legal definition of content moderation.² According to Article 3(t), content moderation is defined as: “activities, whether automated or not, undertaken by providers of intermediary services, that are aimed, in particular, at detecting, identifying and addressing illegal content or information incompatible with their terms and conditions, provided by recipients of the service, including measures taken that affect the availability, visibility, and accessibility of that illegal content or that information, such as demotion, demonetisation, disabling of access to, or removal thereof, or that affect the ability of the recipients of the service to provide that information, such as the termination or suspension of a recipient’s account”. Meanwhile, illegal content in Article 3(h) is defined as “any information that, in itself or in relation to an activity, including the sale of products or the provision of services, is

1. *Gaming and the Metaverse*, Bracket Foundation et al., Bracket Foundation, 2022, California, p. 38, <https://unicri.org/sites/default/files/2022-11/Gaming%20and%20the%20Metaverse.pdf> (accessed 30.04.2025).

2. Krack & Meyere, *op. cit.*, note 19, p. 17.

not in compliance with Union law or the law of any Member State which is in compliance with Union law, irrespective of the precise subject matter or nature of that law”.

Article 15 of the DSA requires intermediary service providers shall make publicly available, at least once a year, transparency reports providing information on orders to remove content, information on their moderation practices and the number of complaints they have received. Articles 16 and 17 of this Act provide mechanisms for reporting illegal content and for user support. Article 20 of the DSA contains mechanisms for handling complaints and requires that platform providers ensure their internal complaint-handling systems are easily accessible and user-friendly. Article 24 imposes transparency and reporting obligations on online platforms regarding the following information:

- The number of disputes submitted to the out-of-court dispute resolution bodies referred to in Article 21 and the average time needed to complete the dispute resolution procedures;
- Number of accounts suspended under Article 23 of the DSA.

More specifically, Article 28 provides for the online protection of children: “Providers of online platforms accessible to minors shall put in place appropriate and proportionate measures to ensure a high level of privacy, safety, and security of minors, on their service.” In paragraph 2 of the same article, online platform providers are prohibited from presenting advertising on their interface based on profiling using the service recipient’s personal data when they are aware that the user is a child. Article 34 requires platforms to take measures to identify, analyse and assess any systemic risks. However, the DSA does not provide a specific definition of the metaverse. Some designated platforms may be considered online platforms, while others may not.

Conclusions and recommendations

Child protection in the metaverse is still in its early stages. If the metaverse is to be part of our future, then child protection cannot be treated as a secondary issue. The current European Union legal framework, particularly the Digital Services Act, although representing an important step towards regulating online services, is not sufficient to address the complexity and challenges brought about by virtual

reality. Consequently, it is necessary to draft a specific legal framework that sets out clear obligations for metaverse service providers, with a particular focus on protective measures for children. In accordance with the principle of the best interests of the child, child protection in the metaverse should be treated as a legal and institutional priority.

The European Union could draft a legal framework including provisions for age verification, personal data protection, restrictions on personalized advertising to children, and parental control.

It is of paramount importance to take measures to specifically criminalize actions carried out in the metaverse. Furthermore, clear legal provisions should be provided that define the types of crimes and punish their perpetrators. In accordance with the legal framework, it will also be necessary to take technical measures that can assist investigators in identifying these crimes and holding the perpetrators accountable.

School curricula will need to be updated to teach children responsible behavior in the metaverse and how to protect themselves. Parents should be informed about the risks of the metaverse and how to safeguard their children. Video game platforms should implement stricter security measures to verify users' ages. Individuals listed in sexual offender registries should be prohibited by law enforcement from accessing children's platforms.

Metaverse gaming platforms must identify all harmful or sexually explicit content, abuse, and exploitation and take measures to remove such content. Young users should have the ability to report violations in the metaverse and seek help. Platforms must empower users to protect themselves by providing easily accessible and understandable reporting and blocking tools. They should also provide children with easy access to assistance on platforms, either through direct psychological counseling or via links to third parties and helplines, reducing barriers for children seeking support.

Finally, it is important that all platforms provide parental control tools across all virtual spaces accessible to children.

References

- “A girl was allegedly raped in the metaverse. Is this the beginning of a dark new future?”, Nancy Jo Sales, *The Guardian*, January 5, 2024, n.p., <https://www.theguardian.com/commentisfree/2024/jan/05/metaverse-sexual-assault-vr-game-online-safety-meta> (accessed 30.04.2025).
- Digital Forensics for Investigating the Metaverse*, Dr. Giannis Tziakouris & Dr. Nadhem AlFardan, Cisco Blogs, June 26, 2024, n.p., <https://blogs.cisco.com/security/digital-forensics-for-investigating-the-metaverse> (accessed 30.04.2025).
- “From Virtual Rape to Meta-rape: Sexual Violence, Criminal Law and the Metaverse”, Clare McGlynn, Carlotta Rigotti, *Oxford Journal of Legal Studies*, 8 April 2025, <https://doi.org/10.1093/ojls/gqaf009>.
- Gaming and the Metaverse*, Bracket Foundation et al., Bracket Foundation, 2022, California, <https://unicri.org/sites/default/files/2022-11/Gaming%20and%20the%20Metaverse.pdf>(accessed 30.04.2025).
- “Identity, crimes, and law enforcement in the Metaverse”, Hua Xuan Qin, Yuyang Wang, Pan Hui, *Humanities and Social Sciences Communications* 12:194, 12 February 2025, n.p., <https://doi.org/10.1057/s41599-024-04266-w>.
- “INTERPOL launches first global police Metaverse”, Interpol, 20 October 2022, India, <https://www.interpol.int/News-and-Events/News/2022/INTERPOL-launches-first-global-police-Metaverse> (accessed 30.04.2025).
- “Investigating Forensic Evidence in Metaverse: A Comparative Analytical Study”, Ramy El-Kady: *Forecasting Cyber Crimes in the Age of the Metaverse*, Hossam Nabil Eishenraki (red.), IGI Global, November 2023, n.p., Abstract, https://www.researchgate.net/publication/376171241_Investigating_Forensic_Evidence_in_Metaverse_A_Comparative_Analytical_Study (accessed 30.04.2025).
- Metaverse: a Law Enforcement Perspective*, White Paper, Interpol, January 2024, n.p., https://3fe6744d-95c2-4732-a88a-118155491396.usrfiles.com/ugd/9c6f35_56a7478a5cf04a7d90f211536ebe0432.pdf (accessed 30.04.2025).

- Metaverse: Opportunities, risks and policy implications*, Tambiama Madiega et al., EPRS, June 2022, n.p., https://www.europarl.europa.eu/cmsdata/268589/eprs-briefing-metaverse_EN.pdf (accessed 30.04.2025).
- “Metaverse policing: A systematic literature review of challenges and recommendations”, Milind Tiwari et al., *Computers in Human Behavior* 166:108591, Elsevier, 2025, <https://doi.org/10.1016/j.chb.2025.108591>.
- Policing in the metaverse: what law enforcement needs to know*, Europol, Publications Office of the European Union, 2022, Luxembourg, <https://www.europol.europa.eu/cms/sites/default/files/documents/Policing%20in%20the%20metaverse%20-%20what%20law%20enforcement%20needs%20to%20know.pdf> (accessed 30.04.2025).
- Protecting children in virtual worlds (the metaverse)*, Maria Niestadt, EPRS, April 2024, [https://www.europarl.europa.eu/RegData/etudes/ATAG/2024/762294/EPRS_ATA\(2024\)762294_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/ATAG/2024/762294/EPRS_ATA(2024)762294_EN.pdf) (accessed 30.04.2025).
- European Parliament resolution on the virtual world – opportunities, risks and policy implications for the single market, (2022/2198(INI)), 17 January 2024, https://www.europarl.europa.eu/doceo/document/TA-9-2024-0032_EN.html (accessed 30.04.2025).
- European Parliament resolution on the policy implications of the development of the virtual world – civil, company, commercial and intellectual property law issues (2023/2062(INI)), 17 January 2024, https://www.europarl.europa.eu/doceo/document/TA-9-2024-0029_EN.html (accessed 30.04.2025).
- “Risks of the Metaverse: A VRChat Study Case”, Laura Ortiz, *The Journal of Intelligence, Conflict, and Warfare* 5(2), 24 November 2022, <https://doi.org/10.21810/jicw.v5i2.5041>.
- “Towards the next technological transition: Commission presents EU strategy to lead on Web 4.0 and virtual worlds”, European Commission, 11 July 2023, Strasbourg, https://ec.europa.eu/commission/presscorner/detail/en/ip_23_3718 (accessed 30.04.2025).
- The Metaverse, Extended Reality and Children*, UNICEF, May 2023, Florence, Italy, <https://www.unicef.org/innocenti/media/756/file/UNICEF->

Innocenti-Rapid-Analysis-Metaverse-XR-and-children-2023.pdf. pdf (accessed 30.04.2025).

“The Metaverse, Online Sexual Exploitation and Sexual Abuse of Children – a new challenge for today’s global society?”, Katarzyna Staciwa, *Kwartalnik Prawo Nowych Technologii* 4, 2022, Poland, <https://www.weprotect.org/wp-content/uploads/08-Staciwa-PNT-042022.pdf> (accessed 30.04.2025).

“Virtual worlds, real risks: exploring user safety in the metaverse under the Digital Services Act”, Noémie Krack, Jean de Meyere, *Proceedings of the International Congress Towards a Responsible Development of the Metaverse*, June 13-14, 2024, Alicante, Spain, <https://catedrametaverso.ua.es/wp-content/uploads/2024/10/Virtual-worlds-real-risks-exploring-user-safety-in-the-metaverse-under-KRACK-DE-MEYERE.pdf> (accessed 30.04.2025).

“What Is ‘No Mercy’? Controversial Game Glorifying Rape Taken Down By Steam”, Abhinav Singh, NDTV, 19 April 2025, n.p., <https://www.ndtv.com/feature/what-is-no-mercy-controversial-game-glorifying-rape-taken-down-by-steam-8204748> (accessed 30.04.2025).

ALBANIA AND THE CHALLENGE OF VIOLENT EXTREMISM: ANALYSIS OF THE MEASURES TAKEN OVER THE YEARS

Arjola Cana¹

Abstract

This paper aims to analyze the phenomenon of violent extremism in Albania, with a focus on the legal framework, institutional mechanisms, and the effectiveness of the measures undertaken by the Albanian state in preventing and combating these threats to national and international security. In a context significantly influenced by global security developments and new challenges related to radicalization and the spread of extremist ideologies, Albania—as a NATO member and an active participant in the Global Coalition against DAESH/ISIS—has aligned its policies with international standards and has undertaken significant steps towards establishing a sustainable and functional institutional response. This paper seeks to provide a chronological and critical analysis of the measures undertaken by Albanian institutions to prevent and combat this phenomenon during the period 2000–2025. The analysis will be based on primary and secondary legislation, as well as on the “Cross-Sectoral Strategy for the Prevention of Violent Extremism and the Fight against Terrorism,” which serves as the main guiding document for the design and implementation of legal, political, and social measures in this field, in addition to reports and assessments from institutional structures. Furthermore, the role of institutional bodies such as the Counter-Terrorism Directorate and the Coordination Center against Violent Extremism will be examined. The paper evaluates the effectiveness of Albania’s approach and offers recommendations for the improvement of existing measures

1. Master of Science in Law, Specialist in the Directorate of Codification and Harmonization of Legislation in the Ministry of Justice, arjolacanaa@gmail.com

within a democratic and rights-based security framework. In conclusion, it highlights the necessity of strengthening law enforcement capacities, enhancing inter-institutional coordination, and integrating a balanced approach between security and the protection of human rights in countering violent extremism policies.

Keywords: *Violent extremism, Radicalization, Terrorism, National security, Counter-extremism strategy, Security policy*

Contents

1. Introduction
2. Meaning of terms “radicalism”, “extremism”, “terrorism”
3. Development of the Legal Framework
 - 3.1 Chronological Overview
 - 3.2 International legal framework
 - 3.3 Internal legal framework
4. Institutional Framework
5. Recommendations
6. Reference

1. Introduction

In recent decades, violent extremism has emerged as one of the most serious security challenges, affecting not only countries with a history of conflict or internal tensions, but also countries with developing democratic traditions such as Albania. This phenomenon has reached global proportions, especially after the dramatic developments in the Middle East and the spread of radical ideologies through social networks and modern technology. Although terrorist groups that develop activity within the country or beyond have not been identified in Albania, it has not been immune to the influences of violent extremism and religious radicalism. The departure of Albanian citizens to conflict zones in Syria and Iraq to participate in terrorist organizations such as ISIS during the years 2012-2014 shows the presence of a sensitive ground to radical ideologies, which often spread through propaganda networks, lack of integration social, institutional gaps and socio-economic factors. The

danger of radicalization and extremism with ideological, religious or nationalist inspiration consists precisely in the fact that they feed terrorist activities. In this context, Albania has undertaken a series of measures to build an effective institutional response adapted to contemporary security developments. As a NATO member country and an active participant in the Global Coalition Against Terrorism, Albania has shown commitment to meeting international standards for the prevention and fight against violent extremism.

This is reflected in the alignment of the legal framework with the best practices of the partner countries, in the creation of relevant institutional structures and in the design of strategies to address this phenomenon in order. This paper aims to present and analyze the measures taken by the Albanian state to fight violent extremism. The analysis will focus on the legal and sub-legal framework, institutional mechanisms and political strategies, with a special emphasis on “Cross-Sectoral Strategy for the Prevention of Violent Extremism and the Fight against Terrorism”. In conclusion, some recommendations will be presented for the further improvement of Albania’s approach to this challenge, so that security policies are harmonized with the principles of the rule of law and respect for human rights.

2. Meaning of terms “radicalism”, “extremism”, “terrorism”.

In the international discourse on security and criminal justice, the terms violent radicalism, violent extremism and terrorism are often used interrelatedly, but each represents a different stage in the spectrum of danger arising from extreme ideologies and violence. An accurate understanding of these concepts is essential for building efficient prevention and punishment policies.

Violent radicalism is defined as a dynamic process of ideological transformation, through which individuals begin to perceive violence as an acceptable and legitimate means of achieving political, religious or ideological objectives¹. This process can lead to profound changes in personal identity, perception of right, wrong and how an individual

1. Osce Guide “The role of civil society in preventing and combating violent extremism and radicalism leading to terrorism in Southeast Europe”, 2018, p. 19 <https://www.osce.org/files/f/documents/5/c/412616.pdf>, accessed: April 15.

positions himself towards society or the state. Not every individual who is radicalized ends up in violent activity, but radicalism serves as a possible precursor to extremism or terrorism.

Unlike radicalism, violent extremism is characterized by open activism, whether in the form of direct participation, incitement of others, or glorification of terrorist acts. The terms “terrorism” and “violent extremism” are often used together and sometimes interchangeably, however they are not completely synonymous with each other. Violent extremism is a broader term that includes terrorist acts as well as acts that cannot be qualified as such.¹ While terrorism is about committing illegal violence, with the aim of spreading fear, in order to force a state to do something.² A distinction between these terms has also been established by the UN Security Council, namely in Resolution 2178 (2014), which identifies violent extremism as a “aid to terrorism”.³

Violent extremism is an extremist ideology combined with the use or support of violence to achieve political or ideological objectives.⁴ Extremism can be used to refer to political ideologies that contradict the core values and principles of a society. In the context of liberal democracies, this can apply to any ideology that supports racial or religious supremacy and/or opposes the core principles of democracy and universal human rights.⁵ Violent extremists are often part of networks that use technology, social media and propaganda to recruit supporters and spread hate messages. To highlight the violent consequences of radicalization and for distinguished by nonviolent forms of radical thinking, some researchers prefer to use “violent radicalization”.⁶

Terrorism is the end result of an escalating spiral that often starts from

1. “Violent extremism the major challenge of our time” Manual For Civil Society Organizations, Albanian Committee of Helsinki, 2018, pg.13.

2. Ibid.

3. Ibid.

4. Teacher’s Handbook “Prevention of Violent Extremism”, Aphrodita Jaha etc., 2018, p.9 <https://undp.org/sites/g/files/zskgke326/files/migration/ks/f921466ce017d19f807d37a5dda9654ee27c54b6a45cb7037f44382c85a4477f.pdf>, accessed: April 15.

5. “Prisons and Terrorism Radicalisation and De-radicalisation in 15 countries”, P. Neuman, A report published by the International Center for the Study of Radicalization and Political Violence (ICSR), 2010, p.12.

6. Ibid.

internal radicalization, turns into violent extremism and culminates in the terrorist act. Terrorism means the use of systematic violence against civilians or non-military objectives, with the aim of exercising political, ideological or psychological influence.¹ In the absence of a single internationally accepted definition, most definitions agree on the essential elements of terrorism: violence, intimidation, political motivation, and civilian casualties. These acts aim to destabilize the constitutional and social order and are often organized by groups seeking to impose a new ideological order.

3. Development of the Legal Framework

In the face of the security challenges arising from the phenomenon of violent extremism and terrorism, the Albanian state has taken important steps to build a functional legal and sub-legal framework aligned with international standards. Efforts to build this framework began in the early 2000s, reflecting the need for a coordinated and sustainable institutional response in the face of new risks that threaten national and international security. The legal approach followed by Albania is based on the principles of the rule of law, respect for human rights and commitments derived from international treaties, especially as a member of NATO and as a candidate country for the European Union.

3.1 Chronological Overview

Phase One: Initial Response to Radicalization (2000–2013)

During this period, Albania did not have a clear strategy for the fight against violent extremism. The main approach was focused on punitive measures through the Criminal Code, which provided for punishments for terrorist offenses but did not address radicalization as a social or psychological process. After international events such as September 11, 2001 and the involvement of some Albanian citizens in conflicts abroad, the need to improve criminal legislation and increase cooperation with international security structures was noticed. In 2003, the Court for Serious Crimes was established to try cases related to terrorism and organized crime. The Penal Code undergoes changes defining terrorist

1. “Violent extremism and ISIS, danger and threat to security”, Dr. Xhavit Shala, Gladis Nano, magazine “Policing and Security No.5”, 2017, p.3.

organizations for the first time as a special form of criminal cooperation.¹ In 2007, several amendments to the Criminal Code were adopted regarding acts with terrorist intent, providing for incitement, public invocation, propaganda, threats or fundraising for terrorist purposes. In 2009, Albania signed the Stabilization-Association Agreement with the European Union, where the fight against terrorism and its financing is defined as a priority area in Chapter III.

Second phase: Legal interventions and increased attention (2014–2016)

This phase was marked by important changes in the Criminal Code, especially with the introduction of articles condemning the participation of Albanian citizens in foreign conflicts as foreign fighters. This measure was taken after the increase in the number of Albanians who joined ISIS/DAESH in Syria and Iraq.

In 2014, Albania adopted articles 265/a, 265/b and 265/c, which prohibit recruitment, training and participation in conflicts abroad for terrorist purposes. The Anti-Terror Directorate was established at the State Police and border control procedures were improved to stop the movement of suspected individuals.²

Third phase: Designing a comprehensive approach (2015–2020)

At this stage, Albania moved from a purely repressive approach to a preventive and cooperative approach. As a member of NATO since 2009, Albania has been actively engaged in fulfilling the Alliance's objectives of strengthening collective defense and the fight against hybrid and non-traditional threats. NATO has defined violent extremism and terrorism as one of the most serious risks for the security of member countries, so Albania has benefited from the expertise, training and technical support offered by this organization to strengthen security and order capacities. Cooperation with NATO has been concretized through participation in

1. Law no. 9275, dated 16.9.2004 "Pfor some additions and changes in law no. 7895, dated 27.1.1995, "Kodi Penal i Rthe republic of Salbania", amended <https://qbz.gov.al/eli/ligj/2004/09/16/9275> accessed: April 15, 2025.

2. REPORT: Albania's Anti-Terrorism Steps <https://www.rcc.int/p-cve/download/docs/FULL-REPORT-Albania-Anti-Terrorism-Steps.pdf/21a0bf25d523cda9593f1d586e3b1b94.pdf>, accessed: April 18, 2025.

specialized programs, involvement in international exercises, as well as in the improvement of surveillance and information management systems that help identify and stop extremist activities. Furthermore, Albania has been among the first countries in the Western Balkans region to join the Global Coalition against Terrorism, a multilateral initiative led by the United States of America aimed at rooting out terrorist groups and preventing the spread of their extremist ideology¹.

In this context, Albania has contributed directly not only through political and diplomatic support, but also through military assistance and prolonged cooperation in the field of internal and international security. Engagement in this coalition has forced the country to develop new prevention and reintegration policies, especially regarding the return and management of Albanian citizens who have participated in the conflicts in Syria and Iraq as foreign terrorist fighters. Adaptation to international standards has also influenced the development of a comprehensive strategic framework.

In 2015, the “Intersectoral Strategy for the Prevention of Violent Extremism and the Fight against Terrorism” was adopted, which marked an innovation in the involvement of non-state actors, such as religious communities, municipalities and civil society organizations. From 2015, the number of Albanian citizens leaving for Syria to participate, supporting ISIS terrorist groups in the armed conflict in Syria/Iraq, was reduced to zero.² In 2017, the Coordination Center against Violent Extremism (QKEDH) was created to help in inter-institutional coordination and to develop concrete action plans. During this time they were developed programs in schools, awareness campaigns and training for public administration and social services employees. In the framework of state measures for the reception and treatment of Albanian citizens who returned from conflict zones such as Syria and Iraq, an Inter-institutional Action Plan “was drawn up for the reception and treatment of Albanian citizens returning from conflict zones in Syria and Iraq”, approved by order no. 169, dated 01.11.2018, of the Prime Minister, where concrete tasks for medical assistance are foreseen for all Albanian

1. Council of Europe. (2018). Cross-sectoral Strategy for the Prevention of Extremism Violent.

2. Ibid.

institutions psychological, social, economic, as well as raising logistical and human capacities for reception, socializing, as well as measures for their rehabilitation and reintegration.

4. Fourth phase: Community reintegration and prevention efforts (2020–2025)

The program for “Schools for Safer Communities” was applied in order to educate young people, train teachers throughout Albania about the dangers of radicalization of violence among young people. 21 cooperation agreements and protocols have been signed with several countries in the region, Europe and the USA, in the field of security and the fight against terrorism. Amendments to the Code of Criminal Procedure of the Republic of Albania were also approved, including in the sphere of jurisdiction of the Special Court against Corruption and Organized Crime the trial of criminal offenses with terrorist purposes.¹ This period is characterized by the deepening of social and community measures, including the treatment of persons returned from conflict zones.

3.2 International legal framework

The Republic of Albania, within the framework of cooperation in the fight against terrorism, has signed and ratified international conventions and protocols that constitute the instruments of international law in the field of the fight against terrorism.² The Albanian State has signed and ratified a series of conventions and protocols for the prevention and fight against terrorism, which have become part of our internal legal system and affirm the common will of the party states in this field, within the framework of their accession to the Nations United and the Council of Europe.³ For the effect of this paper, we are mentioning the most important ones:

1. Law no. 41/2021, dated 23.3.2021 “For some additions and changes in law no. 7905, dated 21.3.1995, “Code of Criminal Procedure of the Republic of Albania”, amended <https://www.krimizgjedhor.com/wp-content/uploads/2021/09/20210401122835ligj-nr.-41-dt.-23.3.2021.pdf> accessed: April 16, 2025.

2. Decision no. 81, dated 14.2.2023 “For the adoption of the cross-sectoral strategy for the prevention of violent extremism and the fight against terrorism 2023–2025 and the action plans 2023–2025”, <https://cve.gov.al/it-isp-content/uploads/2024/05/Strategy-CT-CVE-2023-2025-vkm-81-14-02-2023.pdf>, accessed: April 20, 2025.

3. “Violent extremism the major challenge of our time” Manual For Civil Society Organizations, Albanian Committee of Helsinki, 2018, pg.23.

United Nations Security Council Resolution 1373 (2001)¹

In response to the September 11 terrorist attacks in the US, the United Nations Security Council adopted Resolution 1373 (2001), which marked a turning point in the international approach to terrorism and violent extremism. This resolution reaffirmed the condemnation of terrorist acts and defined a number of obligations for Member States, obliging them to take concrete measures to prevent, punish and curb terrorist activities. One of the innovations e resolution 1373 (2001) was the obligation to criminalize not only terrorist acts, but also preparatory actions such as financing, planning, facilitating or supporting terrorist acts.²

Resolution no. 1456 of 2003, of the United Nations Security Council,³ he focused on strengthening global measures to fight terrorism, stressing that the fight against terrorism must be carried out in full compliance with international law. This resolution is not binding, but encourages states to guarantee that any measures taken in the fight against terrorism are in accordance with international jurisprudence, in particular with international jurisprudence on human rights, refugee law and humanitarian law.⁴

Amending Protocol to the European Convention on Suppressing Terrorism (ETS no. 190), approved in 2003 and ratified by Albania with law no. 9230, dated 13.5.2004, aimed to update the original text of 1977, in response to new terrorist threats and developments in international human rights law.⁵

The basic convention was intended to facilitate extradition procedures between Council of Europe member states, limiting the possibility that terrorism suspects would justify non-extradition by defending themselves

1. Resolution no. 1373 (2001) approved by the UN Security Council, meeting 4345, dated September 28, 2001 (S/RES/1373 (2001)).

2. “Foreign Terrorist Fighters”, Manual for South East European Judicial Training Institutes, United Nations Office on Drugs And Crime, 2019.

3. Resolution no. 1456 (2003) approved by the UN Security Council, meeting 4688, dated January 20, 2003 (S/RES/1456 (2003)).

4. “Prevention of terrorism and the fight against extremism and violent radicalism that favor terrorism: community policing approach”, OSCE, 2014, p.33.

5. Osce Human Dimension Implementation Meeting, Warsaw, EHorking session 4: Rule of lait is II, Contribution of the Council of Europe, September 29 - October 10, 2008, p. 2 <https://www.osce.org/files/f/documents/e/c/33772.pdf>, accessed: April 22, 2025.

against the claim of “political offences”.¹ The list of offenses that cannot be considered “political offenses” for extradition purposes, including hostage-taking, hijacking, explosive attacks and serious actions against life and property, was expanded.

Convention on the Prevention of Terrorism (2005)² it was drafted by the Council of Europe in response to the need to strengthen international anti-terrorism legislation after the events of September 11, 2001. The convention was approved in May 2005 in Warsaw and in Albania it was ratified in 2006, with law no. 9641, dated 20.11.2006. Many of the changes in the Albanian Criminal Code were approved in 2007, specifically in relation to Article 231 of the Code, (amendment of Article 230 “Offenses with terrorist purposes”, addition of Article 230/d “Collection of funds for the financing of terrorism”, 232/ a “Incitement, public call and propaganda for the commission of acts with terrorist purposes”, 232/b “Threats to commit acts with terrorist intent”) to include in the internal law the obligations undertaken by Albania in relation to the ratification of the European Convention on the Prevention of Terrorism by condemning “*Recruitment of persons for committing acts with terrorist purposes or financing terrorism*”, even when such acts are addressed to another state, institution or international organization.

Unlike previous international treaties, the 2005 Convention does not define new terrorist acts, but criminalizes behaviors that may encourage or facilitate their commission. It imposes the obligation on the States Parties to sanction as a criminal offense: Public provocation for the commission of a terrorist act (Article 5), which consists in distributing or making available to the public messages aimed at promoting terrorism; Recruitment for terrorism (Article 6); Terrorism training (Article 7), which means providing technical knowledge about the use of weapons, explosives or other dangerous substances for the purpose of committing terrorist acts.

Council of Europe Convention on Cybercrime, known as **Budapest Convention**, addresses crimes committed through the Internet and other information technologies. It has been open for signature in Budapest since November 23, 2001 and ratified by Albania in 2002. In 2004, Albania

1. European Convention on the Suppression of Terrorism, ETS No. 090, 1977.

2. Council of Europe Convention on the Prevention of Terrorism CETS 196, Warsaw, 16.V.2005.

also ratified **Additional Protocol to the Cybercrime Convention**, which provides for states to criminalize the spread of racist and xenophobic material online and to stop and punish actions that incite racial hatred, including denying, minimizing or justifying genocide and crimes against humanity committed through computer networks.¹ Albania transposed this convention into its national legislation in 2008, building the legal basis for the prevention, prosecution and punishment of criminal offenses committed through information networks.

United Nations Security Council Resolution 2178 (2014)²

The involvement of many foreign nationals in the conflict in Iraq and Syria as foreign fighters and the risk that they could recruit other individuals or commit other criminal acts upon their return prompted the United Nations to ask member states to change their domestic criminal legislation in order to punish this category of subjects.³ This obligation is specified in Security Council Resolution 2178 on “Condemning violent extremism, underlining the need to prevent travel and support for foreign terrorist fighters”, one of whose sponsors is the Albanian state.⁴

This resolution first defined the term “foreign terrorist fighters” as *“individuals traveling to a country other than their countries of residence or citizenship for the purposes of carrying out, planning, preparing, or participating in terrorist acts, providing or pursuing terrorist training, while also engaging in armed conflict.”*⁵

Basically, the resolution foresees three main intervention measures: criminal legislation, punitive measures and preventive measures. The resolution requires Member States to include as criminal offense: travel or attempted travel of foreign terrorist fighters; providing or raising funds to

1. “Albanian Legal and Institutional Framework Against Violent Extremism in Cyber Space”, Edlira Gjollëshi, Esmeralda Hasani, Saimir Kapllan, Academy of Political Studies, 2023, pg.8.

2. Resolution no. 2178 (2014) approved by the UN Security Council, meeting 7272, September 24, 2014, S/RES/2178 (2014).

3. “Foreign fighters – Member State responses and EU action”, Piotr Bąkoit isski, Laura Puccio, European Parliamentary Research Service (EPRS), PE 579.080, 2016.

4. “Albanian Legal and Institutional Framework Against Violent Extremism in Cyber Space”, Edlira Gjollëshi, Esmeralda Hasani, Saimir Kapllan, Academy of Political Studies, 2023, pg.8.

5. Resolution no. 2178 (2014) approved by the UN Security Council, meeting 7272, September 24, 2014, S/RES/2178 (2014), p.2, article 6.

finance these trips; and organizing or facilitating (including recruitment) the purpose of providing travel assistance to foreign terrorist fighters.

Resolution 2178 (2014) notes that foreign terrorist fighters, as well as those who finance or otherwise assist their travel and subsequent activities, may be subject to inclusion in the Al-Qaeda Sanctions List, held by the Committee pursuant to resolutions 1267 (1999) and 1989 (2011), in cases where individuals participate in financing, planning, relief, preparation or performance of acts or activities in the name, in cooperation with, in support of, or under the banner of Al-Qaeda.¹ Sanctions typically use one or more of these three measures: travel bans, asset freezes and arms embargoes.²

Member States are also required to prevent the entry or transit through their territory of any individual for whom they have reliable information that provides “reasonable grounds to believe” that he seeks to enter or pass through the territory for the purpose of participating in the activities defined by this resolution. This serves to prevent the activities of foreign terrorist fighters, in cases where law enforcement actors have sufficient information about their involvement in violent extremist or terrorist activities, although there may not be sufficient evidence to initiate criminal proceedings.

United Nations Security Council Resolution 2396 (2017)³

In December 2017, the Security Council adopted resolution 2396 (2017). The resolution sets out, among other things, concerns about the dangers posed by foreign terrorist fighters (LHTs) returning from conflict zones. Resolution 2396 (2017) calls on Member States to strengthen their efforts to stop the threat posed by the return and displacement of LHTs and their family members, including women and children, through border control measures, criminal justice and information exchange. It emphasizes the need for cooperation and exchange of information between Member States and relevant organizations such as INTERPOL, in order to discover LHTs. It encourages Member States to pay special attention to women and children who may be victims of terrorism when designing

1. Ibid, page 7, article 20.

2. “Foreign Terrorist Fighters” Manual for South East European Judicial Training Institutes, UNODC, 2019, p.39.

3. Resolution 2396 (2017) Adopted by the Security Council at its 8148th meeting, on December 21, 2017.

criminal prosecution, rehabilitation and reintegration strategies.¹

Finally, Member States are required to develop and implement three types of administrative measures to prevent and hinder the travel of LHTs: the collection of biometric data; the creation of Advanced Passenger Information Systems (APIs), according to which airlines operating in the territory of a Member State must provide the competent national authorities with basic information on the identity of passengers; and the ability to collect, process and analyze Passenger Name Registration (PNR).²

Republic of Albania pursuant to this request of Resolution 2396 of the United Nations Security Council (2017) has created a special structure called “Passenger Information Unit”, at the General Directorate of the State Police, which processes and exchanges passenger data with other responsible security structures.

Despite the commitment and initiative undertaken by Albania for alignment with international instruments, in addition to the adoption of provisions, a continuous commitment is needed to strengthen institutional capacities and institutional coordination in order to effectively implement the obligations undertaken by these international legal instruments.

3.3 Internal legal framework

Events in the terrorist field and/or that of preventing and dealing with violent extremism (PPEDH) have also occurred in Albania, where nine people were initially arrested after the indictment for the involvement of two self-declared imams who used mosques in the peripheral areas of Tirana and other regions for the recruitment of persons and the financing of terrorist activities.³ They highlighted the Albanian problem with local radicalizations and the immediate need to address, firstly, stopping the flow of Albanian citizens to join the conflict in the Middle East, secondly, to identify state institutions dealing with terrorism and dealing with violent

1. Ibid, p. 40.

2. Ibid.

3. “Report on the reflection of the situation of terrorism and extremism in the country through media broadcasts and the Albanian legal framework”, Together For Life Association, pg.4.

https://wow.togetherforlife.org.al/it_isp-content/uploads/2022/10/Report-on-reflection-of-situations-that-terrorism-and-extremism-in-the-country-through-transmission-media-and-squad-legal-albanian.pdf.

extremism, focusing more on educational and awareness-raising activities to deter terrorist propaganda that was widely and easily accessible and third, preparing the ground.¹ The most important changes have been reflected in the Criminal Code of the Republic of Albania, which has undergone several additions and improvements over the last decade to criminalize new forms of extremist activity. With the rise of religious radicalism, which culminated in 2014, when 144 Albanians joined the conflicts in Syria and Iraq, Albania found itself facing a legal loophole.² Before August 2014, Albanian legislation did not prevent the country's citizens from joining a foreign conflict. Thus, in order to prevent the travel of foreign terrorist fighters, in July 2014, the Assembly of the Republic of Albania approved law 98/2014, for some additions and changes to the Criminal Code, where, among other things, in its chapter VIII, which punishes crimes against the authority of the state, three new criminal offenses were added. These criminal offenses condemn participation in combat actions in a foreign country (Article 265/a); Organization for participation in combat in a foreign country (Article 265/b); The call for participation in violent acts in a foreign country (Article 265/c). Our country referred to the French model, whose criminal code has as part of its provisions special articles related to the activity of mercenarism.³ These articles complete a broad legal framework that regulates terrorist activities, violent extremism and the financing of terrorist activities in Albania.⁴

Beyond the criminal provisions, an important role is also played by the legislation in the field of terrorist financing. Law no. 157/2013 "For preventing and combating the financing of terrorism" has been a key pillar for creating a system of monitoring and controlling financial resources that can be used for extremist purposes. The law defines concrete measures for identifying suspicious sources, freezing bank accounts, reporting transactions and punishing those who financially support individuals

1. Ibid.

2. "Violent extremism and ISIS, danger and threat to security", Dr. Xhavit Shala, Gladis Nano, magazine "Policing and Security No.5", 2017, p.8.

3. French Penal Code, Chapter VI: "Participation in a mercenary activity" (Articles 436-1 to 436-5), https://www.legifrance.gouv.fr/codes/article_lc/LEGIARTI000006418746, accessed: April 23, 2025

4. "Albanian Legal and Institutional Framework Against Violent Extremism in Cyber Space", Edlira Gjollsheshi, Esmeralda Hasani, Saimir Kapllan, Academy of Political Studies, 2023, pg.10.

or terrorist groups. Following this law, a number of by-laws have been approved that regulate cooperation between institutions, especially the Financial Intelligence Agency, the State Police, the Prosecutor's Office and the Bank of Albania.

"The Cross-Sectoral Strategy for the Prevention of Violent Extremism" first adopted in 2015 and then updated for the period 2023–2025 were drawn up in the spirit of guiding documents of organizations such as NATO, UN and EU. The main goal of the strategy is to create a coordinated, comprehensive and sustainable national response to the threats posed by radicalism and violent extremism. Its objectives include preventing the spread of extremist ideologies, early identification and intervention against endangered individuals, rehabilitation and reintegration of radicalized persons, as well as strengthening inter-institutional cooperation at the central and local level. Within this strategy, instructions and decisions have also been approved that define the roles and responsibilities of state and local institutions in the fight against violent extremism. The strategy emphasizes the importance of early identification of radicalization factors and engagement of local actors, including schools, municipalities, civil society organizations, religious communities and the media. Through the action plan for the implementation of the strategy, interventions in various fields such as: education and training, building institutional capacities, engaging communities, managing returnees from conflict zones, as well as developing public awareness campaigns are foreseen. A particularly important aspect has been the inclusion of women and young people as vulnerable groups, but also as powerful factors for mitigating radicalism through social and economic empowerment programs. Awareness campaigns, trainings for teachers and social workers have been developed, as well as community centers have been piloted that provide psychological and educational support for young people exposed to the risk of radicalization. These instruments show an attempt to move from a rigid state response to a more flexible and community-oriented intervention.

Objectives and content of the Strategy

The Intersectoral Strategy for the Prevention of Violent Extremism and the Fight against Terrorism has as its main goal the creation of a coordinated, comprehensive and sustainable national response to the threats posed by radicalization and violent extremism. Its objectives include preventing the

spread of ideologies extremist, identification and early intervention against endangered individuals, rehabilitation and reintegration of radicalized persons, as well as strengthening inter-institutional cooperation at the central and local level. The strategy also aims to protect the democratic order and human rights, building policies that balance the need for security with respect for fundamental freedoms.

The content of the strategy is structured in several basic pillars. The first is related to building institutional capacities and improving the legal framework to face the phenomenon. The second pillar focuses on intervention in the community, through the establishment of social support and education mechanisms. Another pillar focuses on international cooperation, especially with NATO, the European Union and the Global Coalition against terrorism. The strategy also addresses the reintegration of individuals returned from conflict zones and the involvement of civil society in the implementation of preventive measures. It is accompanied by a concrete action plan, which defines measurable objectives, time limits and actors responsible for each measure foreseen.

The political and social instruments derived from the Strategy

In political terms, the strategy has defined national priorities for security and has influenced the inclusion of measures against extremism in the sectoral plans of education, youth, European integration and public order. Also, it has promoted the development of evidence-based policies and the principle of involvement of local communities in the decision-making process¹.

On the social level, the strategy has encouraged the creation of programs to increase awareness, the inclusion of religious communities in dialogue and partnership for peace, civic education in schools, as well as the creation of networks of mentors to identify and support people at risk of radicalization. One of the important social innovations derived from this strategy is the inclusion of family, women and young people as key actors in prevention. Awareness campaigns, trainings for teachers and social workers have been developed, as well as community centers have been piloted that provide psychological and educational support for

1. "Challenges in Counterterrorism and Extremism in the Western", Balkan Security Network, 2021.

young people exposed to the risk of radicalization. These instruments show an attempt to move from a rigid state response to a more flexible and community-oriented intervention.

4. Institutional Framework

On the institutional level, the Strategy has led to the creation of the Coordination Center against Violent Extremism (CVE), a structure dedicated to coordinating activities between various state and non-governmental institutions. This center plays a key role in the implementation and monitoring of the strategy, periodically reporting on the progress of the measures and their effectiveness. The CVE Center serves as a catalyst for building capacities, identifying needs and functioning mechanisms related to the National Strategy Against Violent Extremism and Action Plan. The concepts and measures drawn up in these two documents have set some obligations for all Responsible Ministries, institutions and other important actors, such as civil society, religious communities, media and partners international.¹ Through this Strategy, the Center has the opportunity to develop guiding principles, policies and actions to cope with radicalization and violent extremism in the territory of Albania, but also to coordinate with the region or beyond to undertake joint prevention initiatives. However, despite this positive development, the Center has faced numerous challenges due to the lack of sufficient human and financial resources, as well as the need to improve cooperation with local actors on the ground. It is worth noting that the Strategy has contributed to increasing institutional and public awareness, fostering a more in-depth and professional discourse on issues related to violent extremism. It has also helped develop pilot programs in several municipalities of the country, such as Tirana, Elbasani and Shkodra, where models of local cooperation and preventive interventions have been tested. However, these efforts have not been extended equally throughout the territory, creating gaps in the implementation of the strategy in rural areas or those with more limited institutional resources.

In 2014, the Counter-Terrorism Directorate (DAT) was established under the Albanian State Police, in the same line as the approval for the Euro-Atlantic countries, since Albania is a member of the international coalition against

1. "Albanian Legal and Institutional Framework Against Violent Extremism in Cyber Space", Edlira Gjollëshi, Esmeralda Hasani, Saimir Kapllan, Academy of Political Studies, 2023, pg.7.

terrorism. The DAT is a special structure within the State Police, replacing the sector against terrorist acts that existed before 2014 in the General Directorate of the State Police, with an increase in the number of officers/agents, to about 90 officers, from a number of very small number of officers who were before its creation.¹

The Counter-Terrorism Directorate acts as an investigation agency with technical and operational support, using advanced resources and methods to identify and attack terrorist groups, which can operate on Albanian territory or use Albania as a base for illegal activities. In addition to surveillance and investigations related to possible terrorist activities, the Counter-Terrorism Directorate has an active role in the exchange of information with international partners, especially with the security agencies of NATO member countries, the EU and regional security agencies and global. The Counter-Terrorism Directorate has had continuous support and works closely with American law enforcement agencies, harmonizing the demands of the Albanian government with the expertise and resources provided by the United States of America.² Through participation in the Counter Terrorism Assistance program at the State Department, DAT has been trained for anti-terrorism investigations, with special investigation methods, for the identification and seizure of digital evidence, etc. The role of the Counter-Terrorism Directorate is also important in the design of training and awareness for law enforcement bodies, so that they can act in a coordinated and sustainable manner against possible threats of terrorist acts.

5. Recommendations

At the end of this paper, we can highlight some of the most important findings and conclusions related to Albania's fight against violent extremism and the challenges it has encountered during the implementation of measures to prevent and combat it.

1. Interview with Mr. Saimir Tahiri (former Minister of the Interior) dated October 20, 2014 <https://www.oranews.tv/luftetaret-ne-siri-dhe-aktet-terroristet-mobilizohet-drejtoria-antiterror-me-104-efektive>, accessed: April 26, 2025.

2. Decision no. 81, dated 14.2.2023 for the adoption of the cross-sectoral strategy for the prevention of violent extremism and the fight against terrorism 2023–2025 and the action plans 2023–2025, <https://cve.gov.al/ep-content/uploads/2024/05/Strategjia-CT-CVE-2023-2025-vkm-81-14-02-2023.pdf>, accessed: April 25.

First, Albania has taken important steps in building a legal and institutional framework to address the threats of violent extremism. The adoption of legal acts and strategies such as the “Intersectoral Strategy for the Prevention of Violent Extremism and the Fight against Terrorism” has created a strong basis to coordinate and implement various measures, including the prevention, rehabilitation and integration of radicalized individuals. This framework has enabled a structured and coordinated approach to a phenomenon that is complex and growing, such as violent extremism. However, there are still some obvious gaps that require immediate attention. One of them is the lack of sufficient financial and human resources, which has prevented the fulfillment of the needs for training, support and strengthening of the capacities of the relevant institutions.

Secondly, detailed programs for monitoring behavior after release from prison are not foreseen, nor for assessing the risk of returning to radicalism. Based on the European Commission Report of 2022, Albania should continue to focus on the reintegration and rehabilitation of persons returned from Syria and on the investigation and prosecution of persons suspected of criminal offenses. It should strengthen case management and referral mechanisms for returnees and individuals at risk for radicalization. Radicalization in prisons and online terrorist content continue to be issues to be addressed.

In conclusion, it is clear that Albania has made significant progress in the fight against violent extremism, but there is still much to do. Recommendations for improving the situation include increasing law enforcement capacities, strengthening inter-institutional cooperation and continuous assistance for the training of security forces and individuals involved in the fight against radicalization. Moreover, it is necessary that the security policy continues to develop in order to maintain a healthy balance between the protection of security and the protection of human rights, thus enabling a comprehensive and fair approach to the prevention of extremism violent.

6. Reference

1. Osce Guide “The role of civil society in preventing and combating violent extremism and radicalism leading to terrorism in Southeast Europe”, 2018, p.19 <https://www.osce.org/files/f/documents/5/c/412616.pdf>.
2. “Violent extremism the major challenge of our time” Manual For Civil Society Organizations, Albanian Helsinki Committee, 2018.
3. Teacher’s Handbook “Prevention of Violent Extremism”, Aphrodita Jaha etc., 2018, <https://www.undp.org/sites/g/files/zskgke326/files/migration/ks/>

ALBANIA: AN IMPORTING, EXPORTING, OR TRANSIT COUNTRY FOR TERRORISM?

Msc. Taulant Sula¹
Dr. Marenglen Tomori²

Abstract

Security is one of the greatest challenges facing humanity, especially in the era of globalization. International population movements, accompanied by cultural and religious diversity, constitute an influential factor in complicating security issues. Often, these movements occur by bypassing the filters established by state border control systems, resulting in illegal migration and consequently creating a risk of infiltration by dangerous elements, including actors of international terrorism.

Albania has not remained outside this global reality. It has been involved in this phenomenon in various ways: as a transit country, an exporter, and to a lesser extent, also as an importer of ideologies or individuals linked to terrorism. Despite having an ethnically homogeneous population, its cultural and religious composition is diverse, as a result of its long history of occupations and foreign influences. Albania's geostrategic position, serving as a bridge between East and West since the time of the Via Egnatia, makes it particularly exposed to international trafficking networks and terrorism.

After the 1990s, with the fall of the communist regime and the opening of borders, Albania was involved in massive emigration movements. Alongside cultural exports, there were also exports of criminal activity,

1. Investigation Specialist, Anti-Terrorism Directorate, Albanian State Police
taulantsula94@gmail.com

2. Criminologist, Executive President -CEO, International Police Organization
tomorimarenglen@gmail.com

while host countries became sources of imported behavioral patterns and new forms of criminal organization, including early manifestations of extremism and terrorism. This process was further accelerated by technological and digital developments. Over the years, cases have been documented involving Albanian citizens involved in terrorist activities, including recruitment and participation in wars abroad, mainly in Syria together with the terrorist organization ISIS, especially during the period 2012–2015.

This abstract aims to open a discussion on the role that Albania currently plays and may potentially play in the global dynamics of terrorism, as well as to highlight the need to strengthen control mechanisms and international cooperation in order to prevent the country's further involvement in such phenomena.

Keywords: *Albania, terrorism, emigration, ISIS, national security, violent extremism*

1. Introduction

Terrorism has become a global challenge with profound political, social, and economic consequences for many countries, including those with limited democratic and economic development. Albania, although a small country in the Western Balkans, has been involved in this new global reality in various ways, as part of international influences and as a producer of certain elements with potential for radicalization.

Albania faces numerous security challenges due to its prolonged transition period, institutional weaknesses, geostrategic position, and the dynamics of migration and diaspora. After the fall of the communist system, large migratory movements began in our country, which became an additional reason for European states, especially neighboring ones, to increase and strengthen their screening measures in an effort to limit these flows. In reality, it was nearly impossible to stop a population that had lived largely in poverty, oppression, and deprivation of several fundamental rights, including one of the most essential human rights: the right to move freely.

Albanians did indeed emigrate in large numbers, but some of them returned. Their return came not only with some modest savings to invest

in their country of birth, but also with some traditions, customs, certain cultures and even new religious beliefs that had been banned in Albania during the communist period. Along with these influences came the first radical and extremist currents in Albania.

The Albanian Government, assessing the threats and consequences of terrorism, created in 2014 the Anti-Terrorism Directorate within the State Police, which has as its mission and functional duty the elimination and prosecution of acts of terrorism. Since its establishment, this directorate has achieved a number of positive results in the fight against terrorism, both independently and through cooperation with international partners. These efforts have contributed to Albania being classified among the countries with a low risk of possible terrorist acts.

2. Study Methodology

This study is based on a qualitative analysis methodology drawing on data from international reports (OSCE, EUROPOL, UNODC), structured interviews with domestic and international security experts, as well as comparative analysis with other countries in the region.

Additionally, it incorporates data collected from media reports, academic publications, and Albanian legislation in force related to counterterrorism, as well as the professional experience of both authors who contributed to this scientific study.

3. Albania in the Global Context of Terrorism

Albania has not been the target of high-profile terrorist attacks, with the exception of one publicly known case, in which a group of individuals organized among themselves from Albania and Kosovo planned to carry out a terrorist attack in the city of Shkodra during the Albania-Israel football match in 2016. The attack did not occur, as Albanian State Police officers, in cooperation with Kosovo Police and international partners, managed to arrest the individuals involved. Subsequently, courts in both countries convicted several individuals of terrorism-related crimes.

Albania remains a source of foreign fighters and a potential transit and recruitment territory for Islamic extremist groups. The country has been involved in various ways in international terrorism networks, including through its diaspora in European countries. These influences have also

been observed in efforts to recruit Albanian citizens for conflict zones in the Middle East.

In the 2014–2017 reports of the State Police and the Anti-Terrorism Directorate, over 100 cases were documented of Albanian citizens who attempted or traveled to Syria and Iraq to join ISIS.

Jurisdiction	Total Adults	Men	Women	Children
Albania	109	96	13	31
Bosnia and Herzegovina	240	177	63	57
Kosovo (according to UNSC resolution 1244)	303	255	48	95
Montenegro	23	18	5	4
Republic of North Macedonia	154	140	14	Without Data
Republic of Serbia	49	37	12	10

The main factors driving this phenomenon are: the lack of structured religious education, poverty, the absence of economic opportunities, and the direct influence of radical preachers.

4. Albania as a country exporting terrorism

The majority of Albanians who joined ISIS were recruited through local contacts with radicalized individuals and online platforms. In some cases, organized networks were used to send entire families to conflict zones. Statistics indicate that, in addition to individuals from Albania, citizens from Kosovo and North Macedonia were also involved. International cooperation has led to arrests and extraditions of several individuals wanted for terrorism. The most intensive period of Albanian citizens' involvement in international terrorism occurred between 2012 and 2015. During this time, individuals from various regions of Albania, including Tirana, Elbasan, Pogradec, Kukës, and Librazhdi, traveled to Syria. In certain cases, entire families, including women and minor children, were involved. Radical elements within the country utilized organized travel

networks and connections with recruitment centers in Kosovo, Turkey, and the Middle East.

4.1 Cases, Statistics, and Profiles

The case of the Mjekë Mosque in Elbasan, which was used for radical preaching, led to the arrest of several individuals in 2014. Investigations revealed connections with networks in Kosovo and Turkey. The case of the Quku family from Pogradec, who traveled to Syria with their minor children, became an example of the influence of blind faith and the lack of timely social intervention. In one of the most well-known cases, the Elbasan case, recruited individuals were linked to foreign extremist figures and assisted in organizing travel to Syria. In many instances, activities were conducted through encrypted communications on applications such as WhatsApp, Viber, and Telegram, making identification and prevention by authorities difficult.

An Albanian individual who was planning to carry out a terrorist attack in Austria was identified, he was affiliated with the ‘Abou-Chaker’ group.

Austrian media continue to report extensively on the young man of Albanian origin who was arrested on Friday on suspicion of preparing a terrorist attack in Vienna. The newspaper “Heute” has provided further details about the young man, identified as Lorenz K., 18 years old, who is under serious suspicion. Lorenz had been known to the police due to several minor offenses he had previously committed. For some time, he had relocated to live in Vienna, Austria. The suspect, Lorenz K., is an Austrian citizen of Albanian descent. After being interrogated throughout the previous night, he was placed in custody. During the raids, no explosive materials were found, but several mobile phones were seized, which will be analyzed for investigative purposes. According to the police, his intention had been to cause as many casualties as possible in the planned attack. It remains unclear how the young man, who reportedly had connections with the Palestinian criminal network Abou-Chaker in Berlin, became involved with Salafist circles. According to the newspaper “Österreich”, he had frequently stayed in Germany, where he had increasingly become “immersed in the Islamist milieu”.

5. Albania as a Transit Country

The Western Balkans route has been used by smugglers to move migrants and illicit cargo, including weapons and drugs, which can be used to finance terrorism. Security structures in Albania have cooperated with Frontex and EU agencies to improve border control, but challenges are related to the lack of advanced technology and the lack of human resources.

Albania is an important transit country on the Western Balkans Route, a route used by irregular migrants seeking to reach the European Union. Albania represents a key segment of this route, which has been active since 2012, when Europe eased visa restrictions for several Western Balkan countries, as well as for countries affected by civil wars. The majority of irregular migrants enter Albania from its southern and southeastern border with Greece, particularly through the Qafë Bota crossing point near Saranda. From Albania, migrants typically travel north to Montenegro or Kosovo. The nationalities of individuals transiting through Albania have been diverse, including Syria, Afghanistan, Morocco, Pakistan, Iran, Tunisia, Turkey, India, and others. While the Western Balkans Route peaked in 2015, it remains active. In 2022, over 7,000 irregular arrivals were registered in Albania. Preliminary data for 2023 identified approximately 9,000 irregular foreign migrants within Albanian territory. To manage its borders, Albania cooperates with the European Border and Coast Guard Agency (Frontex). In 2023, Frontex deployed 162 border guards working alongside the Albanian Border Police. In addition, Albania opened a Temporary Accommodation Centre for irregular migrants in Qafë Botë, Sarandë, in 2023.

5.1 The mysterious story of the ‘terrorist’ without an identity! The immigrant isolated in Albania keeps his mouth shut

Since July 2018, a foreign national has been on Albanian territory, whose identity and country of origin remain unknown. ReportTv presents the story of this unidentified individual, who is being held in isolation at the migrant reception center in Karec, Vora. He was detained 10 months ago at the Kakavija border crossing as a suspected terrorist. However, he refuses to reveal his identity to the authorities. According to forensic expertise, he is neither deaf nor mute, but he simply refuses to speak. The individual, approximately 40 years old at the time of detention,

had no identification documents. He was spotted by the Anti-Terrorism Unit among a group of migrants from the Middle East last July. For identification purposes, authorities contacted Interpol and Europol, but the individual was not found in any records, as his fingerprints did not match any criminal case.

6. Albania as an Importer of Extremist Ideologies

In some cases, Salafist and Wahhabi ideologies have been shown to spread through financial support and training abroad, facilitated by non-resident actors. Preaching has been mainly concentrated in independent mosques. Albanian society in general remains religiously moderate, but the lack of control over religious structures in certain areas has created space for radical ideologies. Several religious preachers in unofficial mosques have been arrested and convicted for inciting hatred and supporting terrorist activities. Among them are publicly known figures such as Genci Balla and Bujar Hysa, who have carried out their activities in the peripheral areas of Tirana and Elbasan. Reports from the Anti-Terror Directorate emphasize that recruitment in Albania has been aided by the lack of effective controls over unofficial religious institutions and by the lack of cooperation from local communities during the early stages of radicalization.

7. The Role of the State and Non-Governmental Actors

In addition to the criminal law that provides for punishment for participation in foreign wars, Albania has adopted Law No. 157/2013 on measures against the financing of terrorism and has established joint task forces with international partners. Information centers have been established near municipalities to identify individuals at risk of radicalization, although the effectiveness of these structures remains to be analyzed. Organizations such as the Albanian Helsinki Committee, the Institute for Democracy and Mediation, and OSCE projects have conducted training sessions, awareness-raising campaigns, and the creation of youth networks to build resistance to radicalization. Prominent Islamic and Christian clerics have collaborated to promote messages of coexistence and have engaged in the deradicalization process.

8. Rehabilitation and Reintegration of Returnees from Conflict Zones

The rehabilitation and reintegration of returnees from conflict zones is a complex and multidimensional process that aims to help individuals - often women, children and men who have returned from war zones, such as those previously controlled by extremist groups such as ISIS - reintegrate into society in a safe and sustainable manner. This process includes aspects of security, mental health, education, social and legal support.

The main elements of rehabilitation and reintegration for returnees are:

A. Initial Assessment and Emergency Care

- Identification of the returnees and their specific needs.
- Provision of physical and psychological healthcare.
- Ensuring a safe and protected environment, especially for children and women.

B. Psychosocial Rehabilitation

- Trauma therapy, especially for children who may have experienced violence or indoctrination.
- Training for mental health professionals and social workers.
- Support for coping with stigmatization by the community.

C. Education and Personal Development

- Reintegration into the education system for children.
- Vocational courses or education for adults to assist them in employment and independence.

D. Community Reintegration and Social Support

- Building trust between returnees and the community.
- Collaborating with local authorities and communities to reduce fear and stigmatization.
- Providing social and economic support, including housing and financial assistance.

E. Surveillance and Follow-up

- Continuous monitoring to track progress and prevent relapse to extremism.

- Clear mechanisms for institutional integration.

F. Legal and Institutional Framework

- Creation of a legal framework that balances security with human rights.
- Inter-institutional coordination between police, courts, social and health services.

This process requires inter-institutional cooperation and international support, particularly in countries with limited capacities, such as those in the Western Balkans. For example, Albania has repatriated several women and children from camps such as Al-Hol in Syria and has initiated rehabilitation phases with the assistance of international partners.

9. Migration and Its Impact on the Development of Terrorism

International migration, particularly irregular migration, is an important factor influencing the spread and development of terrorism. Uncontrolled movements of individuals across borders create dangerous spaces for the recruitment of socio-economically and psychologically vulnerable individuals. In many cases, irregular migrants are exposed to trafficking and exploitation networks, which are often linked to extremist organizations that use the victims for financing, logistics, or propaganda purposes. Albania, as part of the Balkan Corridor, serves as a transit hub for irregular migrants aiming to reach European Union countries. This position makes the country particularly vulnerable to the infiltration of radicalized elements from the Middle East, Asia, and North Africa.

According to data from FRONTEX and UNHCR, thousands of cases of irregular crossings into Albanian territory were recorded between 2017 and 2022. Although the majority of these individuals are economic migrants, in some cases, persons with profiles posing potential threats to national security have been identified. The risk is further heightened by the fact that migration routes overlap with those used for arms and drug trafficking, as well as for financing terrorist groups. In this context, it is crucial for Albania to establish robust mechanisms for identification, monitoring, and integration to prevent irregular migration from becoming a channel for the development of terrorism.

It is also essential to share real-time data with neighboring countries and international security organizations to timely identify high-risk individuals who may use Albanian territory as a transit route. Irregular migration often occurs in contexts of humanitarian crises, armed conflicts, or extreme poverty, where individuals move desperately toward countries with better opportunities. These conditions create a conducive environment for extremist groups to recruit marginalized and unprotected individuals. Terrorist networks exploit gaps in border management and the lack of coordination between states to conceal the movement of foreign fighters, weapons, and funds. In some cases, irregular migrants have been used to provide logistical cover for terrorist operations or to carry out attacks.

In the Western Balkans, Albania has been part of human trafficking routes, often involving organized groups that intertwine organized crime with elements of extremism. These networks may exploit irregular migrants as sources of financing through extortion, exploitation, or forced recruitment. An additional challenge is the lack of capacity for early identification of high-risk individuals due to the absence of documentation, the use of false identities, and limited access to shared regional data.

In the Albanian context, in addition to its role as a transit country, cases have been identified where individuals involved in extremism have entered or exited the country via irregular routes. This underscores the need for coordinated national and regional policies that address not only border control but also social prevention and the integration of migrants. Furthermore, it is important that counter-terrorism strategies include migration management components, such as preventing radicalization in reception centers, monitoring extremist narratives in shared environments, and providing psychological and social support to vulnerable individuals.

10. Conclusions and Recommendations

Reducing the import, export, and transit of terrorism in Albania requires a comprehensive strategy that combines legal, operational, diplomatic, and social measures. These actions should be undertaken in close coordination with international partners and security organizations. Below are some concrete recommendations for the Albanian authorities:

I. Strengthening the Legal and Penal Framework

- Improve legislation on crimes related to the fight against terrorism in line with EU and UN standards.
- Increasing penalties for offenses related to the financing, organization, or incitement of terrorism.
- Adopting specific provisions to prevent the recruitment of individuals in prisons.

II. Increasing Intelligence and Security Capabilities

- Investing in technology for border surveillance and traveler screening.
- Deepening inter-institutional cooperation among the National Intelligence Service (SHISH), the police, the prosecution, and customs authorities.
- Strengthening counter-terrorism units within the State Police to detect potential radicalization and financing networks.

III. International and Regional Cooperation

- Active participation in joint platforms of the EU, NATO, and INTERPOL for data sharing.
- Establishing a database to record all individuals involved in or identified as high-risk for joining terrorist organizations, with real-time access for all relevant members.
- Bilateral agreements with neighboring countries to prevent the movement of radicalized individuals across borders.
- Engagement in Western Balkan regional mechanisms to combat violent extremism.

IV. Preventing Radicalization and Rehabilitation

- Educational programs to build resilience against extremist ideologies in schools, mosques, and prisons.
- Training for imams and community leaders to identify and address radicalization at the local level.
- Rehabilitation and reintegration of individuals returning from conflict zones through psychological and social support.

V. Monitoring and Preventing Online Propaganda

- Surveillance of social networks and online platforms for radical or recruitment content.
- Strengthening cooperation with technology platforms to remove radicalized websites.
- Educating youth about the risks of ideological manipulation online.
- Implementing filters to restrict or prevent access to videos and writings with radical and extremist content for individuals under the age of 21.

VI. Tracking and Disrupting Terrorism Financing

- Stricter monitoring of fund movements by individuals, foundations, or suspicious NGOs.
- In-depth investigations into informal channels such as hawala networks or remittances from the diaspora.

References

- Europol. (2021). Report on the Situation and Trends of Terrorism in the EU. European Union Agency for Law Enforcement Cooperation.
<https://newsbomb.al/identifikohet-shqiptari-qe-do-kryente-sulm-terrorist-ne-austri-ishte-pjese-e-grupit-abou-chaker-babai-nuk-kisha-dijeni>
<https://shqiptarja.com/lajm/ekskluzive-historia-misterioze-e-terroristit-pa-identitet-emigranti-kyc-gojen>
- Albanian Helsinki Committee. (2018). Religious Freedoms and Radical Influences in Albania. Tirana, Albania.
- Foreign Terrorist Fighters: Manual for Judicial Training Institutes of Southeast Europe (Updated Edition 2019). UNITED NATIONS OFFICE ON DRUGS AND CRIME, Vienna, 2019.
- OSCE. (2020). Violent Extremism in Albania: Trends and Responses. Organization for Security and Co-operation in Europe.
- Center for Security Studies. (2022). Annual Report on Violent Extremism in Albania. Tirana, Albania.
- UNODC. (2020). Handbook for Children Recruited by Terrorist Groups. United Nations Office on Drugs and Crime.

PROTECTING AND GUARANTEEING HUMAN RIGHTS IN THE AGE OF ARTIFICIAL INTELLIGENCE AND CRIMINAL JUSTICE CHALLENGES

M.Sc. Eljona Ruçi¹

Abstract

In the century we are living in, technology for each individual is the main source of information, pleasure, entertainment, security, and health, so practically we can say that it covers all the most important spheres of life. However, this bright future unfortunately has a cost and in fact, it is more or less noticed that it is moving towards the violation of the protection of private life.

Even Artificial Intelligence is one of the types of technology development which is making it possible for the computer to have the ability to act like a human being. The long-term goal of politics in Albania, as everywhere in international practice, is that this intelligence is included in all sectors, aiming for a positive transformative impact in: education, agriculture, health care, public administration, as well as taxes.

But this highly sophisticated technological development is practically showing that it is becoming a threat to humanity where there is always more and more possibility that artificial intelligence will defeat man. Based on the above conclusion, in every legal state there must be the sanctioning of legal - criminal norms to effectively guarantee the recognition, development and protection of the various aspects in which the concept of private life and national security materialize.

1. Assistant attorney; eljonaruci@yahoo.com

During this paper, the different ways and forms of how Artificial Intelligence legally affects the violation of private life at the global level will be practically treated and analyzed. Also, in this article, preventive measures will be suggested to reduce as much as possible criminal offenses that affect the private life of the individual, due to the use of AI.

Keywords: *technological development, Artificial Intelligence, private life, national security, criminal law*

Entry

Human rights have their origin about 2,500 years ago in Greek philosophy between the interweaving of the notions of law and natural justice, which are closely related to each other, but which do not promote the same ideas. This is because natural law responds to the ideas of conscience and the need for justice; it is subjective and varies from one person, society and generation to another. While the legal right is found in the rules set by different states, or when these rules and norms are set by the leaders of the instances above their jurisdictions and derive from legal positivism, which is meant here that the laws and rules are set by the people who have the authority to direct others, often the latter placed in positions of inferiority found in front of these leading instances.

It can be said that the right to respect private life, as one of the basic human rights, represents a modern interpretation and an expansion of the traditional concept of the "state of law". Currently, different schools of law give conflicting views on the origin of privacy, but what is worth noting is that a body of basic rights has existed since the end of the century. of XVIII - in Europe and has been the subject of discussions and debates since that period in European schools of thought. More specifically, these ideas began to develop (of course not in the normal legal way that modern jurisprudence knows today), in the 19th century - with prominent representatives such as: Jeremy Bentham, John Austin, John Stuart Mill and in the 20th century - the concept of justice and individual freedom was further developed by the philosopher John Rawls.¹

1. Calvo, C. (1885), *Le Droit International*, 5th ed Paris, (translated from the original in Spanish, *Derecho internacional teorico and practico*, 1868, Paris)

If we were to dwell on the shortcomings that accompany human rights, it is noted that the fundamental weakness of cultural relativity is that it is often used arbitrarily by rulers and officials in positions of power, mainly in those countries where their people do not have the opportunity to freely express their thoughts and views about their rights and freedoms, and mainly on the non-infringement of privacy.

While, as a negative point of view of the universal argument, it has to do with the inevitable fact that the right to respect a private life as one of the basic and most important human rights is not universally applied, observed and respected against what the universal theory promotes, despite the fact that this right is considered a right given by God (or other universal forces) that is attributed to the human being from the moment of his/her conception and that accompanies him/her throughout his/her entire universal existence.

1. Legal instruments of the United Nations for the protection and promotion of fundamental human rights and freedoms

If we were to make a very concise summary of the international instruments that have acted and continue to extend their influence even today in the protection and promotion of human rights, we would single out as key moments these historical events, chronologically classified as follows:

- In 1945 - With the creation of the Charter of the United Nations, the “rules of the club” were established
- In 1948 – Non-binding aspirations were expressed in the Universal Declaration of Human Rights/UDHR
- In 1966 – Two international mechanisms were adopted: the International Covenant on Economic, Social and Cultural Rights/ICESCR, as well as the International Covenant on Civil and Political Rights/ICCPR
- In 1976 – The Covenants entered into force, where together with the Universal Declaration of Human Rights, they formed the global mechanism known as the International Charter of Human Rights

1.1 Charter of the United Nations

Proposals were made to include in the United Nations Charter a package of rights, but this was not realized for two main reasons:

- First, the United Nations Commission on Human Rights was established in 1946
- Secondly, in its article 68 it was expressly foreseen that the Economic and Social Council/ECOSOC should set up commissions in the economic and social fields to make possible in practice the promotion of the implementation of human rights

From the preamble of this international instrument, more specifically in the second paragraph, among others, importance is attached to the fact that “participating states in the United Nations Organization are determined to reaffirm faith in fundamental rights, as well as in the dignity and values of the human being”, guaranteeing in this way the universal values enjoyed by the protection of private life from various violations, as one of the most important fundamental rights for an individual, in the field of the multitude of human rights.

This charter places its law enforcement authority between these actions:

- o Enables the Economic and Social Council of the United Nations to make recommendations for promoting respect for human rights based on reports or studies that are presented to both member states and the General Assembly and Specialized Agencies.
- o Authorizes the Economic and Social Council of the United Nations/ECOSOC to set up commissions in the economic and social fields for the promotion of human rights, as well as other commissions that are necessary for the fulfillment of its functions.

It is worth noting that the Charter of the United Nations contains only advisory references to human rights and freedoms; furthermore, even its article 56, where it is sanctioned that all members “swear”, is non-binding.

1.2 Universal Declaration of Human Rights/UDHR

The Universal Declaration of Human Rights is regarded by many modern theorists who study jurisprudence as the single and most important international document ever written, which has contributed to

the promotion of human rights as a result of a number of reasons that have influenced this statement:

- The moment when it was compiled and the global historical context
- The tremendous influence it has had on subsequent human rights documents and regimes
- Due to the fact that although this document is a declaration and not a treaty, there are still many individuals who believe that the document enjoys the status of customary international law

This declaration recognized the violent criminal acts that history has witnessed deeply wounding the social conscience of humanity, and also recognized the fundamental dignity and inalienable rights of all human beings, which need to be based on freedom, peace and justice.

Also, this statement went further, emphasizing the fact that being considered an international instrument, it would try to establish a standard (achieved among education in this field) in order to increase implementation and ensure universal recognition of human rights.

1.3 International Covenants

The International Pacts were created with the aim of replacing the Declaration in a new, more evolving form since they also provided for a binding legal document. Already the provisions of the Universal Declaration of Human Rights were converted into two international instruments: the International Covenant on Economic, Social and Cultural Rights¹, as well as the International Covenant on Civil and Political Rights².

2. Institutional mechanisms of the United Nations that guarantee the protection and promotion of fundamental human rights and freedoms

The system of protection and promotion of human rights of the United Nations contains two types of structures:

- The structures established by the Charter of the United Nations, including the Human Rights Commission, as well as
- Structures created by international human rights treaties

1. For more see: <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CESCR.aspx>

2. For more see: <http://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>

2.1 The first group

The General Assembly is the international institution at the top of the hierarchy among the organs of the United Nations. However, the Security Council bears certain responsibilities for human rights which become primary when international peace and security are threatened. Meanwhile, the Human Rights Commission under the leadership of the High Commissioner for Human Rights has already expanded its role, responding to problems that violate individual freedoms on a full scale.

Also, the Deputy Commissioner for the Promotion and Protection of Human Rights, Thematic and State Rapporteurs, as well as the working groups that report to the Commissioner, have an important and growing role. The protective role provided by the Economic and Social Council should not be left unmentioned, since most of the official reports pass through it and are then reviewed by the General Assembly.

2.2 The second group

In addition to the institutions established by the United Nations Charter, there are seven bodies-Committees, created by the main human rights treaties, which monitor the implementation of each treaty. Some of the treaty monitoring structures are: Human Rights Committee; Committee on Children's Rights; Committee on Economic, Social and Cultural Rights, etc. The aforementioned committees cooperate closely with the Economic and Social Council, as well as with the General Assembly to ensure the efficient fulfillment of the purpose for which they were created.

3. The legal protection offered by the European Union for the protection of human rights from technological developments

For reasons related to the international scope that criminal offenses have acquired due to technological development, as well as for the reason of the appearance of new integrated forms of criminality, there is an increased attention of international organizations in order to prevent further extension and combat these new forms of criminal offenses. In order to achieve this goal, the Council of Europe has adopted several recommendations.

Also important is the approval of Resolution No. 1 by the European Ministers of Justice presented during their conference, held in Prague in 1997, which recommended the Committee of Ministers to support

activities related to cybercrime organized by the European Committee for problems of a criminal nature. The goal is to align national criminal legislations and make it possible to use efficient investigation tools in the field of technological crimes that violate the privacy of the individual.

In this spirit, on November 23, 2001, the “Convention on Cybercrime” was signed in Budapest. This instrument is supplemented by an additional protocol regarding the criminalization of acts that violate human dignity using computer systems, signed in Strasbourg on January 28, 2003.

In order to create a regulation for the prevention and combating of technological criminal offenses that violate the privacy of the person, the member states of the Council of Europe and other signatory states, considering that the goal of the Council of Europe is to achieve the greatest possible unity between its members in promoting cooperation between states between the signing of the Budapest Convention, makes it possible to pursue as a matter of priority a common criminal policy, which aims to protect society from cybercrime that harms the private life of the person, among others, the adaptation of an appropriate legislation and the promotion of international cooperation where societies and their legal mechanisms are aware and prepare for the innovations brought by the convergence, digitalization and continuous globalization of computer networks.

3.1 Directive 95/46 - EC “On the Protection of Personal Data”

Directive 95/46 - EC is the main text of reference at the European level in terms of personal data protection. This directive covers any form of personal data processing regardless of the technology used. The main purpose of the directive is to protect the basic rights and freedoms of the individual and in particular the right to private life related to the processing processes of personal data by setting the basic standards that must be respected by the processing entities.

3.2 Directive 2002/58 - EC on “e-Privacy”

Directive 2002/58 further clarifies and complements Directive 95/46 regarding the processing of personal data in the electronic communications sector and is widely known as the Privacy Directive. The directive specifically aims to ensure full respect of the right to private life and also

the right to the protection of personal data provided for in articles 7 and 8 of the Charter of Fundamental Rights of the European Union.

3.3 Directive 2006/24 - EC “On Data Storage”

Directive 2006/24 aims to harmonize the legal framework of the member states of the European Union regarding the obligations of service entrepreneurs and public electronic communications networks for the storage of certain data that are processed and administered by them, so that these data can be made available to criminal prosecution authorities for the purpose of detecting, investigating and prosecuting criminal offenses, as defined in the national legislation of each country.

4. The legal protection that our internal legislator makes to the respect of privacy:

Since the introduction of the Constitution, and more specifically in its Article 3, among other values mentioned, our legislator has expressly provided that human dignity and his rights and freedoms are the bases that the state has the legal obligation to protect.

This protection is further emphasized in Article 15 of the Constitution, where it is sanctioned the statement that:

- “1. The basic human rights and freedoms are indivisible, inalienable and inviolable and are the foundation of the entire legal order.
2. The bodies of public power, in fulfilling their duties, must respect basic human rights and freedoms, as well as contribute to their realization.”

The procedural guarantee is further followed by Article 35 of the Constitution¹ which specifically talks about personal data, where the violation of life/private data is expressly prohibited.

1. Article 35 of the Constitution of the Republic of Albania sanctions that:

1. No one can be forced, except when required by law, to make public data related to his person.
2. The collection, use and making public of data about the person is done with his consent, except for the cases provided by law.
3. Everyone has the right to know the data collected about him, except for the cases provided by law.
4. Anyone has the right to request the correction or deletion of false or incomplete data or data collected in violation of the law.”

5. Legislative practice for the implementation of Artificial Intelligence in the framework of guaranteeing basic human rights and freedoms

At the ceremony held in Vilnius, Lithuania, on September 5, 2024, the European Union, the United States of America, Great Britain and Israel were the first in the world to sign the Convention on the Protection of Human Rights in Artificial Intelligence Technologies. After them, the countries that signed this agreement were: San Marino, Norway, Iceland, Andorra, Moldova and Georgia.

Earlier, in May of the same year, the Council of Europe adopted the Framework Convention on Artificial Intelligence and Human Rights, Democracy and the Rule of Law and announced that from September 5, states that wish to sign it will be able to sign it, meaning those states that are not members of the Council of Europe.¹

However, many non-governmental organizations, mainly those that are engaged in human rights protection issues, are not satisfied with the content of the text of the convention. As they say, this convention is not going to bring much in the field of human rights protection, since the language in which it is written is very “decorated”; therefore, it is filled with general principles and not with specific rights and obligations, so it is up to the states that accept it to concretize and further perfect it in their internal legislative practices.

In this line of reasoning, referring to the statements made by Francesca Fanucci, the senior adviser of the European Center for Non-Profit Law, she states that the signatories should discuss and agree on a non-binding methodology on how to assess the impact of artificial intelligence systems on human rights, the rule of law and democracy, in which EU states are unlikely to participate as they apply the law for artificial intelligence.

Also, staying on the same line of reasoning, she emphasizes that the Convention is written in such a way that it does not conflict with the Law on Artificial Intelligence, the EU regulation on AI, so the signature and ratification are not important for the member countries of the European Union.

Recently, National Human Rights Institutions from all over Europe² have

1. <https://abcnews.al/si-te-mbrohen-te-drejtat-e-njeriut-ne-epoken-e-inteligjences-artificiale/>

2. <https://www.avokatipopullit.gov.al/>

gathered together in a meeting, where the multifaceted impacts of Artificial Intelligence, especially in terms of human rights, have been highlighted. This meeting, which took place in Ljubljana (Slovenia), is an initiative of the European Network of National Human Rights Institutions, to discuss the expected challenges in different aspects of society, within the ever-increasing use of Artificial Intelligence technologies. The interactive typology of the format of this meeting evidenced that the intersection of Artificial Intelligence and human rights is a critical area, which is expected to have complex developments and requires careful consideration.

5.1 The practical implementation of Artificial Intelligence in Albania

Referring to the law-enforcement institutions of our country, it was pointed out that Artificial Intelligence will be used in many services for the function of the state and the citizen. Thus, within a very short time of this year, the modules that will be continued in Albania will be functional, there will be a map of all public procurements, where AI will refer to where the game is being played with the revenues that belong to the state. Also, territory control is another area where Artificial Intelligence will be used, and more specifically it will be used for control and legalization. So, our country intends that with the introduction of Artificial Intelligence in this field, it will be possible to have an absolute control of the territory, thus strengthening the national security.

Furthermore, it is planned to start the implementation of smart cameras in all streets and schools, which in this way will be able to collect numerous materials. Also, in this plan of measures, the removal of the police from the streets is foreseen, where they will work like in any other country, that is, not looking for the culprits when they are not obvious, but they will intervene when necessary.

Artificial Intelligence will also be used in the Traffic Rules, where in the event of a violation, the person will be photographed, and then the photo will be sent with his face while he is giving the car a speed exceeding the permitted norms; then he will be told where and when he must go to pay the fine.¹

1. <https://abcnews.al/inteligenca-artificiale-ne-cdo-sherbim-rama-kontroll-absolut-i-territorit-do-largojme-policine-nga-rruget/>

5.2 Consequences felt in international practice as a result of the advancement of Artificial Intelligence infringing basic human rights and freedoms

A recent study conducted by the Council of Europe has pointed out the shortcomings in the existing mechanisms to prevent the occurrence of discrimination in the development of algorithmic systems. It outlines ways to use technology to promote equality and the need for human rights impact assessments throughout the AI lifecycle. Increasingly, Artificial Intelligence is shaping the world we live in: our job prospects, our health care outcomes, and our access to benefits and services. The list of spaces affected by AI is long and growing. Unless we learn how to harness the potential of Artificial Intelligence to overcome inequalities, including gender inequality, as well as prevent discrimination, AI can and will become a force that entrenches, perpetuates and reinforces inequality.

Addressing the challenges presented by new technologies, including Artificial Intelligence, is one of the priority areas of the new Strategy for Gender Equality 2024 - 2029¹ approved in March 2024 by the Council of Europe. The new strategy reiterates the high level of commitment of the member states to move towards a gender equal Europe for all. This commitment requires action. Given the evolution of AI systems, the efforts of EC member states should be increased to bridge the inequality gap.

It is now a fact that Artificial Intelligence is revolutionizing every aspect of our lives and within the next five years its impact will be even greater, profoundly affecting the way we live, work and interact with each other. These will be the main transformations expected until 2030:²

- Economy and the labor market - Reshaping the way of working:

The economy will experience a radical transformation, as many processes will be automated. The financial industry is already using AI algorithms to optimize investments and fight financial fraud. At the same time, AI systems will help businesses analyze consumer behavior and offer personalized products and services.

1. <https://www.coe.int/sq/web/tirana/-/artificial-intelligence-bridging-the-equality-gap>

2. <https://tiranapost.al/tech/si-do-te-jete-bota-pas-5-vjetesh-me-inteligjencen-artificiale-i536581>

However, the automation of work will lead to the loss of some jobs, especially in sectors such as banking, insurance and administrative services. On the other hand, new professions will be created that require skills in the management and development of AI technology.

According to a recent report, by 2029, around 3.8 million jobs in Italy are expected to be replaced by artificial intelligence, while new opportunities will be created in different sectors such as data engineering and AI ethics.

- Education - From traditional learning to personalized intelligence:

In the world of education, AI is reshaping the way students learn. Instead of a uniform teaching method, technology will enable a personalized experience for each student. AI algorithms will identify individual learners' needs and weaknesses, providing materials and pace tailored to each. The professor will not disappear, but will have the role of a supervisor and mentor who will help interpret and reinforce the knowledge obtained from the automated systems.

Many schools already use AI-based platforms that help students understand concepts better through simulations and in-depth analysis. Within the next five years, it is expected that schools will use more virtual teachers and follow a hybrid learning model.

But, despite the positive helpful impact that AI brings to education, this sophisticated technology still leaves room for doubt, since no one can ensure how robotics would interact with students, and mainly with elementary school children, in hypothetical situations when the robot-teacher will stay alone with them in the classroom, becoming a potential risk both for the safety of students' lives and for the disinformative nature of school materials. All this in case of misuse, mismanagement or malfunction of the robot or other tools developed by AI.

- Vehicles and transport - Autonomous driving:

In the next five years, autonomous cars will be more widespread. AI systems will be able to analyze traffic conditions and make real-time decisions to reduce accidents. With the improvement of sensors and self-learning algorithms, these vehicles will be able to move safely even on complicated roads.

In addition to cars, public transport will also benefit from Artificial Intelligence. Transport networks will be better managed thanks to big data analysis, optimizing timetables and reducing pollution.

Beyond the favorable impact, the right to life of the individual would be in danger, in case of the malfunction of the autonomous cars, as well as this would constitute a serious risk for the national security of a country, since it would affect the reduction of the number of the population in case of increasing the number of deaths in the population of this country as a result of these types of means of transport.

- Health - More accurate diagnoses and personalized treatments:

In the field of health, AI will play a crucial role in improving diagnoses and treatments. Within five years, the technology will be able to analyze medical data instantly and suggest personalized treatments for patients. This development will help reduce medical errors and improve the efficiency of health services.

Furthermore, the use of AI in pharmaceutical research will speed up the process of developing new medicines. Through advanced data analysis, it will be easier to find effective treatments for various diseases, significantly reducing the time and costs of their development.

But despite the positive impact, here the right to life, which originates from Article 2 of the ECHR, is called into question, if in medicine it will be assisted more with technology than with doctors. If in a surgical intervention, the Artificial Intelligence will not work properly, this would pose a fatal risk to the patient's life (damage during the operation), or in special cases if the AI would misuse the genetic data of a patient (such as for cloning or collection and processing of genetic material), this would pose a serious threat, both to the lives of citizens and to national security.

- Entertainment and media - Personalization of the experience:

The entertainment industry will change significantly. On platforms like Netflix and Spotify, AI algorithms already recommend content based on our preferences. However, in the future, we will be able to watch movies and play video games where the narratives and scenarios will adapt to our preferences, creating a unique experience for each user.

In the field of music and art, AI is being used to create original music and artwork. In a few years, we may have creative assistance that will help artists explore new forms of expression.

But, all of the above would mean problems with intellectual property rights, since no one would face criminal responsibility in the event that AI would misuse this right, which would constitute a violation of copyright.

- Banking and financial security - Optimizing processes and combating fraud:

In the banking sector, Artificial Intelligence will be used to improve the lending process and strengthen anti-fraud systems. Banks will offer personalized services to their customers through virtual assistants that will help manage personal finances and solve complex problems.

Meanwhile, cyber security will be another area where AI will play an important role. As cyber attacks advance, intelligent systems will be able to analyze and prevent threats in real time, reducing the risk of data theft and financial fraud.

However, the opposite of the above would occur in case of a negative impact of Artificial Intelligence on the banking system and cyber security, as this would bring serious problems with the national security of a country, leading to the total collapse of this country.

- Social relations and ethics - New challenges:

The impact of AI will not be limited to practical areas, but will also affect human relationships. The rise of intelligent virtual assistants could lead to a big change in the way we interact with each other. A recent study shows that one in four young people under 40 think AI can replace a traditional romantic relationship.

However, this poses major ethical challenges, leaving room for raising two critical questions: How can we ensure that Artificial Intelligence does not manipulate people emotionally?

And will it be possible to impose restrictions to protect privacy and human values?

Artificial Intelligence will bring great transformations in all aspects of life. Although its benefits are great, the risks and ethical challenges must

be carefully addressed. One of the biggest challenges will be the balance between innovation and the protection of human rights. In the next five years, the success of our society will depend on how this technology will be used and how the appropriate restrictions will be set.

Also, referring to the assertions of the technology mogul, the American entrepreneur Elon Musk, when he addressed the participants of the investment conference in Riyadh through a video, he said that in the future there will be more robots than people in the world. Although he expressed optimism about the development of artificial intelligence, he still noted that there is a 10 to 20 percent chance that things will go wrong and repeated his previous position that Artificial Intelligence could pose an “existential threat” to humanity, clearly implying that the right to life, as a universal, inalienable and inviolable right, now more than ever with the deepest penetration of AI in every cell of human life is questioning human existence itself.¹

6. CONCLUSIONS and RECOMMENDATIONS

Many scientists now see artificial intelligence—algorithms and software that enable machines to perform tasks that normally require human intelligence—as an equally transformative tool. In medicine, in cancer research, it can sort and summarize more studies in minutes than a human team could do in months.

These new generation tools of Artificial Intelligence have taken the world by storm, but they also carry risks. Information Technology experts warn that this could create a tsunami of misinformation and could even endanger humanity itself.

In this way, Artificial Intelligence lowers costs and barriers for misfits, terrorists and other negative actors who may want to cause damage, often irreparable, both to the national security of a given state or group of states, and to the security of the human being himself.

Moreover, some experts worry that advanced artificial intelligence will be so much smarter than humans that it will control us, not the other way around. Estimates of how long it will take to develop such superintelligent

1. <https://sot.com.al/tech/perben-kercenim-ekzistencial-shokon-manjati-i-teknologjise-ne-te-ardhmen-bota-do-kete-me-shume/>

machines, known as artificial general intelligence, range from a few years to a few decades. But in any case, the growing dangers from today's artificial intelligence already demand greater attention in society. Gary Marcus and Anka Reuel, experts in AI, argue that now is the time to create a global international agency for Artificial Intelligence, with support from governments, business and society, since assessing how fast things are moving, they judge that there is not much time to lose. Also, Europol, on the other hand, has warned that applications such as Chatgpt and OpenAI can increase cybercrime.¹

As we witness rapid advances in Artificial Intelligence, it is essential that National Human Rights Institutions proactively engage to understand and address the potential human rights interrelationships with these rapid developments. In this sense we must ensure that Artificial Intelligence complies with the principles of human rights and our institutions must contribute to the development of a solid multisectoral framework that protects these rights in the era of Artificial Intelligence.

This rapid development of artificial intelligence and its significant use, which is expected to increase during the next decade, should bring together governments, technology developers, civil society and international organizations in collaborative and multidisciplinary initiatives.

In this context, it is essential to draft ethical guidelines and regulations that give priority to the principles of human rights, under the influence of Artificial Intelligence technologies.

As one of the highly productive recommended measures would be the further improvement and completion of the legal framework in the field of cyber security, where in order to reach the ideal harmonization of our internal legislation it is suggested that the evaluation of the best world practices should be done and the recommendations of international reports should be taken into consideration.

Again, in the framework of the approximation of our internal legislation, it is estimated that importance should be attached to the inclusion of a new provision in the Criminal Code, which deals more broadly and specifically with those issues related to online impersonation. We suggest that as a new provision it can be placed alongside articles 121 - 123 of the Criminal Code that protect the individual's rights to private life.

Also, in the framework of the protection of victims from technological

1. <https://tiranapost.al/tech/bota-ka-nevoje-per-nje-agjenci-nderkombetare-per-inteligjencen-artificiale--i524910>

means, it should be taken into consideration the increase of investments to realize the increase of security in the networks and state systems, to make it possible to avoid the leakage of information of the identifying aspects of the persons thus infringing the right to have a private life of their own. Stopping here, priority should be given to increasing investments in hardware and software, to ensure prevention in cases of facing such criminal acts, as our practice has shown.

Another recommendation would be the creation of a National Authority for Technological Development, which could very well function as the state minister, having in its composition specialists from various IT fields, as well as lawyers specialized in the investigation and tracking of cybercrimes. It is estimated that being an institution at the ministerial level will be more monopolistic and would save time and cost for the issues it would handle, offering not only comprehensive protection for victims whose private life is threatened by technological tools, but also would make it possible to avoid the occurrence of such global phenomena caused by Artificial Intelligence.

Of special importance is the cooperation, coordination and institutional harmonization, now not only within the competent institutions with each other for the treatment of criminal offenses that affect the private life of the individual using sophisticated technological means, but this scope of cooperation should always become more present with international institutions and mechanisms with extensive experience in this field, such as Europol and Eurojust.

Also, this institutional experience should be shared with the universities - as well as the academies and universities themselves in coordination with each other, where the organization of trainings, workshops, seminars and conferences is important to highlight the most efficient practices in the prevention of such criminal offenses and the protection of the individual from these technological phenomena.

But, as an adequate measure, which the practices of all have as the most effective measure for the protection of private life, it is suggested to be education and increase awareness about technology crimes among children. This is realized by an information campaign for the population, in cooperation with the media, technicians and NGOs - which operate in Albania. This information is provided in various forms, such as actions of campaigns and advertisements/informative and awareness-raising spots, treatment of such topics in broadcasts, including MASR - in etc.

At the end of this material, it is worth mentioning the quote expressed by A. Einstein, to once again bring to attention the undeniable fact that technological resources, just as they have made our everyday life easier with their sophistication, with the passage of time and the super-sophistication they are getting, are slowly “taking over” our private lives; so we - human beings must do everything we can, as much as we are aware and in time, before it is too late to realize that we are being violated a human right that is basically nothing but natural and universal!

“I fear the day when technology surpasses human intellectual capacity. The world will have a generation of idiots.”

(Albert Einstein)

References:

- Constitution of the Republic of Albania
- The Criminal Code of the Republic of Albania, amended
- European Convention of Human Rights
- Budapest Convention “On Cybercrimes”
- Steven M. Rinaldi, James P. Peerenboom, Terrence K. Kelly, Identifying, Understanding and Analyzing Critical Infrastructure Interdependencies, IEEE Control Systems Magazine, December 2001
- Calvo, C. (1885), Le Droit International, 5th ed Paris, (translated from the original in Spanish, Derecho internacional teorico and practico, 1868, Paris)
- Root, E., (1930), The basis of protection of citizens residing abroad, American Journal of International Law, No.24
- Muçollari, O., International human rights, lecture series, Tirana 2014
- EC Directive 95/46 “On the Protection of Personal Data”
- EC Directive 2002/58 on “e-Privacy”
- EC Directive 2006/24 “On Data Storage”
- <https://www.coe.int/sq/web/tirana/-/artificial-intelligence-bridging-the-equality-gap>

RESTORATIVE JUSTICE FOR JUVENILES IN CONFLICT WITH THE LAW

Albjona KAJUSHA¹

Daniela NDOJ²

Restorative justice (friendly justice) is a new approach to criminal justice, sanctioned for the first time in the Juvenile Criminal Code. If we refer to its development and evolution over time, it is considered that restorative justice emerged prior to criminal justice; therefore, we are not dealing with a new method of dispute resolution offered by criminal law, but rather a return to a traditional way of addressing the consequences caused by criminal acts namely, through mediation and other similar forms rather than punishment. Essentially, the restorative justice process aims at the active involvement of all parties affected by the criminal offence: the offender, the victim, and the community. Its main role is the rehabilitation, reintegration, and restoration of stable human relationships, rather than the punishment of the offender. The introduction of this doctrine for the first time in the Juvenile Criminal Justice Code marks progress in protecting minors in conflict with the law, by offering mechanisms that make the rehabilitation and reintegration of the minor psychologically easier and the process of social reintegration faster. The Juvenile Criminal Justice Code, for the first time, provides alternative measures to diversion from criminal prosecution, such as restorative justice and mediation. The increased effectiveness and applicability of these measures has also led to the establishment of new institutions.

Within the framework of these reforms in the justice system for minors, national action plans have been drafted in the context of the European

1. Student in Faculty of Law, University of Tirana email: albjonakajusha@gmail.com

2. Student in Faculty of Law, University of Tirana email: danielandoj44@gmail.com

Union integration process, which aim to increase the effectiveness of the entire legal package dedicated to the protection of the rights of minors.

European Union Legislation on Restorative Justice

The concept of juvenile justice has been developed through a number of international legal instruments, including those adopted by the main EU institutions. These include:

- * The European Rules for juvenile offenders subject to sanctions or measures (European Rules, 2008)
- * The Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice (the Guidelines)
- * Directive (EU) 2016/800 on procedural safeguards for children who are suspects or accused persons in criminal proceedings (the Children's Directive). The Children's Directive sets out common minimum standards on procedural safeguards for children which are binding within the EU, and is designed to ensure the effective protection of the rights of child suspects by giving these safeguards binding force in EU law. It is based on the principles of existing international and European standards, and emphasizes that the safeguards established in the Directive cannot be interpreted at a lower level than those of the ECHR. For lawyers, this means that the ECHR, as well as authoritative guidance provided through various means such as case law, general comments, and soft-law principles, may assist in interpreting the provisions of the Directive and filling any remaining gaps¹. Article 11 of this Directive, under the principle of the best interests of the child, provides the possibility of applying alternative measures as a first approach towards the child in conflict with the law. Directive 2016/800 has been ratified on the basis of Article 116 of the Constitution and has thus become part of domestic legislation, just like the Law on Legal Aid, the Law on Psychological Assistance, the Law on the State Police, and the Law on Pre-University Education. Directive (EU) 2021/29 of the European Parliament defines in Article 2 "any process through which the victim and the offender may actively participate, if they voluntarily

1. Roadmap practitioner tools

agree, in resolving matters arising from the criminal offence, with the assistance of an impartial third party.” This Directive emphasizes the need for adequate protection and information for those who choose to participate in restorative justice processes.

The Directive requires Member States to:

- * Inform victims about the availability of restorative justice services from the first contact with the competent authorities;
- * Ensure protection for victims who choose to participate in such processes, avoiding secondary victimization and guaranteeing their safety;
- * Develop procedures for referring victims to restorative justice services and assessing the suitability of cases for such an approach.

Particular importance is given to minors. Article 24 of the Directive emphasizes the protection of child victims and provides that any process, including restorative justice, must ensure:

- * Protection of the child’s privacy,
- * Voluntary and informed participation,
- * Exclusion from participation where there is a risk of secondary victimization.

European Rules on Restorative Justice in Criminal Matters

The Recommendation encourages the use of restorative justice at all stages of criminal proceedings and for all types of offences, where appropriate. Member States must ensure that restorative processes are safe and supported by trained professionals, avoiding secondary victimization. The Recommendation suggests integrating restorative justice into existing criminal justice systems, considering it a complementary approach to traditional justice.

It highlights the need for training justice professionals and incorporating restorative justice into educational curricula to increase awareness and competence in this field.

Domestic Legislation

The Juvenile Criminal Justice Code contains specific legal rules relating to the criminal responsibility of minors, procedural rules regarding

investigation, prosecution, trial proceedings, the execution of criminal sanctions, the rehabilitation or any other measure involving a minor in conflict with the law, a minor victim and/or witness of a criminal offence, as well as rules for young adults aged 18 to 21.

The Criminal Code in Article 12 provides that: “Criminal responsibility lies with any person who, at the time of the commission of a criminal offence, has reached the age of fourteen. A person who commits a criminal misdemeanor bears responsibility when he/she has reached the age of eighteen.”

With regard to the legal framework, Albanian legislation *de jure* is based on restorative (friendly) justice, guided by the principle of the best interests of the child at all stages of the process in which a minor may be involved. The juvenile justice framework adheres to ratified international instruments and has been developed in accordance with the standards of the UN Convention on the Rights of the Child, those of the EU, and the Council of Europe.

Law No. 37/2017 “Juvenile Criminal Justice Code” guarantees a legal framework for criminal justice for children, promotes the reintegration of children in conflict with the law, the protection of the rights of child victims and/or witnesses of criminal offences, and prevents the re-victimization of a child who has previously been a victim of a criminal offence or secondary victimization caused by participation in justice processes.¹ This law has developed the justice system in protecting the rights of children in general and minors in conflict with the law in particular by placing the child at the center of attention. In this Code, the Albanian legislation has been aligned with Directive 2011/93/EU of 13.12.2011.²

To complement the legal corpus on restorative justice, a series of laws have been adopted by Parliament, such as: ***Law 18/2017 “On the Rights and Protection of the Child,”*** ***Law 111/2017 “On State-Guaranteed Legal Aid.”***

In addition to the legislation in force, institutions, in cooperation with one another, are required to draft action plans, such as intersectoral action strategies.

1. Law No. 37/2017 “Criminal Justice Code for Minors”

2. Directive 2011/93/EU of 13 December 2011, Official Journal No. 335, 17 December 2011, as well as the standards and rules on juvenile justice established at the United Nations and Council of Europe levels.

Intersectoral Strategy on Juvenile Justice

The strategic document “Justice System Reform Strategy”¹ and its Action Plan drafted by the Special Parliamentary Committee on Justice System Reform (2015) had as a strategic objective the reform of the criminal justice system for minors and the improvement of the position of the victim in criminal proceedings. This strategy, which will extend its activity across the years 2022–2026, aims to achieve several competencies, such as ensuring access to criminal justice for minors with the intention of keeping them away from re-offending and victimization, and addressing the problems faced by minors involved in the commission of criminal offences. Among other things, it provides for keeping children outside criminal and judicial proceedings by consolidating alternative measures of diversion from criminal prosecution or judicial processing. The objective of the action plan is clearly the access of every child to a child-friendly justice in civil, family, and administrative proceedings, and its main purpose is undoubtedly the development of policies for the reintegration of minors. In this strategic document, numerous reports have been taken into consideration, such as the recommendations of the European Commission provided through the “Albania 2022 Report,”² the recommendations of the Committee on the Rights of the Child, the EU Strategy on Juvenile Justice, the Council of Europe recommendations on child-friendly justice³, the recommendations of monitoring mechanisms of UN and Council of Europe conventions to which Albania is a party particularly GREVIO-s⁴, GRETA-s⁵, CPT⁶ EU directives on child-friendly justice and victim protection⁷, as well as recommendations of domestic and international partners working with and for children⁸.

1. <https://rm.coe.int/strategjia-ne-refomen-e-sistemit-te-drejtewise/16809eb53a>

2. https://neighbourhood-enlargement.ec.europa.eu/albania-report-2022_en.

3. <https://rm.coe.int/16804b2cf3>.

4. <https://rrjetikunderdhunesgjimore-monitorime.al/2018/01/14/pjese-nga-raportifillestar-i-vleresimit-i-grevio-s/>.

5. <https://rm.coe.int/greta-2020-09-fgr-alb-en/1680a0b84f>.

6. <https://rm.coe.int/168097986b>.

7. <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32012L0029&from=EN>

8. https://ec.europa.eu/info/policies/justice-and-fundamental-rights/rights-child/child-friendly-justice_en

Vision and Mission of the Strategy:

Vision of “ISJJ 2022–2026”: “Ensuring a more child-friendly justice that protects their highest interests.”¹

Mission of “ISJJ 2022–2026”: “All state institutions will work together with civil society, other partners working with and for children, and with members of society to ensure a society that prevents children’s involvement in criminal offences and their victimization, to enable a child-friendly justice system that restores violated rights and responds to the needs of every child, and that contributes to the rehabilitation and reintegration of children in conflict or contact with the law, as well as to social peace and security in our communities.”²

Policy Objectives of ISJJ 2022–2026

“ISJJ 2022–2026” contains four main objectives:

First Objective: Prevention of criminal offences against children and committed by children, through education, information, and awareness-raising of society and children

Second Objective: A legal, institutional framework supported by professionals enabling a child-friendly justice system for every child;

Third Objective: Ensuring continuous access to child-friendly justice for every child;

Fourth Objective: A criminal justice system that enables the prevention of re-offending, resocialization, and reintegration of children in contact/conflict with the law.³

Based on the above, the best interests of the child must be applied and taken into consideration regardless of the crime committed by the minor and despite the difficulties arising during judicial proceedings. Judicial authorities, in proceedings where the defendant is a minor, must examine not only the objective elements of the committed offence but also the circumstances of the event, the child’s life history, the environment in which he/she was raised, and family conditions. In recent years in Albania, cases of

1. https://ec.europa.eu/info/policies/justice-and-fundamental-rights/rights-child/child-friendly-justice_en

2. https://ec.europa.eu/info/policies/justice-and-fundamental-rights/rights-child/child-friendly-justice_en

3. **Intersectoral Strategy on Juvenile Justice**

domestic violence and the abandonment of children have increased; all these are essential factors influencing the development of minors and consequently contribute to the rise of criminality among them. In a study conducted by the School of Magistrates, statistics show that the most frequent offences committed by minors are theft and irregular driving.

But what are the factors that influence minors to commit such criminal offences?

A key problem we address here still lacking a solution is institutional cooperation. The reform in juvenile legislation after 2017 led to the creation of several new institutions and the expansion of the competencies of existing ones in the framework of protecting and rehabilitating minors. Institutions responsible for minors begin from pre-university education, starting with the school safety officer, the school psychologist; then at the local level with the Child Protection Unit within municipalities, which has the function of monitoring and following up minors within the administrative/municipal unit. At the macro level, there are institutions such as the Juvenile and Youth Crime Prevention Centre, the Probation Service, the Child Rights Protection Section within the Ombudsman, and the State Agency for the Rights and Protection of the Child. The Juvenile and Youth Crime Prevention Centre is an institution under the Ministry of Justice, which develops preventive programs and supervises minors for a 6-month period after the completion of their sentence, cooperating with the Probation Service, the Child Protection Unit, and local self-government bodies.

Alternative Measures

Diversion measures are applied in cases where the minor has committed a criminal offence punishable by imprisonment of up to five years or by a fine. Imprisonment and criminal punishment constitute the last resort when every other measure is ineffective and when necessary for the rehabilitation of the minor. The sanction imposed on minors in conflict with the law must be proportionate to their specific characteristics, the concrete criminal offence, and whether or not they are a recidivist. At every stage of the criminal process, the best interests of the child must be taken into consideration. For diversion to be applied, several cumulative conditions must be met. First, the minor must not be a recidivist. The minor

must have admitted the criminal offence in the presence of his or her legal counsel, written consent must be given for the application of diversion, and the procedure must be in accordance with the best interests of the child.

The alternative measures for diversion from criminal prosecution provided in national legislation include:

- Restorative Justice Programmes
- Mediation
- Counselling for the minor and the family
- Verbal warning
- Written warning
- Mandatory measures
- Placement under care

Mediation in the criminal process is an agreement conducted voluntarily by the parties, both by the injured party and by the minor who is the author of the criminal offence. Mediation may be conducted at any stage of the criminal procedure, both during the investigation phase and the trial phase, until before the final decision is issued, since the primary priority is the best interests of the child. The subjects who may request diversion measures are: the prosecutor, the minor in conflict with the law, the victim, their parents, as well as their legal representatives. The court may also, depending on the case, decide *ex officio* the application of diversion measures after obtaining the child's consent.

The Role of the Family in the Rehabilitation of the Minor

For the restorative justice process to be effective, cooperation between the family and the community is essential. When faced with a criminal offence committed by a minor, society instinctively turns to law-enforcement institutions. However, a rational analysis of the situation clearly shows that the first link that must function properly is undoubtedly the family. The family is the primary environment where a child forms their personality, receives the first behavioural models, and learns social norms. It is undoubtedly responsible within our perspective for the path the minor follows thereafter. Likewise, the community plays an equally important role.

The European Union has adopted Directive 2012/29, which also covers minors in conflict with the law and their reintegration process, emphasising the essential role of both family and community.

- Involvement of family and community:

This directive provides a framework to ensure that crime victims, as well as their families, may participate in restorative procedures. It also enables communities to take part in the process, including involvement in repairing harm done to victims.

- Offender responsibility:

The directive also promotes the use of restorative justice practices for minors, including the possibility of engaging in voluntary work such as community service, which is often carried out within the community. At the international level, various reports from the European Union and the United Nations have monitored and evaluated how member states—and others—should implement restorative justice and ensure the involvement of families and communities in this process. The family has a highly significant role in restorative justice because it directly affects both the victim and the offender. More concretely:

1. Emotional support

- * The family helps the victim express themselves and cope with emotional distress during the restorative process.
- * For the minor who may be the offender, the family must provide support so that they accept responsibility and engage in repairing the harm.

2. Encouragement of reconciliation

- * Family members may encourage dialogue, forgiveness, and the rebuilding of a new relationship between the victim and the offender.
- * They often help reduce tensions and create an atmosphere of understanding.

3. Assistance in fulfilling agreements

- * The family may assist the minor in fulfilling the commitments undertaken (e.g., organising community service or supporting financial compensation).
- * They may also help the victim benefit from rehabilitation or recovery programmes.

4. Prevention of reoffending

- * Families play a key role in the reintegration of the minor after the restorative process by helping them avoid risky environments and build positive new habits.
- * Continuous family support helps reduce recidivism.

The community's participation in the restorative process is essential to creating a supportive environment and minimising the stigma against minors who have committed a crime. The community may assist by providing opportunities for education, employment, and other activities that support the minor's rehabilitation and reintegration. Community involvement is a key element of restorative justice. It means that the community is not merely a spectator to crime or conflict, but an active participant in resolving and repairing the harm. Crime, in this context, affects not only the victim and the offender (the minor) but also the broader community creating feelings of insecurity, fear, or social division. The community, through various organisations, may provide support through educational and recreational activities that contribute to an easier reintegration process for minors. The UN Convention on the Rights of the Child, moreover, urges states to provide families and communities with necessary attention and logistical support, as they are the first links in the upbringing and development of an individual. Similarly, the Havana Rules encourage family-community cooperation with institutions where minors serve their sentences, ensuring that the best interests of the child remain paramount.

Conclusions

Albania has made progress in protecting the rights of minors. Besides adopting the relevant legislation, action strategies also have a significant impact on combating juvenile crime. The legislator has created cooperation mechanisms among institutions which, in practice, are not functioning properly. The case of the killing of a minor at "Fan Noli" School highlighted the de facto malfunctioning of state institutions and the weak cooperation among them in fulfilling their responsibilities. Addressing the problem begins with the mechanisms within the school such as the presence of school psychologists and security officers and extends to the Agency for the Protection of Children's Rights at the Ministry of Justice. Diversion measures represent the best opportunity for minors in conflict with the

law to reintegrate into society. These measures must be at the centre of the justice system, prioritising the reintegration of the minor rather than punishment. Addressing this issue requires continuous training for magistrates and other state officials by the School of Magistrates and the Ministry of Justice. Juvenile delinquency is an evolving phenomenon in our country; we cannot expect its complete eradication, but each step taken by any of us may serve as a cornerstone for a stronger society tomorrow.

Bibliography

- Constitution of the Republic of Albania
- Law No. 37/2017, Criminal Justice Code for Juveniles
- Law No. 7895, dated 27.1.1995, Criminal Code of the Republic of Albania
- European Rules for Juvenile Offenders Subject to Sanctions or Measures (European Rules, 2008)
- Guidelines of the Committee of Ministers of the Council of Europe on Child-Friendly Justice
- Directive 2016/800 on procedural safeguards for children who are suspects or accused in criminal proceedings
- Decision No. 892, dated 27.12.2022 “On the Approval of the Intersectoral Justice Strategy for Juveniles 2022–2026”
- European Convention on Human Rights
- Law No. 8678, dated 14.5.2001 “On the Organisation and Functioning of the Ministry of Justice”
- Stabilisation and Association Agreement
- Directive 2021/29 of the European Parliament
- “Restorative Justice in Cases Involving Child Victims in Albania” – Prof. Dr. Marjana Semini-Tutulani, December 2022
- https://admin.magjistratura.edu.al/uploads/Permbledhje_e_Praktikes_Gjyqesore_0ab2649351.pdf
- <http://magjistrat.al/dokumenta/1691586963Alfred-Balla.pdf>
- <https://qpkmr.gov.al/wp-content/uploads/2024/11/NEVOJAT-E-TE-MITURVE-NE-KONFLIKT-ME-LIGJIN.pdf>

EVALUATING THE EFFECTIVENESS OF INTERNATIONAL LEGAL FRAMEWORKS IN COMBATING MONEY LAUNDERING: A CASE STUDY OF WACHOVIA BANK

Kristian Nela¹
Artemis Azizaj²

Abstract

Governments and organizations use international legal frameworks to combat financial crime, which is crucial in safeguarding a nation's economic welfare. Money laundering (ML) encourages illegal activities, impairs investors' trust, and manipulates global financial markets. This thesis evaluates the role of international legal frameworks in combating money laundering by researching the implementation of relevant task forces and organizations, focusing on critically evaluating a case study, namely the Wachovia Bank scandal. This case study provides empirical evidence, which is crucial in determining the limitations of enforcement and compliance with legal frameworks at the international level. Organizations such as the Financial Action Task Force (FATF), United Nations conventions, Basel Committee, World Bank, IMF, and IOSCO are at the frontline of determining the effectiveness of regulating financial institutions, enforcing compliance, and mitigating cross-border financial crimes. Research findings display a gap in the effectiveness of the combative frameworks regarding money laundering, especially in terms of practical implementation and cross-border cooperation. Even though international legal frameworks strengthen legal compliance mechanisms, financial transparency, and regulatory harmonization, disparities in regulatory

1. Student, Faculty of Law, UT, kristinela17@gmail.com

2. Student, Faculty of Law, UT, azizajartemisa@gmail.com

enforcement, institutional capacity, and jurisdictional fragmentation continue to present significant challenges. The research establishes that adjustments are necessary to enforce the law and counter financial crimes more effectively. Strengthening international cooperation, harmonizing regulatory standards, and improving oversight are essential to ensuring financial stability and market integrity. Ultimately, the findings highlight the need for more consistent enforcement mechanisms, increased political will, and better resource allocation to enhance the global response to money laundering and protect the integrity of international financial systems.

Table of Contents

1 Introduction

1.1 Research Objectives and Questions

1.2 Methodological Approach

2 Money Laundering

2.1 Definition

2.2 Impact of Money Laundering

3 International Legal Frameworks

3.1 Financial Action Task Force (FATF)

3.2 United Nations Conventions

3.3 Basel Committee on Banking Supervision

4 Case Study “The Wachovia Bank”

4.1 Background and Context

4.2 Money Laundering Operation

4.3 Legal and Regulatory Acts

4.4 Public and Financial Impact

5 Synthesis of General Frameworks and Wachovia Case

6 Conclusion

6.1 Limitations

6.2 Suggestions for future research

7 References

List of Abbreviations

ML	Money Laundering
AML	Anti Money Laundering
FATF	Financial Action Task Force
DPA	Deferred Prosecution Agreement
CDD	Customer Due Diligence
USA	United States of America
BSA	Bank Secrecy Act
CDC	Casa de Cambio
IMF	International Monetary Funds

1. Introduction

1.1 Research Objectives and Questions

Financial crimes are illegal financial activities that damage financial markets, leading to damaging countries' financial well-being (Mugarura, 2011, p. 174). A financial crime that is recognized as a major global trend is money laundering. This illicit activity harms the economic stability of a country, especially in the investment and financial aspects, harming monetary markets (Jacko Law Group, 2013).

Despite many initiatives and research, there is a huge gap in research as to how effective the influence of those legal frameworks is and the specific classifications of cases that define monetary laundering (Mugarura, 2011, p. 174).

International legal frameworks have major functions in combating money laundering. These frameworks must be analyzed to answer the research question: "To what extent did international legal frameworks fail to prevent Wachovia Bank's involvement in money laundering, and how can these frameworks be strengthened?"

1.2 Methodological Approach

To answer this research question, peer-reviewed literature research is necessary, as well as a deep literature review of journals, articles, and papers. Legal terms related to legal frameworks and money laundering are used. Quantitative data, a chart, and a case study of the Wachovia Bank are used to assess the effectiveness of international legal frameworks.

The seminar paper is based on the Wachovia Bank scandal. This case allows for a critical analysis of the effectiveness of international legal frameworks in combating money laundering. Incorporating a section for money laundering and international legal frameworks enables comprehensive analysis and an all-encompassing paper.

2. Money Laundering

2.1 Definition

Money Laundering is the process of unlawful hiding of the origin of the money won by illegal activities such as drug trafficking or corruption and then turning this money into legitimate money. It is an operation that organized crime emphasized (Levi, 2015, p. 276).

Money laundering involves three stages: placement, layering, and integration (United Nations Office on Drugs and Crime, n.d.). Collaborating a simple example, demonstrating that this financial crime varies from large to small criminal activity can lead to an easier comprehension of the term. If a drug dealer obtained a sum of 10 euros in a day and put this money that was won from this illicit activity in a bank, this activity would be considered money laundering even without an intent to clean or hide this amount (Levi, 2015, p. 283).

2.2 Impact of Money Laundering

Statistics made public by the United Nations Office on Drug Crime show that funds acquired and laundered from drug dealing and organized crime in 2009 included 3.6% of the global GDP, where 2.7 percent of those illicit funds totaling 1.6 trillion US dollars. In the future, the acquired funds from such crimes could account for a total average of 9% of the global GDP (UNODC, 2011, p. 164). Uncertainty exists about these numbers and about the total money laundering cases, which are carried out through various techniques and ways. The exact real percentage of money laundering is unknown due to the simple fact that there is no knowledge of white-collar criminals and simply criminals that have trespassed the law, if there are any (Levi, 2015, p. 282).

3. International Legal Frameworks

The international legal framework is the regime of norms, laws, and

organizations that prevent such illicit behaviors, rules, and institutions that altogether have the important role of combating money laundering (Alexander, 2001, p. 231). Due to drug trafficking, international efforts to combat financial crimes, especially money laundering, strengthened in the 1980s (Mugarura, 2011, p. 175).

Even though multiple organizations are aiming to combat money laundering, inconsistent enforcement across jurisdictions remains a challenge. This will be reflected in the case study and in the further explanation of compliance frameworks.

3.1 Financial Action Task Force (FATF)

The Financial Action Task Force was initiated in 1989 in the city of Paris. It includes 31 countries that are members, two regional organizations, and 18 observers, which include the IMF and the World Bank. FATF must not be mistaken as a treaty organization; it is a voluntary task force. This task force introduced 40 recommendations as its guideline framework to combat money laundering. (FATF, 2012–2023, p. 7). The recommendations address emerging threats and emphasize the importance of customer due diligence (CDD) and reporting suspicious transactions (Mugarura, 2011, p. 181).

The FATF conducts mutual evaluations to assess members' compliance with the recommendations. However, enforcement remains voluntary. This voluntary compliance limits its effectiveness, especially when countries have differing political or economic interests (Mugarura, 2011, p. 183).

3.2 United Nations Conventions

The United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (Vienna Convention, 1988) marked a significant step in addressing money laundering linked to drug trafficking. One of the main instruments that was established and would reach domestic laws was confiscation. (Alexander, 2001, p. 235).

The Vienna Convention required member states to criminalize money laundering activities and implement mechanisms for international collaboration. However, enforcement often varies due to differences in national legal systems and political priorities, causing gaps in global

AML enforcement (Alexander, 2001, p. 236).

3.3 Basel Committee on Banking Supervision

Basel Committee and Banking Supervision (BCBS) is a transitional institution that has developed standards and regulatory guidelines to enforce the stability and security of global financial systems. It focuses on “enhancing understanding of key supervisory issues and improving the quality of banking supervision worldwide” (Young, 2011, p. 39).

The committee has put in place standards to help banks and authorities monitor and identify weaknesses in risk-managing systems and to prevent financial crimes. However, like the FATF, the Basel Committee lacks enforcement power, relying on national regulators to implement its guidelines, leading to inconsistent global application (Young, 2011, p. 41).

4. Case Study “The Wachovia Bank”

The case of Wachovia Bank is one of the main examples of challenges in regard to the law enforcement of Anti-money laundering (AML). In 2010, Wachovia Bank was one of the biggest banks in the United States of America (USA) due to its transaction sizes, investments, wide reach of customers, and operations.

4.1 Background and Context

In the late 1990s and the beginning of the 2000s, the CDC included an important component, that of the funds flow from the USA to Latin America. CDC allows immigrants to send money to their families between countries. However, it caught the attention of criminal organizations to use this channel to hide the origin of the illicit funds from drug trafficking (Lawlor-Forsyth & Gallant, 2018, p. 140).

Even though some banks in America stopped the relationship with CDCs, Wachovia Bank chose to continue and even expand its operations in this risky market. The investigations found that between the years 1996 and 2004, Wachovia Bank had moved more than \$420 billion in financial transactions with CDC without any effective system to identify or report suspicious activities (Lawlor-Forsyth & Gallant, 2018, p. 140).

4.2 Money Laundering Operation

The money laundering through Wachovia was done mainly through three key services that were offered by the bank (Lawlor-Forsyth & Gallant, 2018):

1. Money Transporting: This service allowed the CDC to transport huge amounts of money, which originated by tracking activities in the USA, to be deposited in America's banks. This secured the way to integrate illicit funds into financial systems (p. 142).
2. Package Deposit Service: The other instrument included CDCs sending checks to the USA to deposit, complicating the origin tracking of illicit funds (p. 142).
3. Deposits in Distance: This service allowed cities to deposit funds from a distance, bypassing traditional verification procedures (p. 142).

Wachovia's behavior to continue these services, regardless of the visible risks, shows a huge focus on financial winnings, setting aside the will to bind to regulatory laws.

4.3 Legal and Regulatory Acts

In March 2010, the bank was struggling with accusations of negligent failure to obey the effective program AML. To avoid prosecution, Wachovia Bank entered into a Deferred Prosecution Agreement with the US authorities. The agreement included (Lawlor-Forsyth & Gallant, 2018):

- Payment of a huge fine of 160 million dollars (p.142).
- Acceptance of negligence (p.142).
- Putting effort to comply with Anti-Money Laundering regulations (p.142).

4.4 Public and Financial Impact

Even though the implied fines were considerate, the long-term impact on Wachovia and the following leader of the bank, Wells Fargo, was limited.

Some financial indicators imply and emphasize the banks' resistance (Lawlor-Forsyth & Gallant, 2018):

- **Revenue:** Total revenue fell slightly from 88.7 billion dollars from the year 2009 to 85.2 billion dollars in the year 2010 (p.142).
- **Net Profit:** Regardless of the punishments, the net profit of Wells Fargo increased from 12.27 billion dollars in 2009 to 12.36 billion dollars in 2010 (p.142).
- **Capital and Deposits:** The total capital value increased from 114.36 billion dollars in 2009 to 127.9 billion dollars in 2010. Base deposits also increased from \$780.7 billion to \$798.2 billion (p.142).

Figure 1. Financial impact of wachovia bank

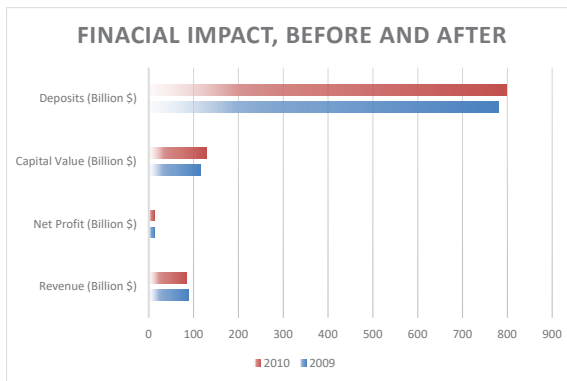


Figure 1. The financial impact on the wachovia bank after the bank entered into a dpa and wells fargo, the successor, took over the bank. (Lawlor-forsyth & gallant, 2018, p. 142).

5. Synthesis of General Frameworks and Wachovia Case

The case of Wachovia Bank is an example of challenges and weaknesses inside the Anti-Money Laundering frameworks. Even though the Bank Secrecy Act (BSA) exists, aiming to ensure that financial institutions report suspicious transactions and to enforce compliance programs, the bank did not adhere to the standards, allowing money laundering on a massive scale. Between the years 1996 and 2004, more than 420 billion dollars passed through the bank from the partnerships with the “Casa de Cambio” in Mexico.

Entering a Deferred Prosecution Agreement (DPA) with the US

authorities to avoid full criminal prosecution, raised questions regarding such an agreement's effectiveness as a prevention tool. Large, profitable financial institutions usually view fines as operational costs with a minimal impact on the profits or their reputation (Lawlor-Forsyth & Gallant, 2018, p. 142).

The void of individual obligations and negligence, emphasizes these systems' ineffectiveness in shifting personal obligation. There is a need for cooperation between regulators and financial institutions in addressing emerging threats and closing existing loopholes. There is a need for proactive risk management from financial institutions, through the performance of thorough due diligence, effective screening technologies, and implementation of a culture of compliance at all levels of organizations. (Lawlor-Forsyth & Gallant, 2018, p. 142).

Additionally, this case illustrates the ineffectiveness of legal frameworks and organizations by allowing the biggest US bank to continue laundering money for a long time and not preventing other parties from carrying out the same activity.

6. Conclusion

The Wachovia Bank case highlights the need for a multi-level approach to the enforcement of AML. Enforcing international collaboration, as recommended by the FATF, is crucial to getting to grips with the international risk of money laundering. Moreover, frameworks should emphasize and enhance prevention measures, such as monitoring transactions in real time and advanced analysis of data. These measures would make possible the prevention and discovery of suspicious activities. (Lawlor-Forsyth & Gallant, 2018, p. 141).

The Wachovia case serves as a warning, highlighting the weaknesses of systems regarding AML. It illustrates the need for all-encompassing measures, including improved supervisory regulators, international collaboration, and accountability mechanisms, to ensure that financial institutions adhere effectively to their obligations in the fight against financial crimes.

6.1 Limitations

This study focuses only on one case study. This limits the ability to generalize the effectiveness of international legal frameworks. Additionally,

this seminar paper draws conclusions and information from secondary research, which can avoid the general internal principles of the Wachovia bank.

6.2 *Suggestions for future research*

- **The effectiveness of Deferred Prosecution Agreement (DPA):** An evaluation of these agreements would be beneficial. The analysis must incorporate the effectiveness of these agreements in preventing money laundering and the function of DPA, whether it functions only as a financial fining agreement without any further reforms.
- **Comparative Analysis of AML Framework:** Research on how different countries adopt AML legal frameworks could emphasize an effective comparative analysis.
- **Role of Technology:** An analysis of technological advancements such as Artificial Intelligence (AI) and blockchain should be incorporated. It should be done to research the effectiveness of these technologies in monitoring transactions and discovering illicit activities in real-time.

7. References

- Alexander, K. (2001). The international anti-money-laundering regime: The role of the Financial Action Task Force. *Journal of Money Laundering Control*, 4(3), 231-248. <https://doi.org/10.1108/eb027276>
- Financial Action Task Force (FATF). (2012–2023). *International standards on combating money laundering and the financing of terrorism & proliferation*. FATF. <https://www.fatf-gafi.org/en/publications/Fatfrecommendations/Fatf-recommendations.html>
- Jacko Law Group, PC. (2013, August 31). Anti-money laundering regulations on the horizon for investment advisers. *Jacko Law Group*. <https://www.jackolg.com/anti-money-laundering-regulations-on-the-horizon-for-investment-advisers/>
- Lawlor-Forsyth, E., & Gallant, M. M. (2018). Financial institutions and money laundering: A threatening relationship? *Journal of Banking*

- Regulation*, 19, 131–148. <https://doi.org/10.1057/s41261-017-0041-4>
- Levi, M. (2015). Money for crime and money from crime: Financing crime and laundering crime proceeds. *European Journal of Criminal Policy Research*, 21, 275–297. <https://doi.org/10.1007/s10610-015-9269-7>
- Mugarura, N. (2011). The institutional framework against money laundering and its underlying predicate crimes. *Journal of Financial Regulation and Compliance*, 19(2), 174–194. <https://doi.org/10.1108/13581981111123870>
- Papadopoulos, T. (2015). *International Organization of Securities Commissions (IOSCO)*. In R. Wolfrum (Ed.), *Max Planck Encyclopedia of Public International Law*. Oxford University Press. Available at SSRN: <https://ssrn.com/abstract=2638622>
- United Nations Office on Drugs and Crime (UNODC). (2011). *Estimating illicit financial flows resulting from drug trafficking and other transnational organized crimes*. https://www.unodc.org/documents/data-and-analysis/Studies/Illicit-financial-flows_31Aug11.pdf
- United Nations Office on Drugs and Crime. (n.d.). *Money laundering: Overview*. Retrieved December 9, 2024, from <https://www.unodc.org/unodc/en/money-laundering/overview.html>
- Young, K. (2011). The Basel Committee on Banking Supervision. In T. Hale & D. Held (Eds.), *Handbook of Transnational Governance* (pp. 39-42). https://books.google.at/books?hl=en&lr=&id=SkOq6n83BMcC&oi=fnd&pg=PA39&ots=1faG0kr5m8&sig=wT_-vdyvivCJrT1FbJWwt7zfzO8&redir_esc=y#v=onepage&q&f=false

CYBERCRIME- THE ROLE OF NATIONAL AND INTERNATIONAL LEGAL MECHANISMS IN ADDRESSING DIGITAL THREATS

Msc. (Lusi) Dhurata Saraçi

Abstract

Cybercrime represents a current challenge for legal systems and security institutions, significantly impacting the rights of individuals, the stability of commercial entities, and the integrity of public institutions.

Victims of these crimes face complex consequences, including damage of their economic rights, violation of privacy, psychological consequences, and numerous difficulties in accessing justice and protective mechanisms. Despite progress in regulatory frameworks and preventive policies, there are still shortcomings in the efficiency of legal systems to adequately respond to this phenomenon. This paper aims to thoroughly analyze the concept of cybercrime victims, examining the different categories of affected subjects, the nature of the consequences they experience and the legal challenges they face in seeking justice.

The analysis includes a combined normative and comparative approach, reviewing national and international legislation, as well as the most effective practices in protecting the victims of these crimes. In the context of protective mechanisms, the study emphasizes the importance of strengthening the normative and institutional framework, promoting preventive measures, and enhancing the capacities of responsible bodies to deal with this category of crime in a specialized manner. At the same time, it highlights the need for greater harmonization of international policies and improving cooperation between states, ensuring a unified and effective approach to victim protection.

Through the conclusions reached based on the conducted study, the aim is to contribute to the academic and political debate on the protection

of cybercrime victims, offering recommendations based on empirical and regulatory analyses to strengthen public policies and relevant legislation. The recognition and effective implementation of legal procedures and mechanisms is crucial to ensuring effective protection of individuals' fundamental rights and freedoms in the digital age.

Keywords: *digitalization, platform, network, attack, cybercrime, victims, privacy, protection, security, prevention.*

I. Introduction

In the digitalization era, the use of information and communication technology has improved and revolutionized every aspect of life, bringing great benefits but also new challenges in the field of security.

We live in a globalized world, and as a result, the development of the internet constitutes one of the main pillars of national economies, driving innovation and competition among state policies worldwide. With its wide range of activities, the internet is gaining significant ground in developmental progress. However, the creation of unlimited freedom online has also opened the door to abuses and malicious activities targeting users. In this regard, government institutions play a key role in monitoring such activities. These authorities, through their policies and guidelines, define not only the citizen's space on the internet but also the security of cyberspace. Today, the administration and provision of public services rely heavily on the integrity of cyberspace, its infrastructure, and the data that support it.¹

From an objective standpoint, cybercrime encompasses a wide range of criminal acts committed through digital networks, such as cyberattacks, data theft, electronic fraud, and the distribution of malware. These criminal activities have numerous consequences for victims, who often face financial, psychological, and social harm—each requiring appropriate protection according to the specific nature of the damage.

The transnational nature and sophistication of cybercrimes make prosecution and the delivery of justice to victims increasingly difficult, creating a gap between technological advancement and the ability of

1. Ligeja K., "Cyber Threats, Their Impact and Distribution in State Institutions in Albania", 3rd International Scientific Conference, Volume II, Policing and Security, Computer Crime, Cyber Threats and National Security, Tirana 2018, p. 37.

institutions to respond effectively. As a result, victims frequently encounter significant challenges in reporting incidents and obtaining the necessary support, while paradoxically facing consequences of an even greater magnitude.

Cybercrime is an extremely profitable, borderless crime. Cyber threat actors generate billions of dollars in revenue each year, making cybercrimes one of the most lucrative criminal enterprises. It can also leave behind devastating consequences related to lost time, services, opportunities and reputation.

Not all cyberattacks are aimed at stealing money. Sometimes cybercriminals conduct cyberattacks to disable, disrupt or control computer systems, or to change, delete or steal data. Their motivation can range from petty theft to acts of war or terrorism.¹

Based on the above-mentioned need for more engaged attention, this paper aims to thoroughly examine the impacts of cybercrime on victims, emphasizing the necessity for a new and more effective approach to protecting users' rights in an increasingly interconnected digital environment.

II. Typologies of cybercrime

Modern technology and the widespread use of the internet have facilitated the commission of these crimes, creating a more supportive environment for their rapid spread, especially recently, on virtual platforms where, overall, the entire era operates.

While the term 'cybercrime' is not amenable to a single description, the question arises whether cybercrime objectives, features, or modus operandi can be identified in general terms, rather than (or in addition to) by reference to a list of individual cybercrime acts. As noted above, one example of this approach is found in the Commonwealth of Independent States Agreement, which describes an 'offence relating to computer information' as a 'criminal act of which the target is computer information.' The Shanghai Cooperation Organization Agreement (more broadly) describes 'information offences' as 'the use of information resources and (or) the impact on them in the informational sphere for illegal purposes.' The Council of Europe Cybercrime Convention – although not by way of defined

1. U.S Immigration and Customs Enforcement, *Cybercrime*, February 2025, <https://www.ice.gov/about-ice/hsi/investigate/cybercrime>

terms – uses broad criminalization headings, including ‘offences against the confidentiality, integrity and availability of computer data and systems,’ ‘computer-related offences’ and ‘content-related offences.’ The Draft African Union Convention similarly uses criminalization chapter headings that make a distinction between ‘offences specific to information and communication technologies’ and ‘adapting certain offences to information and communication technologies.’¹

Cybercrime takes various forms and serves multiple purposes; it can range from relatively simple to highly complex incidents, with consequences that may be either localized or widespread. However, outlined below are a number of the most common cybercrimes.

Phishing: This type of crime involves the perpetrators sending malicious email attachments or links to an individual in order to gain access to their accounts or computer.

Malware: Malware, simply put, is malicious software that ‘infects’ systems and individual devices which either damage or gain access to computers or networks with criminal intent.

Ransomware: It is a form of malware employed by criminals, which usually takes control of a system or network, preventing users from accessing their records.

Social engineering: This is the act of deceiving or manipulating individuals into providing confidential or personal information that is subsequently used to carry out a fraudulent activity.²

As we have seen, in practice several offences often occur simultaneously. For example, it is possible to commit fraud after the financial personal data has been taken over by computer hacking and installing malware. It is even possible that the computers of multiple victims are controlled via a botnet and that those involved work together in a criminal partnership. The money earned can then be laundered using bitcoins.³

1. United Nations Office on Drugs and Crime, “*Comprehensive Study on Cybercrime*”, United Nations, Vienna 2013, p. 14-15.

2. Murphy C., “*Understanding cybercrime*”, European Parliamentary Research Service, March 2024, p. 4-5.
[https://www.europarl.europa.eu/RegData/etudes/BRIE/2024/760356/EPRS_BRI\(2024\)760356_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/BRIE/2024/760356/EPRS_BRI(2024)760356_EN.pdf)

3. Oerlemans J.& Wagen W., “Types of cybercrime and their criminalisation”, 2022, p. 93.

III. Protection of the “victim” of cybercrime under national and international legislation”

Victims of cybercrime include entities (individuals, private and public legal persons) whose rights or legitimate interests are violated as a result of unlawful actions or omissions carried out through computer systems, electronic networks, or other forms of digital infrastructure. The criminal nature of the ‘activity’ emerges when it involves the violation of personal data, breaches of privacy, identity theft, unauthorized access to computer systems, or any other form of illegal use of technology with the purpose of gaining unjust benefits in violation of legal norms.

The concept of the victim is defined in several international documents and instruments, among which the United Nations Declaration on the Basic Principles of Justice for Victims of Crime and Abuse of Power defines victims as: persons who, individually or collectively, have suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that are in violation of criminal laws’.¹ According to this Declaration, the following are considered victims:

- a) persons who, individually or collectively, have suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that are in violation of criminal laws operative within Member States, including those laws proscribing criminal abuse of power;
- b) A person may be considered a victim, regardless of whether the perpetrator is identified, apprehended, prosecuted or convicted and regardless of the familial relationship between the perpetrator and the victim;
- c) The meaning of the term ‘victim’, according to this Declaration, in certain cases also includes the victim’s relatives—whether family members or close relations—who lived with the victim or were dependent on them;
- d) The term “victim” also includes, where appropriate, the immediate family or dependants of the direct victim and persons who have

1. Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, 29 November 1985

suffered harm in intervening to assist victims in distress or to prevent victimization.

According to the EU Directive 2012/29/EU of the Council of Europe, a victim shall be defined as: a natural person who has suffered harm, including physical, mental or emotional harm or economic loss which was directly caused by a criminal offence ... family members of a person whose death was directly caused by a criminal offence and who have suffered harm as a result of that person's death."¹ With regard to the instruments that guarantee and protect the status of victims, Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012, establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA, provides legal support and protection for victims affected by any form of unlawful attack.²

IV. Characteristics of Cybercrime Victims

- **Group of victims (individuals, private legal entities, state authorities, etc.)**

With regard to the various categories of cybercrime victims, they encompass a wide range of individuals and organizations, each group displaying its own specific characteristics and protection needs.

The most directly affected and vulnerable subjects remain individuals. This category includes ordinary individuals who may fall victim to cybercrimes such as identity theft (phishing), misuse of personal data, or the use of malware to steal private information, among others.

Victims are often innocent internet users who are unaware of the risks associated with online activities.

The Albanian Criminal Code provides specific provisions related to cybercrime, one of which is Article 186/a. From the interpretation of paragraph 1 of Article 186/a of the Criminal Code³, it results that the

1. EU Directive 2012/29/EU of the Council of Europe,

2. Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA

3. Article 186/a of the Criminal Code of the Republic of Albania: *"The unauthorized insertion, alteration, deletion, or suppression of computer data for the purpose of creating false data, with the intent of presenting and using them as authentic—regardless*

legislator has foreseen a special legal protection for an important legal relationship—namely, the one established by the state to ensure the normal functioning of electronic activity, electronic data (accounts, websites, etc.), and the regularity of the use of such data. Violation of this legal relationship by citizens, regardless of the motives, constitutes a crime and leads to criminal liability.¹

In relation to more complexly affected parties who suffer more significant financial damages, it is important to highlight private legal entities (e.g., businesses and enterprises), which, although they continuously invest in securing the computer systems they operate with, remain the primary target of attackers in any scenario, as the potential gains from accessing internal business data remain high.

The spread and use of the internet have not been accompanied by sufficient legal mechanisms to protect against cybercrime. As a result, individuals and institutions (both public and private) are at risk and insufficiently protected from this type of crime. Piracy occurs entirely under conditions of anonymity, which greatly complicates the investigative work of the competent authorities.²

Thirdly, due to their more authoritative position as holders and executors of state power, we refer to public legal entities such as government institutions and any entity associated with the functioning of the state. Attacks on public institutions may include surveillance of sensitive state information, assaults on critical infrastructures such as personal, tax, judicial, and health data, or even attempts to manipulate the election voting process. As one of the most surprising and well-structured attacks in Albania, we can mention the 2022 scandal involving the online publication of salaries and vehicle license plate data.

At the time the cyberattack occurred, Albania was transitioning to a fully electronic model of governance, offering public services exclusively online through computerized information systems. If we briefly refer to the cyberattacks carried out in Albania over a period of nearly two years,

of whether the created data is directly readable or understandable—shall be punishable by imprisonment from six months to six years. When this offense is committed by a person responsible for the protection and administration of computer data, in collaboration, more than once, or if it causes serious consequences to the public interest, it shall be punishable by imprisonment from three to ten years.”

1. Decision No. 2488, dated 27.09.2021, Tirana Judicial District Court

2. Poda, Z., “*Transnational Organized Crime*”, Morava Publishing House, Tirana, p. 85.

it becomes evident that, in most cases, the primary victims have been citizens—whether holding public positions or ordinary individuals—who are users of public and non-public services.¹

V. Consequences for Victims of Cybercrime

The impact of cybercrime manifests in specific forms depending on the passive subject to whom the effects of the actions are directed. Physical individuals, due to the nature they represent, tend to be impacted not only by the legal aspect but, more deeply and sensitively, by the emotional one, which is harder to recover from, as a result of the distribution, distortion, publication, interference, or transformation of their personal information, which is now in the hands of the active subject initiating the offense. Depending on the content of the compromised data, the degree of impact and the overall response of the affected individuals increases, especially if the exposed information ‘activates’ the public’s attention, placing them under social targeting or stigmatization.

Regarding the damage suffered by private and public legal entities, the consequences mainly focus on the financial aspect if the purpose of the incident is the economic enrichment of the perpetrator. In another scenario, it may involve a ‘reputational attack’ aimed at disrupting the competitive balance between the dominant market players.

When examining the characteristics of cybercrime, and especially its consequences, it is clear that it differs from all other forms of criminal activity in terms of the scale of risk relative to the targeted goods. This observation becomes even more apparent when it is understood that many criminal activities aided by the influence of cybercrime become even more dangerous and damaging.²

Policymakers need to know the cost of cybercrime, even approximately, so that they can more efficiently allocate priorities, but cybercrime has not only financial costs, it also has social impacts. Cybercrime impacts individuals who experience stress from trying to recover from victimisation and anxiety from the prospect of being victimised again. Cybercrime

1. Institute for Activism and Social Change, “*Cybersecurity and Multi-Stakeholder Responses to Cyber Threats and Cyber Terrorism: Summary of Practices and Legislation*”, Tirana, 2024, p. 18.

2. Musa, A., “*Investigation of Computer Crime as a Form of Organized Crime*”, University for Business and Technology in Kosovo, Kosovo, 2019, p. 30.

impacts communities who experience a loss of trust in online encounters. Stress, anxiety, fearfulness, a loss of trust are difficult to measure in quantitative terms, but they are real and impactful nevertheless. For this, we propose a socio-economic impact assessment of cybercrime that identifies and assesses the impacts of cybercrime beyond those that can be measured financially or economically.¹

VI. Cybercrime Prevention - National and International Mechanisms

In 2010, Europol together with the European Commission and the EU Member States established the European Union Cybercrime Task Force (EUCTF), a trust based network whose role is to identify, discuss and prioritize the key challenges and actions in the fight against cybercrime.²

With the development of technology and the widespread use of the internet, the risks of cyberattacks have significantly increased, affecting individuals, businesses, and public institutions.

The Court acknowledges that, within the challenges involved in policing modern societies, a positive obligation should be interpreted in a way that does not impose an impossible or disproportionate burden on the authorities, or, as in this case, on the legislature. Another consideration is the need to ensure that the powers of control, prevention, and investigation of crime are exercised in a manner that fully respects the fair process and other guarantees that impose legitimate limitations on crime and bring the perpetrators to justice.³

Crimes involving electronic evidence pose unique challenges for international cooperation. Owing to the volatile nature of electronic evidence, international cooperation to combat cybercrime requires a timely response and the ability to request specialized investigative actions, including the preservation and production of data by private sector providers. Response times for mutual legal assistance requests involving the investigation of cybercrime may often fall outside service providers' data retention periods or may enable perpetrators to permanently destroy

1. Wright D., & Kumar R., *"Assessing the socio-economic impacts of cybercrime"*, Trilateral Research, United Kingdom 2023, p. 1.

2. European Cybercrime Center, *"Combating crime in a digital age"*, EUROPOL, 2023.

3. European Court of Human Rights Decision, *"K.U. v. Finland"*, December 2008, paragraph no. 48.

key digital evidence.¹

As societies are transformed by information and communication technology, ICT security has become a priority in the policies of many governments. This is reflected in the adoption of cybersecurity strategies, with a primary focus on protecting critical information infrastructure. However, governments also have a positive obligation to protect individuals and their rights against computer crime and to bring the perpetrators of crimes to justice. The relevant authorities should consider the following measures: to adopt policies or strategies on computer crime, with the objective of ensuring an effective criminal justice response to and through computers, as well as to any criminal act involving electronic evidence, to consider as elements of these policies or strategies, preventive measures, legislation, specialized law enforcement units, prosecution services, inter-agency cooperation, law enforcement training and judicial training, cooperation between the public and private sectors, effective international cooperation, criminal investigations, and the prevention of fraud and money laundering, and the protection of children against sexual violence. To ensure that human rights and the rule of law requirements are fulfilled during the process of taking measures against computer crime.²

As part of the European integration process, Albania has consistently undertaken a series of reforms in the cyber field, ranging from the adoption of specific laws to the establishment of authorities responsible for monitoring and overseeing information infrastructure. One of the concrete commitments has been the adoption of Law No. 25/2024 “On Cybersecurity”, as well as the creation of the respective structure in support of the law’s provisions, the National Authority for Cybersecurity.³ Since 2002, Albania has ratified the Budapest Convention in the field of cybersecurity, aiming to protect society from cybercrime, among other things, by adopting appropriate legislation and encouraging international cooperation. The current convention is necessary to curb actions directed

1. Chrysikos D., “*International legal frameworks for combating cybercrime: the UNODC perspective*”, United Nations Office on Drugs and Crime, Washington D.C. 2016, p. 12.

2. CyberCrime@IPA, “*Strategic Priorities in Cooperation against Cybercrime*”, EU/CoE Joint Project for Regional Cooperation against Cybercrime, Croatia 2013, p. 5.

3. Article 6 of Law No. 25/2024 “On Cybersecurity”: *1. The Authority is the institution responsible for the development and monitoring of the implementation of the National Cybersecurity Strategy, which coordinates its work with other institutions responsible for cybersecurity.*

against the confidentiality, integrity, and availability of computer systems, networks, and data, as well as the misuse of these systems, networks, and data, ensuring that such activities are criminalized.¹

VII. Conclusions

In conclusion, it can be emphasized that cybercrime is in continuous evolution, posing a serious and increasingly sophisticated threat to individuals, organizations, and states, becoming a global phenomenon with both direct and indirect impacts on societal security and well-being. Through the exploitation of elements involved in committing this crime, the advancement of technology is used to carry out illegal actions that often lead to difficulties in identifying and stopping them, complicating the prosecution of the perpetrators and the delivery of deserved punishment.

The victims of cybercrime face consequences that manifest in multiple dimensions, extending beyond financial losses to also include psychological harm. Legal entities in the form of organizations and businesses are similarly exposed to the loss of consumer trust, reputational damage, and disruption of market competition dynamics, including sanctions for failing to take the necessary measures to protect personal data. This situation impacts the growing demand for improvements in cybersecurity legislation and the creation of a safer environment for all societal actors.

The consequences that victims face are often difficult to address, as the opportunities to track and punish perpetrators are limited by technological barriers, lack of investigative infrastructure, and insufficient professional knowledge of cyber platform concepts. Despite numerous efforts to unify an international legal framework, cybercrime remains a challenge for law enforcement authorities, as national borders do not align with the global nature in which this crime takes place.

In the effort to prevent and combat cybercrime, it remains essential to implement consistent and effective measures that are well-planned. Educating citizens and raising awareness about the risks associated with the use of the internet and other technologies for best security practices is an important step, as many victims often find themselves unprepared

1. Law No. 8888, dated April 25, 2002, “On the Ratification of the ‘Convention on Cybercrime,’ the Budapest Convention.”

to identify and avoid cyber threats. Legislation should create flexible spaces to continuously reflect technological developments and support processes for prosecuting and punishing the perpetrators of these crimes, while ensuring the protection of the rights of individuals and organizations engaging in public activities.

In conclusion, the fight against cybercrime presents a complex and ongoing commitment that requires close cooperation, improvement of legislation, investment in security technology, and dedicated education, effectively combating this growing and unstoppable phenomenon.

Bibliography

- Ligeja K., *“Cyber Threats, Their Impact and Distribution in State Institutions in Albania”*, 3rd International Scientific Conference, Volume II, Policing and Security, Computer Crime, Cyber Threats and National Security, Tirana 2018.
- U.S Immigration and Customs Enforcement, *Cybercrime*, February 2025,
<https://www.ice.gov/about-ice/hsi/investigate/cybercrime>
- United Nations Office on Drugs and Crime, *“Comprehensive Study on Cybercrime”*, United Nations, Vienna 2013.
- Murphy C., *“Understanding cybercrime”*, European Parliamentary Research Service, March 2024.
[https://www.europarl.europa.eu/RegData/etudes/BRIE/2024/760356/EPRS_BRI\(2024\)760356_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/BRIE/2024/760356/EPRS_BRI(2024)760356_EN.pdf)
- Oerlemans J.& Wagen W., *“Types of cybercrime and their criminalisation”*, 2022.
- Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, 29 November 1985.
- EU Directive 2012/29/EU of the Council of Europe.
- Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA.
- Criminal Code of the Republic of Albania.
- Decision No. 2488, dated 27.09.2021, Tirana Judicial District Court.

- Poda, Z., *“Transnational Organized Crime”*, Morava Publishing House, Tirana.
- Institute for Activism and Social Change, *“Cybersecurity and Multi-Stakeholder Responses to Cyber Threats and Cyber Terrorism: Summary of Practices and Legislation”*, Tirana, 2024.
- Musa, A., *“Investigation of Computer Crime as a Form of Organized Crime”*, University for Business and Technology in Kosovo, Kosovo, 2019.
- Wright D., & Kumar R., *“Assessing the socio-economic impacts of cybercrime”*, Trilateral Research, United Kingdom 2023.
- European Cybercrime Center, *“Combating crime in a digital age”*, EUROPOL, 2023.
- European Court of Human Rights Decision, *“K.U. v. Finland”*, December 2008.
- Chrysikos D., *“International legal frameworks for combating cybercrime: the UNODC perspective”*, United Nations Office on Drugs and Crime, Washington D.C. 2016.
- CyberCrime@IPA, *“Strategic Priorities in Cooperation against Cybercrime”*, EU/CoE Joint Project for Regional Cooperation against Cybercrime, Croatia 2013.
- Law No. 25/2024 *“On Cybersecurity”*.
- Law No. 8888, dated April 25, 2002, *“On the Ratification of the ‘Convention on Cybercrime,’ the Budapest Convention.”*

LEGAL REGULATION OF MASS TOURISM: CASE STUDY ON BALANCING ECONOMIC BENEFITS, SUSTAINABLE GROWTH AND THE PRESERVATION OF LOCAL CULTURE AND HERITAGE

Jean-Christophe Gay, PhD¹
Katarina Bjelić, MA²

Abstract

This paper examines the phenomenon of tourismophobia, understood as a sociocultural reaction to excessive tourism, and analyses the legal responses across different jurisdictions. By analysing urban regulations, constitutional rights, administrative law, and international environmental obligations, the paper focuses on the legal mechanisms that balance the right to mobility with the need to protect local communities and ecosystems. Using case studies from European cities such as Barcelona, Venice and Amsterdam, where legal restrictions have been implemented regarding short-term rentals, cruise ships and public behavior, the paper explores the legal challenges and consequences associated with excessive tourism. The paper highlights how well-defined laws can contribute to more effective tourism management by creating a legal framework that not only regulates tourism activities but also protects the rights of local communities to housing, a quality environment and the preservation of cultural identity. The legal response to tourismophobia must be comprehensive, addressing the economic, social, and ecological dimensions of tourism. By regulating short-term rental platforms such as Airbnb and Booking.com, as well as imposing limits on the number of cruise ships or days on which properties

1. Full Professor at Université Côte d'Azur, Nice, France
mail: Jean-Christophe.GAY@univ-cotedazur.fr

2. Teaching Assistant at Singidunum University, Belgrade, Serbia
mail: kbjelic@singidunum.ac.rs

can be rented to tourists, it is possible to mitigate the negative effects of excessive tourism. Furthermore, the adoption of clear and transparent laws that integrate international environmental standards can contribute to the sustainable development of tourist destinations. In conclusion, the paper suggests that the proper definition of legal frameworks and the implementation of legislative measures can be crucial in addressing the issues of mass tourism, enabling a balance between economic benefits and the rights of local populations to a healthy living space and the preservation of cultural heritage.

Keywords: *tourismophobia, tourism law, mass tourism regulation, sustainable tourism development*

Résumé

Cet article examine le phénomène de la tourismophobie, appréhendé comme une réaction socioculturelle à un tourisme excessif, et analyse les réponses juridiques à travers différentes juridictions. En analysant les réglementations urbaines, les droits constitutionnels, le droit administratif et les obligations environnementales internationales, l'article se concentre sur les mécanismes juridiques qui concilient le droit à la mobilité avec la nécessité de protéger les communautés locales et les écosystèmes. À l'aide d'études de cas de villes européennes telles que Barcelone, Venise et Amsterdam, où des restrictions légales ont été mises en œuvre concernant les locations de courte durée, les navires de croisière et le comportement public, l'article explore les défis et les conséquences juridiques associés au tourisme excessif. L'article souligne comment des lois bien définies peuvent contribuer à une gestion plus efficace du tourisme en créant un cadre juridique qui non seulement réglemente les activités touristiques, mais protège également les droits des communautés locales au logement, à un environnement de qualité et à la préservation de leur identité culturelle. La réponse juridique à la tourismophobie doit être globale, abordant les dimensions économiques, sociales et écologiques du tourisme. En réglementant les plateformes de location de courte durée telles qu'Airbnb et Booking.com, ainsi qu'en imposant des limites au nombre de navires de croisière ou aux jours pendant lesquels les propriétés peuvent être louées à des touristes, il est possible d'atténuer les effets négatifs du tourisme excessif. De plus, l'adoption de lois claires et transparentes

intégrant les normes environnementales internationales peut contribuer au développement durable des destinations touristiques. En conclusion, l'article suggère qu'une définition appropriée des cadres juridiques et la mise en œuvre de mesures législatives peuvent être cruciales pour aborder les problèmes du tourisme de masse, permettant un équilibre entre les avantages économiques et les droits des populations locales à un espace de vie sain et à la préservation du patrimoine culturel.

Mots-clés : tourismophobie, droit du tourisme, régulation du tourisme de masse, développement du tourisme durable

Introduction

Tourismophobia and mass tourism are two phenomena that have become central topics in contemporary debates, not only within tourism academia but also in the media. These phenomena are closely associated with the rapid growth of tourism over the past few years, and are typically discussed in relation to challenges faced by local communities, as well as the quality of life for residents and the experiences of tourists. Additionally, tourismophobia and mass tourism are linked to the ways in which the pressures of tourism trigger social movements, protests, and tensions between residents and tourists (Veríssimo et al., 2020). These issues are particularly pronounced in major European tourist destinations such as Barcelona, Venice, and Amsterdam, where they are connected to threats to cultural heritage and the lack of consensus on visitation limits and methods of protection, highlighting the urgent and ongoing need for legal and institutional responses.

Overtourism has become a growing concern in many European cities whose popularity has outpaced their capacity to sustainably accommodate increasing numbers of visitors. The UNWTO defines overtourism as “the impact of tourism on a destination, or parts thereof, that excessively affects the perceived quality of life of local residents and/or the quality of visitor experiences in a negative way.” This phenomenon is particularly evident in cities such as Barcelona, Amsterdam, and Venice, where the rapid growth of tourism has produced complex socio-economic and spatial consequences. In response, local governments have attempted to curb the negative effects through measures such as limiting hotel construction,

introducing stricter controls on short-term rental platforms like Airbnb, Booking.com, and VRBO, and promoting the dispersion of tourist flows toward less crowded areas. Notably, New York's recent policy banning short-term rentals of under 30 days has inspired similar restrictions in cities such as Santa Monica, Amsterdam, Paris, and London, with annual rental limits ranging from 30 to 120 days (Sainaghi & Baggio, 2020.)

The growing influence of booking platforms like Airbnb on the housing rental sector has led to heightened regulatory scrutiny. Following the example of New York, which since 2023 has banned rentals shorter than 30 days through these platforms (a policy mirrored in Santa Monica, California), numerous cities are implementing stricter rules. This surge in restrictions globally aims to reclaim a vast number of properties for long-term residential use. Across Europe, a variety of national and local restrictive laws reflect this trend, with cities like Barcelona and Madrid exhibiting significant regulation compared to places like London or Prague. A common measure is setting annual limits on rental periods, such as 30 days in Amsterdam, 90 in London, and 120 in Paris. However, local communities are not uniformly passive in the face of tourism; in Venice, for instance, small property owners have found a lucrative income stream by listing their properties on these platforms. Consequently, many Venetians have contributed to the city's declining population (from 170,000 in 1950 to under 50,000 currently) by renting out their apartments and relocating to the mainland, while tourist accommodation capacity now surpasses the resident population during peak season. Numerous local actors profit considerably from tourism, a dynamic that contributes to the displacement of some Venetians (Knafou, 2023).

Urban tourism, a segment that has seen significant growth since the rise of mass tourism, has been fueled by two main factors: the reduction in travel costs, particularly air travel, and the proliferation of new communication technologies, which have revolutionized tourist accommodation and marketing strategies. Moreover, the transformation of historic centers into attractive tourist destinations has further driven the expansion of urban tourism (Veríssimo et al., 2020). As tourism intensifies in popular destinations, particularly in European cities, it creates tensions between economic development and the protection of local communities, public spaces, housing rights, and environmental sustainability. Tourismophobia, once perceived primarily as a local reaction to overtourism, is increasingly

influencing the creation of legal and institutional responses. According to the research conducted by Almeida-García and colleagues (2023), residents in historic urban centers experience growing dissatisfaction due to issues such as overcrowding, gentrification, environmental degradation, and the appropriation of public spaces. Their findings highlight the need to integrate residents' perspectives more systematically into urban tourism planning and governance. This supports the argument that tourism regulation must extend beyond economic interests and address the social costs of mass tourism.

Despite the increasing emphasis on sustainable tourism governance, the practical implementation of such principles faces significant challenges, particularly when trying to balance economic, environmental, and social objectives in the context of mass tourism. One of the primary obstacles to achieving sustainability in tourism is the lack of an integrated and consistent approach to its regulation. In many cases, tourism policies are introduced in a fragmented manner, with superficial consideration given to their broader implications across policy domains. As a result, critical factors such as the long-term environmental impact, the needs of local communities, and the preservation of cultural heritage are often overlooked in favor of short-term economic gains (Li et al., 2019).

Governance in the context of mass tourism should be understood as a dynamic process that involves the coordination, collaboration, and cooperation of various stakeholders. The goal is to ensure that tourism contributes to sustainable social and environmental development while maximizing its positive impact on the local economy. However, the complexity of tourism demands that its growth and development be guided by well-structured planning and management processes, rooted in the fundamental principles of sustainability. One of the major challenges in managing mass tourism is the frequent tension between national government frameworks and the perspectives of local authorities. This often creates a space where local private interests dominate, potentially sidelining strategies for equitable and inclusive development that genuinely address the needs and concerns of local residents. The integration of residents' voices into tourism policies and legal regulations is crucial for ensuring that the benefits of tourism are shared fairly, and that the negative externalities are minimized. As highlighted by recent studies, this disparity can result in policies that favor short-term economic gains over long-term

social and cultural sustainability (Dos Anjos, F. A., & Kennell, J., 2019).

Furthermore, this analysis underscores how well-defined laws can contribute to more effective tourism management by establishing a legal framework that not only regulates tourism activities but also safeguards the rights of local communities to housing, a quality environment, and the preservation of cultural identity. The study also acknowledges the tensions between national governmental frameworks and the perspectives of local authorities, which can lead to the dominance of local private interests at the expense of strategies for equitable and inclusive development that address the needs and concerns of local residents, a pivotal point in the analysis of the legal regulation of mass tourism (Milano et al. 2019).

Global challenges such as issues in education and healthcare, poverty, inequality, and the aftermath of the COVID-19 pandemic continue to hinder the development of countries worldwide. In order to achieve the Sustainable Development Goals (SDGs), it is essential to manage available resources effectively and foster international cooperation. In this regard, sustainable governance emerges as a fundamental mechanism for steering development in line with the principles of economic, social, and environmental balance. Its relevance is particularly evident in the context of mass tourism, where negative impacts such as overcrowding, gentrification, and environmental degradation increasingly threaten the quality of urban life. A well-defined legal and regulatory framework—encompassing national legislation, local policies, and international standards - can play a key role in controlling tourist flows and safeguarding the rights and wellbeing of local communities (Gündoğdu, 2022).

This study explores the interconnection between sustainable governance and sustainable development, arguing that only coordinated, institutionalised strategies can provide effective, long-term solutions to the growing pressures of mass tourism in urban settings. By integrating legal regulation and coordinated policy efforts, sustainable governance provides a foundation for managing mass tourism in a way that aligns with broader goals of environmental protection, social equity, and economic resilience.

Challenges of Mass Tourism in European Cities: Barcelona, Venice and Amsterdam

Mass tourism in Barcelona

Barcelona has become a prominent example of the challenges that mass tourism poses to urban environments. Although the impacts of tourism have been the subject of academic inquiry for decades, concerns over overcrowding, pressure on housing, and disruption to residents' daily lives remain highly relevant (Hernandez-Maskivker et al., 2019).

Since the mid-2010s, Barcelona has become a key site of local resistance against the negative effects of mass tourism. Although the city's touristification dates back to its nomination for the 1992 Olympic Games, major public attention intensified in 2014, following protests in La Barceloneta sparked by tourists' inappropriate behaviour and the proliferation of short-term rentals, particularly via Airbnb.

According to Lopez, these events marked a turning point in public discourse, linking tourist behaviour to broader issues of overcrowding, rising housing costs, and the erosion of local life.

In response, municipal authorities introduced regulations targeting illegal tourist accommodation, though many residents and activists criticised these efforts as insufficient. One of the most notable acts occurred in 2017 when members of the activist group Arran targeted a sightseeing bus, spraying slogans such as "Tourism kills neighbourhoods." While media reports often framed such protests as vandalism or extremism, they brought significant visibility to the growing discontent among locals (Lopez, 2021)

The term "tourismphobia" became widespread in media narratives, frequently used to describe both public protests and the broader sentiment of dissatisfaction. However, this framing tends to oversimplify the diversity of perspectives within anti-tourism movements and overlooks the complex social impacts of urban tourism.

Results gotten from research by Lopez approve that Barcelona thus exemplifies the tensions between tourism-led development and the rights of local communities, highlighting the need for more inclusive, sustainable, and community-based approaches to urban tourism governance (Lopez, 2021).

Addressing these issues cannot be limited to monitoring tourist

numbers. A deeper understanding of the local context is required, with community engagement playing a central role in planning processes. Residents are key actors in identifying the effects of tourism, and their perspectives should inform sustainable development strategies. Sustainable tourism management calls for strong collaboration between public and private sectors, along with the active involvement of local communities. Cities such as Barcelona must shift towards attracting visitor segments that align with the destination's values, in order to balance authentic experiences with the well-being of local populations (Hernandez-Maskivker et al., 2019).

Mass tourism in Venice

Venice has become a symbolic example of a destination grappling with overtourism. Over the past 25 years, the number of visitors to the city has grown significantly, with daily tourists rising from approximately 5 million in 1988 to nearly 22 million today. As the number of visitors continues to grow, discussions around the sustainability of tourism in Venice have intensified. The concept of carrying capacity, which refers to the maximum number of visitors the city can handle without compromising the quality of life for residents, has been central to these debates (Bertocchi & Camatti, 2022).

However, one of the most pressing challenges to achieving this balance remains the impact of cruise tourism. Large cruise ships contribute significantly to the ecological degradation of the lagoon, strain the city's limited infrastructure, and accelerate the process of urban depopulation.

These vessels often bring in massive numbers of short-term visitors who, while generating economic activity, contribute minimally to the local economy outside the tourism sector

. The result is a "tourism monoculture" that threatens the authenticity of Venice, disrupts the everyday life of residents, and raises concerns over long-term sustainability. Addressing the negative consequences of cruise tourism is therefore essential to safeguarding Venice's cultural heritage and ensuring that tourism development aligns with the needs of both the environment and the local population (De Giorgi, 2024).

Venice has sought to develop sustainable tourism policies that aim to balance the needs of tourists with those of the local community. This

includes regulating tourist flows, improving transport and services, and exploring new strategies to ensure that tourism benefits both visitors and residents. As the global tourism landscape continues to evolve, the city is working to adapt its approach to ensure a more sustainable and livable future for all (Bertocchi & Camatti, 2022).

In response to the pressures of mass tourism, the local population of Venice has developed diverse coping strategies. While some residents have left the historical centre due to rising living costs and a decline in urban services, others have monetised their properties by renting them to tourists through short-term platforms.

A significant portion remains in the city, balancing between the benefits of employment in the tourism sector and the burdens associated with overcrowding, particularly those not directly profiting from tourism-related activities. T

he increasing dominance of tourism has led to a perceived erosion of social cohesion and a reduction in the quality of life for many. Civic groups and individual residents have voiced concerns through movements such as “No Grandi Navi” and “Venezia non è Disneyland”, calling for more responsible tourism governance. Survey results show that a majority of Venetians support regulatory measures, including visitor fees and restrictions on tourist facilities (Bertocchi & Camatti, 2020).

The local government of Venice has developed a strategic plan to address the challenges posed by mass tourism.

The 2016 tourism management and governance plan emphasizes sustainable tourism as a means to preserve Venice’s authenticity and enhance its status as a World Heritage Site.

According to the results by Bertocchi and Camatti, the strategy focuses on regulating tourist flows to ensure they are compatible with residents’ daily lives, improving the tourist tax system to reduce evasion, and optimizing services and transportation to avoid congestion.

The plan sets out specific objectives to achieve these goals, aiming for a balanced and sustainable tourism model that supports both the local community and the city’s heritage (Bertocchi & Camatti, 2020).

Mass tourism in Amsterdam

Amsterdam, as one of Europe’s historic cities rich in cultural and heritage assets, faces significant challenges associated with mass tourism.

Overtourism negatively affects the preservation of the urban landscape, infrastructure, and the quality of life of local residents. In response, city authorities have implemented several measures aimed at reducing the concentration of visitors in the historic city center. One example includes relocating the popular ‘I Amsterdam’ sign to less-visited locations in order to distribute tourist flows more evenly. Additionally, the city actively encourages visitors to explore less crowded areas and provides information about alternative attractions (Karayazi et al., 2024).

In line with these efforts, Amsterdam also made a significant strategic shift by reallocating financial resources from tourism marketing to the management of tourism impacts.

This decision followed an unexpected surge in visitor numbers driven by the successful “I Amsterdam” campaign. According to Font and colleagues, by prioritizing crowd management and sustainable tourism planning, the city aimed to protect the well-being of residents and the integrity of its cultural assets.

Such proactive governance reflects a broader recognition that, without responsible management, mass tourism can jeopardize social cohesion, accelerate the degradation of urban space, and ultimately provoke local resistance in the form of tourismphobia (Font et al., 2023).

Although these measures have shown partial effectiveness, research highlights the need for a more personalized approach to visitor management. According to research conducted by Karayazi and colleagues, a key solution lies in segmenting tourists based on their interests and behavior, allowing different groups to be directed toward destinations that align with their preferences.

This strategy would help alleviate pressure on the city’s most popular sites and support the sustainable development of urban cultural tourism (Karayazi et al., 2024).

SWOT Analysis of Amsterdam, Venice, and Barcelona

City	Strengths	Weaknesses	Opportunities	Threats
Barcelona	- Diverse cultural and entertainment offer - Active urban tourism policy - Positive examples of urban regulation	- Overcrowding in the historic center - Pressure on the housing market (Airbnb and STR) - Tourist concentration in limited areas	- Development of alternative routes and attractions - Involving the local community in tourism governance - Use of digital observatories for sustainable monitoring	- Growth of tourism-phobia - Threat to the sustainability of the urban environment - Declining quality of life for local residents
Venice	- Unique cultural and historical value - Globally recognized destination - Tourism as the city's primary economic driver	- Severe overcrowding during peak seasons - High dependency on mass tourism - Risk of cultural heritage and ecosystem degradation	- Restricting cruise ship entries - Introducing visitor fees for day-trippers - Development of selective and sustainable tourism products	- Climate change (rising sea levels) - Mass tourism disrupting daily life for residents - Rising tourismphobia
Amsterdam	- Well-developed tourism infrastructure - Rich cultural and historical heritage - Innovative digital tools for tourism management	- Overcrowding in the city center - Rising property prices and cost of living - Tourist monoculture in certain areas	- Diversification of the offer toward less visited neighborhoods - Digital personalization of visitor experiences - Enhanced collaboration with the local community	- Growth of tourism-phobia - Loss of authenticity in the historic core - Threat to the sustainability of urban space and environment

Table 1 swot analysis of amsterdam, venice, and barcelona

The SWOT analysis reveals that although Amsterdam, Venice, and Barcelona are among Europe's most attractive urban destinations, they face similar challenges linked to mass tourism. All three cities possess notable strengths such as rich cultural and historical heritage and developed tourism infrastructure. Amsterdam stands out for its innovative use of digital tools in tourism management, while Barcelona is recognized for its diverse cultural offer and proactive regulatory policies. Venice remains globally renowned for its unique cultural and architectural value.

However, the weaknesses clearly point to overcrowding in city centers, increased cost of living, pressure on the housing market (especially due to short-term rentals), and the risk of losing authenticity. These issues are particularly emphasized in Venice, where the city's extreme dependence on mass tourism threatens both cultural heritage and residents' quality of life.

In terms of opportunities, all three destinations have recognized the importance of diversifying their tourism offer by promoting lesser-known areas and creating personalized visitor experiences. Involving the local community in tourism planning and decision-making, as seen in Barcelona's Observatory for Sustainable Tourism, represents a valuable model for other cities. Additionally, limiting access to sensitive zones (such as restrictions on cruise ships in Venice) and applying digital tools for visitor monitoring open up new possibilities for sustainable tourism management.

Among the identified threats, the spread of tourismphobia and overtourism stand out, alongside the gradual deterioration of urban spaces, rising real estate prices, and the decline in residents' quality of life. Tourismphobia, as an increasingly prominent phenomenon, reflects growing frustration and dissatisfaction among local populations who feel excluded from decision-making processes and negatively affected by the excessive number of visitors. The emergence of this sentiment poses a serious challenge to the social cohesion of urban communities, as it can lead to conflicts between residents and tourists, and ultimately harm the image of the destination itself. Climate change also presents a long-term threat, especially for Venice, due to the rising sea levels, but it likewise affects other cities through extreme weather events and the accelerated degradation of urban infrastructure. Addressing these threats requires the development of comprehensive, participatory, and long-term tourism

management strategies that prioritize the needs of the local community while ensuring the sustainable use of urban resources.

Conclusion

Based on the SWOT analysis, it can be concluded that Amsterdam, Venice, and Barcelona are among the most attractive urban destinations in Europe, but they face similar challenges related to mass tourism. All three destinations possess significant strengths, such as rich cultural and historical heritage and developed tourism infrastructure. Amsterdam stands out for its innovative use of digital tools in tourism management, while Barcelona is recognized for its diverse cultural offerings and proactive regulatory policies. Venice remains globally renowned for its unique cultural and architectural value.

However, the weaknesses clearly identified include overcrowding in city centers, rising living costs, pressure on the housing market (especially due to short-term rentals), and the risk of losing authenticity. These issues are particularly emphasized in Venice, where the city's extreme dependence on mass tourism threatens both cultural heritage and residents' quality of life.

When it comes to opportunities for improvement, it is evident that these cities have the potential to reposition themselves by adopting responsible tourism practices that prioritize quality over quantity. Focusing on cultural, educational, and experience-based tourism segments can attract visitors who value authentic and sustainable travel experiences. Moreover, developing year-round tourism products and promoting events during the off-season could reduce pressure on infrastructure and improve the quality of life for residents. Strengthening cooperation between city authorities, the private sector, and local communities remains a key strategy for achieving a more balanced and inclusive tourism model.

However, threats related to overtourism, such as tourismphobia, the decline in quality of life for local communities, rising real estate prices, and climate change, remain serious concerns. Tourismphobia, which arises as a result of frustration and dissatisfaction among locals due to the negative effects of mass tourism, is becoming increasingly widespread in cities like Barcelona, Venice, and Amsterdam. This negative perception of tourism can lead to social tensions, reduced social cohesion, and the creation of

a hostile attitude toward tourists. Additionally, protests and movements against overtourism, such as those in Barcelona or Venice, often lead to polarization among residents, with some advocating for drastic measures while others try to balance the benefits of tourism with the protection of local interests. Therefore, future tourism development in these cities must focus on long-term sustainability and balancing the interests of visitors and local communities.

It is also important to emphasize that tourism, while bringing significant economic benefits, has a direct impact on various essential aspects of urban life, such as housing availability, public space use, traffic congestion, environmental protection, and the preservation of cultural identity. As such, the management of tourism cannot be treated as a one-time intervention but must become a continuous and adaptable process involving cooperation between public authorities, private enterprises, and the local population.

Moreover, it is necessary to invest in educational campaigns aimed both at tourists and local residents to raise awareness of the importance of respecting cultural heritage and environmental standards. Involving citizens in decision-making processes, such as public debates, urban forums, and participatory projects, can help reduce social tensions and restore trust between the authorities and the local population.

Modern digital tools and smart city concepts should also be used to monitor tourist flows, manage reservations for visits to the most popular locations, and provide timely information to both visitors and residents about the current situation in the city. These measures can reduce overcrowding in certain zones and improve the quality of the visitor experience without compromising the daily lives of the local population.

Additionally, special attention must be given to the environmental aspect, as mass tourism significantly affects ecosystems and urban infrastructure. Tourism development policies must be harmonized with environmental protection strategies, with particular focus on cities like Venice, which are directly threatened by rising sea levels as a consequence of climate change. Linking tourism management strategies with climate resilience plans is becoming an unavoidable obligation for the long-term sustainability of tourist destinations.

In conclusion, managing mass tourism in Amsterdam, Venice, and Barcelona requires a holistic approach that involves the joint efforts of all stakeholders: from the public sector and private enterprises to local

communities. These destinations must create a sustainable tourism model that not only allows for development but also preserves the authenticity of the cities, respects the needs of local populations, and responsibly addresses environmental concerns.

Literature

- Almeida-García, F., Cortés-Macías, R., & Parzych, K. (2021). Tourism impacts, tourism-phobia and gentrification in historic centers: The cases of Málaga (Spain) and Gdansk (Poland). *Sustainability*, 13(1), 408.
- Bertocchi, D., & Camatti, N. (2022). Tourism in Venice: mapping overtourism and exploring solutions. In *A research agenda for urban tourism* (pp. 107-125). Edward Elgar Publishing.
- Bertocchi, D., Camatti, N., Giove, S., & van Der Borg, J. (2020). Venice and overtourism: Simulating sustainable development scenarios through a tourism carrying capacity model. *Sustainability*, 12(2), 512.
- De Giorgi, I. (2024). Big Cruise Ships Going Feral: An Ecocritical Reading of Overtourism in Venice. *Lagoonscapes*, 4(1), 1-20.
- Dos Anjos, F. A., & Kennell, J. (2019). Tourism, governance and sustainable development. *Sustainability*, 11(16), 4257.
- Font, X., Torres-Delgado, A., Crabolu, G., Palomo Martinez, J., Kantenbacher, J., & Miller, G. (2023). The impact of sustainable tourism indicators on destination competitiveness: The European Tourism Indicator System. *Journal of Sustainable Tourism*, 31(7), 1608-1630.
- Gündoğdu, H. A. K. A. N., & Aytekin, A. (2022). Effects of sustainable governance to sustainable development. *Operational Research in Engineering Sciences: Theory and Applications*, 5(2).
- Herrera, A. F., Maskivker, G. M. H., Navarro, F. T., & Pulido, J. I. (2019, January). Exploring Mass Tourism Impacts on Locals: A Comparative Analysis between Barcelona And Sevilla. In *Proceedings of the 3rd International Conference on Dynamics of Social Sciences and Humanities Research*” (pp. 27-0). Unknown Publisher.
- Karayazi, S. S., Dane, G., & Arentze, T. (2024). Visitors’ heritage location

- choices in Amsterdam in times of mass tourism: a latent class analysis. *Journal of Heritage Tourism*, 19(4), 497-518.
- Knafou, R. (2023). Réinventer (vraiment) le tourisme. En finir avec les hypocrisies du tourisme durable. Paris: Faubourg.
- Li, M., Liu, T., & Qiu, S. (2020). Governance of sustainable tourism development in China. *Journal of China Tourism Research*, 16(2), 261-278.
- López, A. A. (2021). A summer of phobias: media discourses on ‘radical’ acts of dissent against ‘mass tourism’ in Barcelona. *Open Research Europe*, 1, 66.
- Milano, C., Novelli, M., & Cheer, J. M. (2019). Overtourism and tourismphobia: A journey through four decades of tourism development, planning and local concerns. *Tourism Planning & Development*, 16(4), 353-357.
- Sainaghi R. et Baggio R., 2020, “Substitution threat between Airbnb and hotels: Myth or reality?”, *Annals of Tourism Research*, vol. 83, article 102959.
- Verissimo, M., Moraes, M., Breda, Z., Guizi, A., & Costa, C. (2020). Overtourism and tourismphobia: A systematic literature review. *Tourism: An International Interdisciplinary Journal*, 68 (2), 156-169.

EFFECTIVENESS OF LEGAL MECHANISMS AGAINST RELIGIOUS DISCRIMINATION IN SERBIA

Dijana Savić Božić¹

Abstract

In accordance with the requirements for accession to the European Union, Serbia has adopted comprehensive anti-discrimination legislation. The Law on Prohibition of Discrimination, passed in 2009, offers significant legal protection against religious discrimination. This law prohibits any form of direct or indirect discrimination based on religion or belief, as well as any unjustified distinction, exclusion. The Serbian judiciary played a vital role in maintaining religious freedom and protecting individuals from discrimination. Courts have consistently interpreted and applied anti-discrimination laws to protect the rights of religious minorities and ensure equal treatment for all citizens, regardless of their religious affiliation. Important court decisions have set important precedents in the fight against religious discrimination. In cases where religious discrimination was proven, the courts awarded compensation to the victims, sending a clear message that such acts will not be tolerated under Serbian law. The paper examines the legal framework for protection against religious discrimination in the Republic of Serbia. The paper examines constitutional provisions and legal acts that protect freedom of religion and equality before the law. The analysis includes relevant international agreements and contracts, with an emphasis on the European Convention on Human Rights and its influence on Serbian legislation. In addition, the paper deals with enforcement mechanisms and the challenges they face in maintaining religious freedom and the fight against discrimination. Religious freedom and the protection of individuals against discrimination based on their

1. Doctor of Law, Faculty of Organizational Studies EDUKA, Belgrade, dinabozic@gmail.com

beliefs are fundamental human rights that are internationally recognized. The Republic of Serbia, as a multi-ethnic and multi-religious country, values and supports the principles of religious tolerance and diversity. This paper investigates the legal framework and mechanisms that exist to protect individuals from religious discrimination in the Serbian legal system. It will examine relevant legislation, court decisions and international obligations that ensure the protection of religious rights and freedoms.

Keywords: *religious discrimination, legal mechanisms, Republic of Serbia*

Introduction

The Constitution of Serbia, adopted in 2006, serves as the highest legal document and guarantees the protection of fundamental rights and freedoms. Article 11 guarantees the right to freedom of thought, conscience and religion. This provision ensures that individuals can freely adopt, practice and change their religion or belief without any discrimination. In line with the requirements for accession to the European Union (EU), Serbia has adopted comprehensive anti-discrimination legislation. The Law on the Prohibition of Discrimination offers significant legal protection against religious discrimination. The Anti-Discrimination Council, established in 2010, serves as an independent body responsible for resolving complaints of discrimination in various domains, including religious discrimination. This institution plays a key role in investigating complaints, providing legal advice and advocating for the protection of religious rights.

The Republic of Serbia has recognized and protected the rights of religious minorities through specific laws. The Law on Churches and Religious Communities, adopted in 2006, grants legal recognition and privileges to religious communities with a historical presence in the country. This law ensures that these communities can freely practice their religion and manage their internal affairs.

Serbia has made significant progress in harmonizing its legal system with international standards on religious freedom and combating discrimination. The country is a party to numerous international agreements, including the European Convention on Human Rights (ECHR) and the International

Covenant on Civil and Political Rights (ICCPR). These obligations oblige Serbia to protect the right of individuals to freedom of religion and to prevent all forms of religious discrimination. The Republic of Serbia has made significant progress in protecting individuals from religious discrimination within its legal system. Constitutional provisions, anti-discrimination legislation, judicial precedents, and the establishment of specialized institutions have contributed to preserving religious freedoms and ensuring equal treatment for all citizens. As Serbia continues its path towards EU accession, maintaining and improving this legal framework will be essential for promoting a harmonious and tolerant society that upholds the principles of religious diversity and respect for all.

Legal Framework for Religious Freedom and Protection from Discrimination in Serbia

Religious freedom and equality are fundamental human rights that protect an individual's ability to believe, practice, and manifest their religion or beliefs.¹ In the Republic of Serbia, these rights are enshrined in the Constitution, reflecting the country's commitment to promoting a diverse and inclusive society.

The territory of present-day Serbia has a rich history of religious diversity and interaction. Over the centuries, different religious communities have coexisted, sometimes peacefully, and sometimes amidst tensions. The historical background includes interactions with Eastern Orthodoxy, Catholicism, Islam, and Judaism, among others. After World War II, Serbia became part of the Socialist Federal Republic of Yugoslavia, where the promotion of secularism and religious freedom was a key aspect of state policy.² However, the breakup of Yugoslavia in the 1990s led to a period of ethnic and religious tensions, which led to the need for strong constitutional provisions to protect religious freedoms and ensure equal treatment for all faiths. The current Constitution of the Republic of Serbia, adopted in 2006, comprehensively addresses issues of religious freedom and equality. The most significant provisions relating to these rights are found in Articles 11, 43 and 49.³

1. Johnson, P., Vanderbeck, R. (2014). *Law and Religion*. Routledge, Oxford, p. 28.

2. Milenković, D. (2010). *Guide to the Law on Prohibition of Discrimination*, Helsinki Committee for Human Rights in Serbia, Belgrade, p. 43.

3. Constitution of the Republic of Serbia, "Official Gazette of the Republic of Serbia",

Article 11¹ of the Constitution of Serbia ensures the right to freedom of thought, conscience, religion and belief. It guarantees that all individuals have the freedom to choose, practice and change their religion or belief without fear of discrimination or persecution. This constitutional provision reflects Serbia's commitment to supporting the principle of religious pluralism and recognizing the intrinsic dignity of the spiritual beliefs of every person.

Article 43² of the Constitution is a key provision that ensures the rights of national minorities, including their religious freedom. It emphasizes the right of minority communities to freely practice their religion and customs, ensuring that their cultural and religious identity remains respected and preserved. This article plays a significant role in fostering social cohesion and harmony among different religious communities in Serbia, promoting an atmosphere of mutual understanding and tolerance.

Article 49³ is the cornerstone of Serbia's commitment to religious equality. It explicitly prohibits discrimination on various grounds, including religion, ensuring that individuals are protected from prejudice based on religion. This constitutional protection aims to create an inclusive and just society, in which no one is marginalized or treated unfairly on the basis of their religious beliefs or affiliations.

The constitutional provisions on freedom and equality of religion in the Republic of Serbia are of immense importance for both the nation and its citizens. By guaranteeing religious freedom, the Constitution enables individuals to live according to their conscience, strengthening their autonomy and human dignity. This fosters a sense of belonging and empowerment among citizens, enabling them to actively participate in social, cultural and political spheres without fear of persecution. Furthermore, the protection of minority rights in Article 43 ensures that religious diversity is celebrated and respected in Serbia. It recognizes the historical, cultural and religious contributions of different communities, fostering an environment of mutual respect and cooperation. This, in turn,

No. 98/2006 and 115/2021.

1. Article 11 of the Constitution of the Republic of Serbia, "Official Gazette of the Republic of Serbia", No. 98/2006 and 115/2021.

2. Article 43 of the Constitution of the Republic of Serbia, "Official Gazette of the Republic of Serbia", No. 98/2006 and 115/2021.

3. Article 49 of the Constitution of the Republic of Serbia, "Official Gazette of the Republic of Serbia", No. 98/2006 and 115/2021.

strengthens the fabric of the nation, promoting social cohesion and stability.

The prohibition of discrimination in Article 49 is crucial to preventing tensions and conflicts based on religion. By protecting citizens from discrimination, the Constitution sends a clear message that all individuals, regardless of religious affiliation, are equal before the law. This principle strengthens the democratic values on which Serbia is built and promotes a society that cherishes diversity while preserving the rule of law.

The constitutional provisions on freedom of religion and equality in the Republic of Serbia are essential pillars in the country's commitment to creating an inclusive and just society. These provisions reflect the historical context of religious diversity and interactions in the region and aim to protect individual freedoms and the rights of minorities.¹ By upholding these constitutional principles, Serbia continues to demonstrate its commitment to fostering religious pluralism, social harmony and the protection of human dignity. As the country progresses, it is imperative to ensure that these rights are effectively implemented, enabling every citizen to freely express and practice their religious beliefs while respecting the rights of others.

In order to further safeguard religious freedoms and protect against discrimination, the Republic of Serbia has enacted specific laws and regulations. One of the key legislative instruments in this context is the Law on the Prohibition of Discrimination², which was introduced in 2009. This law prohibits discrimination on various grounds, including religion or belief, in various spheres of public and private life, such as employment, education, housing and social services.

In the Republic of Serbia, religious communities enjoy special legal protections and privileges. The Law on Churches and Religious Communities³, adopted in 2006, recognizes the status of religious communities and grants them certain benefits. To be recognized, a religious community must meet certain criteria, including at least 1,000 adult members and a presence in Serbia for at least ten years. Once recognized,

1. Paunović, M. (2002). *Fundamentals of Human Rights – Source and Glossary*, Belgrade, p. 39.

2. Law on the Prohibition of Discrimination, “Official Gazette of the Republic of Serbia”, No. 22/09, 52/2021.

3. Law on Churches and Religious Communities, “Official Gazette of the Republic of Serbia”, No. 36/2006.

religious communities are granted legal personality, allowing them to own property, engage in religious activities, and receive state support. The state also provides financial assistance to recognized religious communities to support their religious, educational, and charitable activities. This financial support reflects the government's commitment to preserving religious freedoms and promoting religious diversity. Despite the existing legal framework for the protection of religious freedoms and the fight against discrimination, the Republic of Serbia faces certain challenges in fully realizing these rights. One challenge relates to the practical implementation and enforcement of the law. Ensuring consistent application of anti-discrimination measures and preventing religious discrimination in all aspects of public and private life remains an ongoing task. Moreover, the country's diverse religious landscape also poses challenges in maintaining harmonious coexistence among different religious communities. Inter-religious tensions and incidents of hate speech and intolerance may occasionally arise, requiring proactive measures by the authorities.

The statutory law on freedom of religion and protection against discrimination in the Republic of Serbia reflects the nation's commitment to respecting individual rights and fostering religious diversity. The constitutional recognition of freedom of religion, the provisions of the Law on the Prohibition of Discrimination and the Law on Churches and Religious Communities together create a legal framework that protects religious freedoms and aims to prevent discrimination.

The prohibition of discrimination on the basis of religion in the Republic of Serbia is regulated in more detail by a series of laws that regulate certain areas of social life and that sanction discrimination. In addition to the Criminal Code¹, it should be noted that Article 2 of the Law on Churches and Religious Communities² stipulates that no one may be subjected to coercion that could jeopardize freedom of religion, nor be harassed, discriminated against or privileged because of his/her religious beliefs. Also, Article 18 of the Law on the Prohibition of Discrimination³ explicitly

1. Criminal Code, "Official Gazette of the Republic of Serbia", No. 85/2005, 88/2005 - corrected, 107/2005 - corrected, 72/2009, 111/2009, 121/2012, 104/2013, 108/2014, 94/2016 and 35/2019.

2. Article 2 of the Law on Churches and Religious Communities, "Official Gazette of the Republic of Serbia", No. 36/2006.

3. Article 18 of the Law on Prohibition of Discrimination, "Official Gazette of the Republic of Serbia", No. 22/09, 52/2021.

prohibits religious discrimination, which implies behavior contrary to the principle of free expression of religion or belief, or if an individual or group of persons is denied the right to acquire, maintain, express and change a religion or belief, or the right to express, either privately or publicly, or to act in accordance with their beliefs.

The Labor Law¹ also prohibits direct and indirect discrimination against job seekers and employees, including on the basis of religion (Article 18). The same law also stipulates that religion is not considered a justified reason for terminating an employment contract with a relevant person, or rather, that termination of an employment contract on the basis of religion is not possible (Article 183). In order to improve legislation in the field of recognizing and responding to discrimination in educational institutions, provisions have been adopted within the framework of the Law on the Foundations of the Education System² that more closely regulate the prohibition of discrimination, the prohibition of behavior that offends reputation, honor and dignity, and the obligations of authorities and individuals who respond to situations of discriminatory behavior.

Article 110 of this law³ stipulates that discrimination and discriminatory treatment are prohibited in an educational institution that, directly or indirectly, openly or covertly, unjustifiably distinguishes or treats unequally, or does not exclude, restrict or give preference to a person or groups of persons, as well as members of their families or persons close to them, which is, among other things, based on religious beliefs. This article of the Law also defines more detailed criteria for recognizing forms of discrimination by an employee, child, student, adult, parent or other legal representative or third party in the institution. It also defines the institution's actions in case of suspicion or determination of discriminatory behavior, as well as the methods of undertaking preventive and intervention activities, the obligations and responsibilities of an employee, child, student, adult, parent or other legal representative, third party in the

1. Labor Law, "Official Gazette of the Republic of Serbia", No. 4/2005, 61/2005, 54/2009, 32/2013, 75/2014, 13/2017 - decision of the Constitutional Court, 113/2017 and 95/2018.

2. Law on the Foundations of the Education System, "Official Gazette of the Republic of Serbia", No. 8/2017, 27/2018 - other law, 10/2019, 27/2018 - other law, 6/2020 and 129/2021.

3. Article 110 of the Law on the Foundations of the Education System, "Official Gazette of the Republic of Serbia", No. 8/2017, 27/2018 - other law, 10/2019, 27/2018 - other law, 6/2020 and 129/2021.

institution, the body and the body of the institution. Article 112 of the same law¹ defines the prohibition of behavior that insults the reputation, honor or dignity of a child, student and adult, as well as the methods of recognizing behavior that insults the reputation, honor or dignity of an institution and the institution's behavior in these situations. The principle of prohibiting discrimination on the basis of religious affiliation is also prescribed by the Law on Asylum and Temporary Protection² and the Law on the Program for the Protection of Participants in Criminal Proceedings³. In the context of resolving the injustice committed, including violence and discrimination against religious minorities, it is important to highlight the Law on Eliminating the Consequences of the Confiscation of Property of Holocaust Victims Without Living Heirs. This law stipulates that in order to eliminate the consequences of the confiscation of property of Holocaust victims without living heirs after 1945, as well as to return confiscated property to organizations that functioned as a Jewish community before the occupation, the Republic of Serbia will provide financial support to its Jewish community (the Union of Jewish Municipalities of Serbia) in the amount of "950,000 euros per calendar year, for a period of 25 years, starting from 1 January 2017".⁴

Examples of Religious Discrimination in Serbia

Religious discrimination is a global issue that hinders the promotion of human rights and equality.⁵ In the Republic of Serbia, despite its commitment to preserving freedom of religion and belief, cases of religious discrimination have been recorded. One of the most notable cases of religious discrimination in Serbia revolves around tensions between the Serbian Orthodox Church (SOC) and the Islamic Community.

1. Article 112 of the Law on the Foundations of the Education System, "Official Gazette of the Republic of Serbia", No. 8/2017, 27/2018 - other law, 10/2019, 27/2018 - other law, 6/2020 and 129/2021.

2. Law on Asylum and Temporary Protection, "Official Gazette of the Republic of Serbia", No. 24/2018.

3. Law on the Protection Program for Participants in Criminal Proceedings, "Official Gazette of the Republic of Serbia", No. 85/2005.

4. Petrušić, N., Becker, K. (2012). Practicum for protection against discrimination, Partners for Democratic Change in Serbia, Belgrade, p. 65.

5. McColgan, A. (2014). Discrimination, Equality and the Law. Hart Publishing, Oxford, p. 60.

The SOC enjoys a privileged status as the dominant religious institution in the country, while other religious communities, including the Islamic Community, face various obstacles to freely practicing their faith. The SOC has often received preferential treatment from the state, leading to a perceived lack of impartiality in state affairs.

In contrast, the Islamic Community has struggled to gain legal recognition and equal treatment, particularly with regard to property rights and places of worship. This disparity has caused tensions between religious groups and led to accusations of discrimination. The Serbian government's response to this case remains crucial in maintaining religious harmony and promoting an inclusive environment for all religious communities.

Jehovah's Witnesses, as a minority religious group, face significant challenges in Serbia, most notably with regard to conscientious objection to military service. While Serbian law allows for conscientious objection, Jehovah's Witnesses have reported difficulties in obtaining recognition for their beliefs. They often encounter bureaucratic obstacles and face discrimination in accessing alternative civilian service.¹ Jehovah's Witnesses have experienced incidents of societal discrimination and violence because of their religious beliefs. Hate crimes and discrimination against this religious community have raised concerns about the implementation of laws protecting minority rights in Serbia.

The Roma community in Serbia, faced with multiple forms of discrimination, has also faced challenges in freely manifesting their religious beliefs. Discrimination against Roma individuals often intersects with religious prejudice, leading to obstacles in accessing places of worship and performing rituals. Reports of discrimination against Roma children in schools, where they have faced segregation based on their ethnicity and religion, have highlighted the widespread nature of religious discrimination in the country.

The issue of LGBT rights in Serbia is closely linked to religious discrimination. Some religious leaders in the country have been vocal in their opposition to LGBT rights, leading to further marginalization and stigmatization of the LGBT community. Hate speech and violence against LGBT people often find religious justifications, perpetuating a climate of

1. Lawyers' Committee for Human Rights. (2019). *Discrimination in Serbia – Practice and Challenges*, YUCOM, Belgrade, p. 21.

intolerance.¹

The Serbian government has taken steps in recent years to address religious discrimination and protect the rights of religious minorities. It has adopted laws and policies aimed at promoting religious freedoms, combating hate speech, and fostering interfaith dialogue. The country's legal framework includes provisions against religious discrimination and hate crimes. Nevertheless, effective implementation and enforcement remain essential to create a lasting impact.

Religious discrimination in the Republic of Serbia is a complex issue that affects different religious communities, both major and minority. Examples involving the Serbian Orthodox Church, the Islamic Community, Jehovah's Witnesses, the Roma community, and the LGBT community demonstrate the multifaceted nature of religious discrimination in the country. While the Serbian government has made efforts to address these issues, much work remains to be done to ensure equal rights and opportunities for all religious groups.

To effectively combat religious discrimination, it is crucial to promote interfaith dialogue, raise awareness of the importance of religious freedom, and implement measures to protect the rights of all individuals, regardless of their religious beliefs. By fostering an inclusive and tolerant society, Serbia can pave the way for a future in which religious diversity is respected and celebrated.

The Role of State Institutions in Combating Religious Discrimination

In the Republic of Serbia, a multiethnic and multireligious nation with a rich historical and cultural heritage, combating religious discrimination is of paramount importance. The government's commitment to protecting freedom of religion or belief is enshrined in its constitution and international human rights obligations.

The Constitution of Serbia guarantees the right to freedom of religion or belief for all its citizens. Article 43 explicitly states that "everyone shall be guaranteed freedom of thought, conscience, religion or belief, and the right to manifest his or her religious or other beliefs, either in public or

1. Cobb, N. (2019). Gay couple's break like Fawlty Towers: Dangerous representations of lesbian and gay oppression in an era of 'progressive' law reform. *Social & Legal Studies* 18(3), p. 342.

private, individually or in community with others.”¹ This constitutional provision sets the basis for protecting individuals from discrimination based on their religious beliefs. In addition, Serbia is a party to several international human rights treaties that emphasize religious freedoms, including the International Covenant on Civil and Political Rights and the European Convention on Human Rights². These treaties oblige the state to uphold the right to religious freedom and prohibit any discrimination on religious grounds. The Serbian Parliament plays a key role in shaping and enacting laws to combat religious discrimination. It is responsible for adopting laws that protect religious freedoms, ensure equal treatment, and criminalize acts of religious discrimination. In addition, the Parliament is responsible for monitoring the implementation of these laws and making the necessary amendments to ensure their effectiveness. Through the legislative process, parliamentarians have the opportunity to engage in debates and dialogues that foster social understanding and tolerance. They can close any loopholes in existing laws and propose new measures that promote religious pluralism and unity.

The executive branch of the Serbian government is tasked with implementing laws and policies related to religious freedom. This includes ensuring that individuals and communities can practice their faith without fear of discrimination or persecution. The police and other law enforcement agencies play a key role in this regard, as they are responsible for investigating and prosecuting cases of religious discrimination.³ Furthermore, the executive branch can develop comprehensive strategies and action plans to combat religious discrimination. These initiatives may include promoting interfaith dialogue, implementing educational programs on religious tolerance, and conducting public awareness campaigns about the importance of religious freedom.

The independence and impartiality of the judiciary are vital to ensuring the effective protection of religious freedom in Serbia. The judiciary has the responsibility to adjudicate cases of religious discrimination and to

1. Article 43 of the Constitution of the Republic of Serbia, “Official Gazette of the Republic of Serbia”, No. 98/2006 and 115/2021.

2. Edge, P. (2010). Religious rights and choice under the European Convention on Human Rights Web Journal of Current Legal Issues 3.

3. Bamforth, N., Malik, M., Cinneide, O. (2018). Discrimination Law, Theory and Context. Sweet & Maxwell, London, p. 144.

uphold the principle of equal treatment before the law. It serves as a critical check against any discriminatory actions by individuals, organizations, or state institutions. The judiciary can interpret and clarify laws related to religious freedom, providing legal guidance that promotes inclusiveness and non-discrimination in all aspects of society.¹

National human rights institutions, such as the Ombudsman, play a crucial role in safeguarding religious freedom in Serbia. These institutions serve as independent bodies responsible for investigating complaints of human rights violations, including those related to religious discrimination. They have the authority to initiate investigations, make recommendations to the competent authorities, and raise public awareness on religious freedom issues. Functioning as a bridge between citizens and the state, these institutions can highlight the challenges faced by religious communities and advocate for their rights within the government.²

The Republic of Serbia has made significant progress in protecting religious freedoms and combating religious discrimination. Its commitment to international human rights treaties, coupled with the existence of strong state institutions, has strengthened the legal framework for promoting tolerance and inclusiveness. However, despite these efforts, challenges persist, and religious discrimination can still be observed in some areas of society. Continued vigilance, dialogue and cooperation between state institutions, civil society, religious communities and citizens are essential for achieving lasting progress in the fight against religious discrimination.

Awareness and application of legal protection

Religious freedom and non-discrimination are fundamental human rights that form the cornerstone of a democratic and inclusive society.³ The Republic of Serbia, as a multiethnic and multireligious country, recognizes the importance of protecting these rights. However, despite significant strides towards democracy and the protection of human rights, religious discrimination persists in certain segments of society. Throughout

1. Lawyers' Committee for Human Rights. (2019). *Discrimination in Serbia – Practice and Challenges*, YUCOM, Belgrade, p. 24.

2. Vickers, L. (2010) Religious discrimination in the workplace: An emerging hierarchy? *Ecclesiastical Law Journal* 12(3), p. 291.

3. McColgan, A. (2014). *Discrimination, Equality and the Law*. Hart Publishing, Oxford, p. 62.

its history, Serbia has been a melting pot of different ethnic groups and religions, including Orthodoxy, Islam, Catholicism, and Judaism. These diverse religious communities coexisted harmoniously for centuries, but the breakup of Yugoslavia in the 1990s and the subsequent Balkan conflicts had a profound impact on interfaith relations. Nationalism and ethnocentrism fueled tensions, leading to incidents of religious discrimination and violence.¹

To address religious discrimination and support religious freedoms, Serbia has established a legal framework at both the national and international levels.

In addition to constitutional guarantees and international obligations, Serbia has implemented specific laws to combat religious discrimination. The Law on the Prohibition of Discrimination², adopted in 2009, provides a comprehensive legal framework to address various forms of discrimination, including religious discrimination. This law establishes equality bodies and mechanisms for investigating and prosecuting cases of discrimination. Furthermore, the Serbian Criminal Code contains provisions criminalizing hate crimes, including those based on religion. Any individual or organization found guilty of inciting hatred or violence against a religious group may face severe penalties. These legal provisions are essential to deter potential perpetrators and promote a culture of tolerance and respect.

Despite a strong legal framework, raising awareness and effectively implementing these laws remains a significant challenge. First, the prevalence of religious discrimination often goes unreported due to fear of reprisals, social stigmatization, or lack of trust in the justice system. Victims may be reluctant to seek redress, limiting the effectiveness of legal protection. Second, some individuals within the justice system may have biases, leading to leniency or indifference in cases of religious discrimination.³ This highlights the importance of ongoing training for judges, prosecutors, and law enforcement officials to ensure impartial

1. Pokusevski, D. (2014). Protection of Equality – a Manual for National Councils of National Minorities, Commissioner for the Protection of Equality, Belgrade, p. 66.

2. Law on the Prohibition of Discrimination, “Official Gazette of the Republic of Serbia”, No. 22/09, 52/2021.

3. Lawyers’ Committee for Human Rights. (2019). Discrimination in Serbia – Practice and Challenges, YUCOM, Belgrade, p. 29.

application of the law. In addition, religious discrimination can manifest itself through subtle or systemic means, making it difficult to identify and effectively address. For example, discriminatory practices in employment or education can limit opportunities for individuals belonging to certain religious groups. Addressing these structural issues requires comprehensive and targeted efforts by government institutions and civil society.

Civil society organizations and religious leaders play a vital role in promoting awareness and advocating for the rights of religious minorities.¹ These entities often serve as a bridge between affected communities and authorities. By providing support to victims, raising awareness through campaigns, and monitoring incidents of hate, civil society contributes to a more inclusive and tolerant society. Religious leaders, regardless of faith, can also use their influence to promote interfaith dialogue and foster understanding among religious communities. Their support for legal protection against religious discrimination can have a profound impact on public opinion and help break down stereotypes and prejudices.

The Republic of Serbia has made significant progress in combating religious discrimination by enacting comprehensive legal protections and ratifying international human rights treaties. However, challenges remain in raising awareness and ensuring the effective implementation of these laws. Addressing religious discrimination requires a joint effort by the government, civil society, and religious leaders to foster a culture of respect, tolerance, and understanding. By working together, Serbia can uphold the principles of religious freedom and non-discrimination and create an inclusive society in which all individuals can freely practice their faith without fear of discrimination or persecution.

Critical assessment of legal mechanisms

Religious discrimination remains a burning issue in many societies around the world, including the Republic of Serbia. As a multiethnic and multireligious country, Serbia faces various challenges in ensuring the protection of religious rights and combating discrimination. The region has experienced centuries of religious tensions, from the Ottoman era to the

1. Allen, R., Moon, M. (2010). Substantive Rights and Equal Treatment in Respect of Religion and Belief: Towards a Better Understanding of the Rights, and Their Implications, EHRLR, p. 25.

Yugoslav wars of the 1990s. Recently, the Republic of Serbia has sought to respect the principles of religious freedom, especially after the adoption of a democratic constitution in 2006. However, religious discrimination persists, manifesting itself in various forms, such as hate crimes, discriminatory practices and social marginalization.¹

The Constitution of Serbia, specifically Article 21, guarantees the right to freedom of religion or belief. Moreover, Serbia is a party to international human rights treaties that guarantee the right to religious freedom, such as the International Covenant on Civil and Political Rights and the European Convention on Human Rights. These commitments provide a solid basis for combating religious discrimination in the country. Serbia has implemented anti-discrimination laws, such as the Law on the Prohibition of Discrimination, which explicitly prohibits discrimination on the basis of religion. The law covers various areas, including education, employment, and access to goods and services. In addition, the Law on Churches and Religious Communities regulates the registration and legal status of religious organizations, with the aim of ensuring their equal treatment. Religious education in public schools remains a contentious issue in Serbia. The country offers religious education classes for different religious groups, which some argue can lead to the segregation of students based on their religion.² Although the law allows parents to choose whether their children attend religious education or ethics classes, concerns remain about the content and fairness of religious education in practice.

One of the key challenges is the inadequate implementation of existing anti-discrimination laws. Despite the legal framework, cases of religious discrimination often remain unresolved or are not processed appropriately. This is due to various factors, including a lack of awareness among victims and authorities, fear of reprisals, and limited resources allocated to combat discrimination cases. The Law on the Prohibition of Discrimination lacks a clear and comprehensive definition of religious discrimination. The absence of a precise description can lead to misinterpretations, making it difficult to

1. Lawyers' Committee for Human Rights. (2019). *Discrimination in Serbia – Practice and Challenges*, YUCOM, Belgrade, p. 31.

2. Kovačević, Lj. (2019). Specificities of the engagement of religious teachers and work with employers of religious ethos. In: V. Čolović, V. Džomić, V. Đurić, M. Stanić (eds.) *State-Church Law through the Ages (703–740)*. Institute of Comparative Law, Belgrade-Budva, Orthodox Metropolis of Montenegro and the Littoral.

effectively identify and prosecute cases of religious discrimination.

The issue of restitution of religious property is a long-standing concern in Serbia. Following the Yugoslav wars, much religious property was confiscated, leading to tensions between religious communities and the state. While some progress has been made, the slow pace of restitution may perpetuate grievances and feelings of discrimination among affected religious groups. Deep-rooted social attitudes and prejudices may exacerbate religious discrimination in Serbia. Negative stereotypes and prejudices against certain religious communities can lead to discriminatory behavior and social exclusion.

Serbia should consider amending the Law on the Prohibition of Discrimination to include a more explicit definition of religious discrimination, thus providing clear guidelines for identifying and prosecuting such cases. In addition, increasing penalties for discrimination would serve as a deterrent and underscore the government's commitment to combating religious discrimination. Raising awareness of religious discrimination among citizens and law enforcement officials is crucial. Training programs should be implemented to help authorities recognize and effectively address discriminatory behavior.¹ Promoting interfaith dialogue can foster mutual understanding and respect among religious communities in Serbia. Engaging in open and respectful discussions can contribute to reducing religious tensions and promoting a more cohesive society. Reforming religious education to emphasize inclusiveness, tolerance, and understanding of different faiths can contribute to fostering a more accepting society. Implementing ethics classes that address moral values from a non-religious perspective can provide a neutral alternative for students who opt out of religious education.²

While Serbia has made progress in protecting religious freedoms through its legal mechanisms, religious discrimination remains a persistent issue. To effectively combat religious discrimination, the country must address existing gaps and challenges in its legal framework, enforcement mechanisms, and societal attitudes. By promoting inclusiveness, fostering interfaith dialogue, and strengthening anti-discrimination laws, Serbia can work to build a more tolerant and harmonious society in which religious rights are protected and respected for all citizens.

1. Edge, P. (2010). Religious rights and choice under the European Convention on Human Rights Web Journal of Current Legal Issues 3.

2. Drydak, N. (2020). Religious Affiliation and Employment Bias in the Labor Market. *Journal for the Scientific Study of Religion* 49 (3), p. 482.

Conclusion

Religious freedom and protection from religious discrimination are fundamental human rights that are globally recognized. The Republic of Serbia, as a multiethnic and multireligious country, recognizes the importance of preserving religious freedom and ensuring equal treatment of individuals, regardless of their religious beliefs.

Freedom of religion and the prohibition of religious discrimination are fundamental human rights protected by national and international legal instruments. The Republic of Serbia has made significant legal progress in protecting these rights within its legal system. The Constitution of Serbia guarantees freedom of religion and belief under Article 40, which provides that all individuals have the right freely to choose, profess and change their religion or beliefs. Serbia is a party to various international agreements and treaties that protect religious freedom and prohibit religious discrimination. The European Convention on Human Rights is of particular importance in this context. Effective enforcement mechanisms are vital to ensure that individuals can seek legal remedies when their religious rights are violated. This section examines the various channels available to individuals to seek legal remedies and the challenges they face in effectively combating religious discrimination in practice. In conclusion, this paper highlights the importance of protecting religious freedom as a fundamental human right in the Republic of Serbia. It highlights the significant progress that has been made in the legal system to safeguard this right and address religious discrimination. However, it also recognizes the challenges that remain and the need for continued efforts to ensure full and effective protection for all individuals in Serbia, regardless of their religious beliefs.

References

1. Allen, R., Moon, M. (2010). Substantive Rights and Equal Treatment in Respect of Religion and Belief: Towards a Better Understanding of the Rights, and Their Implications, EHRLR.
2. Bamforth, N., Malik, M., Cinneide, O. (2018). Discrimination Law, Theory and Context. Sweet & Maxwell, London.
3. Cobb, N. (2019). Gay couple's break like Fawlty Towers: Dangerous representations of lesbian and gay oppression in an era of 'progressive' law reform. *Social & Legal Studies* 18(3): 333-352.

4. Constitution of the Republic of Serbia, “Official Gazette of the Republic of Serbia”, No. 98/2006 and 115/2021.
5. Criminal Code, “Official Gazette of the Republic of Serbia”, No. 85/2005, 88/2005 - corrected, 107/2005 - corrected, 72/2009, 111/2009, 121/2012, 104/2013, 108/2014, 94/2016 and 35/2019.
6. Drydakis, N. (2020). Religious Affiliation and Employment Bias in the Labor Market. *Journal for the Scientific Study of Religion* 49 (3): 477-493.
7. Edge, P. (2010). Religious rights and choice under the European Convention on Human Rights Web Journal of Current Legal Issues 3.
8. Johnson, P., Vanderbeck, R. (2014). Law and Religion. Routledge, Oxford.
9. Kovačević, Lj. (2019). Specificities of the engagement of religious teachers and work with employers of religious ethos. In: V. Čolović, V. Džomić, V. Đurić, M. Stanić (eds.) State-Church Law through the Ages (703–740). Institute of Comparative Law, Belgrade-Budva, Orthodox Metropolis of Montenegro and the Littoral.
10. Labor Law, “Official Gazette of the Republic of Serbia”, No. 4/2005, 61/2005, 54/2009, 32/2013, 75/2014, 13/2017 - decision of the Constitutional Court, 113/2017 and 95/2018.
11. Law on Asylum and Temporary Protection, “Official Gazette of the Republic of Serbia”, No. 24/2018.
12. Law on Churches and Religious Communities, “Official Gazette of the Republic of Serbia”, No. 36/2006.
13. Law on the Foundations of the Education System, “Official Gazette of the Republic of Serbia”, No. 8/2017, 27/2018 - other law, 10/2019, 27/2018 - other law, 6/2020 and 129/2021.
14. Law on the Prohibition of Discrimination, “Official Gazette of the Republic of Serbia”, No. 22/09, 52/2021.
15. Law on the Protection Program for Participants in Criminal Proceedings, “Official Gazette of the Republic of Serbia”, No. 85/2005.
16. Lawyers’ Committee for Human Rights. (2019). Discrimination in Serbia – Practice and Challenges, YUCOM, Belgrade.
17. McColgan, A. (2014). Discrimination, Equality and the Law. Hart Publishing, Oxford.
18. Milenković, D. (2010). Guide to the Law on Prohibition of

Discrimination, Helsinki Committee for Human Rights in Serbia, Belgrade.

19. Paunović, M. (2002). Fundamentals of Human Rights – Source and Glossary, Belgrade.
20. Petrušić, N., Becker, K. (2012). Practicum for protection against discrimination, Partners for Democratic Change in Serbia, Belgrade.
21. Pokusevski, D. (2014). Protection of Equality – a Manual for National Councils of National Minorities, Commissioner for the Protection of Equality, Belgrade.
22. Vickers, L. (2010) Religious discrimination in the workplace: An emerging hierarchy? *Ecclesiastical Law Journal* 12(3): 280-303.

INTELLIGENCE ACTIVITIES, INTERNATIONAL LAW AND THE PROTECTION OF HUMAN RIGHTS

Erjon Hitaj¹
Ilir Kanaj²

1. Introduction

In the contemporary world, intelligence activities play a crucial role in protecting national and international security. As transnational threats - such as global terrorism, organized crime, the proliferation of weapons of mass destruction, and cyberwarfare - have intensified, governments have progressively expanded the powers of their intelligence agencies to include advanced surveillance technologies, covert operations, and the mass collection of personal data.

However, this operational expansion has raised growing concerns about the compatibility of such activities with fundamental principles of public international law, in particular international human rights law. The indiscriminate collection of information, the use of surveillance/interception programs, the secret detention of individuals suspected of terrorism and the opaque inter-state cooperation between intelligence services have often led to documented violations of the rights to privacy, freedom of expression, effective judicial protection and human dignity.

This issue is particularly relevant today, at a time when balancing collective security with the protection of fundamental rights represents one of the most complex legal and ethical challenges for modern

1. PhD – Sapienza University of Rome, Lecturer of Public International Law, University, “Ismail Qemali” Vlore, ehitaj@yahoo.it.

2. PhD – University of Bologna, Lecturer of Constitutional Law, University, “Ismail Qemali” Vlore, ilirkanaj@yahoo.com.

democracies. Moreover, the lack of transparency, judicial oversight and international accountability over intelligence operations undermines the rule of law and can legitimize arbitrary practices, even in countries with strong democratic constitutions¹.

Addressing the issue of intelligence from the perspective of international law and human rights, therefore, means questioning the future of security governance, the responsibilities of states and the guarantees that should be provided to the individual even in the most critical contexts. It is a central issue for the future of international legal order, the democratic control of power and the effective protection of the human person.

2. The evolution of intelligence services in an international context.

Over the past two centuries, the role of intelligence services in the international arena has undergone a complete transformation, from an instrument used primarily in the field of military and diplomatic security to becoming a significant element of state governance and international security. From covertly investigating the adversary's approach to transnational conflicts, intelligence services have now managed to operate in a highly interconnected global environment, where threats are asymmetric, technologically advanced, and often transcending transnational borders². As a result, intelligence activities have assumed

1. "Establishing a system of intelligence service accountability that is both democratic and efficient is one of the most daunting challenges faced by modern-day states. This arduous task is indispensable, however, as political guidance and direction to the reform of intelligence services contributes to the avoidance of abuses as well as to the enhancement of efficiency for all participating branches of government", BORN, H., LEIGH, I., & WILLS, A, *Making Intelligence Accountable: Legal Standards and Best Practice for Oversight of Intelligence Agencies*. DCAF, 2007, Oslo, p. 4.

2. See, in particular, GILL, P., & PHYTHIAN, M., *Intelligence in an Insecure World* (3rd ed.), Polity Press, 2018, Cambridge: "However, one day in September 2001 transformed the international security situation, resolving instantly internal debates about the relative importance that leading Western states, particularly the US, should attach to the potential threat posed by terrorism vis-à-vis potential state-based threats (particularly, at the time, the implications of the rise of China). The terrorist threat was the most potent expression

enormous importance not only in the context of internal security, but also in international relations and law.

Traditionally, intelligence activities have been closely linked to national defense, military operations, and interstate espionage. During the Cold War, intelligence became an important tool in the ideological competition between the United States and the Soviet Union, culminating in covert operations, political destabilization, and strategic propaganda. Agencies such as the CIA, KGB, MI6, and DGSE developed complex structures for collecting sensitive information. The principle of secrecy dominated the scene, and the lack of effective judicial control was justified by the logic of national security.

The collapse of the Soviet Union in 1991 seemed to temporarily reduce the function of intelligence, directing it towards phenomena such as drug trafficking, organized crime, and nuclear proliferation. However, it was the terrorist attacks of September 11, 2001, that represented a major turning point. The so-called “Global War on Terror” introduced a new operational paradigm, characterized by preventive surveillance, massive data collection, and international cooperation between agencies, often outside formal law¹. Intelligence became a proactive tool, oriented towards prevention rather than reaction².

The new approach of the digital age has brought about a surprising multiplication of the technological capabilities of intelligence agencies. Traditional ways of gathering and disclosing information are slowly being replaced by advanced technological methods and tools such as electronic interception, artificial intelligence, espionage, and large-scale

of the ‘dark side of globalization’ – the idea that the trends that made globalization such a positive force (increased international integration arising from the increasingly free flow of capital, goods and people, underpinned by a revolution in communications technologies – principally, the Internet) also did much to facilitate forms of transnational crime, including terrorism”, p. 33.

1. See, also., DONOHUE, L. K, *The Cost of Counterterrorism: Power, Politics, and Liberty*. Cambridge University Press, 2008, Cambridge. See, among others, CHESTERMAN, S, *One Nation Under Surveillance: A New Social Contract to Defend Freedom Without Sacrificing Liberty*. Oxford University Press, 2007, Oxford.

2. DUFFY, H, *The ‘War on Terror’ and the Framework of International Law*. Cambridge University Press, 2015, Cambridge, “Changes in national laws have also reflected the increased focus - on the international, regional and national levels - on the question of how to harness criminal law not only as a tool to respond to acts of terrorism after the fact, but to its prevention”, p. 196.

automated data analysis¹. The 2013 leaks by Edward Snowden about secret programs of the US National Security Agency, such as the PRISM and *Tempora* programs, showed the wide scope of state surveillance and its profound consequences for the protection of fundamental human rights².

In this new context, intelligence is no longer limited to identifying military or terrorist threats, but intervenes in areas such as cybersecurity, financial stability, information manipulation, health emergencies and even climate security³. The increasing use of biometric technologies, facial recognition systems and mass surveillance software such as Pegasus (according to the European Parliament's PEGA report, 2023⁴) has called into question the principle of proportionality, which is at the heart of privacy protection in the jurisprudence of the European Court of Human Rights.

The evolution of intelligence has generated a growing tension between operational effectiveness and the need to respect international law and human rights. According to the ECHR, even covert activities must respect a minimum basis of legal guarantees, including legality, necessity and proportionality⁵. Recently, in the case of *Big Brother Watch and Others v. the United Kingdom* (2021), the Court ruled that indiscriminate surveillance violates Article 8 of the ECHR in the absence of sufficient checks and oversight mechanisms⁶.

1. SCHEININ, M, Ten Human Rights Questions About Counter-Terrorism Surveillance. *Human Rights Quarterly*, 31(3), 2009, pp. 593–624.

2. “To turn that network into a system of mass surveillance has implications unlike those of any previous state surveillance programs. All the prior spying systems were by necessity more limited and capable of being evaded. To permit surveillance to take root on the Internet would mean subjecting virtually all forms of human interaction, planning, and even thought itself to comprehensive state examination”, GREENWALD, G, *No Place to Hide: Edward Snowden, the NSA, and the U.S. Surveillance State*. Metropolitan Books, 2014, p. 13.

3. BORN, H., LEIGH, I., & WILLS, A, *Making Intelligence Accountable: Legal Standards and Best Practice for Oversight of Intelligence Agencies*. DCAF, 2007, Oslo, p. 71.

4. PEGA Committee final report. The conclusive report of the PEGA Committee from the European Parliament on the use of Pegasus and equivalent surveillance spyware in the EU, https://www.europarl.europa.eu/doceo/document/TA-9-2023-0244_EN.pdf, last access 12.05.2025.

5. ECtHR, *Klass and Others v. Germany*, App. No. 5029/71, 1978.

6. ECtHR *Big Brother Watch and Others v. UK*, App. Nos. 58170/13, 62322/14, 24960/15,

However, many intelligence operations operate in a legal “gray area.” Informal cooperation agreements between states, such as the “Five Eyes” or the “Berne Club,” are not subject to transparent international obligations, making it difficult to attribute responsibility for any rights violations¹. The lack of effective accountability represents one of the most urgent challenges for the international community.

3. The international legal framework of intelligence activities

Intelligence activities, by their secret and strategic nature, fall into a grey area of international law, where the fundamental principles of the global legal system clash with the needs of national security, the fight against terrorism and the prevention of transnational threats. Despite the lack of a universal treaty specifically regulating intelligence operations, general international law - particularly international human rights law, international humanitarian law and customary law - imposes legal constraints and obligations even on these seemingly extra-legal activities².

One of the cornerstones of public international law is the sovereignty of states, enshrined in the Charter of the United Nations (Article 2, para. 1; 4), which implies the right of States to exercise full control within their territory without external interference. Intelligence activities, especially extraterritorial and covert ones (e.g. telephone tapping, clandestine operations, digital surveillance), may constitute a violation of the principle of non-interference and the prohibition on the use of force, if they interfere with the sovereign functions of another state³.

Cyber activities have raised complex questions about whether digital

2021.

1. Venice Commission. (2021). *Report on the Democratic Oversight of Signals Intelligence Agencies*. Council of Europe, <https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=cdl-ad%282015%29011-e>, last access 02.04.2025

2. DUFFY, H., *op. cit.*, p. 213.

3. SCHMITT, M. N, Extraterritorial Lethal Targeting: Deconstructing the Logic of International Law. *Columbia Journal of Transnational Law*, 52(1), 2013, “The position is based on the reality that reliable and actionable intelligence that an attack will occur often exists even when the precise means, timing, and location of such an attack remain unknown. For proponents, it would be incongruent with the object and purpose of the right of self-defense to interpret the norm as disallowing action in such cases”, p. 91.

attacks or surveillance violate the principle of sovereignty¹. However, there is still no clear consensus on this point in international practice.

One of the fundamental pillars of public international law is the sovereignty of states, enshrined in the Charter of the United Nations (Article 2, paragraphs 1 and 4), which implies the right of states to exercise full control over their territory without external interference. Intelligence activities, especially extraterritorial and covert ones (e.g. telephone tapping, clandestine operations, digital surveillance), may constitute a violation of the principle of non-interference and the prohibition on the use of force if they interfere with the sovereign functions of another state².

Cyber activities have raised complex questions about whether attacks or digital surveillance violate the principle of sovereignty³. However, in international practice there is still no clear consensus on this point.

In the context of international and non-international armed conflicts, intelligence operations are subject to international humanitarian law, in particular the principles of distinction, proportionality and precaution. Intelligence-based operational actions (e.g., armed drones, targeted killings) must comply with the provisions of the Geneva Conventions and

1. SCHMITT M. N, *Tallinn Manual 2.0 on the International Law Applicable to Cyber Operations*. Cambridge University Press. 2017, Cambridge, “For instance, conducting cyber attacks against civilian objects would generally violate the law of armed conflict (Rule 94), but it is unclear whether a Security Council authorization to conduct such attacks would, as a matter of law, override the prohibition. Whatever the case, a Security Council decision to disregard rules of international law should not be taken lightly. The International Group of Experts agreed that under no circumstances may the Security Council deviate from rules of a *jus cogens* nature”, p. 360.

2. SCHMITT, M. N, *Extraterritorial Lethal Targeting: Deconstructing the Logic of International Law*. *Columbia Journal of Transnational Law*, 52(1), 2013, “Caustic debates over extraterritorial targeting, which is usually conducted by remotely piloted aircraft (so called “drones”), have plagued the international law community for a number of years. Although that topic merits attention, the discourse has been marked by an unusually high degree of counter-normative and counter-factual assertions”, p. 80.

3. SCHMITT M. N, *Tallinn Manual 2.0 on the International Law Applicable to Cyber Operations*. Cambridge University Press. 2017, Cambridge, “Cyber operations that prevent or disregard another State’s exercise of its sovereign prerogatives constitute a violation of such sovereignty and are prohibited by international law. Of course, in certain situations international law permits or envisages exceptions to the obligation to respect another State’s sovereignty.”, p. 17.

Additional Protocol I¹. The use of inaccurate or unverified information may result in liability for unfair or disproportionate attacks.

However, many covert operations are conducted outside a declared war context, which makes the application of humanitarian law questionable and raises the question of the legal legitimacy of extraterritorial lethal operations in the context of the war on terrorism².

The international responsibility of a State is triggered when the activities of its intelligence agencies violate international norms, such as mass surveillance, torture, arbitrary detention or unlawful interference in third States. The International Law Commission's Draft Articles on the Responsibility of States for Internationally Wrongful Acts (2001) provide a theoretical basis for attributing such acts to the State.

Furthermore, victims of violations resulting from intelligence operations have the right to an effective remedy, as set out in Article 13 of the ECHR. However, secrecy clauses, state immunity and "plausible denial" often impede access to justice³. The European Parliament, through the PEGA Committee, recently denounced the abuse of spyware in several member states, recommending the adoption of binding legal mechanisms to regulate the use of invasive technologies⁴.

4. Protection of human rights in intelligence activities

Intelligence agencies constitute an essential element in ensuring order and protection, both at the national and international levels. However,

1. FLETCHER, G. P., & OHLIN, J. D, *Defending Humanity: When Force is Justified and Why*. Oxford University Press, 2008, Oxford, "In criminal law, as long as the mistaken belief was objectively reasonable at the time, then the doctrine of legitimate defense would apply, and at first glance there is no reason to think there should be any difference in international law. The real question is whether we should view this defense as a justification or as an excuse. One might be confused as to why this distinction is important, especially in international law", p. 172.

2. SCHMITT, M. N, *Extraterritorial Lethal Targeting: Deconstructing the Logic of International Law*. *Columbia Journal of Transnational Law*, 52(1), 2013, p. 93.

3. Venice Commission. (2021). *Report on the Democratic Oversight of Signals Intelligence Agencies*. Council of Europe, <https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=cdl-ad%282015%29011-e>, last access 02.04.2025.

4. PEGA Committee final report. The conclusive report of the PEGA Committee from the European Parliament on the use of Pegasus and equivalent surveillance spyware in the EU, https://www.europarl.europa.eu/doceo/document/TA-9-2023-0244_EN.pdf, last access 12.05.2025.

the proliferation and development of methods of information collection and analysis have raised serious concerns regarding respect for the fundamental rights and freedoms of the individual. The main challenge lies in finding a sustainable balance between legitimate security requirements and the obligation to guarantee human rights, in accordance with the most advanced international standards.

International human rights law sets binding norms for intelligence activities. Instruments such as the International Covenant on Civil and Political Rights (ICCPR) and the European Convention on Human Rights (ECHR)¹ impose obligations on states to ensure respect for the rights to privacy, freedom of expression and due process, including in the context of intelligence operations.

Mass surveillance and indiscriminate collection of personal data may constitute a violation of the right to privacy. The European Court of Human Rights has held that any interference with this right must be in accordance with the law, pursue a legitimate aim and be necessary in a democratic society (ECHR, Article 8). Furthermore, the Toronto Declaration stresses the importance of ensuring that artificial intelligence systems respect the rights to privacy and non-discrimination².

The use of artificial intelligence tools in intelligence agencies' operations raises new challenges for the protection of human rights. The use of algorithmic models can lead to automated decision-making that significantly affects fundamental freedoms and rights, such as cases of presumed consent or prior restriction of personal freedom. Such tools and methods must be highly transparent, established by law and always remain under human control to prevent potential inequalities and violations of rights³.

1. Council of Europe. (1950). *Convention for the Protection of Human Rights and Fundamental Freedoms* (European Convention on Human Rights). Retrieved from <https://www.echr.coe.int/>.

2. Amnesty International & Access Now. (2018). *The Toronto Declaration: Protecting the Rights to Equality and Non-Discrimination in Machine Learning Systems*, <https://www.torontodeclaration.org/declaration-text/english/>, last access 30.04.2025.

3. CARPANELLI, E. (2022). Il ricorso all'intelligenza artificiale nel contesto di attività di law enforcement e di operazioni militari: brevi riflessioni nella prospettiva del diritto internazionale. *DPCE Online*, 51(1). <https://doi.org/10.57660/dpceonline.2022.1580>, "L'utilizzo di algoritmi nello svolgimento di funzioni di protezione della sicurezza pubblica consentirebbe non solo di ridurre il crimine, ma anche di garantire una distribuzione più

The exchange of information between intelligence services of different countries can pose a risk to the protection of human rights, especially when the information serves as a pretext for committing violations such as torture or unlawful detention. Modern international law obliges states not to assist or tolerate violations committed by other states, including through the formal exchange of information for intelligence purposes¹.

To fully guarantee the protection of human rights and freedoms, it is essential that the activities of intelligence agencies are subject to effective criteria of control and accountability. This includes parliamentary, judicial and independent oversight of intelligence activities, as well as the availability of effective legal remedies for victims of rights violations.²

5. European and international case law

International jurisprudence, in particular the European Court of Human Rights (ECHR), has played a decisive role in identifying the legal limits of intelligence activity, setting clear standards for balancing the needs of security and the protection of human rights and freedoms. Through a progressive interpretative approach, the Court has addressed cases relating to electronic surveillance, the secrecy of operations and the lack of judicial review, underlining the principle that intelligence must also act in accordance with the principles of legality and proportionality³.

Klass and Others v. Germany (1978).

In this pioneering case, the ECtHR first addressed the issue of secret surveillance by the German security services (BND). The claimants claimed that German law permitted interception without sufficient

efficiente delle risorse umane disponibili. Tuttavia, simili tecniche predittive possono altresì interferire con il godimento di alcuni diritti fondamentali. Come è stato osservato, infatti, il ricorso a tali algoritmi può enfatizzare le discriminazioni già esistenti e avere effetti negativi sulla tutela dei diritti alla privacy, alla protezione dei dati, e alla libertà di espressione”, p. 384.

1. MILANOVIC, M, Intelligence Sharing in Multinational Military Operations and Complicity under International Law. *International Law Studies*, 97(1), 2021, p.p. 1-30.

2. UNODC. Accountability and Oversight of Intelligence Gathering Methods, <https://www.unodc.org/e4j/en/terrorism/module-12/key-issues/accountability-oversight-of-intelligence-gathering-methods.html>, aksesi i fundit 24.05.2025.

3. SCHEININ, M, Ten Human Rights Questions About Counter-Terrorism Surveillance. *Human Rights Quarterly*, 31(3), 2009, p. 603.

legal safeguards. The Court accepted that secret surveillance could be compatible with Article 8 of the ECHR (right to private life), but only if it was provided for by law and accompanied by effective checks¹.

This case sanctioned the principle that intelligence activities cannot escape the scrutiny of the rule of law and that there must be an effective balance between national security and individual rights and freedoms².

Weber and Saravia v. Germany (2006).

This case concerned the lawfulness of preventive surveillance of telecommunications by the German secret service (BND). Although the Court declared the application inadmissible, it established certain non-derogable criteria: the law authorizing the surveillance must be sufficiently clear, foreseeable and limited in time and purpose.

The Court reiterated that the law must contain safeguards against abuse, including the modalities of authorizations, storage and destruction of the data collected³.

Liberty and Others v. the United Kingdom (2008).

In this case, the applicant organizations complained of unlawful surveillance of their communications by the British authorities under the Interception of Communications Act 1985. The Court held that the lack of transparency and the lack of clear information on the standards applied violated Article 8 of the Convention.

This case has reinforced the idea that operational secrecy cannot justify a total lack of democratic and judicial accountability on the part of intelligence services⁴.

Zakharov v. Russia (2015)

One of the most important decisions on this topic, Zakharov,

1. ECtHR, *Klass and Others v. Germany*, App. No. 5029/71, (1978), par. 50: "Secret surveillance measures, even if extraordinary, must be necessary in a democratic society".

2. *Po aty*.

3. ECtHR, *Weber and Saravia v. Germany*, App. No. 54934/00, (2006), par. 95.

4. "Where it is likely to be of greater relevance is in respect of crimes committed in the name of the 'war on terror', where there has yet to be meaningful accountability of state agents, including high-level officials, but where attempts to ensure their 'de facto' immunity are already apparent.", DUFFY, H., *op. cit.*, p. 213.

concerned a Russian citizen who challenged the legal framework for telephone tapping by the domestic secret service (FSB). The court ruled that the Russian legislation violated Article 8 of the ECHR, as it did not provide for minimum guarantees against arbitrariness or effective judicial review¹.

This case represented a turning point in the protection of digital rights and reaffirmed the value of legal transparency and judicial control over intelligence operations.

Big Brother Watch and Others v. the United Kingdom (2021)

In this much-discussed case, the Court assessed the UK's mass data collection and surveillance programs of electronic communications, revealed by Edward Snowden. The ECtHR ruled that the UK had violated Articles 8 (privacy) and 10 (freedom of expression) due to the lack of sufficient safeguards, transparency and independent oversight.

The case set out important criteria for the legitimacy of mass surveillance, including: the existence of independent *ex ante* authorizations; notification at least after the fact of the subject being monitored; effective judicial or parliamentary oversight².

In addition to the ECHR, UN bodies, such as the Human Rights Committee, have also stated that mass surveillance, in the absence of the criteria of necessity and proportionality, constitutes a violation of the ICCPR³. Similarly, the UN Special Rapporteur on Privacy has denounced the growing use of espionage and intrusion tools by intelligence agencies, calling for an international moratorium on the use of invasive technologies until binding standards are developed⁴.

1. ECtHR, *Zakharov v. Russia*, App. No. 47143/06, (2015), par. 164: "Only the possibility of illegal interception can constitute a violation of the right to private life."

2. ECtHR, *Big Brother Watch and Others v. United Kingdom*, App. Nos. 58170/13 et al., (2021). Par. 387: "A system that allows for the indiscriminate collection of communications must contain strict safeguards against abuse".

3. United Nations Human Rights Committee. *General Comment No. 34: Article 17 (Right to Privacy)*, 2014, <https://www.refworld.org/legal/general/hrc/1988/en/27539>, last access 21.05.2025.

4. CANNATA, J, *Report of the Special Rapporteur on the right to privacy*, A/HRC/37/62, 2018, <https://docs.un.org/en/A/HRC/37/62>, last access 22.05.2025.

6. Responsibility and accountability of States

Intelligence activity, although carried out in a context characterized by operational secrecy and flexibility, cannot avoid complying with international human rights standards. When these operations violate fundamental rights and freedoms or the principles of applicable international law, the problem of state responsibility at the international level and the need to guarantee transparent, legal and institutional accountability naturally arises. The growing attention of jurisprudence, international organizations and doctrine to these issues reflects the urgency of reconciling national security needs with the principles of the rule of law¹.

According to the Draft Articles on State Responsibility for Internationally Wrongful Acts (2001) of the International Law Commission², a state is responsible for acts that violate international norms if these are attributed to state organs, including intelligence agencies. Articles 4 and 8 of the ILA specify that the conduct of such entities is considered state conduct if it is exercised in an official capacity, even if it exceeds the limits of authorization.

Intelligence activities that result in arbitrary detention, torture, extrajudicial executions or extraterritorial interference may therefore constitute internationally unlawful acts³. Sharing information with other states, when it involves participation or complicity in human rights violations, may also result in liability under Article 17.16 of the Draft ILA.

1. "A rule of law approach to counter-terrorism requires that they be prosecuted, in accordance with due process, and that those responsible be held to account with proportionate penalties. The lack of an internationally accepted crime of 'terrorism' should not impede this process: serious acts of terrorism constitute core crimes under international law, while national systems have increasingly incorporated forms of terrorism, among other relevant crimes, in domestic law", DUFFY, H., *op. cit.*, p. 243.

2. International Law Commission, *Draft Articles on Responsibility of States for Internationally Wrongful Acts*, https://legal.un.org/ilc/texts/instruments/english/commentaries/9_6_2001.pdf, last access 20.04.2025.

3. "If States are prepared to accept that exposing individuals to the risk of serious harm can in and of itself violate human rights even if the risk does not materialize, then a fortiori they would accept that providing to a third-party assistance that causally contributes to harms also violates human rights", MILANOVIC, M, Complicity in wrongful acts in international law: Lessons from intelligence sharing. *International & Comparative Law Quarterly*, 69(3), <https://doi.org/10.1017/S002058932000022X>, 2020, p. 1347.

In the context of cooperation between intelligence services - as in the case of the “Five Eyes”, NATO or multilateral missions - responsibility can also arise indirectly, when a state provides information, logistical support or operational capabilities that allow another state to commit violations. This is the case of complicity in so-called extraordinary renditions, as in the well-known case of *El-Masri v. Macedonia*¹, where the Strasbourg Court declared Macedonia responsible for collaborating with the CIA in the abduction and illegal detention of the plaintiff.

The International Court of Justice (ICJ) has also determined that the standard for liability for complicity requires knowledge and intent, but human rights jurisprudence tends to a broader reading, based on due care and foreseeability².

In addition to international accountability, democratic states must ensure effective domestic accountability mechanisms, in particular through: parliamentary oversight of intelligence agencies, specialized committees with investigative powers and access to classified information; judicial control (special judges or constitutional courts) over measures that restrict freedom (e.g. surveillance, checks, wiretapping); independent authorities for the protection of personal data and digital rights, which can act autonomously against systemic abuses³.

However, in many jurisdictions, these controls remain weak, opaque or symbolic, especially when used for reasons of national security or operational secrecy. In this sense, the European Parliament, through the PEGA Committee, denounced in 2023 the abusive use of spyware such as Pegasus in several Member States and called for the establishment of a binding regulatory framework and sanctioning mechanisms⁴.

International human rights law recognizes the right of victims of

1. ECtHR, *El-Masri v. The Former Yugoslav Republic of Macedonia*, App. No. 39630/09, 2012.

2. MILANOVIC, M, *op. cit.*, p. 1380. <https://doi.org/10.1017/S002058932000022X>, last access 26.05.2025.

3. Venice Commission. (2021). *Report on the Democratic Oversight of Signals Intelligence Agencies*. Council of Europe, <https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=cdl-ad%282015%29011-e>, last access 27.04.2025.

4. PEGA Committee final report. The conclusive report of the PEGA Committee from the European Parliament on the use of Pegasus and equivalent surveillance spyware in the EU, https://www.europarl.europa.eu/doceo/document/TA-9-2023-0244_EN.pdf, last access 23.05.2025.

violations to an effective remedy, as provided for in Article 13 of the ECHR and Article 2(3) of the ICCPR. However, the secrecy of intelligence operations, the use of state immunity and the lack of notification often make this right unenforceable in practice¹. Strasbourg jurisprudence has emphasized that even in matters of national security, individuals must be able to defend their rights².

Furthermore, under the doctrine of positive obligations, the state has the duty not only to refrain from violations, but also to prevent, investigate and punish illegal conduct committed by secret service agents or under their responsibility³.

7. Current issues and challenges

Intelligence activities are today at the centre of a profound and controversial transformation. The emergence of new invasive technologies, the globalization of surveillance, the operational ambiguity of agencies and the lack of binding international regulations represent some of the main challenges that put at risk the delicate balance between security and the protection of fundamental rights. While intelligence services are essential tools in preventing complex threats (terrorism, cyberwarfare, transnational crime), their increasing autonomy and secrecy raise critical questions regarding respect for the rule of law⁴.

Mass digital surveillance, enabled by artificial intelligence, facial recognition, spyware (such as Pegasus), and predictive systems, has redefined the boundaries of privacy and security. The use of these technologies, often without an appropriate legal framework or independent oversight,

1. SCHEININ, M, Ten Human Rights Questions About Counter-Terrorism Surveillance. *Human Rights Quarterly*, 31(3), 2009, p. 613.

2. ECtHR, *Zakharov v. Russia*, App. No. 47143/06, 2015, par. 164.

3. CANNATACI, J. (2018). *Report of the Special Rapporteur on the right to privacy*, A/HRC/37/62, <https://docs.un.org/en/A/HRC/37/62>, last access 22.05.2025.

4. “Adapted approaches to procedure and evidence may seek to meet security challenges, but jeopardise the right to trial before an independent and impartial tribunal, or the ability to mount a meaningful defence. The ever-expanding reach of criminal norms and adaptation of criminal process puts real strain on the most basic criminal law principles – legality, individual responsibility, the presumption of innocence, the independence of the judiciary and due process – upon which the legitimacy of the criminal law depends”, DUFFY, H., *op. cit.*, p. 244.

risks transforming preventive surveillance into a tool of generalized social control¹.

The report of the UN Special Rapporteur on Privacy underlined the urgency of restricting the use of spyware until clear international legal standards are adopted². Similarly, the ECtHR, in the *case of Big Brother Watch and Others v. the United Kingdom*, ruled that mass surveillance, in the absence of sufficient safeguards, violates Articles 8 and 10 of the Convention³.

Another obstacle to the protection of rights is the phenomenon of plausible deniability, that is, the possibility for states to officially deny involvement in covert operations, even if they have taken place with their consent or informal participation. This approach undermines the principles of state accountability and hinders access to justice for victims of violations (Milanovic, 2020). Examples of this are the practices of rendition and extraordinary detention in secret facilities, as recognized in the *case of El-Masri v. Macedonia*⁴.

To date, there is no specific international treaty regulating intelligence activities. Applicable rules are found in fragments of general international law, human rights law, humanitarian law and customary law. The lack of common and binding legal standards allows for heterogeneous approaches, some of which allow for structural abuses, particularly in authoritarian regimes, but also in weakly controlled democracies.⁵

In many countries, oversight of intelligence activities is entrusted to parliamentary committees or special judges, but such bodies suffer from limited access to information, lack of coercive power, or political subservience. This undermines the effectiveness of democratic oversight and fosters a culture of impunity⁶.

1. Amnesty International & Access Now. (2018). *The Toronto Declaration: Protecting the Rights to Equality and Non-Discrimination in Machine Learning Systems*, <https://www.torontodeclaration.org/declaration-text/english/>, last access 30.04.2025

2. CANNATA, J. (2018). *Report of the Special Rapporteur on the right to privacy*, A/HRC/37/62, <https://docs.un.org/en/A/HRC/37/62>, akses i fundit 21.04.2025

3. ECtHR, *Big Brother Watch and Others v. United Kingdom*, App. Nos. 58170/13 et al., 2021.

4. ECtHR, *El-Masri v. The Former Yugoslav Republic of Macedonia*, App. No. 39630/09, 2012.

5. Venice Commission. (2021). *Report on the Democratic Oversight of Signals Intelligence Agencies*. Council of Europe, <https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=cdl-ad%282015%29011-e>, last access 22.05.2025.

6. “[...] effective parliamentary oversight depends on effective control of the agencies by

The risk is to consolidate a “permanent zone of exclusion” in which the rule of law is suspended, justified by the need for national security¹.

8. Final remarks

In the contemporary global context, intelligence activities constitute an essential component for the protection of national and international security. However, the growing impact of these activities, the use of intrusive technologies and the lack of operational transparency pose major challenges for the rule of law and the protection of fundamental human rights. As we have tried to establish through normative analysis, jurisprudence and doctrinal literature, there are no real legal gaps: even covert operations must respect the principles of legality, proportionality, necessity and controlled transparency.

The jurisprudence of the European Court of Human Rights, the recommendations of United Nations bodies and the reports of structures such as the PEGA Committee have clearly established a guiding line: security cannot be achieved at the expense of rights but must be managed in accordance with them. The principles of international law, including those on state responsibility, set clear limits even for the most secret sectors of state activity.

For this reason, a multi-level reform would be appropriate, including: the adoption of binding legal instruments at the international level; strengthening parliamentary, judicial and independent oversight;

ministers. Parliaments can only reliably call ministers to account for the actions of the intelligence agencies if ministers have real powers of control and adequate information about the actions taken in their name. Where this is lacking, the only democratic alternative is for a parliamentary body or official to attempt to fill the vacuum. This, however, is a poor substitute because legislative bodies can effectively review the use of powers and expenditure ex post facto, but they are not inherently well-equipped to direct and manage these matters, whereas governmental structures are”, BORN, H., LEIGH, I., & WILLS, A, *Making Intelligence Accountable: Legal Standards and Best Practice for Oversight of Intelligence Agencies*. DCAF, 2007, Oslo, p. 55.

1. “But as executive power expands under the counterterrorist banner, it becomes particularly important for people to know the government is exercising its power – especially now that a number of executive bodies are actively trying to get inside people’s heads, to know what they are going to do before they do it. Such psychological surveillance threatens a range of social and political interests – not least of which is legislative autonomy”, DONOHUE, L. K. (2008). *The Cost of Counterterrorism: Power, Politics, and Liberty*. Cambridge University Press, 2008, Cambridge, p. 341.

guaranteeing effective means of protection for victims; and regulating the private surveillance market. It is also essential to promote an institutional culture of responsible transparency, which can combine operational secrecy with democratic accountability.

In conclusion, the future of democracies will depend on the ability to set legal limits on the “shadow of intelligence.” Only by ensuring a true balance between security and freedom can a just, sustainable national and international legal order be built, one that guarantees human dignity.

THE PANDEMIC'S INFLUENCE ON THE RIGHT TO FREEDOM OF ASSEMBLY AND ORGANIZATION IN ALBANIA

Assoc. Prof. Dr. Ermonela Ruspi¹

Abstract

The COVID-19 pandemic faced human society with many obstacles. One of the challenges was the restriction of fundamental human rights and freedoms. This paper addresses the impact of restrictive measures imposed by the Albanian authorities in the framework of health crisis management, analysing the balance between the need to protect public health on the one hand and, on the other, respect for human rights, including the right to freedom of assembly and organization. The methods applied in this study combine legal analysis, empirical review, and international comparison to analyse regulatory acts and the proportionality of restrictions on the right to freedom.

The study initially deals with the Albanian and international legal framework regarding the right to freedom of assembly and organization, focusing on the restrictions allowed during public emergencies. Then, it analyses the concrete impact of the restrictive measures in Albania, addressing the issues of transparency, accountability, and public consultation in the decision-making process.

To prevent the spread of the virus, state bodies implemented restrictive measures, which in several cases marked an excess of authority and a lack of proportionality. On the other hand, this unusual situation has highlighted the need for stronger rights protection mechanisms and a more comprehensive approach to emergency policymaking.

1. Lecturer, "Eqrem Çabej" University, Gjirokastër
ermonelaruspi@gmail.com

In conclusion, the paper aims to provide some recommendations for strengthening the protection mechanisms for human rights in Albania, proposing concrete steps to ensure the proportionality of restrictions and promote an effective dialogue between state actors and civil society. To this purpose, the balance between public security and fundamental rights is crucial.

Keywords: *pandemic, freedom of assembly, normative act, jurisprudence, restrictions, proportionality*

1. Introduction

The COVID-19 pandemic, as one of the unprecedented forms of public emergency, has had a profound impact on many aspects of economic, political, and social life worldwide. Without having the experience to prevent the spread of the virus, state authorities reacted rapidly to respond to the emergency. One of the most visible consequences of this situation has been the restriction of fundamental rights and freedoms, including the freedom of assembly and organization. In Albania, as in many other countries, restrictive measures were taken to prevent the spread of the virus, thus affecting the way citizens could organize and practice their freedoms and rights. This study focuses on the impact of the pandemic on the freedom of assembly in Albania, analysing how emergency measures have transformed communication and social organization. Albanian state authorities imposed strict restrictions on gatherings, affecting the organization of protests, cultural activities, and other public events.

Many citizens, civil society organizations, and human rights institutions have reacted to these restrictions. This has opened an important issue for the balance debate between maintaining public safety and health and respecting fundamental rights.

In Albania, public opinion has been divided on the need to limit freedom of assembly, seeing it as a necessary measure to protect the health of the population, but also as a violation of fundamental rights¹.

1. According to a report (National Barometer 2022) of the AHC regarding the restrictions imposed on the freedom of assembly, 54% of respondents believe that the restrictions imposed were necessary and proportionate, 21% of them thought that they were not necessities and proportionate, while 25% responded, "I don't know." Albanian Helsinki

One form of citizen reaction has been organizing protests; in this way, they expressed their dissatisfaction with restrictive measures. Several protest cases organized to oppose the measures of state authorities have also been made public in the media.

The study of the impact of the COVID-19 pandemic on the freedom of assembly and organization in Albania is important for several reasons. This study provides an opportunity to analyse how state institutions, civil society, and human rights institutions have reacted to an emergency. On the other hand, this analysis helps to identify how citizens perceive and practice their rights in exceptional conditions. This study also contributes to the academic discussion on the restrictions of freedoms and rights in emergencies and may provide recommendations for policymakers in the future.

The main purpose of this study is to analyse how the measures taken during the COVID-19 pandemic have affected the freedom of assembly in Albania. The specific objectives include:

- Review of the legal framework, aiming to analyse the regulatory acts implemented in force during the pandemic and how they have affected the freedom of assembly and organization.
- Implementation of the measures by assessing how these measures have been implemented in practice and their impact on citizens' rights, and more specifically on the freedom of assembly.
- Consequences of practicing the freedom of assembly and organization by analysing cases of violations or disproportionate restrictions.

The study combines a methodological approach, including analysis of legal documents, empirical examination, international comparison of the issue, and examination of concrete cases of human rights violations during the pandemic. This approach allows for a more complete and balanced assessment of the impact of the pandemic measures on the right to freedom of assembly and association.

Committee, National Barometer 2022. The Impact of the COVID-19 Pandemic on Fundamental Human Rights and Freedoms in Our Country, September 2022, p. 54.. <https://ahc.org.al/wp-content/uploads/2022/09/PERFUNDIMTARE-BAROMETRI-KOMBETAR-2-.pdf>. Accessed on 18.04.2025.

2. The Albanian and international legal frameworks concerning freedom of assembly and organization, with an emphasis on permissible restrictions during public emergencies.

The Constitution of the Republic of Albania, specifically Article 47, point 1, guarantees the right to peaceful assembly and participation in such assemblies. This freedom is not restricted by the purpose as long as it remains a peaceful assembly.

Meanwhile, the term “assembly” is defined by Law No. 8773, dated 23.04.2001, “On Assemblies,”¹ and includes manifestations, meetings, gatherings, and parades of a peaceful and unarmed nature, in which a group of persons express their demands and views on issues of interest to them, including urgent assemblies. This law also expressly defines the procedural rules that condition the practice of this right, which also foresees limitations or exhaustive prohibitions that cannot be exceeded in the practice of the right of assembly. To practice this freedom, the State Police structures guarantee and protect the right of every person to organize and participate in peaceful and unarmed assemblies. The prohibition and dispersal of an assembly is permitted only in cases provided for by law.

Freedom of assembly and association is also guaranteed in the European Convention on Human Rights. According to its article 11: “the practice of these rights may not be subject to any restrictions other than those provided for by law and which are necessary in a democratic society, in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals, or the protection of the rights and freedoms of others....”.

An assembly means a deliberate gathering of several individuals in a publicly accessible place for a common expressive purpose.² These rights include private gatherings and those in public areas, whether stationary or in the form of a procession. The right is practiced both by individual participants and those organizing the assembly.³ It is important to note that individuals participating in assemblies do not seek only to express their

1. Article 2, point 5 of Law no. 8773, dated April 23, 2001, “On Assemblies,” as published in the Official Gazette of the Republic of Albania, No. 20, dated August 12, 1996.

2. Guidelines on Freedom of Peaceful Assembly, Doc. CDL-AD (2019)017, OSCE/ODIHR & Venice Commission,

3. Case of *Djavit An v. Turkey*, § 56 (2003, February 20) *European Court of Human Rights*. Application No. 20652/92.

opinions, but they intend to share and express them together with others.¹ The European Court of Human Rights has held in its jurisprudence that the right to peaceful assembly is fundamental in a democratic society and, for this reason, should not be interpreted restrictively.²

Restrictions imposed on fundamental human rights and freedoms, such as freedom of assembly, may not exceed those provided for in the European Convention on Human Rights³ as interpreted by the ECHR, provided that such restrictions are proportionate to the situation which has necessitated their imposition. The State has discretion to determine the necessity of restricting one or more rights under the circumstances which dictate such a need, taking into account the extent to which the restrictions are necessary to respond to the state of emergency.⁴

3. COVID-19 and restrictive measures regarding the exercise of freedom of assembly and organization in Albania

With the declaration of a global pandemic,⁵ measures to prevent and control the pandemic became the main agenda of all countries. In this context, the Albanian state authorities dynamically and within a short time frame adopted a series of acts⁶ to take special administrative measures

1. Case of *Primov and Others v. Russia*. (2014, June 12). *European Court of Human Rights*.

2. Case of *Kudrevičius and others v. Lithuania*, § 91 (2015, October 15). *European Court of Human Rights*. (Application no. 37553/05).

3. Article 17 of the Constitution of the Republic of Albania. Official Publications Centre. 1998. Tirana.

4. Under Article 15/3 of the ECHR, the Albanian state, by the note verbale of the Permanent Mission of the Republic of Albania to the Council of Europe, dated 31 March 2020, has notified the Secretary General of the EC of the derogation from certain rights provided for in the articles of the Convention, due to the state of epidemic. Notification - JJ9020C Tr./005-231. 1 April 2020. Declaration concerning the Convention for the Protection of Human Rights and Fundamental Freedoms (ETS No. 5). <https://rm.coe.int/16809e0fe5>. Meanwhile, the deadline for which the derogation was made fell on 24 June 2020, after the end of the state of natural disaster. <https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/005/declarations>

5. The pandemic was declared on March 11, 2020 by the World Health Organization. <https://www.who.int/director-general/speeches/detail/who-director-general-s-opening-remarks-at-the-media-briefing-on-covid-19---11-march-2020>

6. Order of the Minister of Health and Social Protection No. 132, dated 08.03.2020 “On the closure of public and non-public activities and the cancellation of mass gatherings

under the situation, which led to the restriction of some fundamental human rights and freedoms.¹ It is worth noting that for the period 15 March - 23 June 2020, the Council of Ministers approved 30 normative acts with the force of law. The numerous acts adopted during the initial phase of the pandemic raised concerns about the adequacy of time for meeting legal requirements and conducting public consultations.²

In the context of addressing freedom of assembly and organization, among other things, some of these acts prohibited the development of public activities, such as gatherings, rallies, and protests in closed and open places.

More specifically, Normative Act No. 3, dated 15.3.2020, of the Council of Ministers,³ in its article 3, point 2, provided that: “Subjects or individuals

in closed or open places”; Normative Act No. 3, dated 15.3.2020, of the Council of Ministers, “On taking special administrative measures during the duration of the period of infection caused by COVID-19”, as amended; VKM No. 243, dated 24.03.2020, “On declaring a state of natural disaster”; a series of normative acts by the Inter-Ministerial Committee for Civil Emergencies as the highest body for coordinating and harmonizing the actions of state institutions and private entities to cope with the natural disaster due to the epidemic caused by COVID-19; acts issued by several ministers, mainly the Minister of Health and Social Protection.

1. For some of these acts, transparency and access to information for citizens have been limited. It has been noted in some cases that the acts have not been made public and published in the Official Gazette according to the constitutional obligation, while they have been implemented by state structures. See the Recommendation of the Ombudsman for taking measures for the immediate publication in the Official Gazette of Joint Order No. 240, dated 07.04.2020, of the Minister of Health and Social Protection and the Minister of Interior. Accessed on 10.04.2025. https://www.avokatipopullit.gov.al/media/manager/website/media/Rekomandim%20p%C3%ABr%20marrjen%20e%20masave%20p%C3%ABr%20botimin%20e%20menj%C3%ABhersh%C3%ABm%20n%C3%AB%20Official%20Gazette%20t%C3%AB%20Ordhrit%20t%C3%AB%20P%C3%ABrbashk%C3%ABt%20nr.%20240,%20dat%C3%AB%2007.04.2020_Sfm6EJV.pdf

See the Recommendation of the Ombudsman for taking certain measures to ensure access to information and services for citizens regarding the restriction/prohibition of the right to movement, during the time of infection caused by COVID-19. Accessed on 10.04.2025. <https://www.avokatipopullit.gov.al/media/manager/website/media/Rekomandim%20lidhur%20me%20aksesin%20shtetasve%20ne%20aktet%20normative%20date%2026%20mars%20seksioni%20i%20vecante.pdf>

2. Public safety vs. human rights protection in emergencies. Westminster Foundation for Democracy. Tirana, February 2021, p.35.

3. Normative Act No. 3, dated 15.3.2020, of the Council of Ministers, “On taking special administrative measures during the period of infection caused by COVID-19”, (approved

who organize the development of public and non-public activities, such as sports, cultural activities and conferences, or mass gatherings in closed or open places, such as concerts, rallies and public hearings, are punished with a fine of 5,000,000 (five million) lek for the organizers and the prohibition of the activity”.

From its content, it is understood that during the pandemic period in our country, mass gatherings in closed or open places, such as concerts, rallies, and public hearings, are prohibited. This means that non-mass gatherings in closed or open areas are not prohibited. However, not only in this act, but also in the security protocols announced by the Technical Committee of Experts for the management of the COVID-19 pandemic, it was not defined what is considered a mass gathering, how many people would constitute this mass gathering and in what space it would be spread, in compliance with the rules of social distancing, bringing uncertainty and subjectivity in its implementation by the State Police, as the body that guarantees the practice of this freedom by citizens. To ensure the compatibility of legal provisions with Article 11 of the ECHR, any restriction imposed regarding the organization of gatherings should be formulated in terms that are as clear as possible under the circumstances, for example by specifying the exact number of people allowed to meet at the same time, to reduce the risk of arbitrary interference with this right¹. On the other hand, the administrative measure of the fine (5 million lek) was assessed as disproportionate, considering that it is equivalent to 166 salaries of an Albanian citizen with a minimum wage² of that period. The

by Law No. 24/2020, dated 16.4.2020), amended by normative act No. 4, dated 16.3.2020; No. 5, dated 17.3.2020; No. 8, dated 24.3.2020; No. 12, dated 2.4.2020; No. 14, dated 11.4.2020, No. 20, dated 20.5.2020, No. 24, dated 27.5.2020, No. 29, dated 15.7. 2020, No. 30, dated 20.7.2020, no. 32, dated 12.10.2020; no. 23, dated 26.5.2021). Official Gazette no. 37.

1. COVID-19 and the Impact on Human Rights. An overview of relevant jurisprudence of the European Court of Human Rights. AIRE Centre & Civil Rights Defenders, 2020, p.109.

2. Evaluating Human Rights and the Rule of Law as Albania Chairs the OSCE, January 2021, p.85. Report by civil society organisations: Albanian Helsinki Committee (AHC), Civil Rights Defenders (CRD), Institute for Policy Studies (ISP), Balkan Investigative Reporting Network Albania (BIRN Albania), Centre for Civic Legal Initiatives (CLIC), Free Legal Service (TLAS) <https://ahc.org.al/wp-content/uploads/2021/01/Vleresimi-i-te-Drejtave-te-Njeriut-dhe-Shtetit-te-se-Drejtes-teksa-Shqiperia-kryeson-OSBE-ne.pdf>. Accessed on 14.04.2025.

nature and severity of the sanctions for participating in a protest must be taken into account when assessing proportionality. In this context, the state authorities must show that less punitive measures could not have fulfilled the purpose of protecting health as effectively.¹

Meanwhile, the Order of the Minister of Health and Social Protection no. 132, dated 08.03.2020, “On the closure of public and non-public activities and the cancellation of mass gatherings in closed or open places”,² amended, point 2, provided for “the cancellation of mass gatherings in closed or open places such as concerts, rallies and public hearings....”. This order was not sufficiently clear from the point of view of legislative technique, and has been drastically interpreted by the Albanian authorities as a complete and absolute ban on the practice of the rights that are limited by it.

Subsequently, the Council of Ministers no. 243, dated 24.03.2020 “On the declaration of a state of natural disaster”, in point 6.1, letter “dh”, provided that: “Public institutions shall prohibit gatherings, demonstrations and strikes”.

Following the derogation from several articles of the ECHR, including Article 11 (Freedom of assembly and association), the United Nations Special Rapporteur on freedom of assembly and association addressed all member states in April 2020, with an appeal requesting the latter to ensure that the measures taken against COVID-19 do not infringe on the freedom of assembly and association.³ In the recommendation addressed to this issue, ten fundamental principles and guidelines were listed that states should take into account to guarantee respect for this right and the involvement of civil society and other actors as partners in facing the crisis that each state was going through.⁴

1. AIRE Centre & Civil Rights Defenders. Protecting Human Rights in Times of Emergencies. Analysis of the relevant jurisprudence of the European Court of Human Rights under the prism of the COVID-19 pandemic, 2022, p.167.

2. The order of the Minister of Health and Social Protection No. 132, dated 8.3.2020, “On the closure of public and non-public activities and the cancellation of mass gatherings in closed or open places”. <https://qbz.gov.al/eli/urdher/2020/03/08/132/9f294e1a-c737-4fc6-a46a-eea2a825c3eb>

3. COVID-19 restrictions should not stop freedom of assembly and association, says UN expert <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25792&LangID=E>. Accessed on 17.04.2025.

4. States’ responses to the COVID-19 threat should not halt freedoms of assembly and

The only act reviewed by the Constitutional Court of the Republic of Albania was Order No. 633, dated November 17, 2020, issued by the Minister of Health and Social Protection.¹ Point 1 of this order prohibited gatherings of more than 10 people in both closed and open spaces, including conferences, rallies, party meetings, holiday ceremonies, wedding ceremonies, and non-family funeral ceremonies, until further notice.

In its decision, the Constitutional Court stated that the restriction on freedom of assembly, imposed by the Minister's order and related to the right of expression, is necessary in a democratic society due to an urgent social need.² However, the Court considers that the contested act did not respect the proportionality criterion, under Article 17 of the Constitution, due to the failure to provide for a specific deadline for the duration of the restrictive measures and to oblige the responsible authorities to periodically assess the restrictive measures established by the order in question. For this reason, the expression "until a second order" was abolished.

In this decision, the Court emphasizes that drafting sub-legal acts in a concise and summarized manner, without an introductory part and without explanatory reports accompanying, makes it more difficult to assess whether a specific restriction of rights meets constitutional principles and standards. This situation is exacerbated when rules change frequently or approaches are ad hoc. In this regard, the contested order should have justified why certain activities (assemblies, party meetings, and family ceremonies) are grouped and treated differently from other activities involving gatherings of people that are not covered by this order.³ These elements, cited above, would help eliminate any doubts about the accuracy of its content.

Additionally, the Court assessed that, as a rule, any restriction of rights must inherently have a temporary element. When these restrictions are indefinite and no justification is provided for their duration, they become a complete prohibition of this right, diminishing the role of alternative measures. Furthermore, the principle of proportionality requires that the greater the restriction, the more detailed and convincing its justification must be.

association" – UN expert on the rights to freedoms of peaceful assembly and of association, Mr. Clément Voule, <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25788&LangID=E>, Accessed on 19.04.2025.

1. Order No. 633/2020 was published in the Official Gazette No. 210, dated 02.12.2020.

2. Decision No. 11 dated 09.03.2021 of the Constitutional Court, Paragraph 70.

3. Ibid. Paragraph 26.

4. Challenges in Implementing Freedom of Assembly and Organization During the COVID-19 Pandemic

The declaration of the pandemic in our country had a profound impact on daily life and restricted economic activity, affecting the living standards and well-being of citizens, particularly vulnerable groups. In this context, to express their concerns or due to the restrictive measures imposed by state authorities, various citizen groups and civil society activists organized numerous protests in different cities across the country.¹ During some of these protests, State Police structures intervened, detaining organizers and some participants for allegedly violating the legal acts in force that prohibited assemblies, and referring procedural materials to the prosecution authorities. The dispersal of assemblies and the criminal proceedings against participants continued even after the end of the state of natural disaster on June 24, 2020.

For some of these cases, administrative investigations were conducted by the Ombudsman,² who, in their conclusion, recommended the cessation of the practice of the State Police structures of not allowing or dispersing gatherings. This institution also recommended the improvement of the normative acts in force that regulate the freedom of assembly, to guarantee this constitutional right even during pandemic periods by respecting the relevant health protocols.³ To ensure the organisation of protests,

1. In the period March-July 2020, there were 48 organized gatherings, and during these, 307 individuals were prosecuted for organizing and participating in illegal gatherings. Assessment of Human Rights and the Rule of Law as Albania Chairs the OSCE, January 2021, p.85. Report of civil society organizations: Albanian Helsinki Committee (AKH), Civil Rights Defenders (CRD), Institute for Policy Studies (ISP), Balkan Investigative Reporting Network Albania (BIRN Albania), Centre for Civic Legal Initiatives (CLIC), Free Legal Service (TLAS). <https://ahc.org.al/wp-content/uploads/2021/01/Vleresimi-i-te-Drejtave-te-Njeriut-dhe-Shtetit-te-se-Drejtes-teksa-Shqiperia-kryeson-OSBE-ne.pdf>. Accessed on 14.04.2025.

2. In 2020, regarding the right to assembly, the Ombudsman institution handled 27 cases, of which 13 were complaints and 14 cases registered on initiative.

3. The Ombudsman recommendation on taking the necessary measures to respect the constitutional right to freedom of assembly even during emergencies, 2020.

<https://www.avokatipopullit.gov.al/media/manager/website/media/Rekomandim%20p%20C3%ABr%20marrjen%20e%20masave%20t%C3%AB%20nevojshme%20p%20C3%ABr%20respektimin%20e%20liris%C3%AB%20kushtetuese%20t%C3%AB%20ubimit%20edhe%20gjat%C3%AB%20jjendjes%20s%C3%AB%20jasht%C3%ABzakonshme.%20.pdf>. Accessed on 24.04.2025.

respecting the principle of proportionality in limiting the measures taken would require the review of the normative acts or their implementation in such a way that the restriction of rights would not be absolute and comprehensive. While preparing these acts, considerations should include the location of the gathering (whether closed or open), the number of participants, protective measures against the spread of infection, and the crucial principle of proportionality.

Civil society organizations have also held public positions regarding the administrative punitive measures provided for in Normative Act No. 3 of 15.03.2020, which disproportionately curtailed the fundamental rights and freedoms of citizens, one of which was the freedom of assembly and organization, requesting a review of the wording of this act.¹

Another issue addressed by the Ombudsman Office was the citizens' protest following the collapse of the National Theatre building in Tirana in May 2020. At a time when state institutions had adopted acts that restricted the freedoms and rights of individuals to preserve health and life, actions were carried out by some state institutions that involved many employees² in the same place, even though mass gatherings were strictly prohibited. Also, a considerable number of protesters were escorted to the premises of the State Police buildings, some of them even exceeding the use of force. The protesters overcrowded the escort rooms meanwhile, there was not enough accommodation capacity in these premises. Therefore, a plan of measures was implemented that led to the violation by the police officers of the anti-COVID-19 measures.

Not only in the above case, but also during other verifications carried out during that period by this institution in the premises of police

1. Freedom of assembly and organization as a fundamental right – To review Normative Act No. 3, dated 15.03.2020. Albanian Helsinki Committee, <https://www.facebook.com/KomitetiShqiptarIHelsinki/posts/2659423454181168/>
<https://qq.com.al/index.php/2020/11/19/35-organizata-dhe-sindikata-leter-te-hapur-institucioneve-per-te-drejten-eprotestes-ne-kohe-pandemie-mungesa-e-protestes-vret-demo-kracine-e-per-pasoje-jeten-e-qytetareve-te-cilet-nese-qeverisennuk/> Accessed 17.04.2025.

2. Referring to the Plan of Measures, 449 employees of various structures from the State Police alone were engaged in the operation. In addition, employees of the Municipal Police, the IMT, and those of the Municipality of Tirana were also present. Recommendation of the People's Advocate on the unlawful actions/inactions of the State Police structures during and after the demolition of the National Theatre building, 2020. <https://www.avokatipopullit.gov.al/media/manager/website/media/Rekomandim%20Teatri%20Kombetar%20nentor%202020.pdf>. Accessed on 20.04.2025.

structures, it was found that compliance with mandatory measures for protection from the spread of the infectious disease COVID-19 was not at a satisfactory level. So, on the one hand, the escorting of citizens was done due to participation in activities/protests that were prohibited, to prevent the spread of the virus, while the protective measures themselves and the conditions in the premises where the persons were escorted did not provide guarantees for the protection of their health.¹

Despite the low number of administrative measures with fines² imposed during the pandemic by the relevant police structures on entities or individuals who organized gatherings and their pardon by a normative act³ in the following months, it is worth emphasizing the intimidating and discouraging effect this measure had on citizens.

Another concern highlighted during the pandemic by civil society⁴ and human rights institutions⁵ has been the application of double standards regarding freedom of assembly. Citizens' protests as an expression of their concerns and opinions, regardless of social distancing rules, have not been allowed, as they were prohibited according to normative acts to prevent the spread of the COVID-19 virus. On the other hand, activities such as public hearings, inaugurations, meetings, etc., massive or not, and with security measures by various public administration authorities, have been held, which have also been made public in the media.

1. Annual Report of the Ombudsman Institution – Year 2020, p.121.

2. From October 15 to December 28, accused of organizing protests during the pandemic, 2 citizens were fined 5 million lek, for a total of 10,000,000 (ten million) lek. Public safety vs. human rights protection in emergencies. Westminster Foundation for Democracy. Tirana, February 2021, p.33.

3. Normative act no. 31, dated 7.10.2020, "On the remission of administrative measures of a punitive nature imposed during the period of infection caused by COVID-19 and families damaged by natural disasters". Official Gazette no. 178.

4. The right to assemble: the double standards hidden behind the fight against COVID-19, 5.11.2020. <https://www.reporter.al/2020/11/05/e-drejta-e-tubimit-standardet-e-dyfishta-qe-fshihen-pas-luftes-ndaj-covid-19/> Accessed on 20.04.2025.

5. The Ombudsman's recommendation, on taking the necessary measures to respect the constitutional freedom of assembly even during the state of emergency, 2020. <https://www.avokatipopullit.gov.al/media/manager/website/media/Rekomandim%20p%C3%ABr%20marrjen%20e%20masave%20t%C3%AB%20nevojshme%20p%C3%ABr%respektimin%20e%20liris%C3%AB%20kushtetuese%20t%C3%AB%20tubimit%20edhe%20gjat%C3%AB%20jendjes%20s%C3%AB%20jasht%C3%ABzakonshme.%20.pdf>. Accessed on 24.04.2025.

A good approach, also under the Constitution and international human rights instruments, would be to review the absolute limitation of citizens' right to organize in gatherings, allowing its practice, under the guarantee of strict rules set by the authorities. One of the best European practices in this regard has been that of Germany, where the Constitutional Court ruled on the right of persons to hold protests up to a limited number of participants while maintaining physical distancing to prevent the spread of the COVID-19 infection. This Court emphasized that a general ban on gatherings would be unconstitutional and that health concerns related to the coronavirus pandemic were not grounds for a general prohibition.¹ Also, in Denmark, the law approved to set a limited number of people allowed to meet contained an exception for organisations concerned with the sharing of opinions, including rallies.²

5. Recommendations

The COVID-19 virus had a deep impact on daily life, with the imposition of many restrictions on citizens' rights and freedoms, enabling state authorities to combat the pandemic through extraordinary measures. However, freedom and fundamental rights issues, which constitute constitutional values, cannot be left aside, but must be treated with the same attention. The pandemic has allowed public authorities to assess and gain the necessary experience to implement appropriate and well-considered measures to cope with similar emergencies in the future.

A good practice would be for public authorities to publicly justify normative acts, including those regulating freedom of assembly and organization, by providing details on the cause, purpose, and object. Transparency, on the other hand, is crucial, as it allows people to obtain relevant public information. This sort of practice includes information that the restrictions are under the requirements of the constitutional principles of legality, proportionality, and equality in law, as well as international standards.

1. Federal Constitutional Court, April 15, 2020 – 1 BvR 828/20/ https://www.bundesverfassungsgericht.de/SharedDocs/Entscheidungen/DE/2020/04/rk20200415_1bvr082820.html

2. AIRE Centre & Civil Rights Defenders, *Protecting Human Rights in Times of Emergencies. Analysis of the relevant jurisprudence of the European Court of Human Rights under the prism of the Covid-19 pandemic*. 2022, pg. 164.

A further recommendation in guaranteeing the protection of human rights during such periods would be the periodic reporting of public authorities that take restrictive measures on human rights to Parliament, which, within the framework of the rule of law, controls and guarantees the accountability of executive bodies.

Furthermore, responsible state structures should enhance the normative acts that govern freedom of assembly to guarantee that it may be practiced even in the event of a pandemic or future emergency, while following essential regulations regarding health. The relevant amendments to these acts should be formulated in the clearest possible terms, i.e. taking into account the determination of the number of participants, the place where the assembly will take place, whether closed or open, the space/area where the assembly will be spread out to maintain physical distancing, the right to appeal in the event of refusal or disallowance of the organization of the assembly, etc.

During emergencies, it is essential that the functionality of the judicial system, particularly the Constitutional Court, remains operational. Only in this manner can the restrictions on the freedom of assembly and organization imposed by public authorities under the regime of emergency measures be subject to judicial review, while also guaranteeing citizens' right to an effective appeal before the court.

References

1. AIRE Centre & Civil Rights Defenders, The Protection of Human Rights in Times of Emergencies. Analysis of relevant jurisprudence of the European Court of Human Rights in the light of the Covid-19 pandemic, 2022, pp. 164 & 167.
2. AIRE Centre & Civil Rights Defenders. COVID-19 and the Impact on Human Rights. An overview of relevant jurisprudence of the European Court of Human Rights. 2020, p.109.
3. Normative Act No. 31, dated 7.10.2020, "On the remission of administrative measures of a punitive nature imposed during the period of infection caused by Covid-19 and families damaged by natural disasters". Official Gazette No. 178.
4. Normative Act No. 3, dated 15.3.2020, of the Council of Ministers,

“On taking special administrative measures during the duration of the period of infection caused by COVID-19”, (approved by law no. 24/2020, dated 16.4.2020), amended by normative act no. 4, dated 16.3.2020; no. 5, dated 17.3.2020; no. 8, dated 24.3.2020; no. 12, dated 2.4.2020; no. 14, dated 11.4.2020, no. 20, dated 20.5.2020, no. 24, dated 27.5.2020, no. 29, dated 15.7. 2020, no. 30, dated 20.7.2020, no. 32, dated 12.10.2020; no. 23, dated 26.5.2021). Official Gazette no. 37.

5. Recommendation of the Ombudsman for taking certain measures to ensure citizens’ access to information and services regarding the restriction/prohibition of the right to movement during the time of infection caused by COVID-19. Accessed on 10.04.2025. <https://www.avokatipopullit.gov.al/media/manager/website/media/Rekomandim%20lidhur%20me%20aksesin%20shtetasve>
6. Recommendation of the Ombudsman for taking measures for the immediate publication in the Official Gazette of Joint Order No. 240, dated 07.04.2020, of the Minister of Health and Social Protection and the Minister of Interior. Accessed on 10.04.2025
7. https://www.avokatipopullit.gov.al/media/manager/website/media/Rekomandim%20p%C3%ABr%20marrjen%20e%20masave%20p%C3%ABr%20botimin%20e%20menj%C3%ABhersh%C3%ABm%20n%C3%AB%20Fletoren%20Zyrtare%20t%C3%AB%20Urdhrit-%C3%AB%20P%C3%ABrbashk%C3%ABt%20nr.%20240,%20dat%C3%AB%2007.04.2020_Sfm6EJV.pdf
8. Albanian Helsinki Committee, National Barometer 2022. The Impact of the COVID-19 Pandemic on Fundamental Human Rights and Freedoms in Our Country, September 2022, p. 54. <https://ahc.org.al/wp-content/uploads/2022/09/PERFUNDIMTARE-BAROMETRI-KOMBETAR-2-.pdf>. Last accessed on 18.04.2025
9. Case of *Djavit An v. Turkey*, § 56 (2003, February 20) *European Court of Human Rights*. Application No. 20652/92.
10. Case of *Kudrevičius and others v. Lithuania*, § 91 (2015, October 2015). *European Court of Human Rights*. (Application no. 37553/05) 0
11. Case of *Primov and Others v. Russia*. (2014, June 12). *European Court of Human Rights*.
12. Clément Voule. States’ responses to the COVID-19 threat should not halt freedoms of assembly and association”. <https://www.ohchr.org/EN/>

- NewsEvents/Pages/DisplayNews.aspx?NewsID=25788&LangID=E. Accessed on 19.04.2025.
13. The right to assemble: the double standards hidden behind the fight against COVID-19, 5.11.2020. <https://www.reporter.al/2020/11/05/e-drejta-e-tubimit-standardet-e-dyfishta-qe-fshihi-pas-luftes-ndaj-covid-19>. Accessed on 20.04.2025.
 14. Federal Constitutional Court, April 15, 2020 – 1 BvR 828/20/ https://www.bundesverfassungsgericht.de/SharedDocs/Entscheidungen/DE/2020/04/rk20200415_1bvr082820.html
 15. Westminster Foundation for Democracy. Public safety vs. the protection of human rights in emergencies. Tirana, February 2021, p.33; 35.
 16. <https://qq.com.al/index.php/2020/11/19/35-organizata-dhe-sindikata-leter-te-hapur-institucioneve-per-te-drejten-eprotestes-ne-kohe-pandemie-mungesa-e-protestes-vret-demokracine-e-per-pasoje-jeten-e-qytetareve-te-cilet-nese-qeverisennuk/> Accessed on 17.04.2025.
 17. Albanian Helsinki Committee (AKH), Civil Rights Defenders (CRD), Institute for Political Studies (ISP), Balkan Investigative Reporting Network Albania (BIRN Albania), Centre for Civic Legal Initiatives (QNLQ), Free Legal Service (TLAS). Civil Society Organisations Report: Assessment of Human Rights and the Rule of Law as Albania Chairs the OSCE, January 2021, p.85. <https://ahc.org.al/wp-content/uploads/2021/01/Vleresimi-i-te-Drejtave-te-Njeriut-dhe-Shtetit-te-se-Drejtues-teksta-Shqipëria-kryeson-OSBE-ne.pdf>. Accessed on 14.04.2025.
 18. Albanian Helsinki Committee. Freedom of assembly and organisation as a fundamental right – To review Normative Act no.3, dated 15.03.2020. 18. Constitution of the Republic of Albania. Centre for Official Publications. Tirana. 1998.
 19. Law no. 8773, dated 23.04.2001 “On Assemblies”. Official Gazette, no. 20, dated 12.08.1996.
 20. World Health Organisation, Declaration of a global pandemic. 11.03.2020 <https://www.who.int/director-general/speeches/detail/who-director-general-s-opening-remarks-at-the-media-briefing-on-covid-19---11-march-2020>
 21. OSCE/ODIHR & Venice Commission. Guidelines on Freedom of Peaceful Assembly. Doc. CDL-AD (2019)017, 8 July 2019, pp. 8,

- para(s) 18 & 19. [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2019\)017-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2019)017-e). Accessed 10.04.2025.
22. Annual Report of the Ombudsman Institution – Year 2020, p.115; 121.
 23. Recommendation of the Ombudsman on the unlawful actions/inactions of the State Police structures during and after the demolition of the National Theatre building, 2020. <https://www.avokatipopullit.gov.al/media/manager/website/media/Rekomandim%20Teatri%20Kombetar%20nentor%202020.pdf>. Accessed 20.04.2025.
 24. Ombudsman's recommendation on taking the necessary measures to respect the constitutional right to freedom of assembly even during emergencies, 2020.<https://www.avokatipopullit.gov.al/media/manager/website/media/Rekomandim%20p%C3%ABr%20marrjen%20e%20masave%20t%C3%AB%20nevojshme%20p%C3%ABr%20respektiminin%20e%20liris%C3%AB%20kushtetuese%20t%C3%AB%20tubimit%20edhe%20gjat%C3%AB%20jendjes%20s%C3%AB%20jasht%C3%ABzakonshme.%20.pdf>. Accessed on 24.04.2025.
 25. United Nations, COVID-19 restrictions should not stop freedom of assembly and association, <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25792&LangID=E>. Accessed on 17.04.2025.<https://www.facebook.com/KomitetiShqiptarIHelsinki/posts/2659423454181168/>
 26. Order of the Minister of Health and Social Protection No. 132, dated 08.03.2020 “On the closure of public and non-public activities and the cancellation of mass gatherings in closed or open places”, Official Publications Centre, 2020.
 27. Order of the Minister of Health and Social Protection No. 633/2020 “On the prohibition of gatherings in closed or open places”. Official Gazette No. 210, dated 02.12.2020.
 28. Decision No. 11 dated 09.03.2021 of the Constitutional Court. Tirana 2021.

FREEDOM OF EXPRESSION IN THE DIGITAL AGE: CHALLENGES, LIMITATIONS, AND THE BALANCE OF RIGHTS

Erinda Ballanca¹

Abstract

Freedom of expression is one of the pillars of democratic societies, granting individuals the right to express their opinions and to receive or disseminate information and ideas without interference from public authorities and without state-imposed limitations. While freedom of thought is an absolute and non-negotiable right, freedom of expression does not enjoy the same inviolability. As technology advances and digital platforms become the dominant mode of communication, the boundaries of freedom of expression have become increasingly complex. The digital age has introduced new challenges and transformed public discourse and engagement, raising essential questions about the limits of free expression and the risks associated with the misuse or abuse of this right. This paper explores the dimensions of freedom of expression in the digital age, analyzing the intersection of state regulatory frameworks and necessary restrictions, while examining the complex balance between safeguarding free speech and addressing potential harms resulting from its misuse. It discusses key challenges such as disinformation, hate speech, and the disproportionate silencing of marginalized groups. The findings highlight the need for an approach that balances the protection of freedom of expression with the need to prevent harm, emphasizing the importance of transparency, accountability, and international cooperation in digital governance. This research contributes to the ongoing debate on the

1. People's advocate

Doctoral candidate, department of public law, tirana university
erinda.ballanca.dr@gmail.com

intersection of fundamental human and digital rights, aiming to promote a more inclusive and fair digital public space.

Keywords: *Freedom of Expression; Balance of Rights; Digital Platforms; Human Rights*

Introduction

Since ancient times, free speech has been a driving force for human emancipation, not merely as an individual right, but as the foundation upon which democratic societies are built. It serves as a platform for the clash of ideas, the correction of errors, and the discovery of truth. Through it, citizens not only articulate their thoughts and feelings but also participate actively in political, social, and cultural life. Yet, this foundational concept, like other rights and freedoms, is not immutable. It has evolved alongside societal and technological developments, facing new challenges in each era. In our time, the digital transformation has revolutionized how we communicate, gather information, and interact, opening new horizons for freedom of expression but also introducing unprecedented risks such as mass disinformation, hate speech, and control of public discourse by private actors. In this new reality, the challenge is not only to defend freedom of expression as an abstract ideal but to ensure that it is exercised responsibly, preserving the fragile balance between individual freedom and the protection of fundamental societal interests. Achieving this balance, between liberty and responsibility, between unrestricted speech and the need to protect against abuse, is one of the greatest challenges of our era and is the focus of this paper.

1. The significance and dimensions of freedom of expression

Freedom of expression is one of the fundamental human rights, widely protected at both international and national levels. It enables not only intellectual and political advancement but also the effective exercise of other fundamental human rights with which it is closely linked. In fact, freedom of expression has been so widely acknowledged that, according to a 1978 study, 124 out of 142 national constitutions (87.3%) recognized this right, whereas other rights, such as the prohibition of torture or inhuman or degrading treatment, were recognized/protected by only 66

constitutions (46.5%).¹

This freedom is considered a framework right, encompassing three essential dimensions: (1) freedom of thought, which guarantees an individual's right to hold and form beliefs without interference; (2) freedom to express those thoughts, enabling the transmission and exchange of ideas, information, and opinions in the public sphere; and (3) institutional media freedom, ensuring the free and independent functioning of the press and other communication platforms. These dimensions are recognized and protected by international instruments such as the Universal Declaration of Human Rights (1948, Article 19), the International Covenant on Civil and Political Rights (Article 19), the European Convention on Human Rights (Article 10), and the Charter of Fundamental Rights of the European Union (Article 11).

In Albania, this right is enshrined in the 1998 Constitution, Article 22, as part of the chapter on personal rights and freedoms². It is further reinforced by international human rights instruments to which Albania is a party, including those mentioned above. Historical research shows that the 1998 Constitution was not the first to recognize this freedom. It was also acknowledged in the 1925 Fundamental Statute of the State, article 128 of which stated: *"Freedom of speech and of the press is guaranteed. Preventive censorship is prohibited. Confiscation of printed material shall be regulated by law. Only Albanian citizens may publish newspapers under special legislation."*³

Subsequent constitutions, those of 1946 and 1976, also formally guaranteed freedom of speech and the press. For example, Article 20 of the 1946⁴ Constitution declared: *"All citizens are guaranteed freedom of speech, press, organization, assembly, gathering, and public*

1. Hence van Maarvseveen & Ger van der Tang, Written Constitutions: a computerized comparative study,

[Kushtetutat e shkruara: një studim krahasues i kompjuterizuar], 1978, cited from Sinani M., etj., Komentari i Deklaratës Universale mbi të Drejtat e Njeriut (DUDNJ), përgatitur për UNESCO (2008), fq.99.

2. Article 22. *Freedom of expression is guaranteed. 2. Freedom of the press, radio, and television is guaranteed. 3. Prior censorship of communication media is prohibited. 4. The law may require authorization for the operation of radio or television stations.*

3. Fundamental Statute of the Republic of Albania (1925);

4. Constitution of the People's Republic of Albania, 1946;

demonstration.” Article 53 of the 1976¹ Constitution added: “*Citizens enjoy freedom of speech, the press, organization, assembly, gathering, and public demonstration. The state guarantees the realization of these freedoms, creates conditions for them, and provides the necessary material means.*” Even the draft Constitution of 1994² included an explicit and detailed provision on freedom of expression in Article 20, establishing the inviolability of freedom of thought, banning prior censorship, guaranteeing the right to be informed, and setting standards for restriction based on proportionality and democratic necessity. This formulation directly reflects the influence of the European Convention on Human Rights by balancing free speech with the protection of life, the rights of others, and the authority of the judiciary.

The existence of these provisions clearly illustrates the importance of formally guaranteeing fundamental rights and freedoms. Constitutional formalization is a critical first step toward creating a system in which the effective protection of human liberties can be realized in practice.

However, the digital transformation has introduced new challenges closely tied to the role and responsibility of digital platforms, which often become the arbiters of freedom of expression and its limitations. Consequently, despite broad recognition and guarantees from national and international legal frameworks, the right to express one’s opinions is neither absolute nor unlimited, especially in the digital age, where communication and information sharing occur far more rapidly and freely than in the past. As a result, the challenges in defining its boundaries have become more complex. While the internet has created new spaces for free expression, it has also brought new problems, raising important questions about the balance between freedom and responsibility in public discourse. Thus, both Albania’s legal system and international law treat freedom of expression as a right accompanied by duties and responsibilities.

The Constitution of Albania explicitly protects the freedom of the press, freedom of speech, and the right to information³. However, it also stipulates that these freedoms may be limited by law to protect the rights of others, public safety, and more (Article 17). Similarly, Article 19 of the

1. Constitution of the People’s Socialist Republic of Albania;

2. Draft Constitution of the Republic of Albania (as presented for referendum on 6 November 1994);

3. Articles 22 and 23 of the Constitution;

International Covenant on Civil and Political Rights¹, along with Article 10 of the European Convention on Human Rights (ECHR), outlines a two-part structure: broad protection in paragraph 1, and permissible restrictions in paragraph 2, for example, to respect the rights or reputations of others, national security, public order, public health, or morals. This conventional framework is a clear example of the delicate balance between freedom of expression and the need to safeguard the fundamental interests and values of society. It emphasizes that while freedom of expression is a fundamental right, it must be exercised responsibly and in a balanced manner, particularly in the circumstances mentioned above.

It appears that, in light of these provisions, states are granted the space and authority to intervene in the exercise of this right, allowing them a certain margin of appreciation to assess whether a restriction on freedom of expression is necessary. The European Court of Human Rights has affirmed that any such restriction must meet a strict three-part test²:

- 1) *The restriction must be clearly prescribed by law;*
- 2) *The aim of the restriction must be proportionate; and*
- 3) *The restriction must be necessary in a democratic society.*

But why does this paper's narrative focus on limitation? The aim of this research is to examine the boundaries of the balance between this freedom and protection from abuse, which requires an assessment of its limits in today's digital reality and the impact of technology on freedom of speech. On one hand, the internet has lowered communication barriers, enabling individuals and communities to express their voices freely without depending on traditional media or state broadcasters. This supports the argument that *the digital age has significantly contributed to the democratization of expression, encouraging pluralism in the public*

1. Paragraph 3 of Article 19 of the International Covenant on Civil and Political Rights sets a clear restriction on freedom of expression, emphasizing that the exercise of this freedom is not absolute but entails specific duties and responsibilities. These restrictions must be clearly established by law and be necessary for:

(a) Respecting the rights or reputation of others, an essential aspect concerning protection from defamation, insult, or any form of reputational harm; and
(b) Protecting state security, public order, health, or morals, an important safeguard to ensure that freedom of expression is not used to incite violence, chaos, or endanger the stability of a democratic society.

2. *Thorgerirson v. Iceland*, 25 June 1992, Appl No. 13778/88, p. 63.

sphere. On the other hand, these digital platforms have created powerful and sensitive means of influencing and controlling public opinion. The very features that enable viral spread and global reach also facilitate the rapid dissemination of false information (disinformation and misinformation), propaganda, and extremist ideologies, all of which can undermine democratic processes.

2. Challenges facing digital freedom of expression

In recent years, three interrelated phenomena have emerged as central to defining the boundaries of digital freedom of expression: (1) *misinformation and disinformation*; (2) *hate speech*; and (3) *content moderation practices*.

Each of these issues raises a fundamental question: *how can we reduce the harm they cause without unfairly infringing on legitimate freedom of expression?* They place important values in tension with one another, truth and public order versus free discourse in the case of misinformation, dignity and equality versus freedom in the case of hate speech, and security versus openness in the case of content moderation.

2.1. Misinformation and Disinformation

In the digital age, the phenomenon of the “*infodemic*”¹ has emerged, a flood of information that includes both *misinformation* (inaccurate information shared without malicious intent²) and *disinformation* (false information deliberately intended to deceive³), which spreads rapidly through social networks. From the perspective of freedom of expression, misinformation undermines the public’s ability to access accurate information and can incite panic or violence. However, efforts to combat “*fake news*” can easily become a pretext for censorship and the suppression of dissent. The question “*Who decides what is false?*” remains problematic, especially in authoritarian regimes where criticism can be labeled as “*fake news*.” Broad bans on publishing false information risk stifling free expression and unconventional opinions. A balanced approach requires targeted measures, rather than sweeping prohibitions, to prevent

1. Term used by the World Health Organization (WHO): https://www.who.int/health-topics/infodemic#tab=tab_1

2. UNHCR, *Using social media in community based protection: A guide, Factsheet 4: Types of Misinformation and Disinformation*.

3. Ibid.

or mitigate serious cases of disinformation. These measures may include regulatory mechanisms, both legal and policy-based, such as transparent platform governance, media literacy education, and strengthening citizens' fact-checking skills.

For example, the European Union's Code of Practice on Disinformation represents a voluntary framework where digital platforms commit to collaborating with fact-checkers, reducing financial incentives for disinformation actors, and providing greater context for news content¹.

2.2. Hate Speech

One of the most visible forms of abuse of freedom of expression is its use to incite or justify hatred, making the relationship and boundary between free speech and hate speech both complex and controversial. This complexity is further heightened by the absence of a universally accepted definition of hate speech at the international level, which in turn leads to varying national approaches. In efforts to clarify this concept, several initiatives have been undertaken at both international and regional levels. The Council of Europe, through Recommendation No. (97)20 of the Committee of Ministers², defines hate speech as *any form of expression that spreads, incites, promotes, or justifies racial hatred, xenophobia, anti-Semitism, or other forms of hatred based on intolerance*. Similarly, the European Commission against Racism and Intolerance (ECRI), in its General Policy Recommendation No. 15³, expands this definition to include the advocacy, incitement, or promotion of denigration, stigmatization, or threats against individuals or groups based on race, ethnicity, religion, or other grounds. ECRI also emphasizes that criminal intervention against hate speech is justified only when there is a clear intent to incite violence, hostility, or discrimination, and only when no less restrictive measures can effectively protect the rights at stake. In other words, there must be a direct and reasonable connection between the form of expression used and the

1. Colomina C., Sánchez Margalef H., Youngs R., European Parliament, Directorate-General for External Policies, *The Impact of Disinformation on Democratic Processes and Human Rights in the World*, (Brussels: European Union, 2021), f.32.

2. Council of Europe, Committee of Ministers, Recommendation no. r (97) 20 of the Committee of Ministers to Member States on "Hate Speech".

3. ECRI General Policy Recommendation No. 15 on Combating Hate Speech, adopted 8 December 2015.

violent consequence it may provoke.

In this context, restricting hate speech in public spaces, including online media, is not only a lawful measure but also a duty to ensure that freedom of expression is not used as a tool to violate the rights and dignity of others. Protecting an inclusive, safe, and violence-free public sphere is essential to the functioning of a healthy democracy and the effective protection of human rights. The argument for limiting hate speech is grounded in the need to safeguard the dignity, equality, and security of vulnerable groups. Particularly in the online environment, where the rapid and widespread dissemination of hate speech has often coincided with real-world acts of violence, addressing it is seen as essential to ensure that the voices of unprotected individuals are not silenced or excluded from active participation in public life. Therefore, intervening against hate speech is not merely a justified restriction of free expression but also a proactive measure to strengthen equality and protect a democratic, inclusive society.

2.3. Content Moderation Practices

One of the main challenges in the digital age is content moderation on online platforms and distinguishing it from censorship, especially regarding its impact on marginalized communities. Unlike traditional public spaces, online discourse is governed not only by law but primarily by the internal policies of private companies. These platforms typically operate under terms of service and community guidelines that define acceptable behavior and content.¹ To enforce these rules, platforms use content moderation practices, which involve restricting or removing certain types of expression that violate their policies.²

In Recommendation *CM/Rec(2022)13*³, the Committee of Ministers of the Council of Europe gives special attention to the issue of content moderation in the digital space. The recommendation emphasizes that internet intermediaries, though private actors, have a significant influence on the exercise of freedom of expression. For this reason, their moderation

1. Commonly known as *community guidelines*;

2. Singh M., “Freedom of Expression and Online Speech,” *International Journal of Novel Research and Development* 8, no. 7 (July 2023): 671, f. 4

3. Council of Europe, *The Impacts of Digital Technologies on Freedom of Expression: Recommendation CM/Rec(2022)13*, adopted by the Committee of Ministers on 6 April 2022, Council of Europe Publishing, 2022.

practices must align with the fundamental principles of human rights.

Content moderation should not be limited solely to removing inappropriate material but should also include other measures such as deprioritization, labeling, providing additional context, and promoting verified sources. Any such intervention must comply with the principles of legality, necessity, and proportionality, in line with the standards of the European Convention on Human Rights. The recommendation urges platforms to be transparent about their moderation policies and procedures, to inform users of the reasons for interventions, and to ensure the right to appeal in cases of content restriction. It also highlights the importance of protecting vulnerable users from online abuse, ensuring that interventions do not result in unjustified censorship of critical or marginalized voices. At its core, the recommendation advocates for a content moderation approach grounded in transparency, accountability, and full respect for freedom of expression and other fundamental human rights. A closer examination of this issue reveals that, in practice, digital platforms have taken on a role similar to that of public institutions within modern discourse spaces. The control they exercise over information content affects not only the flow of public thought but also the functioning of democracy itself. In this light, content moderation should not be viewed merely as a private editorial act but as an intervention bearing significant public responsibility. The boundary between acceptable moderation and arbitrary censorship is fragile. Platform interventions must be justified by clear standards, driven by the need to protect the rights of others, and proportionately limited. Otherwise, a lack of transparency and arbitrary decisions in moderation may suppress not only individual expression but also the voices of communities most vulnerable to discrimination. To avoid such risks, interventions must be accompanied by clear notification procedures, the right to appeal, and independent review mechanisms, upholding *due process* and international human rights standards.

From its inception, the press in Albania gradually gained the space needed to be considered a “fourth estate,” due to the widespread demand for and value placed on freedom. However, this hard-won freedom faced significant challenges, particularly in dealing with issues such as false statements and defamation. Initially, these cases were treated primarily as criminal matters, as citizens and institutions often preferred to file criminal

complaints for defamation rather than pursue civil remedies.

This situation gradually shifted toward a civil approach to such cases, marking an important development for a more accurate understanding of freedom of expression. In this light, freedom of expression should be viewed not only as an individual right but also as an essential component of public debate and both individual and societal progress.

A fundamental point in the analysis of freedom of expression is that this right is not absolute and carries clear limitations. These limitation standards are explicitly outlined in Article 10 of the European Convention on Human Rights (ECHR) and are closely linked to other rights such as the right to a fair legal process, the right to respect for private and family life, the right to freedom of assembly and protest (as a form of organized expression), the right to belief, the right to an effective legal remedy, political debate, the right to information, public participation, diversity of opinion, and press freedom itself. Although these rights often overlap, each has its own identity and must be carefully balanced in any case of conflict or interference.

At the heart of freedom of expression lies the principle of truth, which represents the basic standard that must be respected in all cases. Personal opinion is an integral part of individual liberty, but factual accuracy remains a fundamental element that should guide any interpretation of freedom of expression. However, in the digital age, the distinction and balance between truth and the misuse of information have become increasingly blurred, mainly due to the extraordinary speed at which information circulates online and through digital media.

In Albania, the current legal framework regulating press freedom is minimal. Law no. 7756, dated October 11, 1993, “On the Press,” as amended in 1997, consists of a single article stating: “The press is free and protected by law.”¹ This short and highly general law, although reflecting a clear prioritization of press freedom following the 1997 crisis, is no longer considered modern and fails to provide adequate protection against the complex challenges of the digital era. The professional responsibility of journalists and the accountability of individuals in how they exercise this freedom remain insufficiently regulated.

This normative minimalism, while theoretically ensuring media freedom and avoiding direct state censorship, also implies that online

1. Law No. 7756, dated 11.10.1993, “On the Press,” as amended.

media largely fall outside specific legal regulation. In the absence of a dedicated law for electronic publications, the digital space is governed only by general constitutional principles and existing legislation. This has created clear legal gaps: there is no dedicated legal mechanism to address the responsibility of online platforms, to establish transparency standards for content moderation, or to handle cases of abuse of free speech on the internet.

Recent efforts to fill this gap, such as the much-debated “anti-defamation” package proposed in 2019, have highlighted the difficulty of striking the right balance between regulation and freedom.¹ This legislative package aimed to establish a mandatory register for online media and grant an administrative body (the Audiovisual Media Authority) the power to fine or shut down online portals without a court order. Such a scheme, which could easily translate into state control over digital media, was widely criticized as contrary to international best practices that favor media self-regulation.

Domestic and international press freedom organizations warned that adopting these legal changes would seriously harm freedom of expression in Albania and violate standards set by the European Convention on Human Rights and the country’s international commitments. As a result of public pressure and criticism from international organizations, the legal package was not approved, once again illustrating how delicate the balance is between combating online abuse and avoiding censorship.

In this context, the Venice Commission², in its 2020 opinion, assessed that the draft law in its then-current form was unsuitable for adoption due to vague wording, the risk of administrative overreach (by AMA and the Complaints Committee), the lack of procedural safeguards, and the chilling effect it could have on the media and individuals. The Commission emphasized that the proposed changes could cause more harm than benefit to freedom of expression and recommended that any such measures be based on strong guarantees for institutional independence, proportionality of sanctions, and protection of due judicial process.

The role of the People’s Advocate in promoting human rights is directly linked to upholding and maintaining democratic standards. In this regard,

1. Draft Law “On Amendments and Additions to Law No. 97/2013 on Audiovisual Media in the Republic of Albania,” as amended.

2. Venice Commission, Opinion No. 980/2020, CDL-AD(2020)013, §§ 69–72.

the People's Advocate has been one of the institutions that, within the framework of the Alliance Against Hate Speech¹, drafted a code of ethics for political parties², which was approved and signed by the country's main parties. This code of ethics is sent to political parties during election periods to remind them of their obligations, alongside recommendations from the European Commission against Racism and Intolerance (ECRI). In the specific case at hand, the People's Advocate also issued an official press statement³ publicly presenting the institution's stance. However, the powerful influence of disinformation overshadowed both public awareness and the willingness to verify actual facts.

Careless or abusive use of freedom of expression in digital media can have serious consequences for institutional credibility and public discourse. Journalists and media outlets must act with a high level of professional and ethical awareness; otherwise, they risk not only damaging public trust but also prompting the imposition of undesirable legal restrictions on freedom of expression. As demonstrated by the debates surrounding the audiovisual media law, international engagement and public awareness are essential to ensuring that freedom of expression in Albania remains both responsible and sustainable.

Conclusions

Freedom of expression remains one of the most important and widely recognized fundamental rights at the international, regional, and national levels, serving as an indispensable foundation for the functioning of democratic societies. However, in the face of rapid technological developments and an increasingly complex public discourse, it is still necessary not only to reaffirm its importance but also to deeply understand the nature, scope, and boundaries within which it can be legitimately exercised.

1. The "Alliance Against Hate Speech" was established on 20 December 2019 in Tirana as an initiative of the Ombudsperson, the Commissioner for Protection from Discrimination, the Audiovisual Media Authority, and the Albanian Media Council to combat hate speech in all its forms across Albanian society. <https://nohatealliance.info/>

2. Code of Conduct for Albanian Political Parties during Election Campaigns;

3. Deklaratë e Avokatit të Popullit për nxitjen e etikës në komunikimin politik gjatë fushatës zgjedhore të 2025, link: <https://www.facebook.com/photo/?fbid=1457358268909944&set=a.474597307186050>

Any measure that could potentially infringe on freedom of expression must be justified, clearly defined, and must pass the proportionality test, adhering to the fundamental principles of legality and necessity. In this sense, not every restriction is, by itself, a violation; but any restriction that does not meet these standards constitutes an unacceptable infringement of the right.

On the other hand, the abuse of freedom of expression also poses a significant threat to the very system of human rights. When this freedom is used to spread hatred, disinformation, or to threaten the dignity and safety of others, it loses its emancipatory function and becomes a tool that undermines freedom and equality. Therefore, the modern challenge is not only to protect freedom of expression from arbitrary limitations, but also to ensure that it is exercised responsibly, in accordance with the principles of a democratic order and with respect for everyone's rights.

Bibliography / References

1. Constitution of the Republic of Albania, adopted in 1998, with subsequent amendments.
2. Universal Declaration of Human Rights. United Nations, 1948.
3. International Covenant on Civil and Political Rights. United Nations, 1966.
4. European Convention on Human Rights. Council of Europe, 1950.
5. Charter of Fundamental Rights of the European Union. European Union.
6. Fundamental Statute of the Republic of Albania (1925). Accessed April 23, 2025. <https://www.crteeducazione.org/wp-content/uploads/2025/02/Cost.-Albania-1925-albanese.pdf>.
7. Constitution of the People's Republic of Albania (1946). Accessed April 23, 2025. https://data.globalcit.eu/NationalDB/docs/ALB%20Constitution%20of%20the%20People's%20Republic%201946_ORIGINAL%20LANGUAGE.pdf.
8. Constitution of the People's Socialist Republic of Albania (1976). Accessed April 23, 2025. <https://data.globalcit.eu/NationalDB/docs/ALB%20Kushtetuta%20e%20Republikes%20Socialiste%20Popullore%20e%20Shqiperise%201976.pdf>.

9. Draft Constitution of the Republic of Albania (1994). Venice Commission. Accessed at: [https://www.venice.coe.int/webforms/documents/?pdf=CDL\(1994\)063-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL(1994)063-e).
10. Van Maarseveen, Henc, and Ger van der Tang. *Written Constitutions: A Computerized Comparative Study*. 1978. Quoted in: Sinani, M. et al., *Commentary on the Universal Declaration of Human Rights*, prepared for UNESCO, 2008, p. 99.
11. Thorgeirson v. Iceland, Application No. 13778/88, ECtHR, June 25, 1992. Accessed April 23, 2025. <https://hudoc.echr.coe.int/app/conversion/docx/?library=ECHR&id=001-57795>.
12. UNHCR. *Using Social Media in Community Based Protection: A Guide*. Factsheet 4: Types of Misinformation and Disinformation. Accessed April 20, 2025. <https://www.unhcr.org/innovation/wp-content/uploads/2022/02/Factsheet-4.pdf>.
13. Colomina, Carme, Héctor Sánchez Margalef, and Richard Youngs. *The Impact of Disinformation on Democratic Processes and Human Rights in the World*. European Parliament, Directorate for External Policies, 2021.
14. Council of Europe, Committee of Ministers. *Recommendation No. R (97) 20 on "Hate Speech"*, April 22, 2025. <https://rm.coe.int/1680505d5b>.
15. ECRI. *General Policy Recommendation No. 15 on Combating Hate Speech*. December 8, 2015. <https://rm.coe.int/ecri-general-policy-recommendation-no-15-on-combating-hate-speech-alba/16809eb58e>.
16. Singh, M. "Freedom of Expression and Online Speech." *International Journal of Novel Research and Development* 8, no. 7 (July 2023): 671.
17. Council of Europe. *The Impacts of Digital Technologies on Freedom of Expression: Recommendation CM/Rec(2022)13*. 2022.
18. People's Advocate (Albania). *Code of Conduct of Albanian Political Parties during Election Campaigns*. <https://www.avokatipopullit.gov.al/sq/articles/general-issues/t%C3%AB-tjera/kodi-i-sjelljes-akgju-627/>.
19. *Statement by the People's Advocate on Ethics in Political Communication during the 2025 Election Campaign*. <https://www.facebook.com/photo/?fbid=1457358268909944&set=a.474597307186050>.
20. Council of Europe. *Guidance Note on Countering the Spread of Online*

Mis- and Disinformation through Fact-Checking and Platform Design Solutions. March 2024.

21. Council of Europe. *Recommendation CM/Rec(2024)2 on Countering SLAPPs*. April 5, 2024.
22. European Court of Human Rights. *Guide on Article 10 of the European Convention on Human Rights: Freedom of Expression*. Last updated August 31, 2022.
23. Venice Commission. *Opinion on Amendments to Law No. 97/2013 on Audiovisual Media in Albania*. Opinion No. 980/2020.
24. World Health Organization. *Infodemic*. https://www.who.int/health-topics/infodemic#tab=tab_1.
25. *Alliance Against Hate Speech*. <https://nohatealliance.info/>.

PREVENTION OF CONFLICT OF INTEREST IN THE JUSTICE SYSTEM IN ALBANIA. BALANCING LEGAL CONSTRAINTS IN RELATION TO HUMAN RIGHTS

Dr. Fjorida Ballauri¹

Abstract

In the framework of the 2016 constitutional changes in Albania, the justice system underwent a profound reform both in terms of organization and functioning and in elements that affected the status of judges and prosecutors, for whom the law now uses the unified term “magistrates”. In particular, the law on the status of judges and prosecutors in the Republic of Albania has sanctioned restrictions on the private interests of magistrates due to their function, referring specifically to the regulations provided for in the law on the prevention of conflicts of interest.

The mechanism for preventing conflicts of interest in the Albanian justice system seems complicated to implement in practice, because it refers to several specific laws and regulations. The Law on the Prevention of Conflict of Interest, in addition to the special law on the status of judges and prosecutors in Albania, has provided for a series of prohibitions for judges, prosecutors and persons related to them (spouse, cohabitant, adult children as well as parents of the magistrate and spouse or cohabitant), which will be the subject of legal analysis in this paper. For this reason, the author aims first to summarize in this paper all types of restrictions on the private interests of judges, prosecutors and persons related to them. Secondly, the article aims to conduct a legal analysis, giving the author’s modest assessment of whether there is a fair balance

1. Advisor to the President, the Institution of the President of the Republic of Albania
Lecturer (part time), Faculty of Security and Investigation, Security Academy, Tirana
fjori.k@gmail.com

between the restrictions on private interests that Albanian legislation has provided for magistrates and their related persons, in relation to the human rights.

Keywords: *justice system, conflict of interest, magistrates, restriction on private interest, human rights*

1. Introduction

In a state governed by the rule of law, the impartial and independent functioning of the justice system constitutes the foundation for guaranteeing individual rights, as well as an essential condition for public trust. In this context, preventing conflicts of interest in the exercise of the functions of judges and prosecutors constitutes one of the most important challenges for the integrity of justice.

The Albanian justice reform and the constitutional amendments of 2016, brought not only the institutional reorganization of this system, but also the definition of a new legal framework that aims to guarantee the impartiality, transparency and accountability of magistrates. Among the most important measures of this reform is the construction of clear and effective mechanisms for preventing conflicts of interest or incompatibility of magistrates, which are regulated in the Constitution of the Republic of Albania, the law on the status of judges and prosecutors, as well as in the law on the prevention of conflicts of interest in the exercise of public functions.

The Law on the Prevention of Conflict of Interest, in addition to the special law on the status of judges and prosecutors, has provided series prohibitions for judges, prosecutors and persons related to them (spouse, cohabitant, adult children as well as parents of the magistrate and spouse or cohabitant). Cases of legal prohibitions and those of incompatibility with the function of a judge, prosecutor and persons related to them will be the subject of legal analysis in this paper.

Through a legal and analytical analysis of the legislation in force, seen from a comparative perspective with the regulations before the 2016 reform, the author aims to make an assessment of the effectiveness of these mechanisms in practice, to identify possible problems and to suggest further improvements in the legal framework.

2. Preventive Mechanisms for Conflict of Interest within the Justice System

The constitutional amendments of 2016 initiated a comprehensive restructuring of the Albanian judicial system, affecting not only its institutional organization and functional architecture but also the legal status and professional regime governing judges and prosecutors, referred to collectively under the unified statutory term “*magistrates*.” The status of magistrates is regulated by a dedicated legislative act, namely Law no. 96/2016, “*On the Status of Judges and Prosecutors in the Republic of Albania*,” as amended¹. Constitutional norms continue to serve as the primary source governing the incompatibilities associated with the exercise of judicial and prosecutorial functions.

Article 143 of the Constitution, as amended by Law no. 76/2016 “On Amendments to the Constitution of the Republic of Albania,” codifies the principle of functional incompatibility applicable to judges. The provision stipulates that “*The office of judge is incompatible with any other political or state activity, as well as with any remunerated professional activity, except for teaching, academic or scientific engagement, and secondment to institutions of the justice system, as provided by law.*” A parallel prohibition is articulated in Article 130 concerning the judges of the Constitutional Court. Likewise, the insertion of Article 149/c extends identical incompatibility restrictions to prosecutors, including the Prosecutor General and members of the High Prosecutorial Council, who are barred from exercising any political or state activity, as well as any remunerated professional engagement, with the exception of teaching, academic, or scientific activities.

Before the justice constitutional reform of 2016, the position of a judge was strictly incompatible with any other state, political, or private engagement. Such an absolute prohibition on economic activity, however, did not extend to prosecutors. Pursuant to the former organic law²,

1. Repealed by the decision of the Constitutional Court No. 34, dated 10 April 2017, as amended by Law No. 48/2019, dated 18 July 2019; Law No. 15/2020, dated 12 February 2020; Law No. 149/2020, dated 17 December 2020; Law No. 50/2021, dated 23 March 2021; Law No. 33/2023, dated 25 May 2023.

2. Law No. 8737, dated 12 February 2001, “On the Organization and Functioning of the Prosecution in the Republic of Albania,” repealed by Law No. 96/2016, “On the Status of Judges and Prosecutors in the Republic of Albania,” as amended.

prosecutors were prohibited from joining political parties or participating in political activities; their office was incompatible with electoral candidacy and withholding any elective office, public function, or activity other than teaching; they were barred from secondary employment, except for teaching; and they could not serve on the managerial bodies of commercial companies.

The legislative amendments enacted as part of the justice reform, while relatively relaxing the regime governing judges with respect to private activities, simultaneously expanded the restrictions applicable to prosecutors—who, until 2016, could freely engage in private economic activity, including by holding shares or equity interests in commercial entities. The harmonization of their status under a unified organic law, made both judges and prosecutors subject to identical limitations and prohibitions regarding the pursuit of private interests considering their constitutional functions.

Due to heightened concerns regarding judicial independence, conflict of interest management frameworks for judges and prosecutors are frequently conceived as distinct¹ from those applicable to other public officials. Such frameworks must be attuned to the particularities of the judicial and prosecutorial mandate, which, by virtue of their nature and scope of authority, necessitate tailored regulatory solutions. Consequently, the management of conflicts of interest within the justice system cannot be assimilated to, nor functionally equated with, the mechanisms governing the public administration at large.

3. Regulation of Specific Cases of Conflict of Interest

Specific cases of conflict of interest within the judicial system are governed by procedural laws in civil and criminal matters.

In criminal proceedings, the circumstances under which a judge or prosecutor is obliged to recuse themselves—or in which the parties may request their disqualification from adjudicating or prosecuting a criminal

1. Preventing and managing conflicts of interest in the public sector: Good practices guide, July 2020, Prepared at the request of the G20 Anticorruption Working Group by the World Bank, OECD and UNODC

Available: <https://www.unodc.org/documents/corruption/Publications/2020/Preventing-and-Managing-Conflicts-of-Interest-in-the-Public-Sector-Good-Practices-Guide.pdf>

case – are set forth in the Criminal Procedure Code¹. These include:

1. When the judge has issued [a decision] or taken part in preliminary hearings or has issued a decision in any of the instances of the proceedings, shall not exercise the judicial functions in the other instances.
2. When the judge has examined the requests of the parties during the preliminary investigations or the preliminary hearing for the same proceeding may not take part in the trial. The judge who examines the requests of the parties during the preliminary investigations may not exercise the judicial functions at the preliminary hearing of the same proceeding.
3. A person may not serve as judge in the same proceeding if, has acted as a prosecutor, or has carried out actions of judicial police, or has served as a lawyer, representative, guardian of one of the parties or has been a witness, expert, a victim or person who has lodged a criminal report or complaint, is barred from exercising the judicial function
4. Persons who are spouses, cohabitants, close blood relatives (ascendants, descendants, siblings, uncles, aunts, nephews, nieces, children of siblings), or close in-laws (parents-in-law, sons- or daughters-in-law, siblings-in-law, stepchildren, stepparents) of each other or of participants in the proceedings may not serve as judges or prosecutors in the same proceeding.

In addition to the above, a magistrate is obliged to withdraw from adjudicating or investigating a case when:

5. He has a private interest in the proceedings or if any of the private parties or lawyers is a debtor or creditor to himself or to his spouse, cohabitant or his children.
6. He is a legal guardian, a representative or employer of the defendant or of any of the private parties or if the lawyer or the representative of any of these parties is his own or his spouse's close kindred.
7. He has given advice or expressed his opinion on the object of the proceedings.
8. There are disputes between him, his spouse or any of his close

1. See article 15-16 of the Criminal Procedure Code of the Republic of Albania.

relatives with the defendant or any of the private parties.

9. any of his own or his spouse's relatives has been harmed or damaged by the criminal offence.
10. any of his relatives or his spouse's relatives perform or has carried out prosecutor's role in the same proceeding.
11. any other important reasons for judge's partiality exist.

In civil proceedings, the cases in which a judge must recuse themselves, or in which the parties may request the exempt of the judge, are regulated by the Civil Procedure Code of the Republic of Albania (article 72). Specifically, recusal is required:

1. When the judge has an interest in the case or in another dispute which is related to it in the trial.
2. When the judge or their spouse is a relative up to the fourth degree of consanguinity or the second degree of affinity, or has an adoption-related relationship, or cohabits permanently with one of the parties or their attorneys.
3. When the judge or their spouse is in legal conflict or in enmity or in relations of credit or loan with one of the parties or one of the representatives.
4. When the judge has given advice or has expressed opinion on the case in trial or has participated in the trial of the case in a different level of the process, has been questioned as a witness, as expert or representative of one or the other party.
5. When the judge is the guardian, employer of one of the parties, administrator or has another task in an entity, association, society or other institution which has interests in the case in trial.
6. In any other circumstance where, on the basis of the concrete situation, serious grounds of bias are established.

Considering the coherence that exists among the provisions of the Civil Procedure Code, the Criminal Procedure Code, and the Law on the Prevention of Conflict of Interest, private interests¹ that may constitute

1. With reference to the concept of private interest as defined in Article 5 of Law No. 9367, dated 7 April 2006, 'On the Prevention of Conflicts of Interest in the Exercise of Public Functions,' as amended."

serious grounds of bias justifying recusal of the judge or prosecutor may also include:

1. Interests arising from any other civil-law relationship (not only those involving loans or debts) of the magistrate, their spouse, or their children;
2. Interests arising from gifts, favors, or preferential treatment that a party has provided, provides, or promises to provide in the future;
3. Interests deriving from negotiations the judge may have conducted with any of the parties concerning their future employment or promotion;
4. Known relationships of friendship with one of the parties (in addition to relationships of hostility);
5. Interests arising from ethnic, community-based, or religious relationships (which, in certain circumstances, may also give rise to conflicts of interest on a case-by-case basis).

The above restrictions apply equally to prosecutors in criminal proceedings, who likewise have an obligation to withdraw when serious grounds of bias exist. The categories of private interests that constitute grounds for dismissal of a magistrate form a non-exhaustive list. The law itself leaves room for case-by-case assessment by providing that recusal is required whenever concrete circumstances establish serious grounds of partiality. The prevention of *apparent* conflicts of interest is of equal importance to the prevention of *actual* conflicts of interest. Justice must not only be done, but must also be seen to be done¹.

4. Restrictions on the Magistrate's Private Interests Arising from the Exercise of Office

The amended Law No. 96/2016 “On the Status of Judges and Prosecutors in the Republic of Albania” provides a distinct regulatory

1. Hélène Ruiz Fabri, A focus on ethics in international courts and tribunals conflicts of interests: Navigating in the fog, Published online by Cambridge University Press: 16 September 2019.

Available at: <https://www.cambridge.org/core/journals/american-journal-of-international-law/ajil-unbound-by-symposium/a-focus-on-ethics-in-international-courts-and-tribunals>, accessed 9 Apr. 2025

framework concerning incompatibilities arising from the exercise of judicial or prosecutorial functions. These include prohibitions on political party membership or participation in political activities; restrictions on the public expression of views or disclosure of information regarding pending cases; as well as prohibitions related to private interests, with the overarching aim of preventing conflicts of interest.

Specifically, Article 7 of Law No. 96/2016, as amended, codifies various limitations on the private interests of magistrates stemming from their public function. Paragraph 4 of Article 7 foresees detailed prohibitions concerning the exercise of private entrepreneurial or economic activities by magistrates. A magistrate is prohibited from:

- (a) Administering, directing, or influencing any commercial or profit-making companies, personally or by representation.
- (b) actively owning shares or parts of capital in commercial companies in accordance with the legislation in force on the prevention of conflicts of interest.
- (c) passively¹ owning shares or parts of capital in commercial companies, if the company is gaining profits or benefits from public contracts in accordance with the legislation in force on the prevention of conflicts of interest.
- (ç) passively owning shares or parts of capital in commercial companies in which the magistrate's activity would be prohibited, because it could compromise the magistrate's independence, give rise to a conflict of interest or otherwise lead to a perception of bias or partiality.

First, letter (a) of Article 7(4) of Law No. 96/2016, as amended, establishes an outright prohibition on any form of administration, management, or exertion of influence by a magistrate in commercial or profit-seeking entities.

Second, pursuant to letter (b), the law prohibits the *active* ownership of shares or equity interests in all types of commercial companies, while permitting *passive* ownership strictly within the parameters of the conflict-

1. The meaning of passive ownership of shares is provided in the definitions of the law, specifically in Article 3, point 6 of Law No. 9367, dated 7 April 2006, 'On the Prevention of Conflicts of Interest in the Exercise of Public Functions,' as amended.

of-interest legislation.

Third, under letter (c), passive ownership is prohibited when the company derives profit or benefit from public contracts. Thus, if a company participates in public procurement or other contracts relating to state property or public funds, a magistrate may not hold passive ownership interests therein. This prohibition corresponds directly with Article 21 of the Law on the Prevention of Conflicts of Interest, which prohibits magistrates and their related persons from contracting with public institutions. However, the duplication of a substantively identical prohibition across two different statutes may create interpretive uncertainty in practice.

Fourth, letter (ç) prohibits passive ownership in companies whose activity is deemed incompatible on grounds that it could influence the magistrate's independence, generate a conflict of interest, or create the impression of partiality. This raises the practical question: how can a magistrate reasonably foresee the nature of future cases assigned for adjudication? Indeed, this uncertainty underscores the importance of procedural mechanisms—such as recusal—designed to address conflicts of interest as they arise.

Taken collectively, these prohibitions appear to have generated additional ambiguity for magistrates regarding the permissible scope of private economic activity, particularly when compared with the pre-2016 constitutional framework. For instance, a judge or prosecutor serving at the Durrës District Court may reasonably inquire whether passive ownership in a consulting and legal services company operating in Elbasan, Tirana, and Vlora is permissible; or whether they may passively own interests in a licensed accounting-expertise company? in an insurance company; or in a second-tier bank. It is certain that such questions cannot be conclusively answered solely by referring to Article 7(4)(ç) of Law No. 96/2016.

Moreover, even though these prohibitions are in force, there remains a legislative gap regarding the mechanisms, procedures, and institutional responsibility for monitoring the compliance. To date, no monitoring reports appear to have been issued by the competent oversight bodies—the High Judicial Council (HJC), the High Prosecutorial Council (HPC), or the High Inspectorate for the Declaration and Audit of Assets and Conflicts of Interest (HIDAACI), the latter being the authority responsible for controlling the assets and private interests of public officials.

Meanwhile, regarding the extra-office activities, the law on the status of

judges and prosecutors has defined in its article 9, all types of activities that are permissible or not, defining in detail the steps that the magistrate must follow to obtain permission from the relevant bodies, the High Judicial Council (HJC) or the High Prosecutorial Council (HPC). Periodically, the relevant councils monitor and control the implementation by the magistrate, who according to the law must report annually on external activities.

Unlike the situation regarding the management of the extra-office activities of magistrates, for which the law provides for detailed procedures to be followed by the approval of the High Justice Council or High Prosecutorial Council. These councils periodically monitor compliance, and magistrates are required to submit annual reports on their external engagements. Unlike this structured framework, no analogue system exists for monitoring the restrictions on economic activities of magistrates.

4.1 Prohibitions on Contracting with Public Entities and Limitations Concerning Connected Persons

In addition to the provisions contained in the law on the status of magistrates, the Law on the Prevention of Conflicts of Interest has established further prohibitions applicable to judges and prosecutors at both the first instance and appellate levels.

Article 21(1) of Law No. 9367, dated 7 April 2006, “On the Prevention of Conflicts of Interest in the Exercise of Public Functions,” as amended, provides that:

“No individual, when he is equated with an official holding one of the functions defined in Chapter III, Section 2 of this law, judges and prosecutors at the first instance and appeal courts, and no commercial company, partnership or simple partnership, where this official possesses, actively or passively, shares or parts of capital, at whatever amount, cannot enter into a contract or sub-contract with any public institution”.

It is noteworthy that this provision, as applied to judges and prosecutors of first instance and appellate courts, was not originally included in the Law on the Prevention of Conflicts of Interest but was introduced in 2014 through amendments adopted by Law No. 44/2014, dated 24 April 2014, “On Certain Additions and Amendments to Law No. 9367, dated 7 April 2006, on the Prevention of Conflicts of Interest in the Exercise of Public Functions,” as amended. To comprehensively identify the categories of officials to which this prohibition applies, the law references the functions

defined in Chapter III, Section 2 of Law No. 9367, as amended. Specifically, the categories covered include:

- The President of the Republic;
- The Prime Minister, Deputy Prime Minister, Ministers, and Deputy Ministers;
- Members of Parliament;
- Judges of the Constitutional Court and the Supreme Court; Members of the High Council of Justice (KLD)¹; the Attorney General; the Chair of the Supreme State Audit Institution (KLSH);
- The Ombudsman, Members of the Central Election Commission (CEC), the Inspector General of the High Inspectorate of Declaration and Audit of Assets;
- Members of regulatory bodies;
- Secretaries General, Department Directors, General Directors, and mid-level managerial staff (or equivalent positions);
- Judges and prosecutors at first instance and appellate courts;
- Mid-level managerial officials, but only with respect to contracts within their territorial and jurisdictional scope.

Under Article 21(1), the prohibition on entering into contracts with public institutions extends to contracts throughout the territory of the Republic of Albania and is not confined to the territorial or jurisdictional area where the official performs their function.

Moreover, in pursuit of protecting the public interest, property, and public funds from the risk of conflicts of interest and corruption by public officials, the law equates the ownership of shares held by persons connected to the official with that of the official. Law No. 9367 expressly provides that the prohibitions and restrictions applicable to the official, as set forth in this section, also apply to persons connected to them, including spouses, cohabitants, adult children, and parents of both the official and the spouse or cohabitant.

Specifically, Article 24 of Law No. 9367, as amended, stipulates that the circle of persons connected to an official, in accordance with the prohibitions set forth in Articles 21 and 22 of this Law, comprises the spouse, cohabitant, adult children, and the parents of the official and of the spouse or cohabitant. Also, the prohibitions and restrictions applicable

1. It should be clarified that this law has not been amended following the justice reform.

to the official in this section also apply to their related persons.

Consequently, to these provision, spouses, cohabitants, adult children, and parents of magistrates, as well as spouses or cohabitants thereof, are prohibited from competing for public funds or benefiting from contracts with public institutions due to the magistrate's official function. The prohibition under Article 21(1) encompasses all types of contracts, including public procurement of construction, goods, or services; sales; exchanges; leases or emphyteusis; donations; supplies; entrepreneurship; transport; and any other contract with a public entity not excluded by Article 21(4)¹.

Thus, connected persons (or commercial entities in which they hold shares or stakes) of judges and prosecutors at first instance, for instance within the Tirana judicial district, are barred from competing for public funds, not only in Tirana but throughout Albania. This raises the question of how and to what extent such limitations on private interests of connected persons serve to safeguard or enhance the integrity and independence of the magistrate.

Comparatively, magistrates face stricter prohibitions than high-ranking decision-makers such as MPs, Ministers, or the Prime Minister. For example, under Articles 28 and 33 of the Law on the Prevention of Conflicts of Interest, the Prime Minister and Ministers or Deputy Ministers are prohibited only from actively owning shares or equity stakes in commercial companies, while MPs² may freely hold shares except where they constitute a dominant market position. Conversely, judges and prosecutors are prohibited even from passive ownership of shares in companies where their official activity is restricted, to prevent potential influence on their independence. However, a magistrate cannot predict which cases will be assigned for adjudication, which is why procedural

1. Pursuant to this provision of the law, exceptions are made for contracts relating to: (i) employment within a public institution or the legal status of the official or a person associated with them; (ii) the provision of a service offered by the public institution or by entities established or controlled by the institution, provided that such services fall within the institution's scope of activity and that the service is not granted to the official in a preferential or otherwise advantageous manner relative to others; and (iii) contracts governed by specific laws for public purposes or for special treatment of different categories of officials.

2. See Article 28 of Law No. 9367, dated 7.4.2006, "On the Prevention of Conflicts of Interest in the Exercise of Public Functions," as amended.

law provides for recusal mechanisms when private interests may give rise to a conflict.

Similar proportionality considerations arise regarding constitutional judges compared to first-instance or appellate judges. Constitutional judges' status is regulated by the organic law on the Constitutional Court. Functional restrictions for these judges are addressed in Article 7(4) of the Law on the Status of Magistrates¹ and Article 33 of the Law on the Prevention of Conflicts of Interest. However, the stricter prohibitions applicable to first-instance and appellate judges do not extend to constitutional judges or their connected persons². Therefore, first-instance and appellate judges face stricter limitations than constitutional judges. In this context, the balance between the importance of the magistrate's function and the extent of legal restrictions intended to protect public interest appears not to be respected.

The principle of proportionality is expressly defined in Article 3(12) of Law No. 9367, highlighting the legislator's emphasis on appropriate application:

“The principle of proportionality is the relationship between the significance of the duties, responsibilities, and powers of a public official or institution and the measures adopted to prevent conflicts of interest. The more significant the duties, responsibilities, or powers, the greater the limitations imposed on the official's private interests, the harsher the sanctions, and the more detailed the rules, methods, tools, and procedures for preventing conflicts of interest by public institutions.”

Efforts to prevent, manage, and resolve conflicts of interest in public office require careful balancing between effective preventative measures and the potential infringement of individual rights. Conflicts may arise in diverse situations across different categories of officials, necessitating varied measures. Overly restrictive limitations risk unjustified interference with individual rights. Therefore, proportionality must be maintained between restricted private interests and the public interest justifying such restrictions; exceeding this balance may result in violations or even

1. See Article 16/a of Law No. 8577, dated 10.02.2000, “On the Organization and Functioning of the Constitutional Court of the Republic of Albania,” as amended.

2. In Article 2, letter (gj) of Law No. 96/2016, “On the Status of Judges and Prosecutors in the Republic of Albania,” as amended, it is stated: “Magistrate means a judge, with the exception of a judge of the Constitutional Court...”

unconstitutional measures¹.

For this reason, there must be a balance and proportionality between the private interests being restricted and the public interest that justifies such limitations. Should these restrictions exceed the scope dictated by their purpose, they may result in unjustified violations of these rights and could even lead to the unconstitutionality of the measures adopted to prevent and resolve conflicts of interest².

The Constitutional Court has consistently emphasized criteria for assessing proportionality:

- (i) Whether the legislator's objective is sufficiently important to justify the restriction;
- (ii) Whether the measures adopted are reasonably related to the objective and are not arbitrary, unfair, or illogical;
- (iii) Whether the means employed are no more severe than necessary to achieve the objective, with the weight of harmful effects balanced against the importance of the objective.

The proportionality of a restriction is assessed on a case-by-case basis, taking into account that the above criteria are not to be analyzed in isolation, but in conjunction with each other³. In this regard, the Court emphasizes that in examining proportionality, a number of factors must be taken into account, which cannot be exhaustively defined. They vary from case to case, depending on the facts of the case and the nature of the interference that has restricted the fundamental right.

To date, the attention of judges and prosecutors has been focused on completing the vetting process, but they will soon have to face problems with the practical implementation of Law No. 96/2016, as amended, on the status of magistrates and the law on the prevention of conflict of interest, especially regarding the restrictions on the persons related to them.

1. F.Ballauri, "*Conflict of Interests in Criminal Offenses Committed by State Employees or Public Servants*" (2015) f.28, Available: <https://unitir.edu.al/wp-content/uploads/2015/09/Doktoratura-Fjorida-Ballauri-Kallco-Fakulteti-i-Drejtësisë-Departamenti-i-te-Drejtësisë-Penale.pdf>

2. Ibid

3. See Decisions No. 20 dated 20 April 2021; No. 11 dated 9 March 2021; and No. 33 dated 8 June 2016 of the Constitutional Court, available at <https://www.gjykatakushtetuese.gov.al/vendime-perfundimtare-njoftime-dhe-statistika/>

5. Conclusions

The constitutional and legislative amendments adopted in the framework of Albania's justice reform were designed to strengthen the independence and the integrity of the judiciary and to prevent conflicts of interest. The revised Article 143 of the Constitution (2016), together with subsequent legislative changes imposing restrictions on magistrates, sought to avert undue influence stemming from private interests over judicial and prosecutorial decision-making.

The reform has enhanced and unified the legal framework governing the status of judges and prosecutors, aiming to establish higher standards of integrity and professional conduct.

Nevertheless, the imposition of stringent restrictions in the name of the public interest does not necessarily yield the anticipated outcomes. Such limitations must remain proportionate and consistent with the broader legal order.

This analysis suggests that the limitations of office foreseen in Article 7(4) of the Law on the Status of Judges and Prosecutors, particularly the prohibition on magistrates' passive ownership of shares or capital interests, require normative reassessment. These limitations should be reformulated in accordance with the principle of proportionality and drafted through clear and coherent legislative techniques.

Moreover, the restrictions imposed on persons related to a magistrate must reflect an appropriate balance between the private interests being limited and the public interest invoked to justify such limitations. Where these restrictions extend beyond the conditions that originally warranted their introduction, they may constitute unjustified interference with fundamental rights, incompatible with constitutional guarantees and established standards of protection.

Bibliography

1. Civil Procedure Code of the Republic of Albania, Available at: <https://qbz.gov.al/publications/codes>
2. Criminal Procedure Code of the Republic of Albania, Available at: <https://qbz.gov.al/publications/codes>
3. F. Ballauri, *Conflict of Interests in Criminal Offenses Committed by State Employees or Public Servants* (2015), Available at: <https://unitir.edu.al/wp-content/uploads/2015/09/Doktoratura-Fjorida-Ballauri-Kallco-Fakulteti-i-Drejtësisë-Departamenti-i-te-Drejtës-Penale.pdf>

4. World Bank, OECD, and UNODC, *Preventing and Managing Conflicts of Interest in the Public Sector: Good Practices Guide* (Prepared at the request of the G20 Anti-Corruption Working Group, July 2020), Available at: <https://www.unodc.org/documents/corruption/Publications/2020/Preventing-and-Managing-Conflicts-of-Interest-in-the-Public-Sector-Good-Practices-Guide.pdf>
5. Hélène Ruiz Fabri, *A Focus on Ethics in International Courts and Tribunals: Conflicts of Interest – Navigating in the Fog*, Cambridge University Press, Published online 16 September 2019. Available at: <https://www.cambridge.org/core/journals/american-journal-of-international-law/ajil-unbound-by-symposium/a-focus-on-ethics-in-international-courts-and-tribunals>, accessed 9 Apr. 2025
6. Law No. 8577, dated 10.02.2000, *On the Organization and Functioning of the Constitutional Court of the Republic of Albania*, as amended
7. Law No. 96/2016, *On the Status of Judges and Prosecutors in the Republic of Albania*, as amended
8. Law No. 9367, dated 7.4.2006, *On the Prevention of Conflicts of Interest in the Exercise of Public Functions*, as amended
9. Law No. 8737, dated 12.02.2001, *On the Organization and Functioning of the Prosecutor's Office in the Republic of Albania*, repealed by Law No. 96/2016, *On the Status of Judges and Prosecutors in the Republic of Albania*, as amended
10. Decision of the High Council of Justice No. 171, dated 22.04.2021, *On the Adoption of the Code of Ethics*, Available at: www.klgj.al
11. Decision No. 32, dated 24.02.2022, of the High Council of Prosecution, *On the Adoption of Standards of Ethics and Rules of Conduct for Prosecutors*, Available at: www.klp.al
12. Decision No. 20, dated 20.04.2021, Constitutional Court of the Republic of Albania, Available at: <https://www.gjykatakushtetuese.gov.al/vendime-perfundimtare-njoftime-dhe-statistika/>
13. Decision No. 11, dated 09.03.2021, Constitutional Court of the Republic of Albania, Available at: <https://www.gjykatakushtetuese.gov.al/vendime-perfundimtare-njoftime-dhe-statistika/>
14. Decision No. 33, dated 08.06.2016, Constitutional Court of the Republic of Albania, Available at: <https://www.gjykatakushtetuese.gov.al/vendime-perfundimtare-njoftime-dhe-statistika/>

THE LEGAL FRAMEWORK IN ALBANIA AND THE PRACTICES OF SOME COUNTRIES REGARDING FISCAL AND CRIMINAL AMNESTY

Naim TOTA, Assoc. Prof. Dr.¹
Jura ÇITOZI²

Abstract

Fiscal amnesty is a political and legal tool used by governments to ease the financial burden of taxpayers and to stimulate the fulfillment of fiscal obligations. In Albania, fiscal amnesty has been a controversial and periodically implemented topic, aiming to reduce tax debts and encourage the formalization of the economy.

All fiscal amnesty programs principally aim to encourage taxpayers who have broken the law to voluntarily resolve their tax matters in exchange for a degree of protection from legal prosecution. Voluntary asset declaration programs differ from direct tax amnesties, as the expected outcome in the first case is not the full or partial forgiveness of tax obligations, but the declaration of previously undeclared income and assets as part of a national strategy to improve compliance with fiscal obligations.

This paper analyzes the legal framework of fiscal amnesties in Albania, taking into consideration the latest laws and regulations, as well as their effects on the domestic economy.

Furthermore, the paper makes a comparison of the legal framework and fiscal amnesty policies in Albania with those of some other countries such as Italy, Greece, Spain, Turkey, and South Africa. Through this comparison, the strengths and weaknesses of the Albanian system are

1. Assoc. Prof. Dr. Avokat. Naim TOTA, “Aleksandër Moisiu” University, Durrës,
Email Address:naimtota@yahoo.com

2. Jura ÇITOZI, Student, Faculty of Law, Tirana, Email Address:juracitozi16@gmail.com

identified, as well as the lessons that can be learned from the experience of other countries. In particular, aspects such as the criteria for determining forgiven debts, the application procedures, and the long-term effects on the national economy are analyzed.

The main objective of this paper is to reflect on several models of legal regulation that some European and other countries have for carrying out amnesty programs through the voluntary declaration of undeclared assets, the beneficiary subjects, the level of tax applied, and the duration of the amnesty.

Finally, the paper offers recommendations for improving fiscal amnesty policies in Albania, emphasizing the need for a more sustainable and transparent approach that ensures a balance between the interests of the state and those of taxpayers. Through this analysis, the aim is to contribute to the public debate and the decision-making process in the field of fiscal policy.

Keywords: *Fiscal amnesty, financial burden, legal framework, beneficiary subjects, tax obligations, etc.*

1. Introduction

Fiscal amnesty constitutes an important instrument used by governments for various purposes such as increasing budgetary revenue from taxes, improving the level of compliance with tax obligations, and/or facilitating procedures for the repatriation of assets in support of economic policies. Fiscal amnesty refers to a favorable treatment of tax obligations, in the form of avoidance, full or partial forgiveness of taxes and penalties, for individuals/entities that have previously undeclared (or incorrectly declared) taxable income, funds, or assets, including undeclared assets held abroad (known as voluntary asset disclosure programs), as well as asset repatriation programs.¹

Governments make decisions to implement fiscal amnesties ² with the aim of rapidly increasing revenue and future tax compliance, by encouraging taxpayers to declare and pay previously undeclared taxes, as well as to promote the repatriation of capital. Amnesties are primarily offered

1. Financial Action Task Force (FATF), (2012) – Best Practices Paper: “Managing the antimoney laundering and counter-terrorist financing policy implications of voluntary tax compliance programmes” <https://www.fatf-gafi.org/media/fatf/documents/reports/BPP%20VTC.pdf> (Last accessed on 29.04.2025).

2. Ibid., p. 15.

during periods of economic crisis, when there is a fear that taxpayers may not be able to fulfill their tax obligations, when there are significant currency devaluations, or when there is a change of government.¹ Governments also introduce amnesties in response to pressures from various interest groups for the forgiveness of existing, declared, and undeclared tax debts.²

2. Regulatory Framework for Fiscal Amnesty in Albania

Over the years, several legislative initiatives for fiscal amnesty have been undertaken in Albania. One of the first initiatives for amnesty was adopted in 2006, followed by other initiatives in 2008, 2010, 2011, 2014, 2015, and most recently the one adopted in 2017.³ Additionally, two legislative initiatives for fiscal amnesty have been undertaken based on voluntary asset disclosure, respectively in 2011 and most recently in 2022.

The Constitution of the Republic of Albania⁴ stipulates that amnesty is approved by a qualified majority of 3/5 of all members of the Assembly, i.e., with 84 votes, due to its importance and the effects it has on the economy. Over the years, Albanian governments have proposed other alternative forms of amnesties, legalizations, and forgiveness/eradication of tax obligations. 2022⁵.

Law No. 9575, dated 3.7.2006⁶ “On the forgiveness of fines for mandatory social and health insurance contributions, as well as income tax from employment for legal and natural persons registered as taxpayers of the local tax on small businesses, for the tax periods of 2005” aimed at forgiving imposed fines and reimbursing paid fines related to all tax periods of 2005,

1. Ibid

2. Ibid

3. Golemi, E. (2022), *History of Fiscal Amnesties and Voluntary Asset Declarations in Albania*, Albanian Institute of Sciences / Open Data Albania <https://ais.al/new/wp-content/uploads/Amnistia-Fiskale-dhe-Deklarimet-Vullnetare-te-Pasurive-ne-Shqiperi.pdf> (Last accessed on 24.04.2025).

4. Constitution of the Republic of Albania, Article 81, paragraph 2, letter “ë” <https://qbz.gov.al/preview/635d44bd-96ee-4bc5-8d93-d928cf6f2abd> (Last accessed on 24.04.2025).

5. Golemi, E. (2022), *History of Fiscal Amnesties and Voluntary Asset Declarations in Albania*, Albanian Institute of Sciences / Open Data Albania. <https://ais.al/new/wp-content/uploads/Amnistia-Fiskale-dhe-Deklarimet-Vullnetare-te-Pasurive-ne-Shqiperi.pdf> (Last accessed on 24.04.2025).

6. Official Gazette of the Republic of Albania No. 79, 28 July 2006, p. 2283 <https://qbz.gov.al/eli/fz/2006/79/349136c5-1069-47a3-ac22> (Last accessed on 27.04.2025).

associated with the late declaration and payment of obligations for social insurance contributions, health care insurance contributions, and income tax from employment, on the condition that the declaration and payment are made by 31.12.2006. The implementation period of this law was July – December 2006.

Entities that benefited from the law:

- Legal and natural persons registered as taxpayers of the local tax on small businesses;
- Legal and natural persons registered as taxpayers of the local tax on small businesses who had cases in the appeal process.

Cases for the execution of court decisions, which had become final by the date of entry into force of this law and were related to the fines mentioned in this law, are terminated. Meanwhile, the law did not specify entities that were excluded from its application.

Law No. 9986, dated 11.09.2008 ¹“On the forgiveness of customs and tax obligations, overdue obligations of the annual road circulation tax of vehicles and the annual vehicle registration tax, as well as unpaid fines and interest on mandatory social and health insurance contributions.” This law aimed to forgive customs and tax obligations, together with their components, fines, and interest. The implementation period of this law was October 2008 – March 2009.

Entities that benefited from this law²:

- Natural and legal persons, state institutions, and state-owned enterprises, debtors to the customs and tax administrations, who had their customs/tax obligations, together with fines and interest, partially or fully forgiven;
- Self-employed natural persons, enterprises and state-owned companies, state institutions, etc., as well as private legal and natural persons, who had their obligations fully or partially forgiven.

Partially unpaid obligations for social and health insurance contributions, together with fines and interest;

- Natural persons, individuals, debtors to the tax and customs

1. Official Gazette of the Republic of Albania No. 143, 28 July 2008, p. 2283 <https://qbz.gov.al/eli/fz/2008/143/4331ab45-4a04-> (Last accessed on 27.04.2025).

2. Ibid., Articles 1–4.

administration, for imported vehicles, who had their customs obligations fully or partially forgiven, together with interest and fines, as well as overdue obligations for the annual road circulation tax of vehicles.

Entities excluded¹: Individuals, natural and legal persons, debtors to the customs and tax administration and the Social Insurance Institute, for whom a criminal proceeding had been initiated and who were found guilty upon its conclusion, or whose obligation had been determined by a final court decision, or those who had paid the obligation, including all its components.

Law No. 10228, dated 04.02.2010 ² “On certain additions and amendments to Law No. 8438, dated 28.12.1998 ‘On Income Tax’, as amended” enabled the increase of the capital of commercial companies created through previously undeclared income, with the aim of legalizing any of their undeclared assets. Specifically, the revision of Law No. 8438, dated 28.12.1998³, provided for the recognition of income in monetary form for the increase of capital from sources outside the company, which had not been previously taxed, although they were subject to taxation and were not accompanied by official documents proving the origin of these incomes⁴. The implementation period of this law was unspecified.

Law No. 10 418, dated 21.4.2011⁵ “On the legalization of capital and the forgiveness of part of tax and customs debt” aimed at legalizing capital and forgiving part of tax and customs debt, as well as social and health insurance contributions⁶. Capital legalization was carried out through the Voluntary Asset Declaration (VAD)⁷, which consisted of⁸:

1. Ibid., Article 7

2. Official Gazette of the Republic of Albania, No. 90, 21 July 2007, p. 2614 <https://qbz.gov.al/eli/fz/2007/90/fb78e891-668d-468c-8460-> (Last accessed on 27.04.2025).

3. Ibid., Article 1.

4. Official Gazette of the Republic of Albania, No. 2, 11 January 2011, p. 7

5. Official Gazette of the Republic of Albania, No. 61, 20 May 2011, p. 2500 <https://qbz.gov.al/eli/fz/2011/61/b2edc420-b463-4468-a5ad-> (Last accessed on 27.04.2025).

6. Ibid., Article 1 “Object of the Law”.

7. Ibid., Article 3 “Definitions”.

8. Ibid., Article 5 “Entities Benefiting from the Capital Legalization Process”.

- a) A voluntary declaration made by individuals, citizens of the Republic of Albania;
- b) A voluntary declaration made by legal persons, based in the Republic of Albania, for the positive difference resulting from the revaluation of assets;
- c) The voluntary declaration of cash amounts by natural persons registered as individual traders.

The Voluntary Asset Declaration was the core of the proposed program, intended to avoid future tax evasion, and aimed at the legalization of assets and the forgiveness of part of tax and customs debt, which included unpaid tax obligations of individuals up to 31 December 2010.¹ This law was implemented during the period June – December 2011.

The entities excluded from the rights provided by this law were those individuals who, in accordance with the applicable legislation, were subject to the legal obligation to declare their assets to the High Inspectorate for the Declaration and Audit of Assets.²

Law No. 39, dated 17.4.2014³ “On the forgiveness of administrative penalties in the form of fines, imposed on the basis of tax audits and verifications carried out for the period 1 March – 31 August 2013.” The purpose of the law was the forgiveness of fines imposed, as part of the tax obligation, by the central and local tax administrations, on taxpayers, recorded and accounted for in the tax registers for the period from 1 March to 31 August 2013.⁴ The law provided that within the month of October 2013, the central and local tax administrations were required to delete the forgiven fines from the registers and make accurate adjustments. The implementation period of this law was June – October 2014.

Entities that benefited from this law⁵:

- Legal/natural persons registered with the central and local tax administrations, who were debtors for tax obligations, fines imposed as part of unpaid tax obligations during the period 1 March – 31

1. Same source. Articles 10, 19, 20, 22, 23, 24, 26, 30, 31.

2. Same source. Article 6 “Entities excluded from the capital legalization process”.

3. Official Gazette of the Republic of Albania, No.136, 29 August 2014, Page 6267 (Accessed on 27.04.2025).

4. Same source. Article 1 “Object of the law”.

5. Same source. Article 2 “Beneficiary taxpayers”; Article 3 “Forgiveness of fines”.

August 2013;

- Legal persons or natural persons who, at the time of entry into force of this law, had filed an appeal and were in the appeal process;
- All taxpayers who had been fined administratively for undeclared employees, or employees declared late, for failure to install fiscal equipment, or failure to issue fiscal receipts/tickets.

From the application of the forgiveness¹ of any administrative penalty (fine), the tax amount and interest were excluded, as well as fines calculated and automatically recorded by the tax information system due to violations of the provisions of Law No. 9920, dated 19.5.2008, “On Tax Procedures in the Republic of Albania”, as amended.

Law No. 33, dated 30.03.2017 ² “On the payment and deletion or extinguishment of tax obligations of Payable at customs, as well as the procedure for the removal from circulation of means of transport after the deletion and extinguishment of unpaid tax liabilities. The law provided for the payment and deletion/extinguishment of unpaid tax liabilities, of liabilities payable at customs, as well as the procedure for removing from circulation the means of transport after the deletion/extinguishment of unpaid tax liabilities³. The implementation period of the law was June – December 2017.

Beneficiary subjects⁴:

- Entities registered in the active, passive or deregistered register for tax liabilities towards the central and local tax administration respectively, according to Articles 5, 6, 7 and 11 of this law, for unpaid tax liabilities pertaining to tax periods December 2010 and earlier;
- Entities that are debtors to the customs administration respectively, according to Articles 9, 10 and 11 of this law;
- Entities owning means of transport, as defined in Article 12 of this law.

1. Same source. Article 4 “Exclusions from forgiveness”.

2. Official Gazette of the Republic of Albania, No.99, 8 May 2017, Page 5521 (Accessed on 27.04.2025).

3. Ibid. Article 1 “Object of the law”.

4. Ibid. Article 3 “Beneficiary subjects

Subjects excluded ¹ from the implementation of this law were those entities that had tax/customs liabilities which had been convicted by a final court decision for criminal offences in the tax and/or customs field, within the meaning of the legislation in force.

3. Practice of several European countries and beyond regarding fiscal and criminal amnesty

This section presents the regulatory framework of several states such as Italy, Spain and South Africa regarding fiscal amnesties and voluntary disclosure programmes of assets. It focuses on reflecting the regulatory framework, the beneficiary subjects, the procedure for self-declaration of undeclared assets, the duration and the level of tax applied in the aforementioned states.

3.1 Italy

In Italy, various forms of fiscal and criminal amnesty have been undertaken, approved by law and on a temporary basis². A fiscal and criminal amnesty was undertaken in 2009 and was regulated by Decree-Law No. 78 of 2009. The decree-law contained provisions on the possibility of repatriating and “regularizing” financial assets and capital held abroad in violation of tax obligations.³

The procedure was carried out by submitting a confidential declaration through authorized tax intermediaries, who were required to guarantee the confidentiality of the declarations. Afterwards, these intermediaries they had to transfer to the tax authorities the amounts and fees that had to be paid to “regularize” financial assets and capital, without disclosing the name of the person in whose name the operation was conducted.⁴

In 2014, a more comprehensive tax amnesty for the repatriation of capital with a duration of one year was introduced⁵. This amnesty was

1. Article 4 “Non-beneficiary subjects”.

2. ECPRD Request No. 5242 “Fiscal and Criminal Amnesty” posted on 03.11.2022 (Accessed for the last time on 24.04.2025).

3. Ibid.

4. Ibid.

5. International Monetary Fund (2022), *Voluntary Disclosure Programs—Design, Principles, and Implementation Considerations*, p. 29

<https://www.imf.org/en/Publications/TNM/Issues/2022/04/06/Voluntary-Disclosure->

regulated by Law No. 186/2014, “On measures for the exit and return of capital held abroad as well as for strengthening the fight against tax evasion”.¹ The purpose of this law was the repatriation of capital from abroad, as well as combating tax evasion and money laundering. This law extended its effects until 30 September 2015.

The law provided two alternatives for voluntary disclosure. According to the “analytical method,” declared assets were taxed at a full rate, as if the income had been regularly declared during the years covered by the program.² Depending on the type of income, the tax rate was 12.5%, 20%, 27%, or 43%. According to the “confiscation method,” which applied only to the repatriation of foreign assets and for taxpayers with an average account balance not exceeding €2 million in each fiscal year covered by the voluntary asset declaration, a fixed tax rate of 5% was applied to the total value of foreign assets and a 27% rate to taxable income.³

Applicants for voluntary disclosure were entitled to immunity from criminal prosecution for tax crimes.⁴ They had to declare their name, banking information, and intermediaries to enable the authorities to verify the origin of the assets. In this context, Italy signed an agreement with Switzerland, where most of the undeclared assets of Italian taxpayers were held, for automatic exchange of tax information and cooperation against tax fraud.⁵

This process was carried out in two phases: first, an inventory of the assets held in Switzerland was prepared, by reconstructing their origin and calculating taxes and fines, while protecting the taxpayer’s confidentiality;

Programs-Design-Principles-and-Implementation-Considerations-516211 (Last accessed on 24.04.2025).

1. Legge 15 dicembre 2014, n. 186, *Disposizioni in materia di emersione e rientro di capitali detenuti all'estero nonché per il potenziamento della lotta all'evasione fiscale* https://www.agenziaentrate.gov.it/portale/documents/20143/275776/legge+186+del+2014_Legge_186_2014_voluntary_disclosure_autoriciclaggio.pdf/9976669c-35a6-2052-4246-5547ede02d44 (Last accessed on 24.04.2025).

2. International Monetary Fund (2022), *Voluntary Disclosure Programs—Design, Principles, and Implementation Considerations*, p. 29 <https://www.imf.org/en/Publications/TNM/Issues/2022/04/06/Voluntary-Disclosure-Programs-Design-Principles-and-Implementation-Considerations-516211> (Last accessed on 24.04.2025).

3. Ibid.

4. Ibid.

5. Ibid.

secondly, measures were taken to pay the taxes and fines in Italy. No bank documents or information identifying the Italian taxpayer were sent to the tax authorities before the applicant accepted the voluntary disclosure form.¹ At the end of 2014, revenues from repatriated assets and taxes declared under the voluntary disclosure program reached €4 billion.²

3.2 Spain

In Spain, the most recent fiscal amnesty was undertaken in 2012, through the mechanism known as the Special Tax Declaration³. This declaration was regulated by Royal Decree-Law No. 12/2012, which introduced various tax and administrative measures aimed at reducing the public deficit⁴. According to paragraph 5 of the first additional provision of this decree-law, the deadline for submitting the declarations and payments was 30 November 2012.⁵

The beneficiaries, according to paragraph 1 of the first additional provision of the Royal Decree-Law, were taxpayers of personal income tax, corporate income tax, or non-resident income tax who held assets or rights not corresponding to the income declared in their tax statements. These individuals could submit the special tax declaration to regularize their tax obligations, provided they owned the assets or rights linked to them prior to the entry into force of this provision.⁶ Meanwhile, Order No. 1182/2012 established that ownership of the assets or rights subject to the Special Tax Declaration must have been acquired by the declarant before 31 December 2010.

1. Ibid.

2. Ibid.

3. ECPRD Request No. 5242 “Fiscal and Criminal Amnesty” posted on 03.11.2022 <https://ecprd.secure.europarl.europa.eu/ecprd/private/search?searchValue=5242> (Last accessed on 29.04.2025).

4. Global Regulation, *Royal Decree-Law 12/2012, 30 March, Which Introduced Various Tax and Administrative Measures Aimed at Reducing the Public Deficit* <https://www.global-regulation.com/translation/spain/617472/royal-decree-law-12-2012%252c-30-march%252c-which-introduced-various-tax-and-administrative-measures-aimed-at-reducing-the-public-deficit.html> (Last accessed on 24.04.2025).

5. ECPRD Request No. 5242 “Fiscal and Criminal Amnesty” posted on 03.11.2022 <https://ecprd.secure.europarl.europa.eu/ecprd/private/search?searchValue=5242> (Last accessed on 24.04.2025).

6. Ibid.

According to Section 3.2 of Order No. 1182/2012, the current holder of assets or rights corresponding to undeclared income was not entitled to submit the special tax declaration if a verification or investigation procedure had previously been initiated against them or the legal holder of the assets or rights.¹

Spanish taxpayers participating in the program were required to fully identify themselves as well as all trusts, companies, or any other “hidden” schemes used². The program covered unpaid income tax for the previous four years and a reduced tax rate of 10% on the value of declared assets, both for individuals and legal entities. Additionally, interests and fines were waived, and immunity from criminal prosecution was granted. This program did not introduce mandatory repatriation of assets.³

Regarding the results the program had on revenues, it is noted that the voluntary disclosure program generated approximately €1.2 billion in revenue from the special tax declaration, plus an additional €350 million in revenue from other taxes, indirectly increased by the newly declared assets.⁴ The additional revenue amounted to 0.3% of total revenues in 2012. The program was a partial failure, as the short-term revenue increase of €1.2 billion fell below government projections.⁵

3.3 South Africa

In 2003, South Africa introduced a tax amnesty and asset repatriation program with three main objectives: (i) to allow South Africans to regularize their affairs without criminal prosecution, (ii) to ensure maximum identification of foreign assets to facilitate their repatriation to South Africa, and (iii) to expand the tax base by declaring previously unreported foreign assets.⁶

1. Ibid.

2. International Monetary Fund (2022), *Voluntary Disclosure Programs—Design, Principles, and Implementation Considerations*, p. 30 <https://www.imf.org/en/Publications/TNM/Issues/2022/04/06/Voluntary-Disclosure-Programs-Design-Principles-and-Implementation-Considerations-516211> (Last accessed on 24.04.2025).

3. Ibid.

4. Ibid.

5. Ibid.

6. Transparency International, *Best Practices in Tax Amnesty and Asset Repatriation Programmes* (2017)

Repatriation of assets was not mandatory, but very few amnesty applicants used it. The main objective of the voluntary asset disclosure program with supporting tax measures was the regularization of asset ownership, not repatriation.¹ During the implementation of this program, three tax rates were applied: (i) 10% on the value of non-repatriated assets, (ii) 5% for repatriated assets, and (iii) 2% on the amount of offshore assets derived from previously undeclared income. Revenues from crime were excluded from the program. Fines and interest were waived.² Another voluntary asset disclosure program was implemented for offshore assets and income from 1 November 2010 to 31 October 2011.³ Taxes were paid in full, with differentiated interest relief. Where no audit/investigation had been initiated, a 100% relief on interest payments was granted. Whereas, if an audit/investigation had started, the applicant received a 50% relief on interest payments.⁴ Monetary penalties, criminal prosecution, and imprisonment were waived.

The amnesty implemented in South Africa was largely considered a success, as during the nine months of the amnesty program, the total declared foreign assets reached approximately €7.8 billion.⁵ Of this amount, about €2.4 billion represented authorized assets, while around €5.4 billion represented previously unauthorized foreign assets for control purposes. At that time, reactions from multilateral financial institutions concluded that this amnesty could serve as a benchmark since it achieved its objectives.⁶

https://knowledgehub.transparency.org/assets/uploads/helpdesk/Best_practices_in_tax_amnesty_and_asset_repatriation_programmes_2017.pdf (Last accessed on 24.04.2025).

1. International Monetary Fund (2022), *Voluntary Disclosure Programs—Design, Principles, and Implementation Considerations*, p. 30

<https://www.imf.org/en/Publications/TNM/Issues/2022/04/06/Voluntary-Disclosure-Programs-Design-Principles-and-Implementation-Considerations-516211> (Last accessed on 24.04.2025)

2. Ibid.

3. Ibid.

4. Ibid.

5. Transparency International, *Best Practices in Tax Amnesty and Asset Repatriation Programmes* (2017)

https://knowledgehub.transparency.org/assets/uploads/helpdesk/Best_practices_in_tax_amnesty_and_asset_repatriation_programmes_2017.pdf (Last accessed on 24.04.2025).

6. International Monetary Fund (2022), *Voluntary Disclosure Programs—Design, Principles, and Implementation Considerations*, p. 30

Conclusions

From the analysis of the regulatory framework of the selected countries in this research study (Italy, Spain, and South Africa), it is observed that tax amnesty is legally regulated. Regarding the beneficiaries of tax amnesties, in all analyzed countries, both natural persons and legal entities are included. Concerning the duration of the tax amnesty, it lasted 12 months in South Africa, 9 months in Spain, while in Italy, the first amnesty lasted 8 months and the second one 12 months.

In Italy and Spain, tax amnesties were implemented through declarations to banks or other financial institutions. Specifically, in Italy, during the first amnesty in 2009, voluntary disclosure was made through a confidential declaration via tax assistants who transferred the amounts to the tax authorities to “regularize” financial assets and capital. In Spain, the voluntary disclosure program was implemented through a special tax declaration for taxpayers of personal income tax, corporate income tax, or non-resident income tax who had assets not corresponding to the reported income.

The repatriation of capital through voluntary disclosure programs was applied in Italy’s second amnesty, whereas in Spain the program did not aim at capital repatriation. In South Africa, repatriation of assets was not mandatory.

Amnesties implemented through voluntary disclosure programs provided immunity from criminal prosecution for tax crimes in Italy, Spain, and South Africa.

Regarding the tax rates applied to self-declaring subjects, these vary across countries. Specifically, in Italy, two methods were applied. The first, the “analytical” method, taxed declared assets at the full rate, depending on the type of income: 12.5%, 20%, 27%, or 43%. The second method applied only to the repatriation of foreign assets and to taxpayers with an average bank account balance not exceeding €2 million. For these, a fixed rate of 5% was applied on the total value of foreign assets and 27% on taxable income.

In Spain, a rate of 10% was applied to the declared assets, both for

natural and legal persons. In South Africa, three tax rates were applied: (a) 10% on non-repatriated assets; (b) 5% on repatriated assets; and (c) 2% on offshore assets.

References

- Golemi, E. (2022), *Historiku i Amnitive Fiskale dhe Deklarimet Vullnetare të Pasurivenë Shqipëri*, Albanian Institute of Sciences/OpenData Albania. <https://ais.al/new/wp-content/uploads/Amnistia-Fiskale-dhe-Deklarimet-Vullnetare-te-Pasurive-ne-Shqiperi.pdf>
- Financial Action Task Force (FATF) (2012), *Best Practices Paper: Managing the Anti-Money Laundering and Counter-Terrorist Financing Policy Implications of Voluntary Tax Compliance Programmes*. <https://www.fatf-gafi.org/media/fatf/documents/reports/BPP%20VTC.pdf>
- Global Regulation, *Royal Decree-Law 12/2012, 30 March, Which Introduced Various Tax and Administrative Measures Aimed at Reducing the Public Deficit*. <https://www.global-regulation.com/translation/spain/617472/royal-decree-law-12-2012%252c-30-march%252c-which-introduced-various-tax-and-administrative-measures-aimed-at-reducing-the-public-deficit.html>
- International Monetary Fund (2008), *Tax Amnesties: Theory, Trends, and Some Alternatives*. <https://www.elibrary.imf.org/display/book/9781589067363/9781589067363.xml>
- International Monetary Fund (2022), *Voluntary Disclosure Programs—Design, Principles, and Implementation Considerations*. <https://www.imf.org/en/Publications/TNM/Issues/2022/04/06/Voluntary-Disclosure-Programs-Design-Principles-and-Implementation-Considerations-516211>
- European Parliament (2022), ECPRD Request No. 5242, “Tax and Penal Amnesty,” posted 03.11.2022. <https://ecprd.secure.europarl.europa.eu/ecprd/private/search?searchValue=5242>
- Constitution of the Republic of Albania. <https://qbz.gov.al/preview/635d44bd-96ee-4bc5-8d93-d928cf6f2abd>

- Italy, Legge 15 dicembre 2014, n. 186, *Disposizioni in materia di emersione e rientro di capitali detenuti all'estero nonché per il potenziamento della lotta all'evasione fiscale*. https://www.agenziaentrate.gov.it/portale/documents/20143/275776/legge+186+del+2014_Legge_186_2014_voluntary_disclosure_autoriciclaggio.pdf/9976669c-35a6-2052-4246-5547ede02d44
- Meka, E. (2020), "LEGAFORMALESTY – A Different Approach for a New Amnesty in Albania." <https://uet.edu.al/economicus/wp-content/uploads/2022/01/economicus-19-36-47.pdf>
- OECD (2015), *Update on Voluntary Disclosure Programmes: A Pathway to Tax Compliance*. <https://www.oecd.org/ctp/exchange-of-tax-information/Voluntary-Disclosure-Programmes-2015.pdf>
- PWC (2022), *A New Wealth Amnesty Programme*. <https://www.pwc.com.tr/en/hizmetlerimiz/vergi/bultenler/2022/a-new-wealth-amnesty-programme.html>
- Transparency International (2017), *Best Practices in Tax Amnesty and Asset Repatriation Programmes*. https://knowledgehub.transparency.org/assets/uploads/helpdesk/Best_practices_in_tax_amnesty_and_asset_repatriation_programmes_2017.pdf
- Udhëzim nr.5, datë 30.01.2006, *Për tatimin mbi të ardhurat*, amended. <https://altax.al/wp-content/uploads/2021/09/Udhezimi-Tatimi-mbi-te-Ardhurat.pdf>

SECURITY STUDIES AND THE STRATEGIC CULTURE-ORIENTED ELITE AS A NECESSITY FOR STRENGTHENING NATIONAL SECURITY AND ADVANCING NATIONAL DEVELOPMENT

Dr Ardian Elezi¹

Abstract

Security is both an existential and universal value and simultaneously a multifaceted concept. Its understanding, perception, and realization have become responsibilities that transcend national borders, involving a wide array of domestic and international actors. The global landscape has undergone profound changes, particularly in the aftermath of the pandemic and various armed conflicts across different regions. In this increasingly unpredictable and volatile international system, the very notion and environment of security are in constant transformation—marked by new peaks of risk, evolving threats, crises, and uncertainty.

For small states, such as Albania, national security must first be understood as an internally generated imperative. It begins within—at the level of the household and the community. Identifying and addressing internal security vacuums and challenges must be a domestic priority. In a rapidly shifting security environment, where scenarios evolve continuously and unpredictably, the most effective response is preparedness through foresight and adaptation. In Western countries, where responsible governance prevails, the engagement of intellectual elites in security studies is a strategic imperative. These elites contribute intellectually and patriotically by providing alternative security scenarios and rational policy options to decision-making institutions, thereby shaping national security strategies in line with democratic principles and national interests.

1. Dr. Ardian Elezi, Lecturer at Luarasi University

This article argues that, especially in the context of integration processes and international cooperation, the path to confronting multifaceted security threats lies in education, professional training, and the institutionalization of strategic analysis. Building a strategic culture through national research centers and the consolidation of a strategically-minded elite is essential to harmonize responses at both national and international levels.

In the age of artificial intelligence and rapid technological transformation, intellectual and political elites must adopt a forward-looking vision that transcends traditional paradigms of politics. Contemporary national security studies increasingly emphasize the importance of strategic culture—a critical component in shaping national and international strategies. Every state, along with its security institutions, develops its own strategic culture, which informs elite behavior and decision-making.

In the Albanian context, the lack of strategic culture within political leadership has posed risks to national stability and development. Therefore, investing in the formation of a strategic elite, empowering academic institutions, reforming curricula to include national security topics, and fostering an institutional culture of cooperation are not merely academic goals—they are urgent strategic necessities.

Keywords: *international relations, national security, security studies, individual security, legal security, strategic culture, intellectual elites, small states, security environment, institutional cooperation, national development.*

1. Introduction

We are living in an era of profound transformation, driven primarily by rapid technological advancements that pose some of the most formidable challenges humanity has ever faced¹. These developments have shaken the foundations of long-standing ideologies—most notably liberal and neoliberal doctrines—that have shaped global politics over the past decades. The increasing reach and influence of information technology across all spheres of life, including security and defense, have prompted a fundamental re-evaluation of their effectiveness and relevance.

1. Yuval Noah Harari, *21 Lessons for the 21st Century*, Botart Publishing House, Tirana, 2018, p. 20.

To live in a complex and dynamic world means to exist amid uncertainty and to confront ambiguity on a daily basis. This pervasive sense of insecurity often pushes societies to the edges of anxiety, especially in times of crisis, conflict, and systemic upheaval. Even during periods of relative peace and stability, uncertainty lingers in the background, clouding our ability to foresee the future with confidence. Such uncertainty becomes even more pronounced during periods of war, global crises, demographic disruptions, economic shocks, political instability, cyber threats, and environmental degradation.

Responses to these challenges vary widely. Some actors focus on short-term emergency management; others succumb to apathy or paralysis in the face of complex threats. A portion simply retreats, passively awaiting external solutions or placing excessive hope in the strategic goodwill of global powers. However, such approaches are neither sustainable nor strategic.

Security issues today represent the core concern of the international relations system. They have long been the domain of prestigious institutions and continue to capture the attention of intellectual elites across nations. The concept of security has undergone a dynamic evolution, shaped by the historical and political transformations of international systems—from the Westphalian ¹order and the rise of nation-states² in the 18th and 19th centuries, to the balance-of-power dynamics of the European Concert, and later, to the principles of collective security enshrined in the League of Nations³ and subsequently the United Nations. Today, the concept continues to expand, reflecting both vertical and horizontal dimensions of modern threats and risks.

Security, therefore, must be understood as a historically rooted yet evolving category—at once deeply political, highly interdisciplinary, and context-dependent. In broad terms, it can be defined as “the protection of identity.” More specifically, it refers to a multidimensional structure that spans from internal security to global security, aiming to measure the degree

1. *The Peace of Westphalia, as a comprehensive document*, is important because it provided perhaps the first small sign of the system of sovereign international states. For more details, see also: Kissinger, *Diplomacy*. Tirana, 1999. pp. 21-22

2. *Security is the most distinctive feature of a sovereign country*,” stated Thomas Hobbes in 1651. Cited by Xharro, Kristaq, *Revista MN*, no. 15, Qendra Hapsirë, Tirana, 2016, p.16.

3. See also Kissinger, Henry, *Diplomacy*, Publishing House of the Writers’ Union, Tirana, 1999, pp. 247-258.

to which the international system maintains balance and predictability.

This study is guided by a set of fundamental questions that form the core of contemporary security discourse:

- What are the root causes of insecurity?
- What principles and mechanisms are most effective in mitigating risks and threats to societies, states, regions, and the international system?
- How much security is enough?
- From which threats should we be protected?
- With what tools and at what cost?
- Over what time frame?
- What role does strategic culture play, and why is the presence of strategically educated elites essential?

These questions are not new; they have been actively debated by political parties, policy makers, academic analysts, and both governmental and non-governmental actors. The answers provided to them—and the policies and strategies built upon those answers—will shape the future of global security, the quality of peace, and the stability of the 21st century.

Thus, understanding the complexity of security studies and acknowledging the dynamic nature of the security environment are crucial steps toward building national strategies capable of navigating future challenges. In the chapters that follow, this paper explores the particular vulnerabilities and challenges facing small states, with a specific focus on the Albanian case. It discusses the importance of strategic culture, the formation of strategic elites, and the need for comprehensive, horizontally and vertically integrated approaches to national and human security.

2. Security in the Context of Its Complexity and Diverse Elements

Security is the very substance of human life. To be secure means to be protected and free from worry or fear. Throughout history, security and economics have remained the twin pillars shaping societal development across all political systems. Leading scholars assert that security is, at once, a universal value, a cornerstone of international relations, and a deeply complex, dynamic concept. As it has become globalized, the responsibility for ensuring security now falls on a wide array of both national and international actors.

Within democratic systems, security guarantees social peace and underpins public trust. Positioned hierarchically as a basic human need, security is essential for individual and collective survival. Its universal significance is matched by its dynamic complexity. Traditional international relations theory¹ has often focused on security as the fundamental concern of state actors, but its scope expanded significantly during the economic and environmental eras, particularly since the 1960s and 1970s.

National security is now inclusive and multi-dimensional, encompassing territorial integrity, sovereignty, political stability, democratic institutions, and transparent governance. When these elements function properly, societies can achieve collective advancement and development². National security also entails sociocultural cohesion and moral consensus, providing protection from internal threats and ensuring citizens' well-being and health. The quality of public education, the effectiveness of communication channels, robust legislation, and ethical leadership are all fundamental to maintaining institutional integrity. These elements jointly support both the public and private lives of individuals committed to the common good.

Conceptually, security can be examined through both **diachronic** (vertical) and synchronic (horizontal) perspectives:

1. **Vertical dimension:** spans from the individual, through the state, and up to the global system.
2. **Horizontal dimension:** includes diverse fields such as human security, environmental protection, migration, terrorism, religious radicalism, public health crises, natural and humanitarian disasters, and cyber threats.

Over time, the concept of security has broadened. Whereas it was once tightly linked to the protection of state sovereignty and national interests, particularly during the Cold War, it now transcends national borders. Barry Buzan of the Copenhagen School proposes that security should be understood in five sectors: military, environmental, economic, societal, and political. The concept of **human security** further shifts focus from the state to the individual, highlighting dimensions such as economic,

1. Allan Collins, *Contemporary Security Studies*, Tirana 2009, p. 481

2. For more details, see also Ribaj P., *Politics*, Scientific Journal, No. 1/2017, Faculty of Social Sciences, Tirana, 2017, pp. 7-27.

environmental, political¹, and social security, and, more recently, **cybersecurity**.

The end of the Cold War did not eliminate global insecurity. The expected era of peace² failed to materialize. Instead, P. W. Maxwell argues that “personal security”—the well-being of individuals—remains fundamental, even in international security discourse.³

Human security, as a central aspect of national security, addresses a wide array of human needs: from basic survival to higher aspirations for self-realization. In its **vertical form**, it extends from the state to the individual and their immediate environment, while its **horizontal scope** includes economic, social, and political rights and freedoms.

This form of security is enshrined in international instruments such as the Universal Declaration of Human Rights, the UN Charter, and related covenants, supported by scholars of the Copenhagen School. Other theorists, including Habermas and Hay (2001), identify “absolute rights” and “humanitarian rights” linked to the prevention of suffering, and “social rights” aimed at protecting health and welfare.

1. Buzan, B. (1991a), “*Peuple, States and Fear: An Agenda for International Security Studies in the Post-Cold war Era*”, London: Harvester Wheatsheaf, 2nd edn.

Political security relates to the stability of the organization of states, governance systems, as well as the ideologies that provide them with legitimacy. **Economic security** concerns the use of resources, finances, and markets necessary to maintain acceptable levels of welfare and state power. **Social security** involves the maintenance and preservation (within acceptable conditions for evolution) of traditional forms of language, culture, customs, as well as religious beliefs and national identity. **Environmental security** refers to the care for the local and planetary biosphere as the fundamental protective system on which all other human activities depend.

2. Since 1989, according to UCDP (Uppsala Conflict Data Program), one of the most prestigious forums on security issues, 144 armed conflicts have been recorded across more than 80 regions, of which no less than 47 are considered on the scale of wars due to the level of engagement and consequences. In just the last 10 years, the number of active conflicts has increased from 31 to 37, while only 6 ceasefire agreements have been achieved. Another concerning phenomenon relates to the consequences, especially the number of victims of armed conflicts, which since 1989 has exceeded 6 million people. Of these, over 90% are civilians, and three out of four killed are children and women. The UNDP estimates the number of refugees displaced from conflict zones at no less than 50 million. Conflicts inspired by non-state actors, originating from peripheral or national levels, have carried capacities to threaten regional and broader security.

3. Buzan, B. (1991a), “*Peuple, States and Fear: An Agenda for International Security Studies in the Post-Cold war Era*”, London: Harvester wheatsheaf, 2nd edn.

The United Nations defines human security as “freedom from fear,” linking it to the Millennium Development Goals and the broader agenda for “freedom from want” encompassing poverty alleviation, life protection, and sustainable development¹.

Core Security Dimensions

- 1. Economic Security:** Access to employment income and social safety nets are essential for survival. Inadequate investment, high unemployment, poverty, and lack of basic services compromise economic security. Policies such as social assistance, legal minimum income, consumer protection, and targeted subsidies help reduce inequality and enhance social cohesion.
- 2. Health and Food Security:** Secure health systems ensure protection from diseases—especially infections—through adequate medical infrastructure, medicines, and food supply. In Albania, persistent gaps in medical staffing, equipment, service quality, and ethical compliance contribute to public health insecurities, sometimes with fatal outcomes. Similarly, access to safe and sufficient food remains a critical challenge, particularly amid global inflation and supply disruptions.
- 3. Environmental Security:** Protecting ecosystems, natural resources, air, water, and land is vital to human health. Environmental degradation—through unregulated construction, pollution, and mismanagement—poses significant threats. Climate change further intensifies these risks, with profound implications for food systems and geopolitical stability.
- 4. Personal Security:** Protection from violence—whether state-sanctioned, criminal, or discriminatory—is essential. Guaranteeing civil and political rights, judicial guarantees, and non-interference from arbitrary power are fundamental to individual and community safety².

1. “Conceptual Framework for Human Security” (Alkire, 2003, p. 80). According to Alkire (2003), human security involves protecting individuals from critical and pervasive threats, encompassing both “freedom from fear” and “freedom from want.” This aligns with the United Nations’ Millennium Development Goals framework, which connects human security to both safeguarding people from violence and addressing poverty to promote sustainable development.

2. Cases of violence such as genocide and ethnic cleansing in Rwanda, Kosovo, and

5. Legal Security: Individuals must have unimpeded access to justice, with assurances that laws will not change retroactively or arbitrarily. Legal security ensures the protection of acquired rights and guards against authoritarian encroachment. It refers to security from chronic threats such as hunger, disease, and violence, understood as protection in everyday life¹—at home, within the family, on the streets, at work, and in the community.

Ultimately, human security is universal and centralized in policy focus. It thrives on prevention of chronic risks—such as hunger, disease, and violence—and protects individuals throughout their daily lives: at home, in public, at work, and in community settings.

2.1. Legal Security as a Fundamental Element of Human Security and Part of the Security Environment Analysis

Legal security represents a core principle of the rule of law, directly related to the stability and predictability of state functions. It underpins citizens' trust in the legal system by ensuring that established legal norms and rules are not arbitrarily changed in ways that deteriorate their previously acquired legal situations or rights.

In certain justified circumstances, the protection of the **public interest** may prevail over individual legal security. For instance, in cases of expropriation involving former property owners, the right to compensation must be proportional to the real market value of the expropriated property. While individual rights are not absolute, any interference must be balanced carefully against pressing public needs and policy reforms. In such situations, a fair equilibrium must be achieved between the necessity to implement public interest measures and the right of the affected party to seek adequate compensation, in accordance with legal standards.

Courts have increasingly established consistent jurisprudence in this regard, particularly in cases related to property restitution, compensation, pensions, and administrative decisions. Judicial reasoning in these decisions must consider both substantive and procedural law, ensuring that the principle of legal certainty is not violated.

Bosnia and Herzegovina. ec

1. Collins, A. *Contemporary Security Studies*, op. cit, idem

Where legislative texts present **ambiguity** or **unclear provisions**, interpretation should be guided by the underlying intent and purpose of the law. In criminal law, the **non-retroactivity of laws** is a general principle, ensuring stability and predictability of legal relationships. However, **retroactive application** is permitted when the new law is more favorable to the accused.

At its core, **legal security** entails the protection of acquired rights against retroactive or sudden changes in the legal framework that worsen an individual's legal position. This principle must be upheld at all levels of the judicial system—until a final and binding decision¹ is reached—and must also govern the **execution of judicial decisions**.

Legal security is embedded in **constitutional doctrine**², expressing citizens' trust in state institutions and reflecting the principle of **checks and balances**³ among the legislative, executive, and judicial branches. It demands clarity, consistency, and non-arbitrariness in legal norms, especially those governing already-regulated matters.

Mechanisms that safeguard this principle include:

- The **right to challenge** public administrative acts,
- The **right to appeal** decisions within prescribed legal deadlines,
- The **review and revision of court rulings**,
- **Constitutional oversight**, and
- **Access to fair adjudication**.

These legal tools are crucial to ensuring the rule of law and the proper enforcement of justice.

1. Article 6(1) of the European Convention on Human Rights (ECHR), along with Article 42 of the Constitution, establishes the obligation of public administration to enforce court decisions. The enforcement of final and binding court rulings is an essential element of the rule of law process. Failure to do so constitutes a violation of judicially recognized rights and undermines the administration of justice.

2. Article 42(1) of the Constitution states: "*Freedom, property, and other rights recognized by the Constitution and by law shall not be violated without due process of law.*"

3. All three constitutional powers — *legislative, executive, and judicial* — must respect legal and constitutional standards in exercising their authority and competencies. They should avoid interfering with one another while ensuring the principle of checks and balances is upheld. Additionally, they must guarantee legal security by protecting the rights acquired by citizens and ensuring their enforcement and realization in everyday life.

2.2. Health and Food Security as Core Dimensions of Human Security

According to the World Health Organization (WHO), public health is a fundamental pillar of national development. Infectious and contagious diseases—such as HIV/AIDS and viral outbreaks—have profound consequences, increasing the financial burden on families and the state and necessitating significant resources for both **prevention and treatment**.

Under **medical ethics and deontology**, healthcare professionals are legally and ethically obligated to report such diseases. When symptoms or confirmed cases are detected, the medical staff must **immediately notify relevant authorities** and institutions.

The current healthcare infrastructure in many countries, including Albania, often lacks the necessary capacity to address outbreaks and manage infectious diseases effectively. **Improving preventive healthcare systems**, increasing transparency, combating corruption, and ensuring equitable access to services remain significant challenges. Moreover, **medical negligence**, inadequate diagnostic procedures, and non-compliance with clinical protocols further undermine public trust and patient safety.

Food security is directly tied to human dignity and the ability of the state to fulfill its constitutional role: ensuring citizens' well-being and sustaining long-term development. It is one of the most complex and crucial challenges of modern governance.

Access to food has become a **strategic tool**, akin to energy or defense policy. It is closely related to economic development and poverty reduction. Guaranteeing food availability, affordability, and safety is not just a social imperative but a critical component of **national sovereignty**.

Ensuring food security today involves:

- Addressing global inflation and supply chain disruptions,
- Balancing economic development with the preservation of ecosystems (water, soil, and air),
- Adapting agricultural policy to reflect environmental sustainability, and
- Strengthening consumer protection and food quality control systems.

In the face of increasing environmental degradation and economic inequality, achieving food security requires a comprehensive and

coordinated approach by governments, international institutions, and civil society.

3. Analysis of the Continuously Evolving Security Environment

The world, as often noted, has never been more unpredictable. Such assertions must be followed by cautious—and even sceptical¹—answers. We are indeed in a period of profound transition and upheaval, marked by a leadership vacuum and fragmentation among states. Many Western leaders describe today’s security landscape as a grim “déjà vu” echoing the 1920s and 1930s. Indeed, repeated Russian aggressions—every six to eight years, from the 1914 Crimea annexation to the 2022 eastern Ukraine operations—along with U.S. “strategic retrenchment,” shifting alliances, defense spending spikes, rearmament, populist and authoritarian leadership, and the functional paralysis of global institutions like the UN, signal a return to old patterns. International law is frequently violated, as witnessed in conflicts between Ukraine and Russia, Gaza, and elsewhere—raising moral and legal dilemmas.

At the same time, moderate voices are raising urgent warnings. Sir Keir Starmer asserts that “the world stands at history’s greatest crossroads,” while Emmanuel Macron has warned of “the end of one era and the beginning of another,” urging European strategic autonomy. Ursula von der Leyen claims, “our security is at risk,” calling for a trillioneuro military budget².

History threatens to rewrite itself. This is a red alert, especially for unstable regions like ours, requiring enhanced defense capabilities, logistics, and local arms industries. Over-reliance on NATO’s collective Article 5 without sufficient national capacity (Article 3) left small states vulnerable until the Trump administration in the U.S. prompted NATO members to reassess this balance. Recently, a trilateral security agreement between Albania, Croatia, and Kosovo³—aligned with NATO’s

1. Jan Bremer, *Every State for Itself*, Minerva Publishing House, Tirana, 2020, p. 12.

2. Xharro, K. “It Is a Strategic Orientation Agreement for ‘Smart Defense’, Not ‘Smart Offense’, Mr. Vučić.” *Tema*, March 22, 2025.

3. As Xharro (2025) reports, Serbia’s military doctrine, released in late 2023, states that: “Serbia must have military capacity 110% greater than all the countries that ‘threaten’ it... Albania, Croatia, Kosovo, North Macedonia, and even Montenegro...” Xharro, K. (2025, March 22). It is a strategic orientation agreement for “Smart Defense,” not “Smart Offense,” Mr. Vučić. *Tema*.

“Smart Defense” initiative since the 2010 Lisbon Summit—emerged. It emphasizes shared resources, avoidance of duplication, and joint capacity development, reflecting best practices from Nordic, Visegrád, Baltic, and other European partnerships.

Although our country is not globally significant in geopolitical terms, it remains exposed to regional insecurity. Several global events have underscored the need to reconsider security paradigms, both theoretically and practically:

1. The COVID19 pandemic and its destabilizing effects on global safety¹.
2. The RussiaUkraine conflict—a hybrid war of geopolitical and geostrategic competition, unresolved even after three years of sanctions.
3. Middle East conflicts: Gaza, Hezbollah in Lebanon, Houthi rebels in Yemen, Syrian instability—each shaped by competing regional powers (Turkey, Iran, Russia, China, the U.S., Israel).
4. The refugee crisis, which now exceeds state and regional capacities.
5. Trade tariffs—reintroduced as strategic tools of geo-economic influence.
6. Technological advancements—AI and biotechnology—presenting both great benefits and unprecedented risks. Without strict oversight, these technologies could foster a dystopian global surveillance state legitimized by “security.”

4. Security Studies: Global Trends and the Albanian Experience

The concept of security encompasses multiple meanings and dimensions. One influential effort to broaden its scope comes from Barry Buzan and colleagues², who pioneered a multidimensional understanding of

1. Virologists and intelligence experts express growing concerns over the possibility of COVID-19-infected biological material being stored under optimal laboratory conditions, maintaining high virulence for extended periods. In a potential biological warfare scenario, the key challenge for intelligence agencies remains: “*What happens next?*” This question underscores the unpredictability of biothreats and the urgent need for robust international surveillance mechanisms, transparency in research, and advanced preparedness strategies.

2. Buzan, Barry. *People, States and Fear: An Agenda for International Security Studies in the Post-Cold War Era*. London: Harvester Wheatsheaf, 1991. Collins, Alan. *Contemporary*

security. Security studies today are inherently multidisciplinary, focusing increasingly on individuals as the ultimate beneficiaries of economic, social, political, and human rights.

Guaranteeing these rights—the right to work, social protection, judicial access, quality education, healthcare, and a clean environment—is a constitutional obligation of the state, and an integral part of human security.

Comparative scholarship from the EU, Japan¹, Canada², and developing countries distinguishes between approaches that emphasize “**freedom from fear**” (e.g., Canada, Norway) and those that emphasize “**freedom from want**” (e.g., Japan, Global South).

Institutionally, the UN Development Programme’s 1994³ Human Development Report identified seven components of human security: *economic, food, health, personal, environmental, political, and social security*.

Traditional security studies place the state at the center, assuming people are secure when their state is secure. But what about cases where the state oppresses certain citizens—as occurred in conflicts in Kosovo, Bosnia, Gaza, and elsewhere—or when the state lacks capacity to protect its citizens? In such contexts, whose security should take precedence?⁴ These

Security Studies op. cit., f. 91.

1. Japan places **human security** at the core of its strategic focus, closely linking it to the **protection of human dignity**. This approach emphasizes *not only freedom from fear but also freedom from want*—seeking to ensure access to healthcare, education, food, and basic human rights as essential components of national and global security. Japan sees human security linked to human dignity as its focus

2. Canada has strongly linked **security** to **humanitarian concerns**, framing it not just as the protection of state borders, but as the safeguarding of individuals. As McRae and Hubert (2001: 5–6) argue, human security focuses on protecting people from both **violent threats** and **systemic human rights violations**, emphasizing humanitarian assistance, conflict prevention, and the promotion of democratic governance. *Canada links security with humanitarian aspects*, Mc Raw & Hubert, 2001:5-6)

3. United Nations Development Programme (UNDP). (1994). Human Development Report 1994: *New Dimensions of Human Security*. New York: Oxford University Press.

4. These questions—together with broader theoretical challenges to the ontological and epistemological foundations of realism—sparked a wave of critical responses in the field of security studies. Emerging from various theoretical backgrounds, these critiques coalesced under the label of Critical Security Studies, particularly after the publication of the influential volume *Critical Security Studies: Concepts and Cases*, edited by Keith Krause and Michael C. Williams. Krause, K., & Williams, M. C. (Eds.). (1997). *Critical Security Studies: Concepts and Cases*. Minneapolis: University of Minnesota Press.

questions underpin critical security theories, which challenge traditional realist frameworks. These debates have propelled theoretical, political¹, ethical, and practical expansion of security studies—broadening the focus from powerful states to include smaller, conflict-affected societies.

5. Strategic Culture and the Role of Elites in National Security

In modern security studies, **strategic culture** is recognized as a key determinant of a state's behavior in both national and international security affairs. It refers to the shared values, practices, and historical experiences that shape how national elites conceptualize threats, determine strategic priorities, and craft policies.

Every country, state institution, and security organization develops its own unique strategic culture. Within this framework, **political and intellectual elites**, when immersed in strategic education and security studies, are crucial—they translate national security challenges into coherent visions and platforms for future action.

In Western democracies, where strategic culture is deeply institutionalized, intellectual elites actively contribute policy alternatives, scenario analyses, and strategic recommendations. They ensure that decision-makers are informed by rigorous, professionally grounded security perspectives. For smaller states—such as Albania—this dynamic remains underdeveloped: strategic culture is undervalued by political leadership, which in turn undermines national resilience.

Building a sustainable strategic culture requires the institutional support of education and training programs, the establishment of independent research centers, and curricula explicitly focused on national security studies. It necessitates fostering **highly qualified elites**—scholars, analysts, and policymakers—who understand complex security environments through interdisciplinary lenses.

These elites serve three essential functions:

1. However, the broadening of the concept of security should not be understood as the transformation of every political issue into a security matter (*the securitization of politics*)—a risk rightly highlighted by the *Copenhagen School*. Instead, critical approaches emphasize the importance of *turning every security issue into a matter of political theory*, that is, the *politicization of security*, keeping it within the realm of democratic debate rather than isolating it through emergency logic.

1. **Forecasting and Scenario Planning:** Crafting plausible future security scenarios to guide state preparedness.
2. **Policy Formulation:** Translating strategic vision into coherent policies, laws, and defense strategies.
3. **Advocacy and Civic Engagement:** Cultivating a national discourse on security that enhances public awareness, accountability, and democratic transparency.

Without these functions, states risk **reactivity**—responding to crises on a case-by-case basis—rather than developing sustained, anticipatory strategies that bolster resilience.

In the Albanian context, the absence of a robust strategic culture has manifested in policy gaps, inconsistent governance, and weakened institutions. Political elites have often neglected specialized security education. To reverse this trend, the country must invest in academic partnerships, mandates for security curriculum reform, and incentives for leading research in strategic analysis. A **strategic-security elite** educated in both theory and praxis would help Albania ensure integration with Euro-Atlantic standards, strengthen national defense, and promote institutional maturity.

5.1. Security Challenges of Small States: A Security Strategy for a Small Country

When discussing the analysis of the security environment, we refer to the internal environment, the immediate surroundings, as well as the external environment, whether as advantages, opportunities, threats, or risks that they may present.

The **SWOT¹ analysis** is a technique, model, or planning and evaluation mechanism of a security environment in which a country operates or is located. It helps by analyzing internal and external factors to identify strengths, advantages, weaknesses, opportunities, and threats. This assists decision-makers and elites who shape the internal and external

1. SWOT analysis is a strategic planning tool used to identify and evaluate the internal and external factors that impact an organization, policy, or situation. *The acronym SWOT stands for:* **S** – Strengths: Internal capabilities that give an advantage. **W** – Weaknesses: Internal limitations or shortcomings. **O** – Opportunities: External factors that can be leveraged for growth or improvement. **T** – Threats: External elements that could hinder success or stability.

environment to analyze threats, risks, challenges, and opportunities, allowing them to choose their strategy—especially important in the conditions and limitations faced by a small state like ours, constrained by size, geography, area, demographics, economy, technology, military, alliances, etc.

The role of small states in the international system and their influence on the policies of Great Powers has often been overlooked. This is largely due to their limitations and constraints in addressing complex security challenges, as well as their restricted political, economic, and military capacities that hinder their ability to exert direct influence on international relations and the strategic decision-making of more powerful actors¹.

Small states face significant limitations in their ability to influence international relations. Their geopolitics—defined by limited will and power projection capacity within a given geographic space—places them in a position where larger powers typically impose their interests. As a result, small states are often compelled to comply with and implement the policies of dominant actors, thereby restricting their autonomy and influence on the international stage.

A good understanding of these factors forms the premise and core of the national security strategy to use these resources and potentials effectively to achieve its strategic goals and objectives.

Every state, country, or region has its own security challenges, and facing them requires mobilization and joint action of all actors involved in implementing the security strategy.

These challenges, by their very nature, are transnational—they cross the borders of a state or nation and thus require cooperation, partnership, and joint coalitions between states. Such cross-border challenges include organized crime, trafficking and migration, ethnic conflicts, terrorism, cybercrime, state failure, etc.

Addressing them demands unity, trust among all parties, leadership, and the elites of a country.

1. Guy, N. (2012). *The Birth of Albania*. Tirana: Pegi Publishing, p. 18.

For further details, see: Ribaj, P., & Cami, Sh. (2015). *War, Peace, Security: Balkan Realities*. Tirana, pp. 287–291.

6. Elites with a Strategic Culture as a Necessity for National Security and Country Development

6.1 Strategic Culture

The concept of culture is widely used nowadays. Broadly speaking, culture has different meanings. Culture consists of the values held by members of a group, the norms they respect, and the material goods they create.

What is strategic culture?

Today, there is no single definition of what strategic culture is, either at the national or international level, that can be used as a unified theoretical academic model of analysis.

Various authors—such as Herkul Bic, Boston Gerg, and others—define strategic culture commonly as a set of beliefs, norms, and shared ideas within a society. These arise from shared historical experiences, among other factors.

There seems to be an implicit agreement that, at its core, strategic culture includes beliefs, assumptions, values, experiences, attitudes, and behavioral tendencies that influence policy choices.

Colin Gray conceptualizes strategic culture as created within a historical context in which states form their security policies. He further emphasizes that everything a security community does is not simply a manifestation of strategic culture, but at least an example of behavior caused by people, organizations, procedures, and weapons shaped by cultural factors or cultivated culturally¹.

Strategic culture should be used to distinguish between officially declared policies and the real goals and motives of the political elite.

The concept of “strategic culture” was first introduced in modern security studies in 1977 by Jack Snyder, who attempted to understand and predict Soviet perceptions of nuclear weapons and nuclear conflict as a means of ensuring national security. Snyder’s work on Soviet nuclear strategy during

1. Gray, Colin, 1999:52, Gray, C. S. (1999). **Modern Strategy**. Oxford University Press. Colin Gray conceptualizes *strategic culture* as something formed within a historical context where states develop their security policies. He further emphasizes that not everything a security community does is merely a manifestation of strategic culture; rather, it is at least an example of behavior caused by people, organizations, procedures, and weapons that are culturally informed or culturally shaped

the Cold War directed scholars' attention to the link between military and political culture and strategic choices¹.

A nation's strategic culture is a synthesis of multidisciplinary sciences that connects the past with the present within a given territory or state. It derives from geography and resources, history and experience, society, and the political institutions of a state that have exploited these through historical processes and flows.

Strategic culture is the set of shared beliefs, summaries, and behaviors derived² from common experiences and accepted narratives (both oral and written) that shape the collective identity and relationships with other groups. One of the main challenges of any state's strategic culture is determining which institution serves as the bearer and transmitter of the cultural strategy and what role elites play in this regard.

Strategic cultures vary across countries worldwide due to the influence of different historical, cultural, political, economic, and social factors that shape them. The evolution of European strategic culture, as envisioned in the European Security Strategy, reflects the diverse attitudes and decisions of member countries regarding security and defense issues.

This explains differences in positions and decisions among certain states concerning security challenges, defense, or joint initiatives within the EU integration process, such as the case of the Common Security and Defense Policy (CSDP), highlighting the gap between national security and defense policies.

Discussions and divergences among EU member states about the future of the CSDP, especially relevant today during the Russia-Ukraine conflict and other conflict zones, reveal both convergences and divergences among member states about its future. This example exposes the divergences related to strategic cultures within the EU.

Questions arising for solution and response include:

- Does strategic culture change or remain unchanged?
- Who are the bearers of strategic culture?

1. Lantis, J. S. (2006, October 31). Strategic culture: *From Clausewitz to constructivism*. Presented at the SAAIC conference.

2. Colin S. Gray defines culture as the ways of thinking and acting with respect to force, derived from the perception of national historical experience, the aspiration for self-characterization, and from all the distinctive experiences of America (including geography, political philosophy, civic culture, and "way of life") that characterize an American citizen.(ibid., Gray)

6.2 Bearers of Strategic Culture

Political elites are its bearers—the so-called strategic decision-making community and experts, in which the public is also involved.

Changes in geopolitical orientations due to ideology, the nature of autocratic or liberal-democratic regimes show that strategic cultures and the attitudes of elites as their bearers vary depending also on changes in international circumstances.

Four problematic fields¹ are identified that reflect essential aspects of national security and defense policies and consequently the strategic culture of a nation:

1. Level of ambition
2. Scope of execution
3. Orientation of foreign policy—NATO, EU, etc.
4. Willingness to use force

Factors influencing its creation and strengthening relate to how the past is perceived, historical experiences, wars, conflicts, experiences, geography, tradition, interpretation, treatment, and approaches to these.

The nature of regimes, ideology, open democracy or autocracy, are factors and elements influencing the formation of strategic culture, the way security environment, opportunities, threats, and risks are viewed and evaluated, and how society and representative elites orient themselves toward security issues, strategy, policy, and solutions.

Alliances in multinational cooperative security and collective defense organizations—such as the UN, OSCE, NATO—along with experiences of cooperation with them influence the strategic culture of a country that shares values, beliefs, attitudes, experiences, and lessons with other member countries in facing security and defense challenges.

Strategic culture helps guide the behavior and attitudes or decision-making of a state in shaping doctrines, strategies, objectives, goals, and policies undertaken to achieve and implement them in national defense, alliances, etc.

The influence of strategic culture is evident and relevant in global conflicts, such as in the Middle East, Eurasia, Ukraine-Russia, etc.

For example, some states due to their legacy play a passive or neutral

1. Joans, J., & Anderson, V. (2010). *Does America have a strategic culture?* Journal of Conflict Studies, 30(2).

role in security, defense, and decision-making issues—such as Switzerland, Austria, or China’s abstention votes in UN Security Council meetings—or in the case of Ukraine’s neutral status demand, non-inclusion in NATO.

Powerful states of imperial nature, regional powers, and those with global influence like the USA, Russia, and China seek to fulfill their ambitions and protect their vital national and economic interests, exposing geopolitical and geostrategic approaches as elements and expressions of offensive or imperial strategic culture.

Multipolarity means the existence of multiple poles and decision centers in security issues, including collective security and defense organizations like the UN, NATO, OSCE.

Strategic culture is a variable shaped by factors such as historical, geographical, political, economic, financial, and social conditions; geopolitical dynamics; globalization and its accompanying effects; technology; constraints of alliances and partnerships among states; and the role and influence of public opinion (e.g., protests by civil society against the import of waste and radioactive materials, which led the government to withdraw its decision).

Strategic culture orients decision-makers to undertake policies that reduce/minimize risks, prevent conflicts, and create a safe and stable environment—a premise and important prerequisite for sustainable long-term socio-economic, financial, and overall development of the country.

Countries in the Western Balkans have been and are constrained by geography—imprisoned by their geography—where they have limited freedom in their positions and decisions on security and defense issues, alliances, partnerships, and exercising absolute sovereignty.

Participation in NATO, EU, UN, OSCE peacekeeping missions, and recently the trilateral agreement initiative Albania-Kosovo-Croatia are typical examples of the creation and consolidation of a strategic culture in the approach to security and defense issues as well as in international relations with regional and global alliances and state partnerships.

At the institutional level, the Academy of Security and Defense, improvement of curricula based on best practices of sister colleges in NATO, EU, USA, and the Marshall Center, influence the creation and strengthening of a regional cooperation strategic culture.

6.3 How Strategic Culture Influences Security Policies

From a historical perspective of conflict and war analysis, the relationship between culture, strategy, and politics has been interconnected and conditioned by one another. Culture has served as a conceptual tool for designing strategy and making policy¹, as an instrument to explain a part or the entirety of a state's behavior and strategy.

National characteristics such as language, religion, traditions, beliefs, virtual practices², the interpretation of collective memory, historical and national experiences³, geography, climate, the nature of political and defense structures of a state, military doctrines, key texts⁴, civil-military relations, myths, symbols, international norms, globalization, and the effects of technological changes are all tools, instruments, and resources that influence the understanding, conceptualization, formation, and transformation of strategic culture.

The strategic culture of Russia (nuclear deterrence) is characterized by insecurity and a tendency toward authoritarian control, where the Russian military shows a preference for the use of nuclear weapons.

Trump and the political elites⁵ supporting him at the White House demonstrate a shift in behavior and attitudes in their approach to relations with partners, allies, and international organizations such as NATO, the EU, and WHO. Within the philosophy and narrative used to achieve their goals of "America First," a new dimension of American strategic culture regarding security, defense, and economic global challenges is revealed.

Strategic culture is characterized as a "negotiable reality among elites" who have more freedom of action⁶ than others. These elites preserve, transmit, maintain, and implement it through their attitudes, decisions, and policies.

The elites of a country, as well as its security, are linked to the influence

1. Baylis, Wirtz, Gray, & Cohen, 2013, p. 111

2. Snider, 2013, *ibid.*, p. 111

3. Gray, 2013, *ibid.*, p. 113

4. The "*Art of War*," "*The Peloponnesian War*," and the seminal works of prominent authors such as Clausewitz, Sun Tzu, and others, constitute foundational texts in the study of warfare and strategic thought.

5. It is an axiomatic truth that politics directs strategy, as politics includes the elites of a country.

(*ibid.*, p. 95)

6. *Ibid.*, p. 125

they have on designing national security strategies and policies. These elites include all contributors to the process of drafting, formulating, implementing, and evolving these policies, as well as those influencing military, defense, security services, and macroeconomic stability fields. They also include academics, intellectuals, and experts who promote culture and debate on security issues.

Elites, through their expertise on internal and external security environments, threats, and challenges, reflect and conduct analyses, forecasts, and suggestions regarding investments in these fields, alliances, and partnerships between states and organizations.

Elites influence the governance of a country, increasing accountability, good governance, transparency, respect for rights and freedoms, and fighting corruption and abusive practices.

Security and the role of elites are a necessity for a country's development.

Security should be seen as a necessary public good and a *sine qua non* condition linked to political, economic, and financial stability. This has direct references to increasing investments, reducing unemployment, and raising incomes.

There is a direct correlation between security, stability, and investments, and their growth. High security is a premise for increasing capital and foreign investments, business numbers, employment, and income levels.

Security should not be abused or misused in the name of power or political control but should serve as an instrument and opportunity for development.

National development strategy includes as a key element the realization of its objectives through security policies, which play an important role.

National development strategy involves goals and objectives whose achievement requires the engagement of many factors and actors, where security is seen as the primary instrument for success in economic-financial stability and increasing investments.

Elites have an important role in raising awareness of respect for security policies and enhancing government accountability.

They promote good governance, rule of law, transparency, and combat corruption.

From this perspective, elites play a crucial role in national security and development policies by guaranteeing stability, increasing transparency, respecting the law, and fighting corruption, organized crime, and practices that hinder economic development. They contribute to the drafting of long-

term development strategies.

The role of elites affects strengthening public institutions, increasing decision-making transparency, good governance, drafting effective strategies for order, defense, security, foreign policy, alliances, and partnerships. This role is especially essential today given the geopolitical dynamics where the behavior and attitudes of state actors and powers are tied to interests.

Political, economic, and financial elites can face risks of power abuse for personal gain, corruption, which leads to autocracy, limits freedoms and human rights, harms democratic principles, and impedes the country's development.

Elites, as experts in their respective fields of security, economy, and finance, increase accountability, governance, and responsibility. They promote messages, options, and strategies for solving specific issues, encourage public participation in decision-making, and push for ongoing reforms in areas related to security and protection of public interest.

6.4. Elites as Bearers of Strategic Culture – A Necessity for National Security

Political decisions on important issues show that strategic culture is best characterized as a “negotiable reality” among elites, an important element of consensus among them.

The behavior of elites as “strategic users of culture” during handling important issues and decision-making related to them is aware of the limitations or “limits of the possible,” especially for small countries where the great powers do what they want and the small ones suffer what is imposed.

The lack of social cohesion and strategic will, as important elements of a country's power, cause leaders at all levels to operate under the shadow of the strategies of others.

In reality, changing geography and history as constant elements is impossible without the human factor that realizes planning and strategic will. Referring to D. Jablonski's analysis of power¹, planning and strategic will are multipliers of national power. This must be considered by intellectual and political elites in all their analyses of this power in general and especially the security environment, including all these elements, as they condition the

1. See: Jablonski, D. (2009). *Security Strategy Guide*. Spiro Moisiu Defense Academy, Tirana. “*Manual of Security Strategy*”

attitudes and important decisions made, especially for a small country like ours.

Culture is very important; so are the other dimensions of war, peace, and strategy. The role of institutions, especially Military Academies, is indispensable for studying knowledge of strategic culture. Universities and Academies continue to be institutional expressions of the universal value of knowledge, particularly about security environment, strategy, war, peace, etc. These organizations are also sources of trained personnel who think clearly, a skill that undoubtedly benefits society. Nonetheless, creating trained personnel is a secondary product of academic life. The main purpose of academic institutions is the cultivation and consolidation of knowledge and strategic culture, the discovery, preservation, and communication of knowledge through trained professionals who are patriotic assets with the DNA of patriotism and in the interest of the nation and the country's development.

7. Conclusion and Reflection

Security, with all its elements, remains one of the most current and widely debated topics nowadays, seeking a definition that can be accepted by everyone without exception — individuals, states, etc. Security can be defined as the hope to preserve the ability and capacity to enjoy and cherish the most valuable values, to be free from any obstacle or threat.

Today, in relations between states and in negotiations discussed to reach agreements between warring parties and the actors supporting them, there is detailed discussion on issues related to their security architecture, both internal and external, considering these as the reasons and causes of conflicts and wars.

Small countries, under the effects of large exchanges and globalization, are now an open part of the larger geography benefiting from it, but on the other hand, they are equally exposed to threats and serve as springboards for major non-traditional risks.

Addressing all security challenges is part of public opinion sensitivity, as well as the agendas of local, regional, cooperative, and global institutions dealing with these issues, where the role of the academic world has been sensitive. The academic world and universities have contributed significantly to the field of security.

The truth is that in Albania, after the opening, there were commendable and motivating efforts in security studies in some private universities, especially by AFA. The special assistance from Western allies and Euro-Atlantic partners within engagements and partnerships has been important in preparing a considerable number of experts in authoritative institutions like the John Marshall Center, some famous NATO colleges, etc. This had impacts on shaping security culture as innovation in political leadership and experts, especially in strong security institutions, drafting strategic documents, awakening interest from the academic world, and enriching curricula with modules from fields of security, geopolitics, etc., in several universities.

Despite efforts, unfortunately, this investment and enthusiasm at AFA did not continue; on the contrary, education in this field was prejudiced with political orientation and authoritarian behavior and revolutionary methods that destroyed institutional foundations, were hindered, demotivated, and reverted to the old paradigm of security as a phenomenon closed within military barracks. Although interest in this field remains alive at UET, ISE, Luarasi University, and the promising beginnings of the Security Academy and especially from some NGOs with their publications¹, the reality of security studies is at its lowest point. The undervaluation and demotivation of qualified experts in the aforementioned Western institutions, the limitation of the status of prestigious institutions where security expertise should be a domain beneficial to political decision-making, the arbitrary closure of master's and doctoral programs with interesting topics in security studies, geopolitics (a very current term and concept, returned more openly than ever in all conflicts, wars, relations between states, geopolitical analyses, etc.), which are very useful for the quality of analyses and recommendations for the defense and development of national interests, the country's development and security — all this is an ignorance of knowledge and information as power, a blow to the promising elite with national formation and a very useful security culture for facing challenges, Euro-Atlantic integration, etc.

In geopolitics, there is a postulate that the great powers do what they want; the small ones do what they must. This reality imposes on us that facing any scenario, we must be prepared, proactive in forecasts, and self-aware — not just waiting for what the great powers or alliances offer us. In

1. As publications of the Atlantic Association, Space Center, IDM, AFA, Security Academy, etc.

this framework, we must focus on several objectives related to creating and consolidating a broad security culture, raising debate and critical thinking on concrete problems of Albania's geopolitics in relation to internal capacities, relations with neighbors, and its role in the region.

Intellectual elites, security and geopolitics experts, from the Ministry of Defense, as bearers of strategic culture based on analyses and geopolitical and geostrategic dynamics of the behavior of powerful actors that determine the fate of nations, regions, and the world, provide timely guidance to decision-makers and leadership of a country to benefit in protecting national interests and fulfilling national goals and platforms arising from important and golden moments that cannot be repeated for decades and centuries for their benefit.

Strategic cultures help us predict and analyze challenges and threats, face them, where we as a small country must think and wish for the best and foresee the worst, and not absolutize NATO's collective defense Article 5 (very vital for us), but also value and take measures to fulfill Article 3 of the alliance where each state must take measures for its individual defense, according to the principle: you cannot lend capacities to NATO if you do not *have "flour"* for yourself.

Albania and Albanians need leaders who represent not just an administrative structure but a high national and historical vision. In the era of European integration and the redimensioning of the world order, where the EU and USA are redefining their relations, where certain states and new powers challenge the traditional architecture of diplomacy, and where artificial intelligence, digital economy, and technological transformation create unpredictable challenges, national leadership with strategic culture is not just a political choice, it is an existential necessity. Faced with chaos, anarchy, and uncertainty of events, extraordinary pressure of situations when courage and intellectual power are needed to make decisions about the fate of the nation, strategic culture helps and guides decision-making leadership to understand the logic of the "two-level game"¹ and be skilled negotiators, like Henry Kissinger² in his era of

1. In his work *Diplomacy and Domestic Politics: The Logic of Two-Level Games* (1988), Robert Putnam argues that any small state seeking integration into a larger system must develop leadership capable of maneuvering between two levels: the domestic political level and the external diplomatic level.

Putnam, R. D. (1988). *The logic of two-level games*. *International Organization*, 42(3), 427–460.

2. "Many leaders make mistakes because they think they are making history, when in fact they are simply experiencing it."

strategic diplomacy, and to understand “geography is not fate, it is fact,” as well as the best course of action to protect our national interests.

Today there is talk about the “Devil’s Manual,” which we see daily around us. This devilish manual is applied in our televisions and more broadly, where sometimes its chapters are woven with names like: game, reality show, showbiz, TV format, influence, clicks, viral posts, political amorality, self-declaration of gender, parents with numbers, blogger, making pout lips, filler, global citizen, and various such terms, which are exactly part of the Devil’s Manual, professionally treated by Prof. Albert Hitoaliaj of the Academy of Security¹. This manual was created by humans for control and power. It was created by interest and the gradual transformation of society, capture of powers, and enforcement of norms of the power of different groups through technology.

At the foundation of successful small countries stands a pact, a strategy, a national survival and development agreement. Consensus, cohesion, and clarity in their development path have been the key to success. And while the world globalizes every day, the only way for small countries is to orient only toward clear strategic objectives assessed and accepted based on national interest.

Let us not forget that in the tragic years of history, historical and unrepeatable events, and throughout the processes and flows of history, including the modern ones of our fragile transition, we have held strong and steadfast primarily thanks to that spiritual cohesion brewed over generations by the information and education received. In this regard, universities, colleges, and scientific and cultural institutions have a special role in protecting and keeping alive the spiritual, social, and national cohesion from exposure to risks that destroy this cohesion. This is a national mission. And certainly, the engagement of the academic world, including the example of Luarasi University in cultivating this mission and these issues, is a necessity and imperative.

The analysis of the security environment is important in choosing the security policy of each state.

Security strategy is the attribute of security institutions.

The National Security Council should be assisted and supported by unified and concentrated structures and centers (as centers of expertise and as early warning centers for security issues) that continuously monitor changes

1. Hitoaliaj, B. (2025, April 23). ChatGPT and “*The Devil’s Handbook*”: *The mental destruction of younger generations*. *Panorama*.

and dynamics of the environment, analyze and assess threats and risks, their impact on national security, as well as present, provide suggestions, and recommendations for national security strategy.

The national security strategy should not be merely a political declarative act, descriptive and stating facts, but as a guiding framework to engage through concrete tactical and operational plans and actions at all levels of the organism and its implementing links to achieve goals and objectives.

For all these issues and treatment areas raising theses and hypotheses around them, horizons have been opened for researchers of these disciplines, where both students and lecturers, intellectual elites as bearers of strategic culture under the exemplary promotion of the respected model of Luarasi University should follow and utilize.

References

- Thomas Hobbs (1640), *Elements of Law, Natural and Politic*
- <https://www.undp.org> › UNDP Crisis Offer 2022
- *NATO New Strategic Concept 2022*, <https://www.nato.int/strategic-concept/>
- W. Friedman, *The Next Hundred Years*, Tirana 2010
- Christian Enemark, *Disease and Security: Natural Plagues and Biological Weapons in East Asia*, (London: Routledge, 2007)
- Kissinger, Henry, *Diplomacy*, Publishing House of the Writers' League, Tirana, 1999
- Revista MN, No. 15, Qendra Hapsirë, Tirana, 2016
- Allan Collins, *Contemporary Security Studies*, UET Press, Tirana, 2010
- Buzan, B., *People, States and Fear. An Agenda for International Security*, 1991
- Charl. W., Kugley, JR, *World Politics, Trends and Transformation*, UFO University Press, Tirana, 2009
- Yuval Noah Harari, *21 Lessons for the 21st Century*, Botart Publishing House, Tirana, 2018
- R. Koen and M. Mihallka, Ashton B. Carter, William J. Perry, and John D. Steinbrunner, *A New Concept of Cooperative Security*, Washington, DC: The Brookings Institution Press, 1993

- Mclean, *Political Dictionary*, Book and Communication House, Tirana, 2001
- *International Relations Theories*, UET Press, 2010
- Joseph S. Nye Jr., David A. Welch, *Conflict and Cooperation in International Relations*, Tirana, 2014
- Jan Bremer, *Every State for Itself*, Minerva Publishing House, Tirana, 2020
- Guy N., *The Birth of Albania*, Pegi Publishing, Tirana, 2012
- Ribaj P. and Cami Sh., *War, Peace, Security*, Tirana, 2015
- *Security of Small States*, AFA, 2013
- *The Military Art of the People's War*, R.P. Socialist Republic of Albania, Tirana, 1985
- *50 Years of the Defense Academy*, Tirana, 2008
- AFA, *Guide for National Security Policy and Strategy*, Tirana, 2009
- *Defense Magazine*, Tirana, January 2008
- *100 Years Albanian State - 100 Years Albanian Armed Forces*, Tirana, 2012
- Yuval Noah Harari, *21 Lessons for the 21st Century*, Botart Publishing House, Tirana, 2019
- Mustafa Syleyman, *The Coming Wave*, Botart, Tirana, 2023
- Cimbali, Giovanni, *Pluralism of Faith and Religious Communities in Albania*, Tirana, 2013
- Fredman, George, *The Next 100 Years*, Plejad, Tirana, 2009
- Ribaj P., *Politics*, Scientific Journal No. 1/2017, Faculty of Social Sciences, Tirana, 2017, pp. 7-27
- K. XH Shih and Xharro, "It Is a Strategic Orientation Agreement 'Smart Defense,' not 'Smart Offense', Mr. Vučić," Tema, March 22, 2025
- Hitoaliaj, B., "ChatGPT and 'The Devil's Manual': Mental Destruction of New Generations," Panorama, April 23, 2025
- General Piro Ahmeti, "16th Anniversary and NATO of the Next Generation," Panorama, April 4, 2025

COMPARATIVE ADMINISTRATIVE LAW IN SOUTH-EASTERN EUROPE AND THE EUROPEAN UNION

Dr. Dael Dervishi, Fatmir Latifi¹

Abstract

This article offers a comparative examination of administrative law across three Western Balkan jurisdictions—Albania, Kosovo, and Serbia—and three EU Member States—Germany, France, and Italy. It maps institutional design, administrative procedure, judicial review, and accountability/transparency mechanisms, and evaluates the transformative effects of the EU acquis and governance standards on public administration reforms. The analysis finds that while the Western Balkan countries have largely aligned the formal architecture of administrative procedure and judicial control with European standards, persistent gaps remain in implementation, enforcement, and the cultivation of a durable culture of integrity and accountability. Drawing on EU instruments (e.g., the Single Digital Gateway and European digital identity frameworks), national administrative procedure acts, freedom-of-information regimes, and SIGMA's Principles of Public Administration, the article proposes actionable reforms to strengthen administrative justice, ensure effective compliance with judicial decisions, deepen proactive transparency and digital service delivery, and reinforce merit-based civil service systems.

Keywords: *Administrative law; public administration; judicial review; transparency; comparative law; EU standards; Western Balkans; digital government.*

1. Luarasi University, Albania
dael.dervishi@luarasi-univ.edu.al
fatmir.latifi@luarasi-univ.edu.al

1. Introduction

Administrative law structures how public authorities make decisions, how the public participates and obtains reasons and access to information, and how courts hold the administration to account. In Europe, a shared vocabulary of legality, reason-giving, participation, good administration, and effective judicial protection has emerged—shaped by the EU legal order, Council of Europe standards, and national traditions. South-Eastern European jurisdictions have undertaken extensive reform to converge toward these standards, especially under the impetus of EU accession conditionality and SIGMA/OECD guidance. The key question is not whether the region has adopted modern frameworks—they largely have—but whether those frameworks operate with sufficient effectiveness to change administrative behavior in practice. The analysis that follows addresses that question thematically—procedure, judicial control, transparency/digitalization, and merit-based administration—using Germany, France, and Italy as reference points of mature systems, and Albania, Kosovo, and Serbia as reforming comparators.¹

2. Method and Sources

The paper applies functional comparative method: it identifies core administrative-law functions and compares how each jurisdiction addresses them in positive law and institutional design. It uses authoritative legal sources (administrative procedure acts; codes of administrative justice), freedom-of-information and transparency statutes, selected EU regulations on digital administration, and EU/SIGMA monitoring frameworks. Where possible, official government or codification portals are cited to ensure doctrinal accuracy.

3. Administrative Procedure: Structures and Safeguards

3.1 *Germany*

Germany's *Verwaltungsverfahrensgesetz* (VwVfG) codifies fundamental procedural guarantees including the right to be heard (§ 28), the duty to state reasons (§ 39), and rules on participation and access to

1. https://www.sigmaweb.org/content/dam/sigma/en/publications/reports/2023/11/the-principles-of-public-administration_5e68f805/7f5ec453-en.pdf

files, with federal and Länder variants complementing sectoral statutes. The Verwaltungsgerichtsordnung (VwGO) organizes the administrative judiciary and sets out avenues of review. Together they operationalize the rule-of-law baseline that decisions be lawful, reasoned, and reviewable.

3.2 France

France consolidated general principles and procedural requirements in the Code des relations entre le public et l'administration (CRPA), which codifies motivation (statement of reasons) duties and participation in decision-making, while the Code de justice administrative (CJA) frames judicial organization and remedies. The CRPA's Book II and Title I on motivation reinforce administrations' obligation to provide intelligible reasons in defined categories of acts; the CJA ensures effective review by tribunaux administratifs, cours administratives d'appel, and the Conseil d'État.¹

3.3 Italy

Italy's Administrative Procedure Act (Law No. 241/1990) introduced, and has continually refined, principles of participation, time-limits, reason-giving, and administrative transparency/access to documents (Capo V). Procedural safeguards interact with the Codice del processo amministrativo (Legislative Decree No. 104/2010), which systematizes judicial review before the Tribunali Amministrativi Regionali and the Consiglio di Stato. English translations and reliable summaries confirm Law 241/1990's core guarantees and the CPA's jurisdictional design.²

3.4 Albania, Kosovo, and Serbia

Albania's Code of Administrative Procedures (Law No. 44/2015) aligns closely with EU-style principles—legality, proportionality, hearing, reasoning—while Law No. 49/2012 established dedicated administrative courts and the framework for administrative disputes, deepening judicial protection. Kosovo's Law No. 05/L-031 on General Administrative Procedure offers a modernized, coherent procedure act with reason-giving,

1. https://www.legifrance.gouv.fr/codes/texte_lc/LEGITEXT000031366350

2. https://legislationline.org/sites/default/files/documents/c4/Italy_Law_Administrative-procedure_1990_am2010_en.pdf

participation, and time-limit rules suited to a fragmented administration. Serbia's updated Law on General Administrative Procedure (2016) similarly codifies contemporary guarantees and emphasizes legality and efficiency. Across the three, formal alignment is significant; the challenge remains consistent implementation and timely enforcement.¹

4. Judicial Review: Effectiveness and Enforcement

In the EU comparators, specialized administrative courts exercise full legality review and grant a spectrum of remedies, including annulment and—under certain conditions—injunctive relief and damages. Germany's VwGO, France's CJA, and Italy's CPA each exhibit mature remedial taxonomies and a culture of compliance by the administration with judicial outcomes. In Albania, the creation of administrative courts has improved access and specialization, though persistent delays and follow-through on judgments can still impede full relief. Kosovo and Serbia have specialized venues or chambers for administrative disputes; however, enforcement consistency and administrative compliance with judgments vary and can weaken incentives for legality. Continued convergence requires not only procedural texts but also managerial accountability for post-judgment compliance and, where appropriate, the use of contempt-like levers or budgetary conditionalities to ensure execution.

5. Transparency, Access to Information, and Proactive Disclosure

5.1 Freedom of Information regimes

Albania's Law No. 119/2014 on the Right to Information guarantees public access to official documents and obliges proactive publication; it is accompanied by institutional guidance and oversight practices. Kosovo's Law No. 06/L-081 on Access to Public Documents updated the FOI framework with clearer obligations, and Serbia's Law on Free Access to Information of Public Importance remains the backbone of access rights, administered by an independent Commissioner. These statutes have driven notable improvements but still face issues of administrative silence, narrow interpretations of exceptions, and delays in practice.

1. https://www.legifrance.gouv.fr/codes/texte_lc/LEGITEXT000031366350

5.2 EU comparators

Germany's federal Informationsfreiheitsgesetz (IFG) ensures access to federal administrative information, dovetailing with Länder laws and sectoral regimes (e.g., environmental information). France embeds access/transparency in the CRPA and a dense web of sectoral norms and open-data commitments, while Italy's approach couples Law 241/1990 (access to documents) with a modern transparency decree—Legislative Decree 33/2013—substantially revised by Legislative Decree 97/2016, often described as Italy's FOIA, expanding generalized civic access.¹

5.3 Digitalization and proactive transparency

EU-level initiatives have reshaped expectations. The Single Digital Gateway Regulation (EU) 2018/1724 mandates user-centred online access to information, procedures, and assistance services via the Your Europe portal and national gateways, with the “once-only” technical system now operational to support cross-border evidence exchange. These obligations pressure national administrations to digitize end-to-end procedures, adopt consistent quality standards for online information, and enable user feedback loops. The evolution of the European digital identity framework further underpins cross-border authentication for administrative services. Western Balkan candidates aligning with the gateway's principles and tools can leapfrog legacy paper processes, provided domestic laws and IT systems are adapted to enable secure data exchange, privacy safeguards, and robust service design.²

6. Accountability Ecosystem: Ombudsman and Integrity

Effective administrative law requires complementary accountability institutions. Albania's People's Advocate (Ombudsman), Kosovo's Ombudsperson, and Serbia's Protector of Citizens all provide non-judicial redress and systemic oversight, issuing recommendations and special reports. When integrated with access-to-information bodies and supreme audit institutions, ombudsman findings can catalyze remedial action without litigation and illuminate patterns of maladministration. The durability of this ecosystem depends on follow-up rates, publication and

1. https://www.legifrance.gouv.fr/codes/texte_lc/LEGITEXT000031366350

2. https://single-market-economy.ec.europa.eu/single-market/single-digital-gateway_en

tracking of recommendations, and parliamentary or ministerial pressure to implement corrective measures.¹

7. Meritocracy and Professionalism in the Civil Service

Administrative procedure and judicial control are only as effective as the bureaucracy implementing them. EU and SIGMA benchmarks emphasize merit-based recruitment, career development, performance management, and protection from politicization. Regional monitoring shows formal alignment with many standards but identifies variable capacity in HRM systems, inconsistent application of competitive recruitment, and uneven managerial accountability. Consolidating professional, politically neutral civil services is essential to internalize legality, reason-giving, and service orientation beyond mere compliance with texts.²

8. Comparative Assessment

8.1 Convergence in texts; divergence in practice

Albania, Kosovo, and Serbia exhibit significant textual convergence with EU Member State models: general procedure codes set hearing and motivation duties; FOI laws guarantee access and mandate proactive disclosure; judicial review forums exist or have been strengthened. Germany, France, and Italy provide operational models where these norms are routinized through entrenched administrative cultures and mature judicial ecosystems. The divergence appears in implementation depth: timeliness of decisions and responses, quality and granularity of reasons, administrative compliance with judgments, and the everyday usability of digital services.

8.2 The digital turn as an opportunity

The Single Digital Gateway and related EU digital measures concretize user-centric design, once-only data exchange, and cross-border service delivery. For the Western Balkans, aligning administrative procedure with digital service design—standardized forms, clear time limits, machine-

1. https://www.kuvendikosoves.org/Uploads/Data/Documents/PLperndryshimineLigjitnr.06-L-114perzyrtaretpublik_vVu4ujKdgd.pdf

2. https://www.sigmaweb.org/content/dam/sigma/en/publications/reports/2023/11/the-principles-of-public-administration_5e68f805/7f5ec453-en.pdf

readable proactive publications—can lift both legality and user experience. The literature and official guidance suggest that the gateway’s common tools and feedback mechanisms create external benchmarks that encourage administrations to publish intelligible, complete, and current information.¹

9. Recommendations

9.1 Strengthen the quality of reasons and participation

Codified motivation duties should be operationalized through internal guidance and templates requiring clear factual findings, legal bases, discretionary considerations, and proportionality analysis. Public participation—especially for regulatory acts and high-impact decisions—should move beyond formal notice to structured consultation with summaries of how input influenced outcomes. France’s CRPA and doctrine on motivation provide instructive models for drafting standards and for judicial scrutiny of insufficient reasons.²

9.2 Ensure effective judicial protection

Administrative courts need tools and incentives to secure swift compliance with judgments: targeted timelines for re-decision, reporting duties to the court or ombudsman, and where constitutionally permissible, coercive measures or cost sanctions for non-execution. Comparative practice in Germany, France, and Italy demonstrates how routinized execution fosters a culture of legality within administrations.

9.3 Institutionalize proactive transparency and end-to-end digital procedures

Western Balkan authorities should fully implement FOI duties through comprehensive web portals that integrate registers of administrative acts, datasets in open formats, and standardized response dashboards. Aligning national portals with the Single Digital Gateway architecture—complete procedural descriptions, online applications, once-only data exchange—will reduce discretion at the front desk and make delays or refusals visible to oversight bodies and the public.³

1. https://single-market-economy.ec.europa.eu/single-market/single-digital-gateway_en

2. https://www.legifrance.gouv.fr/codes/texte_lc/LEGITEXT000031366350/

3. https://single-market-economy.ec.europa.eu/single-market/single-digital-gateway_en

9.4 Deepen merit-based civil service systems

Recruitment should prioritize competitive, competency-based methods with third-party monitoring, while mobility and training systems must reward legal-reasoning quality, user-centric service design, and ethics. SIGMA's 2023 Principles and the 2024 regional monitoring identify concrete milestones and indicators that ministries can adopt in performance agreements and budget programs.¹

10. Conclusion

South-Eastern European jurisdictions have put in place the core legal architecture of a European administrative state: modern procedure codes, access-to-information regimes, and specialized judicial review. Yet the transition from *laws on the books* to *laws in action* is incomplete. The next phase hinges on managerial accountability for reason-giving, systematic execution of judicial decisions, and high-quality digital services grounded in EU's gateway standards. Taken together, these steps will not only move Western Balkan administrations closer to EU best practice but will also generate tangible gains in trust, integrity, and effectiveness—hallmarks of a mature rule-of-law state.²

References (APA style)

- Albania. (2014). *Law No. 119/2014 on the Right to Information* [English translation]. RTI-Rating. <https://www.rti-rating.org/> (English consolidated translation and commentary).
- Albania. (2012). *Law No. 49/2012 on the organization and functioning of administrative courts and administrative disputes* [Overview]. Commissioner for the Right to Information and Data Protection (Albania). <https://idp.al/>
- Albania. (2015). *Code of Administrative Procedures (Law No. 44/2015)* [Overview]. Commissioner for the Right to Information and Data Protection (Albania). <https://idp.al/> (Légifrance)
- European Commission, & OECD/SIGMA. (2023). *The Principles of*

1. https://www.sigmaweb.org/content/dam/sigma/en/publications/reports/2023/11/the-principles-of-public-administration_5e68f805/7f5ec453-en.pdf

2. https://single-market-economy.ec.europa.eu/single-market/single-digital-gateway_en

- Public Administration (2023 edition)*. OECD. <https://www.sigmaweb.org/> (SIGMA)
- European Commission. (2018). *Regulation (EU) 2018/1724 establishing a Single Digital Gateway* (consolidated). EUR-Lex. <https://eur-lex.europa.eu/eli/reg/2018/1724/oj/eng> and <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:02018R1724-20250119> (EUR-Lex)
 - European Commission. (2023–2025). *The Single Digital Gateway and Your Europe: Policy pages and guidance*. DG GROW. https://single-market-economy.ec.europa.eu/single-market/single-digital-gateway_en (Internal Market & SMEs)
 - France. (2015–2025). *Code des relations entre le public et l'administration (CRPA)* [Consolidated]. Légifrance. https://www.legifrance.gouv.fr/codes/texte_lc/LEGITEXT000031366350/ (Légifrance)
 - France. (2000–2025). *Code de justice administrative (CJA)* [Consolidated]. Légifrance. https://www.legifrance.gouv.fr/codes/texte_lc/LEGITEXT000006070933/ (Légifrance)
 - Germany. (latest cons.). *Verwaltungsverfahrensgesetz (VwVfG) / Verwaltungsgerichtsordnung (VwGO)* [Federal codifications]. German e-Justice Portal (with links to *Gesetze im Internet*). <https://e-justice.europa.eu/>
 - Germany. (2005). *Informationsfreiheitsgesetz (IFG)* [Federal FOI]. German e-Justice Portal (overview). <https://e-justice.europa.eu/>
 - Italy. (1990, as amended). *Legge n. 241/1990 sul procedimento amministrativo e sul diritto di accesso* [English translation; amended to 2010]. OSCE/ODIHR, Legislationline. [https://legislationline.org/\(PDF: “The Italian Administrative Procedure Act...”\)](https://legislationline.org/(PDF:~{The~{Italian~{Administrative~{Procedure~{Act...}}})) (Legislationline)
 - Italy. (2010). *Codice del processo amministrativo* (D.Lgs. n. 104/2010) [official text PDF; summaries]. Giustizia Amministrativa; Gazzetta Amministrativa. <https://www.giustizia-amministrativa.it/> ; [https://gazzettaamministrativa.it/\(PDF\)](https://gazzettaamministrativa.it/(PDF)). (giustizia-amministrativa.it)
 - Italy. (2013; 2016). *Legislative Decree n. 33/2013 on transparency* (as amended by *Legislative Decree n. 97/2016*, “Italian FOIA”). Government portals and ministerial implementations. https://www.dt.mef.gov.it/en/amministrazione_trasparente.html ; https://www.dt.mef.gov.it/en/amministrazione_trasparente.html

www.protezionecivile.gov.it/en/approfondimento/transparent-administration/ (Mef)

- Kosovo. (2016). *Law No. 05/L-031 on General Administrative Procedure* [Official Gazette index]. Official Gazette of the Republic of Kosovo. <https://gzk.rks-gov.net/> (UNECE)
- Kosovo. (2019). *Law No. 06/L-081 on Access to Public Documents*. Official Gazette of the Republic of Kosovo. <https://gzk.rks-gov.net/>
- Republic of Serbia. (2016). *Law on General Administrative Procedure* [Official Gazette / government portal]. Government of Serbia. <https://www.srbija.gov.rs/> (Kuvendi i Kosovës)
- Republic of Serbia. (2004; as amended). *Law on Free Access to Information of Public Importance* [Commissioner's portal]. Commissioner for Information of Public Importance and Personal Data Protection. <https://www.poverenik.rs/>
- SIGMA/OECD. (2025). *Public administration in the Western Balkans 2024: Regional overview of assessments*. OECD. <https://www.oecd.org/> (PDF). (OECD)

CHALLENGES OF EUROPEAN INTEGRATION OF LOCAL GOVERNMENT TEN YEARS AFTER THE ADMINISTRATIVE-TERRITORIAL REFORM

Dr. Vera Shtjefni¹

Abstract

*Albania, as a candidate country for the European Union, is continuing negotiations with the objective of joining the EU by 2030. Ten years ago, the Administrative-Territorial Reform (ATR) was completed, and the functioning of local government units and their bodies resulting from the 2015 local elections began. Local Government Units play an important role in the European Union. In the EU, over 70% of *acquis Communautaire* is implemented at the local level. Local self-governments of EU countries participate in horizontal cooperation among themselves as well as vertical cooperation with EU institutions. The period leading up to EU membership presents challenges, not only in meeting legal and institutional standards, but also in ensuring that these Albanian local self-governments are organized, function, and perform comparably to units in other EU member states. This paper aims to contribute to highlighting the essential role that local government has in fulfilling the objectives and addressing the challenges of Albania's EU membership. The EU membership process provides an excellent opportunity to analyze the performance of local self-government in recent years and to continue with legal and institutional reforms toward a functional model that meets the highest standards of local government in EU countries. This paper addresses not only the academic community but also central and local self-government actors, civil society, and professionals to promote local government reform in Albania.*

1. Full-time academic staff, Department of Public Law, Faculty of Law, University Tirana. Lecturer of Administrative Law 2, Advanced Administrative Law and Control over Public Administration, Public Administration and Human Rights.

1. Introduction

Albania, as a candidate country for the European Union, is continuing negotiations with the objective of joining the EU by 2030. Ten years ago, the Administrative-Territorial Reform was completed, and the functioning of local self-government units and their bodies resulting from the 2015 local elections began.

Local self-governments in EU countries participate in horizontal cooperation among themselves as well as vertical cooperation with EU institutions. The period leading up to EU membership presents challenges, not only in meeting legal and institutional standards, but also in ensuring that these local authorities are organized, function, and perform comparably to authorities in other EU member states. Although there is no specific chapter in the negotiations with the EU dedicated to local government, local authorities must achieve the highest standards as provided by the European Charter of Local Self-Government¹. The *acquis Communautaire* does not contain specific acts regulating the organization and functioning of local self-government in the EU, but the European Charter of Local Self-Government (ECLSG) has become an international reference point in this field, establishing common European standards for the protection of local authority rights. The Charter contains substantial guarantees for rights derived from local autonomy, although it has left “a certain amount of space to the states in relation to the obligation to implement the obligations it contains”².

The Charter (ECLSG) is considered an international legal instrument that has had a significant impact on the development of local governments in Europe, serving as a “roadmap for the new democracies in the East”³. It provides normative and particularly constitutional guidelines for building a new system of local government from its foundations at the local level—as was the case for countries of Central and South-Eastern Europe that underwent transitions from authoritarian regimes to democracy throughout

1. European Charter of Local Self-Government. https://www.coe.int/t/congress/sessions/18/source/charteeuropeenne_en.pdf

2. Treaty-Making for Standards of Local Government: The European Charter of Local Self-Government and its Possible Application Beyond Europe, p. 8, Chris Himsworth, University of Edinburgh School of Law Working Paper Series No 2011/24

3. Røiseland, A. Local Self-Government or Local Co-Governance? *Lex Localis - Journal of Local Self-Government*, p. 143, Vol. 8, No. 2, April 2010

the 1990s—as well as for supplementing the constitutional frameworks of legal orders in which a system of local government already exists.¹

The EU cannot establish rules governing the application of EU law at the domestic level; rather, Member States themselves are endowed with the task of execution and the duty of ensuring compliance with EU law in their domestic orders by regulating the division of powers between public authorities as they see fit.²

2. The role of local self-governments in the European Union.

Local self-governments play an important role in the European Union. In the EU, over 70% of Aquis is implemented at the local level. The ECLSG is the only criterion that sets out common minimum standards that can be considered general principles of EU law and must be respected by EU institutions when adopting new legislation. Most of its principles can be considered part of the common constitutional identities of Member States in accordance with Article 6(2) the Treaty on the functioning of the European Union TFEU.³

Local self-governments of EU countries participate in horizontal cooperation among themselves as well as vertical cooperation with EU institutions. The period leading up to EU membership presents challenges for Local Government Units, not only in meeting legal and institutional standards, but also in organizing, functioning, and performing comparably to units in other EU member states.

2.1. Local communities in the EU.

The regions of EU member states are considered separate actors in the multi-level European system.⁴ Although they are under the national jurisdiction of states, they are increasingly becoming strong partners in cooperation with each other and with EU institutions. Compared to the

1. Boggero, Giovanni. *Constitutional Principles of Local Self-Government in Europe*. : Brill, 2018. ISBN 9789004347243 (e-book) p.291.

2. Ibid., p..68.

3. Ibid., p..71.

4. Guérot, Ulrike. “‘Europe of the Regions’: A Genealogy of an Ambiguous Concept.” *European Regions: Perspectives, Trends and Developments in the 21st Century*, edited by Elisabeth Donat, Sarah Meyer and Gabriele Abels, Bielefeld: transcript Verlag, 2020, p. 235.

rather static construction of the ‘state,’ the ‘region’ is a much more flexible and fluid concept¹. Regions have been used as instruments to strengthen federalism in the EU. Supporters of strengthening the regions envisioned overcoming the nation-state and building a European federation based on independent regions.² EU regional policies have strongly influenced the empowerment of regions. The EU regards regions and local authorities as partners at the same level as national governments.³ Regions and cities play a key role in connecting citizens and EU institutions⁴

National governments often view this partnership as a “potential erosion of national state sovereignty”.⁵ They have attempted to counter this with centralist tendencies during the integration process, strengthening the role of national governments and centralizing power at the center, with a centralized institutional decision-making structure to which regional actors have limited access.⁶

Regions have become the institutions responsible for implementing the growing body of EU legislation. They are increasingly active in the process of implementing EU policies, often without being beholden to national governments. EU institutions view this partnership as equally important as their cooperation with Member State governments, creating a simultaneous relationship with both Member State governments and the regions of these states, forming a ‘triangular relationship of Europe.’⁷

Europeanization has transformed the relationship between central

1. Donat, Elisabeth. Meyer, Sarah. Abels, Gabriele (eds.) *European Regions Perspectives, Trends and Developments in the 21st Century*. p.12.

2. Guérot, Ulrike. ““Europe of the Regions’: A Genealogy of an Ambiguous Concept”. *European Regions: Perspectives, Trends and Developments in the 21st Century*, edited by Elisabeth Donat, Sarah Meyer and Gabriele Abels, Bielefeld: transcript Verlag, 2020, p. 236.

3. Carlo Panara and Michael Varney. “Local Government in Europe” p. 18.

4. Guérot, Ulrike. ““Europe of the Regions’: A Genealogy of an Ambiguous Concept”. *European Regions: Perspectives, Trends and Developments in the 21st Century*, edited by Elisabeth Donat, Sarah Meyer and Gabriele Abels, Bielefeld: transcript Verlag, 2020, p. 235.

5. Selcen. Öner. *Relations between the EU and sub-regions and their impact on the European Nation-State* p. 40

6. Carter, C. and Pasquier, R. (2006) *European integration and the transformation of regional governance: Testing the analytical purchase of ‘Europeanisation’*.p.2.

7. Selcen. Öner. *Relations between the EU and sub-regions and their impact on the European Nation-State* p.40.

government and the regional level from a bipolar (bilateral) relationship to a relationship among three levels of government (EU, national government, and regional level).¹

The dynamics of these relationships have often been accompanied by strong tensions between parties. There have been cases where “regions have seen direct cooperation with the EU and European integration as an opportunity to increase their autonomy”² and escape the “yoke” of national government. The opposite has also occurred, where regions have viewed cooperation with the EU as a risk of “colonialism” by a Europe resembling a “club of the rich”³ or a loss of democratic control and market principles. Regionalization has created an image of a “federalized” Europe even though it does not resemble the models of federal states. Regions are increasingly attempting “to increase their role, but only the future can tell whether they will be subjects of a federalized Europe”.⁴ Over recent decades, there have been initiatives to build a ‘four-tier Europe,’ in which different levels of government work together to achieve common policy objectives and to strengthen the legitimacy of EU governance.⁵

Despite the strengthening of the role of regions in the EU governance system, because of treaty changes, regions have not become participants in the EU legislative process as a ‘third tier’ alongside the Council and the European Parliament. 19 EU member states still have the primary influence at almost all levels of the EU decision-making process today.⁶

The role of the Committee of the Regions (CoR) was expanded by the Lisbon Treaty, which stipulates that the Commission, the Council, and the European Parliament must consult the CoR when drawing up new policies aimed at regional agendas. The Committee now issues opinions

1. Peter John. *Local Governance in Western Europe*. p.65

2. Selcen. Öner. *Relations between the EU and sub-regions and their impact on the European Nation-State* p.39

3. Lafont. *La Revolution Régionaliste*. In: John Loughlin. *Europe of the Regions and the Federalization of Europe....* p. 143. (Selcen. Öner. *Relations between the EU and sub-regions and their impact on the European Nation-State* p.39)

4. John Loughlin, *The Regional Question, Subsidiarity and the Future of Europe* p.85

5. Guderjan, Marius. Verhels, Tom. *Local Government in the European Union*. **Springer Nature Switzerland AG 2021**. p.1.

6. **Donat, Elisabeth. Meyer, Sarah. Abels, Gabriele (eds.)** *European Regions Perspectives, Trends and Developments in the 21st Century*. p.19.

on more policy areas, such as energy policy and climate change. It can also challenge new EU regulations in the European Court of Justice if it considers that its opinions are not being taken into account and that EU legislation violates the principle of regional and local subsidiarity.¹ However, this right of regions and municipalities to participate in the formulation of EU policies does not necessarily imply the recognition of a principle or right of local or regional self-government under EU law and, in any case, not necessarily as defined in the Charter (ECLSG).²

2.2. Euroregions as an Efficient Model for Albania.

Cross-border cooperation is widely recognized as playing an important role in concepts of regional development. Cooperation is useful in coordinating policies and jointly exploiting common development potential.³ A Euroregion is a form of cross-border cooperation between territorial associations or local authorities of border regions of two or more states that share a common border, where cooperation aims at coordinating joint efforts and implementing agreed actions in various spheres of life according to national legislation and international law norms to solve common problems, taking into account the rights of this territory on the border side. In European politics, Euroregions represent a specific type of cross-border region.⁴

They are organized to promote common interests across the border and to cooperate for the common good of border populations.

They are organized to promote common interests across borders and to cooperate for the common good of border populations. Euroregions as cross-border structures are agreements for cooperation between local or regional government units across borders with the aim of promoting common interests and increasing the living standards of border populations.⁵ As a result of Euro-regional cooperation, they represent

1. Crepaz, Katharina. 'Europe of the Regions': An Approach to Counter Separatist Tendencies? L'Europe en formation n° 379 Printemps 2016 - Spring 2016. p.28.

2. Boggero, Giovanni. Constitutional Principles of Local Self-Government in Europe: Brill, 2018. ISBN 9789004347243 (e-book) p.70.

3. Donat, Elisabeth. Meyer, Sarah. Abels, Gabriele (eds) European Regions Perspectives, Trends and Developments in the 21st Century. p 163.

4. Otoĝan, Oriano. The Euroregion as a mechanism for strengthening opportunities and challenges of cross-border and interregional cooperation (Venice Commission) p.4.

5. Right there.

added value: political, institutional, socio-economic, and socio-cultural.¹ ‘Euroregions,’ following a functional and/or symbolic rationale of (re-) connecting territories that share a common historical or ethno-cultural identity but are separated by international borders, are essentially political in nature.²

3. The EU accession process: An opportunity for Local Government Reform

3.1. The Organization of Local Government in Albania

Local government in Albania “is presented as a set of institutions that implement the laws of the country and address the essential daily issues and needs of certain communities in order to be closer to the community, to better recognize the needs of citizens and to better serve them.”³ The organization and functioning of local government in Albania is based on the Constitution and the organic law on local self-government (LSG).⁴ The Constitution uses the term “local government”⁵ when referring to local government units or bodies of these units and the term “self-government”⁶ as a right exercised by local government units.⁷ Local self-government is a constitutional right and guarantee, which is closely related to the constitutional principle of local autonomy.”⁸ Unlike the Constitution, the organic law, in its title and throughout, does not use the term “local government” but “local self-government.” The law does not provide a definition of this concept, but in Article 3 it defines the mission of local self-government, which “ensures effective, efficient governance

1. Ibid. p.8.

2. Donat, Elisabeth. **Meyer, Sarah. Abels, Gabriele (eds.)** European Regions Perspectives, Trends and Developments in the 21st Century. p 84.

3. Xh. Zaganjori. A. Anastasi, E. Çani. “The Rule of Law in the Constitution of the Republic of Albania”. p.262, Tirana 2011.

4. Law No. 139/2015 “On Local Self-Government”.

5. See articles 108/1, 2, 109.1 and 4, 110/1, 111, 112, 113 and 115.

6. See articles 108/4, 113/3.

7. municipalities at the first level and regional councils at the second level. (author’s note).

8. Decision of the Court of First Instance no. 29/2006, p. 15 and decision **no. 19 / 2015 p. 58.**

at a level as close as possible to citizens”.¹

The Constitution provides detailed, though not exhaustive, regulation regarding the organization and functioning of local government.² Municipalities and regions implement local self-government in the Republic of Albania.³ The Albanian model of local government organization and functioning does not differ significantly from local government models in EU countries, where “the political bodies in the municipality are representative, elected by democratic elections; there is an identifiable political leader, known as the mayor, who can be directly elected by citizens or by council members, or appointed by the central government; in most municipalities there is at least one executive officer to manage, coordinate, and supervise the organization of the government, and to ensure that public resources are used rationally, efficiently, and in accordance with the law”.⁴

The Assembly, with Law No. 139/2015 “On Local Self-Government”,⁵ has approved the normative framework for the organization and functioning of local government.⁶ This law recognizes the new functions and competencies that are decentralized to local government and regulates the organization and functioning comprehensively following the administrative-territorial reform.⁷ According to the Council of Ministers, as the proposing entity, this law was approved within the framework of the administrative and territorial reform, as well as the decentralization reform that began with the approval of the Cross-Sectoral Strategy for Decentralization and Local Governance 2015-2020⁸, which was extended until 2023, followed by the adoption of the Cross-Sectoral Strategy for

1. Article 3 of Law 139/2015.

2. L. Omari, A. Anastasi “Constitutional Law”, p. 335, Tirana 2008,

3. Article 5/1 of Law No. 139/2015.

4. Xavier B. Horta, Mariana T. F o r n e . Systems of Local Government in Europe and their Chief Executive Officers. P.6.

5. Official Gazette no. 249, year 2015, p. 16963-16988.

6. Since the entry into force of Law No. 8652, dated 31.7.2000, as amended, the organization and functioning of the Local Government was regulated by this law (author’s note).

7. It becomes necessary to draft a new framework law for the organization and functioning of LG in Albania, serving as the most important reference for changes in sectoral legislation and bylaws. Report on Draft law “On local self-government” p.1.

8. Cross-Sectoral Strategy for Decentralization and Local Governance 2015-2020, approved on July 29, 2015.

Decentralization and Local Governance 2023–2030.¹

The Law “On Local Self-Government” has fundamentally revised the basis of existing functions and competencies, adding new functions in the context of deepening decentralization and new policies in this field, such as agriculture, irrigation and drainage functions, fire services, local social services, forests and pastures, etc. It corrects the shortcomings and defects encountered during implementation². It introduces a new formulation in its title, changing the name from “local government” to “local self-government.” This name is harmonized with the terminology used by the Charter (ECLSG) and most European countries that refer to local government with the term “local self-government.” The change of name was also requested by the Council of Europe.³ It brings innovation in establishing a clear normative relationship between the central government and local self-government.⁴

The law has brought innovations in the framework of building transparency relations and the right of citizens to participate in local decision-making. A new separate chapter is dedicated to transparency and citizens’ rights. The law recognizes the right of “citizens’ initiative” to propose certain draft acts for decision-making by municipal councils. This law sanctions the obligation that functions are recognized to local government only through law and always with provisions for financial effects and sources of coverage. The law provides for a new typology of local government functions, classifying them into own functions and delegated functions. It introduces the concept of “asymmetric decentralization” of functions and powers. The recognition by law of this instrument allows the decentralization of functions and powers in a differentiated manner, adapting the transfer of functions to the real capabilities that different Local Government Units possess. The law introduces a new classification of Local Government Unit competences in performing functions into competences to “administer” and to “regulate” the functions recognized by law.

1. DCM No. 252/2023 “On the approval of the cross-sectoral strategy for decentralization and local governance 2023–2030, its action plan 2023–2025 and the indicator passport”.

2. CM’s report on the draft law “On local self-government”. p. 2.

3. Right there.

4. Right there.

3.2. *Local self-government units*

Local government units—municipalities and regions—are provided for in the Constitution.¹ They are established as “three units of local government in the same legal-constitutional position”.² The Albanian constitutional model resembles “the models of decentralized unitary states, which realize a less pronounced division of normative power between the state at the central level and local collectivities”.³ The Constitution “guarantees local government with two levels: the first level is the commune or municipality and the second level is the region”.⁴ It defines municipalities or communes as the basic units of local government⁵, which “are essential for the realization of local government [...] since they bear the main weight of the realization of functions within their jurisdiction. Without the basic unit, the realization of local self-government, as a form of democratic governance, is not possible.”⁶ This determines the priority of the first level over the second level⁷(the region). The Constitution does not define the region level⁸ but describes it as a unit consisting of several basic units of local government, “where regional policies are developed and implemented and where they are harmonized with state policy”.⁹ The main task of the region is to “bring local issues regulated by the bodies of the basic units of local government, within their jurisdiction, to a common political line and also to ensure that this political line is the same as state policies”.¹⁰

The Organic Law on Local Government only provides for municipalities and regions as units that “implement Local Government in the Republic of Albania”.¹¹ It defines the municipality as “the basic unit of Local Government that represents an administrative-territorial unity and a community of

1. Article 108/1 of the Constitution.

2. L. Omari, A. Anastasi “Constitutional Law”, p. 336, Tirana 2008.

3. Ibid., p. 332.

4. Decision of the Court of Appeal no. 19 dated 15.04.2015, pg 44 p.18.

5. Article 108/3 of the Constitution.

6. **Decision of the Court of Appeal no. 19 dated 15.04.2015, pg 45 p.18-19.**

7. See Constitutional Debate, volume 2, Tirana 2006, pp. 115-120.

8. Article 5/4 of Law 139/2015 stipulates that. “The district is a second-level unit of the VQV.”

9. Article 10/2.

10. Xh.Zaganjori, A. Anastasi, E. (Methasani) Çani. The Rule of Law in the Constitution of the Republic of Albania, p..278, Adelprint, Tirana 2011.

11. Article 5/1 of Law 139/2015.

inhabitants”.¹] It “consists of several administrative units, which group cities and/or villages, according to traditional, historical, economic and social ties”.² This law and Law 115/2014 “On the administrative-territorial division in the Republic of Albania” have abolished communes as units of Local Government.³ This issue became the subject of adjudication and decision-making in the Constitutional Court. The claim of the initiating subject of this constitutional trial included the assertion that Law 115/2014 “contradicts Articles 108/1 and 116 of the Constitution, as it suppresses the local unit commune provided for in the Constitution. [...] the law has suppressed an existing local unit provided for at the constitutional level, which cannot be avoided by law, even if it is approved by a qualified majority”.⁴

The Constitutional Court examined whether the commune is a concept protected by the Constitution⁵ and whether it was the intention of the constitution-maker for these basic units (communes/municipalities) to exist simultaneously.⁶ It stated: “the aim of the constitutional legislator was to provide the concept of the basic unit of local government, which can be a commune or a municipality. [...] Since the Constitution did not distinguish between communes and municipalities in terms of the manner of their creation, the functions they have, or the manner of termination of these bodies, the constitution-maker did not necessarily intend their simultaneous existence. On the contrary, had this been the intention, the constitution would have provided them with special powers, and even with special appointment/election or dismissal/termination procedures. [...] The Court, starting from the provision of the concrete constitutional provisions that provide for local government units, considers that there is no difference at the constitutional level between the commune and the municipality to necessarily justify their simultaneous existence as units of local government”.⁷

1. Article 5/ p 2 and 3 of Law 139/2015.

2. Article 6/ p 1 and 2 of Law 139/2015.

3. Law No. 115/2014 “ On the administrative-territorial division of local government units in the Republic of Albania”, article 1, point 1 provides that: “The local government units in the Republic of Albania are: a) municipalities - 61 b) regions - 12).

4. Decision of the Court of First Instance no. 19 dated 15.04.2015, pg 42 p.17.

5. Ibid., pg 45, p.18.

6. Ibid., p.46, p.19.

7. Ibid., pp. 47 and 48, p. 19-20.

The legal position of local government units, which implies the rights and responsibilities of these units, is defined in the organic law on local self-government, which, in fulfillment of the constitutional principle of local autonomy, sanctions the right of the bodies of these local government units to undertake initiatives of local public interest¹ in the territory of their jurisdiction on any matter that is not prohibited by law or that is not exclusively given by law to another state body.² This legal provision is in full compliance with the standards of the Charter related to the principle of local autonomy of local communities.

The rights and responsibilities of local government units are provided for in the Constitution (Articles 111 and 113) and in more detail in the law on local self-government (the right and responsibility of self-government³, ownership⁴, collection of income and expenditures⁵, exercise of economic activities⁶, the right to cooperation⁷, legal person status⁸, other rights⁹), detailing and defining the components of each. The constitutional and legal provision of these rights has led to the fulfillment of the standards of the Charter in terms of the compatibility of Albania's domestic legislation with the region, as a local government unit (second level), exercises its own specific functions and those delegated by the central government. The main function of the region is "the development and implementation of regional policies, their harmonization with state policies, at the regional level.

The region, as a self-government unit (second level) exercises its own specific functions and those delegated by the central government but the region also performs other functions provided by law. At the same time, the region performs functions delegated by the municipalities within its territory, according to agreements concluded between the parties. It also performs and exercises powers delegated by the central government,

1. Selimi, F. Local Governance - Comparative Reviews p.34 Vatra Prishtina 2008.

2. Article 8/1 of Law 139/2015.

3. (article 9/1.1 of law 139/2015)

4. (article 9/1.2)

5. (article 9/1.3)

6. (Article 9/1.4).

7. Article 9/1.5 of Law 139/2015 defines this right in the same terms as Article 10 of the CEDAW and its Explanatory Report.

8. (Article 9/1.6).

9. article 9/1.6).

according to the principles of exercising functions. The main function of the region is: “the development and implementation of regional policies, their harmonization with state policies, at the regional level”¹, but the region also performs other functions provided by law. At the same time, the region also performs functions delegated by the municipalities, within its territory, according to an agreement concluded between the parties. It also performs and exercises the powers delegated by the central government, according to the principles of exercising functions.²

The creation of new local government units, following the administrative-territorial division and the implementation of the requirements of the organic law on local self-government regarding the functions and responsibilities of these local government units, remains a challenge for the realization of the functions that these units had and those granted through this law.

The regional council as a representative body is provided for in the Constitution. However, it does not have “any superior position over the bodies of communes or municipalities. Article 113 of the Constitution presents the functions of the municipal, communal, and regional councils on an equal footing; therefore, it does not place them in any hierarchy among themselves”³.

The regional council is composed of representatives of the municipal councils that are part of the region and the mayors of these municipalities. The number of representatives of the municipalities in the regional council is determined in proportion to the population, including the mayor. The members of the regional council are not directly elected by the citizens of the region but by the municipal councils. This fact has been seen as a reason for the members of this council to avoid accountability, and both prefects and mayors have questioned the legitimacy of regional authorities.⁴

According to the Constitution and the organic law, the region is the unit where regional policies are developed and implemented and where they are harmonized with state policy, but regional government is still perceived as an “empty box,” since the functions of regional councils are not yet clearly defined.

Mayors of larger municipalities, in particular, are reluctant to accept

1. Article 31/1

2. Article 31 points 2 and 3.

3. Omari, L Anastasi, A. “Constitutional Law”, p. 337, Tirana 2008.

4. Report No. 27885-ALB Albania: Decentralization in Transition Volume I: Summary Report and Issues and Choices Matrix World Bank Document paragraph 20 August 2004.

being led by the regions or for the regions to mediate in their dialogue with central authorities, since they (mayors of municipalities) usually manage to gather a fairly large number of actors themselves.¹ The organic law on local self-government has not provided for changes in relation to the bodies of the region as a second-level local unit, nor in relation to their functions and competencies. Their role seems to be even weaker than before because, now in the conditions of consolidation of first-level local units and increasing their capacities in performing functions and exercising responsibilities, it appears that regions will not have the opportunity to exercise functions delegated by municipalities.

3.3. Administrative-territorial reform

Albania undertook and implemented a reform of administrative-territorial consolidation² by adopting Law No. 115/2014, “On the administrative-territorial division of local government units in the Republic of Albania,” thereby resolving the issues of fragmentation of local units.³

Territorial organization reforms (Administrative-territorial reforms, ATR) have been implemented through the process of territorial consolidation or territorial fragmentation. ATR has aimed at building local units of optimal size and scope that provide better service to citizens and enhance the credibility of local government.⁴ ATR, through consolidation or fragmentation, is not a mechanical division of the map of a state’s

1. Report No. 27885-ALB Albania: Decentralization in Transition Volume I: Summary Report and Issues and Choices Matrix. World Bank Document, paragraph 20 August 2004.

2. Territorial reorganization of LG is carried out through voluntary or imposed mergers of local units or through the creation of inter-municipal bodies.

3. Territorial organization in Albania since 1992 has led to the fragmentation of Albania’s territory into small municipalities and communes, giving more importance to the democratization of power than to efficiency in the provision of services and economic development.

4. To determine the administrative-territorial division, the criteria of functional area, distance from the center of the Local Government Unit, territorial continuity, number of inhabitants, historical tradition were used. The first level of Local Government was reorganized with 61 municipalities. The second level of LG did not change. Among the functional areas according to the concentric, polycentric or cross-border model, the polycentric model was adopted with the argument that it promotes the polycentric development of Local Government Units by strengthening several development centers, beyond the main urban center. (author’s note).

territory but rather defines the relationship between central government and local government, effectiveness and efficiency in the use of resources, and the development of local democracy.

Based on the experiences of other countries, it was certain that this reform would bring some significant problems.¹ The construction of local units with large geographical areas, compared to smaller units, would lead to decreased access of local administration to citizens due to geographical distance, loss of time, and increased financial expenses. At the same time, it would also lead to a weakening of the identity of local communities.² Serious studies on this phenomenon in countries that have experienced this have raised the concern that: “The liquidation of local administration makes it difficult for citizens to benefit from services and damages local social life. Moreover, these communities fear not only emotionally but realistically that they will not benefit from investments from new municipalities, as conflicts may arise between communities or former local units, now united in one unit”.³ In order to minimize these effects as much as possible, it was necessary to determine the most appropriate criteria, methodologies, and solutions.

The ATR consolidated first-level Local Government Units but did not change the regional administrative-territorial map, which has an extraordinary impact on the development of the country and very large implications for other political, electoral, and socio-economic reforms. Regional ATR is possible through the territorial consolidation of regions, but such a reform has not been proposed even 11 years after the adoption of the ATR. In any case, this reform must be well thought out, well consulted, and based on objective and politically consensual criteria.

3.4. Local government challenges in Albania's EU accession process.

Although local actors are generally excluded from enlargement negotiations⁴, local self-government structures are expected to play a

1. Sisk, Timothy D. and others. Democracy at the Local Level International Institute for Democracy and Electoral Assistance Pg.14 (IDEA) 2001 Series 4.

2. Swianiewicz, Paweł. Territorial Fragmentation as a Problem, Consolidation as a Solution? pg. 11. Territorial Consolidation Reforms in Europe Local Government and Public Service Reform Initiative.

3. Ibid.

4. James, Hughes. Sasse, Gwendolyn and Gordon, Claire. Europeanization and

key role in managing and implementing key objectives of enlargement policy-particularly in the areas of regional policy and structural funds, agriculture, and the environment.¹ Upon entry into the EU, 70% of community legislation in Albania will be implemented at the local level. Local self-government units will participate in horizontal cooperation among themselves as well as vertical cooperation with EU institutions. The period leading up to EU membership presents challenges, not only in meeting legal and institutional standards, but also in ensuring that these local units are organized, function, and perform comparably to units in other EU member states.

There is much to be done in this regard. The ATR and the institutional structuring of Local Government Unit bodies were expected to reduce budgetary expenditure on personnel and redirect resources toward capital investments, thereby increasing the quality of services provided to citizens at lower cost. In fact, Local Government Units have increased their expenditure on salaries, and capital expenditures have not experienced the expected increase. Although municipalities have had difficulties in extending and standardizing their services throughout the territory of the municipality, unfortunately it is observed that expectations have gone in the opposite direction. They have further inflated personnel, leading to increased funds allocated for salaries, while it is seen that expenditure on basic services and investments have increased to only modest levels.

The administrative units, which have replaced the merged Local Government Units, do not provide a better complement to the level of services that the former units provided because the law has centralized their functions and competencies to the municipality and has left them with only a few basic services. They serve as the municipality's information office in the territory of the administrative unit.

In the peripheral areas of municipalities, it appears that service standards have not improved in any of the previously decentralized functions. There are difficulties in controlling the territory, managing road infrastructure, sewage, and urban waste treatment. For these reasons, the government has been forced to intervene to address problems of water supply, urban waste treatment, and unauthorized construction.

Regionalization in the EU's Enlargement to Central and Eastern Europe: The Myth of Conditionality First published 2005 by Palgrave Macmillan, p. 68,

1. Ibid., p. 162,

In the territory of former municipalities that have not changed, the situation has not changed significantly, either positively or negatively. Functions and responsibilities are exercised at the same level as before, and services remain the same. Due to the lack of structured information and the fact that these municipalities are governed by new leaders, it is difficult to distinguish whether the quality of services is due to the level of management or the application of ATR and decentralization.

The pace of reform in local government during these years appears to have decreased compared to the first two years, when the very active role of the Government and the Assembly was observed with the approval of the ATR and the law on local self-government. Public attention and debate have shifted to other issues. Local self-government reforms are of no interest to the public, extinguishing the great debate during and after the approval of the ATR. There is no monitoring and periodic information on the steps being taken and what is happening with the fulfillment of obligations arising from these reforms.

In terms of meeting the standards of the Charter, these reforms have brought about important positive developments, although other standards have not yet been met. The constitutional and legal basis of local self-government meets the standards required by the Charter, a requirement that has been fulfilled for some time and is also sanctioned by the law on local self-government. It appears that the ATR, with territorial consolidation, does not ensure the implementation of the principle of subsidiarity so that services are closer to citizens, even though the law on local self-government has expanded the functions of Local Government Units. Administrative units do not have the competencies of merged Local Government Units. It remains a challenge for new Local Government Units to provide better services to citizens at lower costs through increased efficiency and effectiveness.

The fragmentation of the competences of Local Government Unit bodies continues even after the adoption of the law on local self-government. The competences of Local Government Unit bodies should be complete and exclusive, but this is not always the case. Territorial planning, although an exclusive competence of Local Government Units, continues to be carried out by central government structures.

The Albanian government has approved the Cross-Sectoral Strategy for Decentralization and Local Governance 2023–2030 (SNDQV 2023–2030)¹,

1. DCM No. 252/2023 “On the approval of the cross-sectoral strategy for decentralization

which contains several new elements dictated by the historic moment of the opening of negotiations for membership in the European Union in July 2022 and by the national context of development priorities that has brought digital transformation and governance into focus.

Albania must fully implement the *acquis Communautaire*, contextualizing compliance with all thematic chapters. This is a long, newly launched process that will bring about a radical political, economic, and social transformation of the country, with direct impact and benefit, but also the need for active engagement of local government. This transformation will continue to deepen and will also include local government as an integral part of e-government.

The ATR has remained “incomplete” after excluding the second level of local government (regions). It will be complete when the regional reorganization is finished to ensure an efficient local government model. A reform of regional organization should be initiated as the final phase of the ATR, which would meet the standards of the Charter and bring Albanian regions closer to the regions of the EU.

A parliamentary commission should be established for the reforms of local government and to supervise their implementation with a duration until the standards of the Charter are met. This commission, with an equal composition of the ruling party and the opposition, would have the mission of carrying out the reform of regional organization, integrating this reform with the ATR and the decentralization reform, as well as other structural reforms (Electoral Reform, Economic Development Reform, etc.). This parliamentary body would enable the comprehensive inclusion of the opinions of political and institutional factors, local communities, other interest groups, scientific and academic institutions, civil society, and would create an appropriate climate, avoiding the phenomena that occurred during the drafting of the ATR.

The parliamentary commission should be a permanent parliamentary structure for local government reforms and would ensure a relationship between the legislative branch and local government, which has been lacking in Albania thus far. The legislative body (the Assembly) needs to have a direct relationship with local government and not only through the central government or the individual activity of members of parliament with their constituents.

and local governance 2023–2030, its action plan 2023–2025 and the indicator passport”.

Literature

1. Boggero, Giovanni. Constitutional Principles of Local Self-Government in Europe. Brill, 2018. ISBN 9789004347243 (e-book).
2. Carter, C. and Pasquier, R. (2006) European integration and the transformation of regional governance: Testing the analytical purchase of 'Europeanisation'. : <https://www.researchgate.net/publication/242443756>
3. Constitution of the Republic of Albania. 1998
4. Crepaz, Katharina. 'Europe of the Regions: An Approach to Counter Separatist Tendencies? L'Europe en formation n° 379 Printemps 2016 - Spring 2016 <https://shs.cairn.info/revue-l-europe-en-formation-2016-1-page-24?lang=en>
5. Debati Kushtetues, vëllimi 2, Tiranë 2006, OSBE Tiranë.
6. Donat, Elisabeth. Meyer, Sarah. Abels, Gabriele (eds.) European Regions Perspectives, Trends and Developments in the 21st Century. ISBN 978-3-8376-5069-3. <https://doi.org/10.14361/9783839450697>
7. European Charter of Local Self-Government. https://www.coe.int/t/congress/sessions/18/source/charteeuropeenne_en.pdf
8. Guérot, Ulrike. Europe of the Regions: A Genealogy of an Ambiguous Concept. European Regions: Perspectives, Trends and Developments in the 21st Century, edited by Elisabeth Donat, Sarah Meyer and Gabriele Abels, Bielefeld: transcript Verlag, 2020, <https://doi.org/10.1515/9783839450697-014>
9. Himsworth, Chris. Treaty-Making for Standards of Local Government: The European Charter of Local Self-Government and its Possible Application Beyond Europe, University of Edinburgh School of Law Working Paper Series No 2011/24
10. Horta, Xavier B. Forne, Mariona T.. Systems of Local Government in Europe and their Chief Executive Officers. https://www.academia.edu/270218/SYSTEMS_OF_LOCAL_GOVERNMENT_IN_EUROPE_AND_THEIR_CHIEF_EXECUTIVE_OFFICERS
11. James, Hughes. Sasse, Gwendolyn and Gordon, Claire. Europeanization and Regionalization in the EU's Enlargement to Central and Eastern Europe The Myth of Conditionality First published 2005 by Palgrave Macmillan, ISBN 1-4039-3987-X
12. John, Peter. Local Governance in Western Europe. 2001 First Edition.

SAGE Publications Ltd. ISBN: 9780761956372

13. Law No. 115/2014 “On the administrative-territorial division of local government units in the Republic of Albania”.
14. Law no.8652/2000,” On organization and functioning of local government” shfuqizuar.
15. Law No. 139/2015 “On Local Self-Government”.
16. Loughlin, John. The Regional Question, Subsidiarity and the Future of Europe. 2005 Hart Publishing. ISBN 1-84113-488-0.
17. Marius, Guderjan. Verhels, Tom. Local Government in the European Union. Springer Nature Switzerland AG 2021. ISBN 978-3-030-74381-9.
18. Omari, L., Anastasi, A. *Constitutional Law*, Tirana 2008, ISBN 978-99956-01-41-6.
19. Otoyan, Oriano. “Euroregion as a mechanism for strengthening transfrontier and interregional co-operation: opportunities and challenges” Report(Venice Commission)[https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-UDT\(2010\)008-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-UDT(2010)008-e)
20. Panara, Carlo and Varne, Michael. “Local Government in Europe, Routledge 2015. ISBN 9781138930049.
21. Report No. 27885-ALB Albania: Decentralization in Transition Volume I: Summary Report and Matrix of Issues and Options World Bank Document, paragraph 20, August 2004.
22. Explanatory Report of the Council of Ministers on the draft law “On Local Self-Government”.
23. Røiseland, A. Local Self-Government or Local Co-Governance? Lex Localis - Journal Of Local Self-Government, Vol. 8, No. 2, April 2010.
24. Selcen. Öner. Relations between the EU and sub-regions and their impact on the European Nation-State. http://www.publikon.hu/application/essay/39_2.pdf
25. Selimi, F. *Local Governance – Comparative Analyses*, Vatra, Prishtina 2008. January 2008. ISBN: 978-9951-441-43-8. <https://www.researchgate.net/publication/331071749>
26. Sisk, Timothy D. and others. Democracy at the Local Level International Institute for Democracy and Electoral Assistance (IDEA) 2001 Series 4. <https://www.idea.int/sites/default/files/publications/democracy-at-the-local-level-handbook.pdf>

27. Cross-Sectoral Strategy for Decentralization and Local Governance 2015–2020, approved on 29 July 2015.
28. Swianiewicz, Paweł. Territorial Fragmentation as a Problem, Consolidation as a Solution? Territorial Consolidation Reforms in Europe Local Government and Public Service Reform Initiative
29. Constitutional Court Decision No.19/2015.
30. Constitutional Court Decision No. 29/2006.
31. Decision of the Council of Ministers No. 252/2023 “*On the approval of the cross-sectoral strategy for decentralization and local governance 2023–2030, its 2023–2025 action plan, and the indicator passport.*”
32. Zaganjori, Xh., Anastasi, A., Çani, E. *The Rule of Law in the Constitution of the Republic of Albania.* p. 262, Tirana 2011.

EXTERNAL PRESSURES, INTERNAL REALITIES: THE 2016 ALBANIAN JUDICIAL REFORM AND THE MULTIFACETED IMPACT OF INTERNATIONAL ORGANIZATIONS ON RULE OF LAW DEVELOPMENT

PhD. Nertil BËRDUFI¹, PhD (C).
Jetnor KASMI²

Abstract

This paper examines the dual role of international organizations (IOs) and developed countries in shaping rule of law (RoL) reforms in developing states, critiquing the “false paradigm” of externally imposed governance models and emphasizing the interplay between international influence and domestic authorship. Through a case study of Albania’s 2016 judicial reform—a process driven by EU conditionality and U.S. support—the study argues that while IOs are indispensable in overcoming institutionalized corruption and political resistance, sustainable progress requires reconciling external accountability mechanisms with local ownership. Despite measurable successes, including dismissing corrupt judges and establishing anti-corruption bodies, the reform’s legitimacy and pace remain contested due to technocratic overreach, performative compliance by elites, and societal skepticism of foreign-driven agendas. The paper concludes that RoL promotion must navigate the tension between international norms and contextual realities, prioritizing hybrid frameworks that empower domestic reformers without replicating neo-colonial dependencies.

Keywords: *Rule of Law (RoL), International Organizations (IOs), False Paradigm, EU Accession Conditionality, Corruption in Post-Communist*

1. Assistant Professor at Western Balkans University, Tirana-Albania

2. PhD (C) University of Duisburg-Essen, Germany

Introduction

The promotion of the rule of law (RoL) in transitioning democracies has often been shaped by what can be described as a “false paradigm”—a conceptual and policy framework that assumes Western governance models can be universally transplanted, irrespective of the recipient country’s historical, cultural, and institutional contexts. The term “false paradigm” originates from development economics, where it was used to critique the failure of development strategies in the Global South. These strategies, often designed by Western economists and international organizations, were grounded in an incorrect understanding of the drivers of development. For example, they frequently overemphasized capital accumulation while neglecting the critical importance of social structures and institutional transformation (Weeks, 2012).

In the context of RoL reforms, this paradigm manifests through donor-driven efforts prioritizing the formal aspects of legal and constitutional engineering, such as judicial independence, transparency mechanisms, and anti-corruption frameworks, while giving insufficient attention to local political dynamics, informal institutions, or societal norms. Although the development models promoted by Western international organizations are not inherently flawed and often provide valuable technical and normative guidance, their effectiveness is significantly diminished when local ownership, legitimacy, and contextual adaptability are ignored. For rule of law initiatives to succeed, they must be sensitive to the complexities of local governance ecosystems and calibrated to support endogenous processes of legal and institutional development (Klabbers, 2015). Scholars like Mendelski (2015) have critiqued this approach, arguing that it prioritizes technical compliance over systemic transformation, frequently producing superficial reforms that fail to dismantle entrenched informal power dynamics or build sustainable institutional legitimacy. Mendelski emphasizes that rule of law reforms exported through development aid tend to emphasize legal transplants, producing “organizational isomorphism” reforms that look effective on paper but fail in practice due to a lack of contextual adaptation (Mendelski, 2015).

Albania's 2016 judicial reform, widely celebrated as a landmark initiative in the Western Balkans, epitomizes this tension between international design and domestic implementation (European Commission, 2024). On the one hand, it was catalyzed by European Union (EU) accession conditionality—primarily through Chapters 23 and 24 of the *acquis communautaire*, which pertain to judiciary reform and fundamental rights—and reinforced by high-level diplomatic pressure from the United States, mainly through the U.S. Embassy in Tirana and USAID/OPDAT (Nela, 2021). On the other hand, the reform also revealed the paradox at the heart of externally driven reform processes: while international organizations (IOs) provided indispensable leverage to overcome deeply embedded political resistance and institutional dysfunction, the reform's long-term legitimacy and sustainability remain contested. Concerns have emerged over technocratic overreach, elite strategies of performative compliance, and societal skepticism toward foreign-driven agendas, particularly in a country with a long history of foreign interference (Feta & Rruplli, 2025).

Albania's political and legal trajectory provides a compelling case study of the interplay between international influence and domestic reform dynamics. Following the collapse of its totalitarian communist regime in 1991, Albania embarked on a protracted and often uneven democratization process. The 1998 Constitution was a milestone in formalizing the separation of powers and enshrining judicial independence. However, the post-communist judiciary remained plagued by politicization, rampant corruption, and a lack of professional standards. As early as the 2000s, EU and U.S.-funded programs attempted to strengthen the rule of law in Albania through training, infrastructure investment, and legal harmonization. Nonetheless, political elites—shielded by immunity laws and patronage networks—routinely undermined prosecutorial independence and judicial autonomy. Public trust in the judiciary remained consistently low, with surveys showing that most Albanians view courts as corrupt and subservient to political and economic interests (Transparency International, 2016; Freedom House, 2017).

By the mid-2010s, pressure for reform reached a critical juncture. The EU, facing growing concerns about enlargement fatigue and the credibility of its normative agenda, made judicial reform in Albania a litmus test for further Western Balkans integration. In its 2016 progress report, the European Commission noted that the integrity of the Albanian judiciary

was a fundamental obstacle to the country's EU accession bid (European Commission, 2016). The United States, similarly, viewed judicial dysfunction as a significant impediment to democratic consolidation and a fertile ground for organized crime. These pressures culminated in the Albanian Parliament's adoption of the 2016 Judicial Reform Package, which included sweeping constitutional amendments (Law no. 76/2016) and new legislation (Laws no. 84/2016, 111/2016, 115/2016) that restructured the judiciary from the ground up.

At the heart of this reform was the vetting process—a systematic review of the professional and ethical qualifications of all sitting judges and prosecutors. Overseen by the Independent Qualification Commission (IQC) and monitored by the International Monitoring Operation (IMO), the process aimed to eliminate corrupt, incompetent, or politically compromised officials. The IMO, a unique institutional innovation composed of international experts nominated by the EU, OSCE, and Council of Europe, was embedded directly in Albania's constitutional framework (Austrian Development Agency, 2023). This structure reflected a profound lack of trust among the Albanian public toward their own institutions and international partners regarding the domestic political elite's commitment to genuine reform.

The political context in which this reform unfolded was deeply polarized. While both ruling and opposition parties publicly endorsed judicial reform, its implementation was marked by sharp disputes, delays, and accusations of political manipulation. In March 2017, the opposition boycotted parliament, accusing the government of links to organized crime and demanding guarantees of transparency in the vetting process. The subsequent political crisis was only resolved through direct mediation by U.S. and EU diplomats, leading to a June 2017 agreement that allowed early elections and unblocked parliamentary procedures (Westminster Foundation for Democracy, 2019). Meanwhile, high-profile corruption cases, such as the refusal of parliament to lift the immunity of former Interior Minister S.T., accused of narcotics trafficking, reinforced public skepticism regarding the political class's sincerity in confronting impunity (Erebara, 2018). The reform also carried significant social and institutional costs. The vetting process led to the dismissal or resignation of more than 60% of sitting judges and prosecutors between 2018 and 2023, severely disrupting court functionality and exacerbating existing case backlogs

(Open Data Albania, 2023).

The establishment of new bodies such as the High Judicial Council (HJC), High Prosecutorial Council (HPC), and Special Anti-Corruption Structure (SPAK) introduced necessary institutional checks and new prosecutorial capacities. However, their operations have been hindered by budget constraints, limited personnel, and ongoing political interference. Civil society organizations and legal professionals voiced concerns that the vetting process, while necessary, was insufficient in the absence of broader governance reforms, such as transparent party financing, campaign regulation, and parliamentary accountability.

This paper argues that sustainable RoL development in transitional democracies like Albania requires hybrid frameworks that balance international accountability mechanisms with genuine domestic ownership. Rather than relying on externally imposed templates or short-term technical fixes, reform strategies must foster internal constituencies for change—empowering reformist judges, prosecutors, civil society watchdogs, and public opinion. While international organizations can play a pivotal role in creating windows of opportunity, lasting transformation hinges on addressing the deeper political and societal factors that reproduce dysfunction.

To that end, the paper is structured as follows: first, it engages the broader literature on rule of law promotion and conditionality, situating the Albanian experience within theoretical debates about international influence and domestic agency. Second, it outlines the research methodology and data sources employed. Third, it provides a detailed account of the architecture, sequencing, and implementation of Albania's 2016 judicial reform. Fourth, it offers a comparative analysis with regional cases—particularly Croatia and Serbia—to highlight variations in reform outcomes. Fifth, it critically discusses the reform's successes, limitations, and unintended consequences. Finally, it concludes with reflections on the policy and scholarly implications of externally supported RoL reform in fragile democracies.

Literature Review

International organizations (IOs) have long been characterized as *norm entrepreneurs* and *structural influencers* in promoting the rule of law (RoL) across developing and transitional democracies. As norm entrepreneurs, bodies such as the United Nations, the European Union, and the World Bank have actively constructed and disseminated RoL as an indispensable prerequisite for political stability, economic development, and regional integration. Through policy frameworks like the UN's Sustainable Development Goals, the EU's *acquis communautaire*, and the World Bank's governance indicators, IOs define what constitutes a "modern" judicial system—emphasizing independence, transparency, and accountability—and condition access to funding, membership, or technical assistance on adherence to these norms.

Yet this decisive normative role has elicited the "false paradigm" critique drawn from dependency theory, which contends that IO-driven reforms often amount to the imposition of neoliberal, Western-centric governance blueprints, with insufficient regard for local histories, power structures, and socio-political dynamics. Carothers (2006) and Mendelski (2015) warn that such template reforms—whether institutionalizing independent judicial councils or mandating asset disclosure regimes—can become superficial exercises in compliance when they fail to engage domestic stakeholders or account for entrenched patronage networks. Thomas Carothers (2003) highlights that rule-of-law assistance operates from a disturbingly thin base of knowledge, lacking a deep understanding of how legal change occurs and the real effects of such changes. He warns that template reforms, such as institutionalizing independent judicial councils or mandating asset disclosure regimes, can become superficial exercises in compliance when they fail to engage domestic stakeholders or account for entrenched patronage networks.

In Albania, for example, the EU's persistence on a centralized High Judicial Council (HJC) modeled on Western European counterparts met resistance from political elites accustomed to informal influence over judicial appointments and disciplinary proceedings. Although the HJC's reconstitution under Law No. 115/2016 represented an institutional advance on paper, the absence of complementary measures to weaken patronage ties limited its capacity to effect genuine independence (Law

No. 115/2016). This scenario exemplifies Carothers's challenges, where externally imposed models clash with domestic political realities. Further elaborating on these challenges, Carothers (2006) emphasizes the need for a more nuanced understanding of promoting the rule of law abroad. He argues that reforms risk being ineffective or counterproductive without a comprehensive grasp of local contexts. Additionally, Carothers and de Gramont (2013) discuss the inherent political nature of development aid, asserting that ignoring the political dimensions of assistance can lead to misguided strategies. They advocate for a more politically informed approach to development assistance, recognizing that technical solutions alone are insufficient to address deeply rooted governance issues.

In examining the shortcomings of international organizations (IOs) in implementing the rule of law, Krygier (2004) challenges the oversimplified dichotomies—such as universal versus local or individual versus state—often underpinning IOs' rule of law initiatives. He argues that these binary frameworks fail to capture legal systems' complex, context-dependent nature, leading to ineffective reforms. He further emphasizes that the rule of law is not a monolithic concept but a multifaceted ideal that must be understood within specific cultural and historical contexts. He critiques the tendency of IOs to apply standardized legal models across diverse societies without considering local nuances, which can result in reforms that are disconnected from the communities they aim to serve (Krygier, 2004). This perspective is particularly relevant when analyzing the limitations of IO-led legal reforms prioritizing form over function, potentially undermining the principles they intend to uphold. Krygier emphasizes that the rule of law is not a one-size-fits-all concept but must be understood within specific cultural and historical contexts. Applying this perspective to Albania suggests that while international support was crucial, a deeper engagement with Albania's unique legal traditions and societal dynamics might have led to more sustainable reforms (Krygier, 2004). Moreover, Weeks (2012) "On the irreconcilable inconsistencies of neoclassical macroeconomics: a false paradigm" critically examines the foundational assumptions of neoclassical macroeconomics, highlighting internal contradictions and advocating for alternative economic frameworks. It is particularly relevant for discussions on the limitations of prevailing economic paradigms in shaping policy reforms, such as those related to the rule of law and justice systems (Weeks, 2012)

Sustainable RoL promotion also hinges on *state actor accountability*—the capacity of domestic institutions and officeholders to internalize and uphold accountability norms rather than treating them as external mandates. In post-communist Albania, decades of systemic judicial corruption, politicized court rulings, and the infiltration of organized crime had eroded public trust in the judiciary. The 2016 reform sought to redress these deficits by linking judicial vetting to EU accession negotiations, thereby aligning individual career prospects with demonstrated integrity. It aimed to establish merit-based selection processes, require thorough asset and background checks for judges and prosecutors, and institute independent oversight bodies such as the HJC and the Special Anti-Corruption Structure (SPAK). However, for accountability to be truly internalized, domestic actors must perceive these mechanisms as legitimate and congruent with national legal traditions. Therefore, there is a need for sustained domestic buy-in and supportive legal culture because even the most rigorously designed institutions struggle to embed long-term behavioral change. Furthermore, Domestic agency and elite behavior further complicate RoL promotion. Börzel and Schimmelfennig (2017) emphasize how political elites in transitioning states like Albania engage in “performative compliance,” adopting reforms rhetorically while resisting substantive change. For instance, Albania’s delayed implementation of vetting and political meddling in SPAK investigations reflect this dynamic.

This body of scholarship underscores a central tension: IOs can provide the catalytic impetus and technical templates for reform, yet the durability and depth of RoL improvements depend on context-sensitive adaptation, domestic ownership, and complementary reforms that address the broader political economy of governance. Furthermore, emerging scholarships advocate hybrid models that balance international accountability with local ownership. The EU’s gradual shift from direct oversight to mentorship in Albania’s vetting process—training domestic evaluators while maintaining progress benchmarks—offers a tentative example (European Commission, 2023). Integrating civil society into anti-corruption monitoring is essential, as these organizations serve as independent checks and balances within democratic governance. Their involvement aligns with broader calls for “localized” reform processes that actively engage grassroots actors and communities. Albania’s experience underscores the potential and the limitations of externally driven rule of law (RoL) initiatives, pointing

to the need for hybrid models that combine international accountability standards with locally rooted reform strategies. Strengthening civil society enhances transparency and public oversight and ensures that reforms are contextually relevant and socially sustainable (Carothers & de Gramont, 2013).

Methodology

This study employs a qualitative case-study design, using process tracing to chart the sequence of Albania's 2016 constitutional amendments through to the vetting outcomes of 2018–2023. Primary materials—including the relevant constitutional amendment and implementing laws, official European Commission enlargement reports, Constitutional Court rulings, and statements from OSCE and Council of Europe missions—were analyzed alongside secondary sources such as Transparency International's Corruption Perception Index, Freedom House assessments, and scholarly critiques of externally driven rule-of-law reforms. Through thematic coding and source triangulation, the analysis uncovers how EU conditionality and U.S. diplomatic pressure shaped legislative action, the establishment of oversight bodies, and patterns of judicial dismissals. Recognizing that public records cannot fully capture informal negotiations, the study recommends targeted interviews with key stakeholders for future research.

The Role of IOs as Norm Entrepreneurs and Structural Influencers

International organizations (IOs) function as norm entrepreneurs by promoting the rule of law (RoL) frameworks rooted in Western liberal democratic ideals, often positioning these as universal prerequisites for development and stability. However, this approach perpetuates a “false paradigm,” a critique grounded in dependency theory and post-colonial scholarship, prioritizing institutional mimicry over contextual adaptation, exacerbating structural inequalities and legitimacy deficits. The EU, World Bank, and other IOs disseminate norms through technical assistance programs that transplant standardized institutional models, such as centralized judicial councils or anti-corruption bodies, into vastly different socio-political landscapes. The EU's role in Albania exemplifies technical assistance as a norm-diffusion tool. Through programs like EURALIUS

IV, the EU provided expertise on judicial independence, anti-corruption frameworks, and institutional design, mirroring its broader strategy of “Europeanizing” candidate states’ governance structures (European Commission, 2016). Similarly, the U.S. Agency for International Development (USAID) and Office of Overseas Prosecutorial Development, Assistance and Training (OPDAT) supported prosecutorial training and legislative drafting, framing these efforts as pathways to modern justice systems (U.S. Department of State, 2021). Such technical interventions are not neutral; they reflect Western liberal democratic ideals, positioning judicial centralization, transparency, and meritocracy as universal norms. Yet these template reforms often clashed with Albania’s informal patronage networks, where political elites historically controlled judicial appointments through clan-based or political ties. The HJC’s delayed implementation allowed ruling parties to manipulate interim appointments, undermining its independence from the outset. At the same time, the Special Anti-Corruption Structure (SPAK), designed to emulate Italy’s anti-mafia prosecutors, shows promising signs in combating corruption and organized crime. However, the political influence over the judiciary in corruption cases is still a concern (Freedom House, 2023).

EU conditionality has played a critical role in driving judicial reforms in Albania by linking financial aid and accession prospects to fulfilling procedural benchmarks. This external pressure helped break political deadlock, leading to constitutional amendments and the adoption of vetting laws aimed at purging corruption from the judiciary (Kmezić & Bieber, 2017). However, while conditionality has proven effective in triggering formal legislative and institutional changes, it has also encouraged performative compliance, where reforms are implemented on paper but lack meaningful execution. Albania exemplifies the complexities of this dynamic: although the EU has successfully pushed for structural reforms like the vetting process, the actual implementation has faced significant political resistance and administrative shortcomings, limiting the reforms’ long-term effectiveness (Transparency International, 2023).

Conditionality is a powerful tool of normative influence by connecting financial aid, trade privileges, or accession opportunities to compliance with specific benchmarks. In Albania’s case, EU accession conditionality was pivotal in overcoming entrenched political inertia. The European Union explicitly linked the opening of accession negotiations to the

passage of constitutional amendments and the creation of independent vetting institutions, strategically leveraging Albania's aspiration for EU membership to enforce judicial reforms (European Commission, 2016). Complementing this pressure, U.S. conditionality—including the threat of visa bans for obstructive political figures—further compelled Albanian elites to act. However, as Börzel and van Hüllen (2014) caution, such top-down conditionality often fosters a culture of transactional compliance, where domestic actors implement reforms instrumentally rather than embracing their normative underpinnings.

External monitoring mechanisms help institutionalize accountability, with actors such as the Venice Commission, OSCE, and the International Monitoring Operation (IMO) ensuring that reforms adhere to international standards. The IMO in Albania, composed of international judges overseeing the vetting process, exemplifies this model of procedural oversight. While these mechanisms bolster transparency and procedural legitimacy, they also reinforce structural asymmetries, with donor states and international organizations setting reform agendas often aligned with geopolitical goals, such as EU and NATO enlargement, rather than local priorities (Pech, 2020). As a result, domestic voices expressing concern over the pace, sequencing, or social consequences of reforms are often sidelined.

Critics of this externally driven reform paradigm argue that it imposes institutional models ill-suited to local political and social realities. Based on French and German legal systems, the EU's advocacy for centralized judicial councils clashed with Albania's entrenched informal patronage networks, which historically shaped judicial appointments and political loyalty. As Mendelski (2015) points out, such "template reforms" prioritize institutional mimicry over transformative change, ignoring the power dynamics perpetuating systemic dysfunction. Similarly, technocratic fixes like the World Bank's push for digitized court systems may improve bureaucratic efficiency but fail to tackle the root causes of corruption, such as inadequate judicial salaries (approximately €800/month), which leave judges vulnerable to bribery (Transparency International, 2023).

Moreover, the EU has struggled to address the deeper socio-political factors that sustain corruption and undermine institutional trust, such as patronage networks, inadequate judicial salaries, and the persistence of informal norms that normalize bribery. While technocratic solutions—

like digitizing court procedures—have improved efficiency metrics, they often overlook the structural drivers of dysfunction. Notably, only 24% of Albanians perceive the judiciary as independent, with even lower trust levels in rural areas (19%) compared to urban populations (34%), partly due to the exclusion of traditional informal dispute resolution systems (Transparency International, 2023). These findings suggest that while conditionality remains a necessary instrument for reform, it must be applied cautiously and supported by robust, context-sensitive benchmarks to ensure genuine compliance, monitor progress, and prevent backsliding.

The false paradigm's structural biases emerge from IOs' domination by developed states, which steer agendas toward geopolitical interests. Albania's reform urgency aligned with Western goals of Balkan stabilization and EU/NATO expansion, sidelining local concerns about reform pacing. Rushed vetting timelines dismissed 140 judges by 2023 but caused staffing shortages that paralyzed courts, with civil case resolution times up to 1,250 days. Similarly, the World Bank's focus on court digitization ignored rural access barriers, entrenching urban-rural divides. These outcomes underscore the paradox of externally driven RoL promotion: while dismantling overt corruption, prescriptive models often replicate dependencies by neglecting informal power structures and cultural logics. Sustainable reform demands hybrid frameworks that marry international norms with local adaptations—pairing vetting with salary reforms, recognizing select *kanun* practices in mediation, or integrating civil society oversight. Without such contextualization, the false paradigm risks perpetuating cycles of imposition and resistance, entrenching the very inequalities it seeks to resolve.

In sum, IOs act as norm entrepreneurs and structural influencers, reshaping domestic governance through technical, conditional, and monitoring frameworks. Yet their impact remains contingent on reconciling universal norms with localized realities—a tension starkly evident in Albania's contested judicial reform.

The Architecture and Phases of Albania's 2016 Judicial Reform

Albania's 2016 judicial reform unfolded through a carefully sequenced series of constitutional amendments, legislative enactments, institutional formations, and implementation phases, each influenced by sustained external pressure and domestic political negotiations. The process began

in October 2016 with Amendment no. 76/2016 to the Constitution, which enshrined the principle of transitional reevaluation (vetting) of all sitting judges and prosecutors for the first time. By embedding the International Monitoring Operation (IMO) into the constitutional annex, Albania's political elite signaled that purely domestic mechanisms were deemed insufficient to guarantee impartiality and integrity in the judiciary. In the subsequent months, Parliament passed three critical laws. Law no. 84/2016 established the grounds and procedures for vetting, which include asset verification and criminal background checks. Law no. 111/2016 created the Special Anti-Corruption Structure (SPAK) and the National Bureau of Investigation (NBI) to address high-level corruption and organized crime. Finally, Law no. 115/2016 restructured the High Judicial Council (HJC) and the High Prosecutorial Council (HPC), granting them authority over appointments, promotions, and disciplinary oversight.

The operational phase commenced mid-2017 after months-long delay caused by opposition boycotts and a Constitutional Court referral. Under a May 2017 EU–U.S. agreement brokered by Federica Mogherini and Hoyt Brian Yee, the vetting bodies—the Independent Qualification Commission (IQC) and its supporting Independent Qualification Board (IQB)—were finally constituted. These bodies combined nine domestic legal professionals with six international experts nominated by the EU, OSCE, and the Council of Europe. At the same time, the IMO, led by G.R-C., provided external oversight of hearings, evidence evaluation, and public reporting (European Western Balkans, 2017). The mixed composition of these panels aimed to blend local legal expertise with international standards, yet it also provoked domestic concerns about sovereignty and cultural misunderstanding.

The Independent Qualification Commission (KPK), Albania's first-level vetting body for judges and prosecutors, officially concluded its seven-year mandate after evaluating 805 magistrates. As of January 1, 2025, all unresolved cases previously overseen by the Public Commissioners are to be transferred to the Special Structure Against Corruption and Organized Crime (SPAK), led by A.D. The vetting process has been a cornerstone of Albania's judicial reform, aimed at restoring public trust by assessing the professional qualifications, moral integrity, and financial background of judicial officials. Of those evaluated, 268 magistrates were dismissed, while approximately 100 resigned preemptively, anticipating they would not meet the criteria. Although widely regarded as a success by international

partners, including the European Union, the reform has faced domestic political resistance (Albanian Times, 2024)

Simultaneously, SPAK and the National Bureau of Investigation (NBI) launched probes into high-profile corruption cases involving former ministers, former president, mayors, parliamentarians and powerful business figures, challenging longstanding impunity. SPAK's mission to combat corruption and impunity enjoys widespread public support. Albanians have long yearned for justice, and when high-profile figures that were long seen as untouchable began to face investigations, there was a sense of long-overdue accountability. However, over time, alongside the good news, a pattern of troubling allegations began to emerge—stories of arbitrary phone confiscations, aggressive, indeed coercive, questioning tactics, and a broader atmosphere of fear that carried uncomfortable echoes of dark times Albanians had begun to forget (Albanian Times 2025). SPAK's evolution from a fledgling institution into one capable of confronting the political elite signals an unprecedented shift in Albania's rule-of-law landscape. As Gunjic (2022) notes, this phase of reform reflects both the transformative potential of internationally backed institutions and the enduring challenges of institutionalizing impartial judicial practices in a politically polarized environment.

Reconciling External Pressures with Domestic Realities

Albania's ongoing struggle with systemic corruption is deeply rooted in its authoritarian past and the incomplete transition to democratic governance. Under Enver Hoxha's communist regime (1944–1985), the judiciary operated as a tool of the Party of Labor, prioritizing ideological conformity over legal autonomy. Judges were appointed to uphold state control and suppress dissent, embedding a culture where the rule of law served political power rather than public accountability. After the collapse of communism in 1991, this legacy endured. Weak institutional frameworks and the absence of comprehensive transitional justice mechanisms allowed former communist elites and emergent political actors to capture the judiciary, reinforcing elite influence and legal impunity (Kasmi 2024).

Judicial inefficiency further compounded the corruption problem. Civil disputes, especially property-related cases, routinely took 8–10 years to resolve, and administrative delays stifled economic development. Citizens, disillusioned with the formal justice system, turned into informal alternatives:

rural communities often relied on *kanun*-based customary law, while urban residents increasingly engaged in bribery to expedite court decisions. These dynamics significantly undermined public trust in state institutions and the rule of law (Joireman, 2014). The 1997 collapse of nationwide pyramid schemes, which triggered violent unrest and over 2,000 deaths, vividly demonstrated the fragility of state oversight and the pervasive capture of regulatory institutions (Beck, 1997).

The 2016 judicial reform initiative marked a watershed moment, catalyzed by mounting public dissatisfaction and intense international pressure. While international organizations (IOs) were instrumental in pushing forward reforms aimed at dismantling elite capture, they also risked undercutting national legitimacy. The European Union’s conditionality mechanism, particularly through Chapters 23 and 24 of the *acquis communautaire*—functioned as both a technical benchmark and a political instrument. The EU directly linked progress in accession negotiations to the adoption of sweeping constitutional and legal reforms in 2016, warning that any delay would “jeopardize the very credibility of the process” (European Commission, 2016). This was reinforced by U.S. involvement through USAID and OPDAT, and notably by Ambassador D.L., who declared that the United States “If this reform fails, you, the members of this committee, will dishonor the people who elected you. And you will dishonor your relationship with the United States and the European Union,” (Erebara, 2016). Such a rare alignment between international and domestic actors enabled political consensus and opened the policy space for reform-minded coalitions to act.

The reform process began with Constitutional Amendment No. 76/2016, which introduced a transitional vetting system for all sitting judges and prosecutors. To ensure credibility, Albania integrated the International Monitoring Operation (IMO)—comprising international legal experts from the EU, OSCE, and Council of Europe—into the constitutional framework (Venice Commission, 2016). This was followed by three pivotal laws:

- Law No. 84/2016 on the vetting process,
- Law No. 111/2016 establishing the Special Anti-Corruption Structure (SPAK) and the National Bureau of Investigation (NBI), and
- Law No. 115/2016 restructuring the High Judicial Council (HJC) and High Prosecutorial Council (HPC).

Despite delays caused by political opposition and legal challenges in the Constitutional Court, the process was ultimately launched in 2017 through an EU-U.S.-facilitated agreement. The vetting bodies, the Independent Qualification Commission (IQC) and the Special Appeal Chamber (IQB) comprised a hybrid of national and international professionals. The IMO, led by G. R-C., offered oversight and legitimacy while ensuring adherence to EU standards. Nonetheless, this model sparked debates about national sovereignty and the transplanting of Western legal models into post-communist contexts (Elbasani & Šabić, 2017).

Between February 2018 and November 2023, Albania's judicial vetting process—an integral part of the country's EU-supported justice reform—resulted in the dismissal or resignation of a significant number of judges and prosecutors. According to data from Open Data Albania, out of 702 individuals vetted by the Independent Qualification Commission (IQC), 152 (21.7%) were dismissed, including 92 judges, 58 prosecutors, and 2 legal assistants. In addition, 109 individuals (15.5%) resigned during the vetting process, comprising 63 judges, 28 prosecutors, 12 legal assistants, 4 legal advisers, and 2 inspectors. In total, 261 members of the judiciary either resigned or were dismissed, demonstrating the depth of the reform effort (Open Data Albania, 2023). Further data from the European External Action Service (EEAS) shows that, as of October 21, 2024, the IQC had issued 267 dismissal decisions and registered 113 resignations. These developments reflect Albania's continued commitment to enhancing judicial integrity by removing officials deemed unfit due to issues such as corruption, lack of professionalism, or unjustified wealth. While the process has been disruptive, it is considered essential to restoring public confidence and aligning Albania's judiciary with EU standards, particularly in the context of its accession negotiations (European External Action Service, 2024).

In parallel, SPAK and the NBI began prosecuting high-level corruption and organized crime. Several former ministers and prominent business figures were indicted. However, the agencies faced critical resource shortages and political obstruction. One stark example was Parliament's 2017 refusal to authorize the arrest of former Interior Minister S.T., despite credible evidence from Italian authorities implicating him in a narcotics trafficking ring (BIRN, 2018). Such episodes raised concerns about selective justice and continued elite interference.

While international involvement succeeded in dismantling overt judicial capture, the technocratic nature of the reform produced unintended consequences. The EU-backed “judicial map” reform closed many local courts, compelling citizens in rural areas to travel long distances to access basic legal services—exacerbating social and regional disparities (Kasmi 2023). Furthermore, the BTI 2024 Albania Country Report similarly notes that by 2022, only half of the targeted 800 judges and prosecutors had been vetted. Despite new institutional structures, backlogs remain high, and high-level prosecutions are still rare. Political pressure and budgetary dependency continue to hinder the judiciary’s full autonomy (BTI, 2024).

The Albanian experience crystallizes broader theoretical tensions. IOs act as both norm entrepreneurs and structural influencers, yet overly prescriptive interventions risk entrenching dependency and performative compliance. These outcomes highlight broader theoretical concerns. While IOs act as norm entrepreneurs and structural facilitators, excessively prescriptive approaches can entrench dependency and produce superficial compliance. Thomas Carothers’ (1999) critique of the “rule of law orthodoxy” is particularly relevant: Albania’s reforms achieved formal benchmarks but often lacked deep contextualization and domestic ownership. Effective, sustainable reform requires adaptive governance that combines international norms with local conditions and prioritizes measurable outcomes such as access to justice and institutional trust over formalistic progress indicators. For sustainable RoL development, recalibration is imperative. IOs must foster adaptive governance ecosystems where international standards are interpreted through local lenses, and conditionality is tied to locally measured outcomes—access to justice, service delivery, and public trust—rather than mere legislative checkmarks (Börzel & Schimmelfennig, 2017).

Mendelski (2015) contends that sustainable reforms require *outcome-based conditionality*, tying progress to measurable improvements in service delivery, judicial efficiency, and public trust—metrics the EU’s enlargement reports consistently sideline. Börzel, T. A., & Schimmelfennig, F. (2017) extend this analysis to EU conditionality, arguing that RoL promotion in candidate states like Albania often incentivizes “box-ticking” compliance, where reforms are adopted symbolically to satisfy accession requirements without genuine institutional change. Their work aligns with Transparency International’s (2016, 2023) findings on Albania,

which reveal persistent gaps between legislative reforms (e.g., vetting laws) and tangible reductions in corruption. The European Commission's annual progress reports (2016–2023) corroborate this disconnect, noting Albania's "good progress" in formal institutional restructuring alongside enduring challenges like political interference in judicial appointments. For Albania, this would mean expanding benchmarks to include reductions in pre-trial detention periods or the percentage of citizens reporting resolved disputes, indicators that reflect lived realities rather than legislative optics.

Ultimately, though necessary, judicial cleansing is insufficient to uproot systemic corruption. Complementary reforms in campaign finance, administrative transparency, and public procurement are essential to disrupt entrenched elite networks. Civil society must play a central role: empowered watchdogs and local legal aid organizations can democratize justice and ensure that reforms benefit marginalized communities and urban elites. Albania's path forward depends on hybrid frameworks that balance external support with genuine domestic authorship, transforming the paradox of external tutelage into a catalyst for context-sensitive and sustainable rule of law. Albania's context thus epitomizes the vicious cycle of institutionalized corruption—a legacy of authoritarianism, elite capture, and transitional failures. While the 2016 reform disrupted overt collusion, it also exposed the limitations of external blueprints in dismantling deeply rooted, informal power dynamics. The path to sustainable reform lies not merely in adopting international norms but in confronting the historical and cultural legacies that sustain corruption's grip (Kelmendi & Vurmo, 2024).

Finally, the analysis underscores that rule-of-law promotion cannot be solved. Albania's judicial reform, while ambitious, has shown that cleansing the bench alone, though necessary, cannot uproot the intertwined political, economic, and cultural drivers of corruption. Broader governance reforms in party financing, electoral transparency, and administrative accountability must proceed in tandem to dismantle the ruling-class incentives that co-opt judicial institutions. Civil society's role is pivotal here: empowered watchdogs, representative legal associations, and grassroots legal aid networks can ensure that reforms resonate beyond capital cities and reach the citizens most affected by judicial dysfunction.

Albania's 2016 judicial reform demonstrates both the catalytic potential and the pitfalls of externally driven rule-of-law initiatives. While EU

and U.S. pressures broke the logjams that long paralyzed the judiciary, the reform's sustainability will hinge on cultivating domestic capacity, embedding adaptive governance models, and broadening the reform agenda to encompass the full spectrum of state-society relations. Only through such hybrid frameworks can the paradox of international tutelage give way to genuine, home-grown rule-of-law consolidation.

Conclusion and Policy Implications

Albania's 2016 judicial reform stands as a critical case study in the complexities of rule-of-law promotion, illuminating both the transformative potential and inherent limitations of externally driven initiatives. International organizations such as the European Union and the United States provided indispensable leverage to dismantle decades of institutionalized corruption, yet the reform's contested outcomes underscore the necessity of reconciling external norms with Albania's unique socio-political realities. The reform's implementation exposed deep-seated challenges: capacity crises precipitated by rapid dismissals, political pushbacks that selectively stymied high-profile prosecutions, persistent public skepticism fueled by perceptions of foreign imposition, and the adaptation of patronage networks to new institutional forms. The experience demonstrates that sustainable RoL development demands hybrid frameworks that balance international accountability with domestic agency, moving beyond the "false paradigm" of institutional mimicry to foster adaptive, context-sensitive governance.

The reform's achievements, most prominently the dismissal of corrupt judges and prosecutors through a constitutionally enshrined vetting mechanism, the establishment of the Special Anti-Corruption Structure (SPAK), and the reconstitution of the High Judicial and Prosecutorial Councils—highlight the catalytic role of external pressure in overcoming political deadlock. SPAK's high-profile indictments signaled a departure from impunity but faltered amid chronic underfunding and political obstruction, illustrating how formal institutional designs may flounder without grounded domestic support and resource commitments. Yet these successes coexist with stark contradictions. Mixed domestic–international oversight mechanisms, designed to ensure impartiality, inadvertently fueled perceptions of foreign imposition, especially in areas where clan-

based kanun traditions had long mediated local disputes.

Reconciling external norms with contextual realities requires embracing hybridity. The International Monitoring Operation's gradual shift from direct oversight to mentorship—training Albanian evaluators to lead vetting processes—offers a tentative model for transferring ownership while preserving international safeguards. SPAK's collaboration with local NGOs to investigate petty corruption further bridges the gap between formal institutions and grassroots needs. Integrating informal dispute-resolution mechanisms into rural justice strategies could rebuild community trust without sacrificing legal integrity.

Moving forward, the EU's conditionality framework must evolve to prioritize outcome-based metrics over checkbox compliance. Scholars such as Carothers (2006) and Mendelski (2015) argue that genuine RoL promotion hinges on measuring lived experiences—reduced pre-trial detention periods, equitable access to justice in rural areas, and rising public trust—rather than mere legal enactments. For Albania, this would mean pairing vetting with systemic reforms: raising judicial salaries to curb bribery incentives, decentralizing court services to address urban-rural divides, and insulating institutions like SPAK from political interference through autonomous funding mechanisms.

Ultimately, Albania's reform affirms that rule-of-law promotion cannot be siloed. Judicial cleansing, though essential, must coincide with structural reforms targeting the incentives and networks that perpetuate corruption. By centering contextual legitimacy and empowering domestic actors, externally driven reforms can transcend the paradox of imposition and evolve into sustainable, home-grown rule of law. The Albanian case thus serves as both a cautionary tale and a clarion call to reimagine RoL promotion as a dynamic, collaborative process—one that honors the complexity of local realities while aspiring to universal principles of justice.

Bibliography

1. Albanian Times. (2024, December 17). *Albania's 'Vetting Commission' concludes after 7 years of judicial reform*. <https://albaniantimes.al/albanias-vetting-commission-concludes-after-7-years-of-judicial-reform/>
2. Albanian Times. (2025, February 13). The Veliaj case and Albania's justice reform at a crossroads: The need for checks and balances. <https://albaniantimes.al/spak-veliaj-arrest-justice-reform-albania/>
3. Austrian Development Agency. (2023, April 1). *IMO-III International Monitoring Operation – Phase III, EC funds*. <https://www.entwicklung.at/en/projects/detail-en/imo-iii-international-monitoring-operation-phase-iii-ec-funds>
4. Bieber, F. (2015). *The Western Balkans and the EU: The Hour of Europe?* Central European University Press.
5. Bieber, F. (2020). Antagonistic EU conditionality: The challenge of deep reform in the Balkans. *Journal of Democracy*, 31(1), 40–51. <https://doi.org/10.1353/jod.2020.0003>
6. Bieber, F. (2020). The rise of authoritarianism in the Western Balkans. *Southeast European and Black Sea Studies*, 20(1), 1–15.
7. Börzel, T. A., & Schimmelfennig, F. (2017). Coming together or drifting apart? The EU's political integration capacity in Eastern Europe. *Journal of European Public Policy*, 24(2), 278–296. <https://doi.org/10.1080/13501763.2016.1265574>
8. Beck, E. (1997, January 29). Albania's collapsing pyramids could tip political balance. *The Wall Street Journal*. <https://www.wsj.com/articles/SB854490470762118000>
9. Carothers, T. (2003). *Promoting the rule of law abroad: The problem of knowledge* (Carnegie Working Paper No. 34). Carnegie Endowment for International Peace. <https://carnegieendowment.org/2003/01/28/promoting-rule-of-law-abroad-problem-of-knowledge-pub-1169>
10. Carothers, T. (Ed.). (2006). *Promoting the rule of law abroad: In search of knowledge*. Carnegie Endowment for International Peace. <https://carnegieendowment.org/research/2006/01/promoting-the-rule-of-law-abroad-in-search-of-knowledge?lang=en>
11. Carothers, T. (1998). The Rule of Law Revival. *Foreign Affairs*, 77(2), 95–106. <https://doi.org/10.2307/20048791>

12. Carothers, T., & de Gramont, D. (2013). *Development aid confronts politics: The almost revolution*. Carnegie Endowment for International Peace. <https://carnegieendowment.org/2013/04/16/development-aid-confronts-politics-almost-revolution-pub-51407>
13. Council of Europe. (2017). *The Venice Commission reports on Albania's judicial reform*. Council of Europe.
14. Council of Europe. (2022). *Report on judicial independence in North Macedonia*. <https://rm.coe.int/report-judicial-independence-nm/>
15. Elbasani, A. (2013). *Europeanization and democratization in the Western Balkans: Institutional compatibility and external pressure*. Routledge.
16. European Commission. (2016). *Consolidation of the Justice System in Albania* (IPA 2016/038717.4). https://enlargement.ec.europa.eu/document/download/f14735d2-a1b6-4e90-9bf6-657251898f78_en?filename=ipa_2016-038717-4_consolidation_of_the_justice_system_in_albania.pdf
17. European Commission. (2024, July 24). *2024 Rule of Law Report: Country chapter on the rule of law situation in Albania* (SWD(2024)828 final). https://commission.europa.eu/document/download/0154dce1-5026-45de-8b37-e3d56eff7925_en?filename=59_1_58088_coun_chap_albania_al.pdf
18. European Commission. (2016). *2016 enlargement package: Albania*. European Commission. https://ec.europa.eu/neighbourhood-enlargement/system/files/2016-11/20161109_report_albania.pdf
19. European Commission. (2016, November 9). *Key findings of the 2016 Report on Albania* (MEMO/16/3636). https://ec.europa.eu/commission/presscorner/detail/en/memo_16_3636
20. European Commission. (2023). *2023 enlargement package: Albania*. European Commission. https://neighbourhood-enlargement.ec.europa.eu/system/files/2023-11/SWD_2023_693%20Albania%20report.pdf
21. European Union Council. (2022). *EU conditionality and accession prospects for Western Balkan countries*. <https://data.consilium.europa.eu/doc/document/ST-11222-2022-INIT/en/pdf>
22. European External Action Service. (2024, October 21). *Overview of the activity of the vetting bodies until 21 October 2024*. Retrieved from https://www.eeas.europa.eu/delegations/albania/overview-activity-vetting-bodies-until-21-october-2024_en

23. European Western Balkans. (2017, July 18). *Calavera: Vetting of judges and prosecutors starts in September*. <https://europeanwesternbalkans.com/2017/07/18/calavera-vetting-judges-prosecutors-starts-september/>
24. Erebara, G. (2016, May 5). US and EU ambassadors warn Albania leaders about much-delayed justice reform. *Balkan Insight*. <https://balkaninsight.com/2016/05/05/us-and-eu-ambassadors-warn-albania-leaders-about-much-delayed-justice-reform-05-05-2016-6/>
25. Erebara, G. (2018, May 28). *US ambassador fears courts 'pressure' in Tahiri case*. *Balkan Insight*. <https://balkaninsight.com/2018/05/28/bribes-and-pressure-on-albania-former-minister-drug-case-us-ambassador-warns-05-27-2018-1/>
26. Elezi, G. (2017). *Establishing the rule of law after communism: A comparative approach*. Polis Journal. <https://uet.edu.al/polis/wp-content/uploads/2023/02/Establishing-the-rule-of-law-after-communism-a-comparative-approach.pdf>
27. Elbasani, A., & Šelo Šabić, S. (2017). Rule of law, corruption and democratic accountability in the course of EU enlargement. *Journal of European Public Policy*, 25(9), 1317-1335. <https://doi.org/10.2139/ssrn.3308095>
28. Feta, B., & Rruplli, Ç. (2025, February). *The journey of Albania's justice reform: Progress amidst ongoing implementation challenges* (ALGREE Thematic Paper No. 1). Hellenic Foundation for European & Foreign Policy (ELIAMEP). https://www.eliamep.gr/wp-content/uploads/2025/02/ALGREE-Thematic-Paper-1_Final-1.pdf
29. Freedom House. (2017). *Nations in Transit 2017: The false promise of populism*. Freedom House. https://freedomhouse.org/sites/default/files/NIT2017_booklet_FINAL_0.pdf
30. Freedom House. (2023). *Albania: Nations in Transit 2023 Country Report*. <https://freedomhouse.org/country/albania/nations-transit/2023>
31. Groenendijk, K. (2019). Judicial harmonization and rule of law challenges in Kosovo. *Journal of Comparative Law*, 54(2), 67–83.
32. Gunjic, I. (2022). *Albania's special courts against corruption and organised crime* (U4 Brief 2022:1). U4 Anti-Corruption Resource Centre. <https://www.u4.no/publications/albanias-special-courts-against-corruption-and-organised-crime.pdf>
33. Klabbers, J. (2015). The EJIL foreword: The transformation of

- international organizations law. *European Journal of International Law*, 26(1), 9–82. <https://doi.org/10.1093/ejil/chv009>
34. Kasmi, J. (2023). The role of the Supreme Judicial Council in judicial reform: Stress for independence and accountability. *Beder Journal of Humanities*, 12(3), 18. <https://doi.org/10.13140/RG.2.2.20874.44485>
 35. Kasmi, J. (2024). Dealing with the past and the path to transitional justice: A comparative analysis of South Korea and Albania. *Asian Politics & Policy*. Advance online publication. <https://doi.org/10.1111/aspp.12727>
 36. Krygier, M. (2004). False dichotomies, true perplexities, and the rule of law. In A. Sajó (Ed.), *Human rights with modesty: The problem of universalism* (pp. 271–294). Springer. https://doi.org/10.1007/978-94-017-6172-7_12
 37. Kelmendi, T., & Vurmo, G. (2024, December 12). *Riding the wave: How Albania can make the most of its EU moment*. European Council on Foreign Relations. <https://ecfr.eu/article/riding-the-wave-how-albania-can-make-the-most-of-its-eu-moment/>
 38. Kmezić, M., & Bieber, F. (2017). *Justice in transition: Judicial reforms in the Western Balkans*. Palgrave Macmillan.
 39. Kochenov, D. (2008). *EU enlargement and the failure of conditionality*. Kluwer Law International.
 40. Joireman, S. F. (2014). *Aiming for certainty: The Kanun, blood feuds and the ascertainment of customary law*. *Political Science Faculty Publications*, 1055. <https://scholarship.richmond.edu/cgi/viewcontent.cgi?article=1055&context=polisci-faculty-publications>
 41. Law no. 76/2016, “For some changes in the law no. 8417, date 21.10.1998, ‘The Constitution of the Republic of Albania’”, amended.
 42. Law no. 84/2016, “For the transitional reevaluation of judges and prosecutors in the Republic of Albania”
 43. Law no. 111/2016, “On the organization and functioning of institutions in the fight against corruption and organized crime”
 44. Law no. 115/2016, “For the government bodies of justice system”
 45. Magen, A., & Morlino, L. (2008). International actors, democratization, and the rule of law. *International Political Science Review*, 29(3), 291–311.
 46. Mendelski, M. (2015). The EU’s pathological power: The failure of external rule of law promotion in Southeastern Europe. *Southeastern*

- Europe*, 39(3), 318–346. <https://doi.org/10.1163/18763332-03903003>
47. Mungiu-Pippidi, A., Johnston, M., & Krafchik, W. (2019). *Anti-corruption and the future of governance*. World Bank.
 48. Nela, I. (2021). *Lessons learned from the justice reform in Albania* (ÖGfE Policy Brief No. 24'2021). Austrian Society for European Politics (ÖGfE). <https://www.oegfe.at/policy-briefs/lessons-learned-from-the-justice-reform-in-albania/?lang=en>
 49. Obradović-Wochnik, J. (2018). Serbia's struggle for rule of law: Political and judicial interference. *Southeast European and Black Sea Studies*, 18(2), 145–159. <https://doi.org/10.1080/14683857.2018.1474542>
 50. Open Data Albania. (2023, November 10). *Justice Reform: Number of Judges and Prosecutors Dismissed or Resigned as a Result of Vetting*. Retrieved from <https://ndiqparate.al/?p=20854&lang=en>
 51. Organization for Security and Cooperation in Europe (OSCE). (2021). *Judicial reform and digitalization in North Macedonia*. <https://www.osce.org/files/f/documents/3/3/496357.pdf>
 52. Pajo, M. (2016). Consequences of the totalitarian past on the Albanian post-communist society. *European Journal of Multidisciplinary Studies*, 3, 45–62.
 53. Perry, V. (2019). Post-conflict judicial reforms in Bosnia-Herzegovina and Kosovo: Challenges and progress. *Conflict, Security & Development*, 19(4), 298–319. <https://doi.org/10.1080/14678802.2019.1643976>
 54. Ruiz-Calavera, G. (2018). Cilësia para shpejtësisë në kryerjen e vettingut në Shqipëri [Quality over speed in Albania's vetting process]. *Deutsche Welle*. <http://www.dw.com/sq/genoveva-ruiz-calavera-cilësia-para-shpejtësisë-në-kryerjen-e-vettingut-në-shqipëri/a-41451181>
 55. Schimmelfennig, F., & Sedelmeier, U. (2005). *The Europeanization of Central and Eastern Europe*. Cornell University Press.
 56. Transparency International. (2016). *Corruption Perceptions Index 2016*. Transparency International. <https://www.transparency.org/en/cpi/2016>
 57. Transparency International. (2021). *Corruption Perceptions Index 2021*. <https://www.transparency.org/en/cpi/2021>
 58. Transparency International. (2023). *Corruption Perceptions Index 2023*. <https://www.transparency.org/en/cpi/2023>

59. Trimçev, F. (2020). Albania's judicial reform package: Successes and struggles. *European Politics and Society*, 21(3), 327–341. <https://doi.org/10.1080/23745118.2020.1762571>
60. U.S. Agency for International Development, Office of Overseas Prosecutorial Development, Assistance, and Training (USAID/OPDAT). (2017). *Technical assistance records*. U.S. Embassy.
61. U.S. Department of State. (2021, August). *Albania: FY 2020 country assistance fact sheet*. https://www.state.gov/wp-content/uploads/2021/08/Albania_FY-2020-Country-Assistance-Fact-Sheet.pdf
62. U.S. Embassy Tirana. (2017). *Remarks by Ambassador Donald Lu at the launch of the campaign against organized crime*. U.S. Embassy.
63. Venice Commission. (2018, December 17). *Opinion on draft constitutional amendments enabling the vetting of politicians* (Opinion No. 942/2018, CDL-AD (2018)034). European Commission for Democracy through Law. [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2018\)034-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2018)034-e)
64. World Bank. (n.d.). *Worldwide Governance Indicators*. <http://info.worldbank.org/governance/wgi>
65. Weeks, J. (2012). *The irreconcilable inconsistencies of neoclassical macroeconomics: A false paradigm*. Routledge.
66. Westminster Foundation for Democracy. (2019). *Parliamentary boycotts in the Western Balkans: A challenge to institutional democracy*. <https://www.wfd.org/what-we-do/resources/parliamentary-boycotts-western-balkans-challenge-institutional-democracy>

FROM LEGAL GUARANTEES TO LOCAL REALITIES: ASSESSING TRANSPARENCY AND ADMINISTRATIVE RIGHTS AT LOCAL LEVEL IN ALBANIA

Diamanta Vito¹
Megi Marku²

Abstract

Transparency in decision-making is an important part of good governance and a key element of administrative law. It helps ensure that public institutions act openly, follow the law, and are accountable to citizens. In Albania, laws such as the Code of Administrative Procedures (Law No. 44/2015), the Law on the Right to Information (Law No. 119/2014), and the Law on Public Consultation (Law No. 146/2014) give people the right to be informed, to give their opinion, and to appeal decisions. These rights are also supported by the Law on Local Self-Government (Law No. 139/2015) and other regulatory frameworks.

This paper examines how these legal guarantees are translated into practice at the local level, drawing on an assessment of eight municipalities in Albania. It explores the institutional mechanisms that support transparency—such as public consultation processes, transparency programs, electronic registers, and publication of council

1. PhD Candidate

Research Centre for Research and Development in Law and Economics, Faculty of Business and Law, University of Elbasan, Albania
diamantavito@yahoo.com

2. Associate Professor

Research Centre for Research and Development in Law and Economics, Faculty of Business and Law, University of Elbasan, Albania
megi.marku@uniel.edu.al

decisions—and assesses their effectiveness in operationalizing the rights of citizens, including women and other vulnerable groups. While municipalities demonstrate increasing awareness and compliance with legal obligations, the implementation remains uneven due to structural challenges, limited institutional capacity, inconsistent enforcement, and gaps in civic engagement.

The findings point to key deficiencies, including the lack of complete information in public procurement records, weak publication of donation data, and unclear responsibilities of transparency coordinators. Moreover, the study identifies a lack of gender-sensitive approaches in participatory and transparency processes, which limits the inclusion of women's voices and perspectives in local decision-making. The need for ongoing training, better communication tools, and dedicated staffing, along with the integration of gender-responsive strategies, is evident. The study concludes with actionable recommendations to strengthen procedural safeguards, promote meaningful and inclusive participation, and institutionalize transparency as a driver of improved public administration, gender equality, and democratic accountability in Albania's local governance system.

Keywords: *transparency, decision making, local government units, Albania*

Introduction

Transparency and public participation represent fundamental principles of democratic governance and are widely recognized as essential conditions for enhancing government accountability, responsiveness, and citizen trust. According to the United Nations and the OECD, the ability of citizens to access information, influence decision-making processes, and hold public authorities accountable is critical not only for the quality of governance but also for the legitimacy and sustainability of democratic institutions¹. In Albania, these principles have gained particular significance in the post-transition period, as the country strives to consolidate democratic norms, align with European standards, and rebuild public trust after decades of

1. UNDP, 2016; OECD, 2017.

centralized governance¹.

Over the last two decades, Albania has undertaken substantial legal and institutional reforms aimed at promoting transparency, access to information, and citizen participation. The adoption of Law No. 119/2014 “On the Right to Information,” Law No. 146/2014 “On Notification and Public Consultation,” and Law No. 139/2015 “On Local Self-Government” has established a comprehensive legal framework that formalizes citizens’ rights to be informed, consulted, and engaged in public decision-making processes. These reforms are part of Albania’s broader efforts toward democratic consolidation and are aligned with obligations arising from its European Union accession process².

However, despite the robustness of the legal framework, considerable gaps remain between formal guarantees and their practical realization. Studies and monitoring reports have consistently highlighted challenges such as limited institutional capacity, resource constraints, lack of technical knowledge, and low levels of civic awareness, which impede the full operationalization of transparency and participation mechanisms at the local level³. Moreover, structural inequalities, including gender-based barriers, often prevent women and marginalized groups from fully exercising their participatory rights, further deepening democratic deficits⁴.

This article examines how legal obligations related to transparency and citizen participation are implemented in practice by municipalities in Albania. Drawing on an assessment of seven municipalities—Korçë, Shkodër, Pukë, Vau Dejës, Kukës, Pogradec, and Kamëz—the study explores institutional mechanisms, identifies good practices and persistent gaps, and provides targeted recommendations for strengthening democratic governance at the local level. Particular attention is given to the inclusivity of consultation processes and the degree to which gender responsiveness is integrated into transparency initiatives. Through this analysis, the article aims to contribute to ongoing efforts to bridge the gap between legal standards and local realities and to support the development of a more participatory, inclusive, and accountable governance culture in Albania.

1. European Commission, 2022.

2. European Commission, 2023; Council of Europe, 2022.

3. Council of Europe, 2022; UN Women Albania, 2021.

4. UN Women Albania, 2021.

Legal framework supporting transparency and participation

In Albania, transparency and civic participation are anchored in a comprehensive legal framework designed to ensure that public decision-making processes are open, inclusive, and accountable. Three major legislative acts structure the national and local obligations regarding information access, public notification, consultation, and participation: Law No. 119/2014 “On the Right to Information”, Law No. 146/2014 “On Notification and Public Consultation”, and Law No. 139/2015 “On Local Self-Government”. Together, these laws create a foundation intended to support democratic governance, strengthen citizen trust in institutions, and promote greater responsiveness of public authorities.

The first cornerstone, *Law No. 119/2014 “On the Right to Information”*¹, establishes the right of every individual—citizen or non-citizen—to access public information held by government authorities. It articulates that information transparency is essential for promoting public accountability and democratic engagement. According to this law, public authorities are obligated to proactively disclose a wide range of documents and data, including institutional budgets, public procurement information, organizational structures, and internal regulations. Moreover, public bodies must create and maintain a Transparency Program, which lists key categories of information that should be accessible without the need for specific requests. These programs must be updated regularly and made available to the public, often via official websites. The law also allows individuals to submit formal requests for information, requiring public bodies to respond within ten working days, extendable only in specific, justified cases. The Commissioner for the Right to Information and Protection of Personal Data oversees the enforcement of this law, empowered to investigate complaints and impose administrative sanctions where violations occur. However, despite its strong normative framework, practical challenges persist, particularly at the local level, where many municipalities have incomplete, outdated, or insufficient transparency programs, and where a lack of citizen awareness and institutional resources often hinder effective application.

Complementing the right to information is *Law No. 146/2014 “On Notification and Public Consultation”*, which specifically regulates

1. Official Gazette of Albania, 2014.

the process through which citizens and stakeholders are engaged in policymaking (European Commission, 2022). This law applies to all public authorities, including ministries, agencies, and municipalities, and mandates public consultation on draft laws, draft national and local strategic documents, and policies of high public interest. It notably excludes certain categories of decision-making, such as issues related to national security, international treaties, civil emergencies, and individual administrative acts unless otherwise regulated. The law introduces a centralized Electronic Register, serving as the primary tool for publishing draft acts, notifications of consultations, and related documentation. This register is intended to guarantee that citizens, civil society organizations, and other stakeholders have timely access to draft documents and consultation opportunities, thereby enhancing transparency and engagement.

Under Law 146/2014, public authorities must ensure that the consultation process is not merely formal but substantive. Authorities are required to gather opinions and recommendations from interested parties through public meetings, written submissions, and direct consultations. The entire consultation process must be documented through official minutes, and a reasoned summary must accompany the final act, explaining how the received comments were considered and why certain recommendations were either accepted or rejected. Special attention must also be paid to ensuring equitable participation by marginalized groups, including women, minorities, and persons with disabilities, thereby making consultations not only open but inclusive.

Each public body must designate a Coordinator for Public Notification and Consultation, tasked with overseeing and managing the consultation processes, ensuring compliance with legal obligations, and facilitating communication between the public authority and citizens. Importantly, Law 146/2014 provides mechanisms for recourse: if stakeholders believe their right to consultation has been violated, they can lodge a complaint with the head of the responsible public body before adoption of the act, or with the Commissioner for the Right to Information after the act has been finalized. However, a critical weakness of the law is that it does not provide for the annulment of acts adopted without proper consultation. The Commissioner can impose administrative sanctions on responsible officials but cannot invalidate acts that breach consultation obligations, leaving a significant gap in the law's enforcement power.

Despite these shortcomings, Law 146/2014 represents a substantial achievement for Albania, aligning its legal standards with European principles of participatory democracy. Yet, the implementation remains uneven. Municipalities, in particular, often struggle with meeting consultation obligations due to limited administrative capacities, lack of specialized staff, inadequate budgeting for consultation activities, and insufficient public outreach. As a result, consultations risk becoming procedural formalities rather than meaningful exercises in democratic deliberation.

Law No. 139/2015 “On Local Self-Government” further reinforces the framework for transparency and participation, focusing specifically on the role of municipalities as the level of government closest to citizens. Recognizing that effective governance depends on direct engagement with communities, Law 139/2015 establishes public participation as one of the core missions of local government units. It mandates that municipalities must actively promote inclusive community involvement in planning, budgeting, service delivery, and decision-making processes.

The law imposes an obligation on Municipal Councils to conduct mandatory public consultations before approving key decisions that have significant impacts on citizens’ lives. These include the approval of the municipal budget and its amendments, the setting of local taxes, tariffs, and fees, the alienation or transfer of municipal properties, and the adoption of internal regulations governing service standards and citizen rights. The emphasis placed on consultation for budgetary and financial decisions is particularly critical, as these decisions directly affect the allocation of resources and the prioritization of public services.

Law 139/2015 provides for various forms of public consultation, such as open meetings with residents, consultations with interest groups and civil society organizations, expert forums, and local referenda. However, the law allows municipalities to choose among these forms rather than mandating a combination of methods, potentially limiting the breadth and depth of citizen engagement. Moreover, although the law strongly emphasizes the obligation to consult, it does not explicitly provide for the invalidation of decisions made without prior public consultation. Nevertheless, the spirit of the law suggests that non-compliance with consultation obligations could serve as grounds for challenging the validity of Municipal Council decisions.

Furthermore, Law 139/2015 obliges municipalities to appoint a Coordinator for Public Notification and Consultation, responsible for facilitating the

public participation process, ensuring transparency in the scheduling and organization of consultations, and reporting on participation outcomes. Municipalities are also expected to adopt internal regulations detailing the procedures for civic initiatives and consultations, thereby operationalizing the rights enshrined in the law. However, many municipalities have yet to develop clear, comprehensive, and practical internal procedures, leading to inconsistencies in the way consultations are conducted across different local government units.

In practice, the realization of the participatory rights granted by Law 139/2015 faces significant barriers. Financial constraints, lack of staff training, political resistance to open governance, and limited public awareness continue to undermine effective participation. Additionally, while the law envisages a dynamic and ongoing relationship between municipalities and their constituencies, in many cases citizen engagement is still limited to reactive forms, such as attending budget hearings, rather than proactive involvement in planning and priority-setting.

Overall, Albania's legal framework for transparency and public participation—comprising Laws 119/2014, 146/2014, and 139/2015—provides a robust foundation for democratic governance and citizen engagement. However, as the findings from the assessment of eight municipalities suggest, the translation of these legal guarantees into effective practice remains incomplete. Closing the gap between law and reality requires not only strengthening the institutional capacities of public bodies but also fostering a political culture that genuinely values citizen input as a cornerstone of good governance.

Methodology

The methodology adopted for this study combined a documentary review, and semi-structured interviews, aiming to capture both the normative frameworks and practical realities of transparency and participation at the local level in Albania. Data collection was conducted across seven municipalities: Korçë, Shkodër, Pukë, Vau Dejës, Kukës, Pogradec, Kamëz. These municipalities represent diverse socio-economic profiles and geographic settings, enabling a comparative understanding of the implementation of transparency and consultation obligations.

The first phase of the research involved a review of national legislation,

including Law No. 119/2014 “On the Right to Information,” Law No. 146/2014 “On Notification and Public Consultation,” and Law No. 139/2015 “On Local Self-Government.” In parallel, local regulations, transparency programs, municipal websites, social media channels, and public notices were analyzed to assess the mechanisms through which information is provided and consultations are organized.

The second phase consisted of semi-structured interviews conducted with heads of departments such as public relations, legal affairs, and municipal council members during a period of three months, October to December 2024. These interviews provided deeper insights into institutional practices, resource constraints, inter-departmental coordination, and community outreach strategies. Particular attention was given to understanding how marginalized groups, including women and minorities, are engaged in public decision-making processes.

The final phase involved comparative analysis of the findings from the municipalities. Data from the interviews were processed to identify patterns and divergences, responses were categorized into thematic areas related to transparency, consultation, institutional capacity, and inclusiveness. The analysis sought to highlight both good practices and gaps, thereby informing targeted recommendations for strengthening participatory governance at the local level.

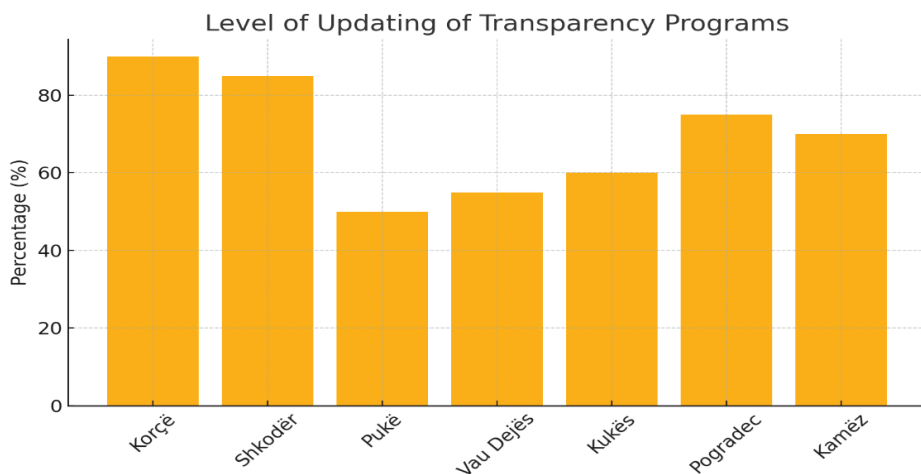
The combination of documentary review, and interview findings allows for a nuanced understanding of how legal guarantees for transparency and participation are operationalized—or fail to be operationalized—across different local governance contexts in Albania.

Findings and analysis

The analysis of transparency and participation practices across the municipalities of Korçë, Shkodër, Pukë, Vau Dejës, Kukës, Pogradec, and Kamëz reveals both important progress and persistent challenges. The assessment, based on documentary review, survey responses, and in-depth interviews, provides insight into how local governments operationalize their legal obligations under Law No. 119/2014, Law No. 146/2014, and Law No. 139/2015.

Transparency Practices and Access to Information

All assessed municipalities have established basic structures for ensuring public access to information. Transparency Programs are formally adopted and published online in compliance with Law No. 119/2014. However, the level of comprehensiveness, accessibility, and updating of these programs varies significantly.



Source – Elaborated by the authors

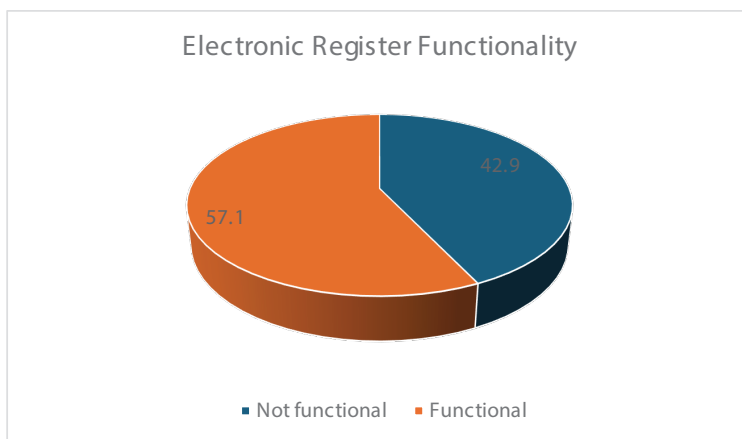
In Korçë and Shkodër, Transparency Programs are relatively complete, covering budgetary data, council decisions, and institutional structures. Both municipalities maintain updated Transparency Programs and have created visible spaces, both physically and digitally, for citizens to access key information. In contrast, in smaller municipalities such as Pukë and Vau Dejës, although Transparency Programs exist, they often lack systematic updating and fail to cover all required categories of information.

The use of municipal websites as a transparency tool is widespread, but the quality of these websites varies. Pogradec, for instance, maintains a reasonably comprehensive and citizen-friendly website, whereas Kamëz, although recently improved, still requires significant enhancement, particularly in ensuring the regular publication of council decisions and detailed reports. Across municipalities, social media platforms—especially Facebook—are increasingly used as informal tools for disseminating information, although their reliability and comprehensiveness remain inconsistent.

Access to information upon request is generally respected. Most municipalities have designated coordinators for the right to information, and requests are processed within legal deadlines. However, interviews with municipal staff indicate that in practice, bureaucratic obstacles and occasional delays in responding to requests still occur, particularly in resource-constrained municipalities.

Public Notification Mechanisms

Regarding public notification obligations under Law No. 146/2014, most municipalities have established formal procedures for announcing draft acts and public meetings. Public notifications are usually posted on municipal websites, notice boards within municipal buildings, and, less frequently, announced through local media.



Source – Elaborated by the authors

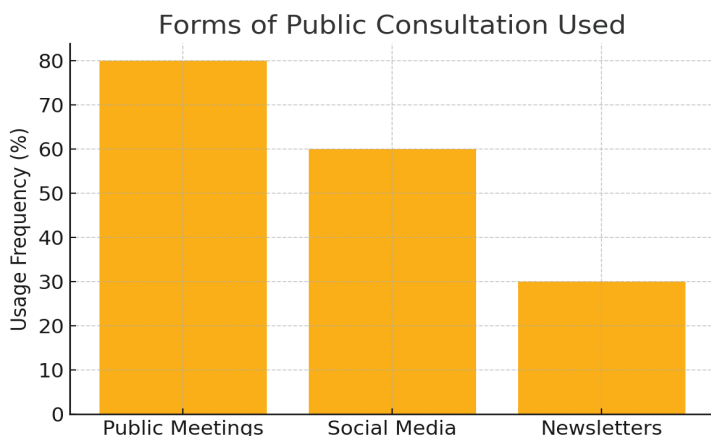
The electronic register of public notifications, mandated by law, is operational in larger municipalities such as Korçë and Shkodër. However, in municipalities like Kukës and Pukë, the register either does not exist or is not regularly updated. In Pogradec, the electronic register is functional, although actual entries—particularly regarding public consultations—remain limited.

Direct communication mechanisms, such as public notice boards and newsletters, are used across municipalities to varying extents. In Kamëz, the use of public notice boards in administrative units is systematic,

although the information posted tends to be limited to legal obligations rather than proactive engagement material. In several municipalities, particularly Vau Dejës and Pukë, staff noted the need for more diversified and citizen-centered notification practices.

Public Consultation Processes

The implementation of public consultation processes remains one of the most uneven aspects across municipalities. According to the data collected, larger municipalities such as Korçë and Shkodër are more consistent in organizing public consultations before adopting key decisions such as budget approvals or local development plans. These consultations often take the form of open meetings, budget hearings, and thematic forums.



Source – Elaborated by the authors

In contrast, in smaller municipalities like Pukë and Vau Dejës, public consultations tend to be sporadic and often limited to formal compliance rather than genuine dialogue with citizens. Public meetings are frequently attended by municipal staff, council members, and a small group of citizens, suggesting that consultations are often perceived as procedural obligations rather than meaningful opportunities for civic engagement.

Municipalities such as Pogradec and Kamëz have made notable efforts to systematize public consultation practices. Pogradec, for example, integrates public consultations into its annual planning processes and uses

social media to invite broader participation. However, challenges persist, including low turnout, limited public interest, and insufficient follow-up on citizens' input.

A particularly weak area across all municipalities is the inclusivity of consultations. There are limited efforts to ensure the participation of women, youth, persons with disabilities, and minority groups, with few municipalities adopting targeted outreach strategies to engage vulnerable populations.

Institutional Challenges

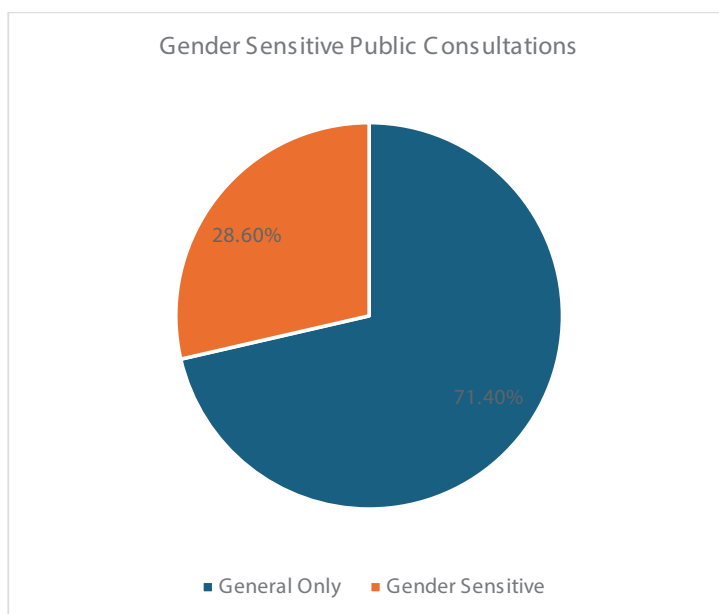
Several institutional challenges undermine the effectiveness of transparency and participation mechanisms. First, human resource constraints are prevalent. Many municipalities have limited or overstretched staff responsible for managing transparency programs, coordinating public consultations, and maintaining electronic registers. The role of coordinators for public notification and consultation is not always clearly defined or supported institutionally.

Second, financial constraints significantly affect the capacity of municipalities to invest in communication tools, outreach activities, and citizen engagement initiatives. Municipalities such as Kukës and Vau Dejës noted the lack of dedicated budgets for public consultations or transparency activities, relying instead on ad hoc reallocations of general funds.

Third, awareness and capacity gaps persist among municipal staff and elected officials. Although most respondents demonstrated a general understanding of legal obligations, there was variation in the depth of knowledge about procedural requirements, especially regarding the steps necessary for conducting meaningful consultations. Several municipalities indicated the need for regular training programs on transparency, information rights, and participatory governance.

Specific Observations on Gender Responsiveness

Gender responsiveness in transparency and consultation processes remains limited across all assessed municipalities. While municipalities such as Korçë and Shkodër have made some progress by integrating gender perspectives into their planning documents, gender-sensitive approaches to public consultation remain largely underdeveloped.



Source – Elaborated by the authors

Most municipalities do not systematically disaggregate consultation participants by gender or assess the specific needs and barriers faced by women and girls. Public consultation agendas rarely include topics specifically addressing gender equality, women's economic empowerment, or access to public services for vulnerable women. Similarly, public information materials are seldom designed with attention to gender-specific accessibility needs.

The lack of gender-sensitive practices highlights the need for integrating gender-responsive budgeting and planning principles into local governance structures and processes, as a means to enhance both the inclusivity and the impact of public decision-making.

Comparative Insights across Municipalities

Overall, the municipalities assessed exhibit a growing awareness of their legal obligations regarding transparency and participation, and there are clear examples of good practices emerging. Korçë, Shkodër, and, to a lesser extent, Pogradec stand out for their relatively systematic approaches to public information and consultation.

However, the uneven implementation across municipalities—particularly in smaller and more resource-constrained areas like Pukë, Vau Dejës, and Kukës—points to a need for targeted capacity-building support, stronger monitoring mechanisms, and enhanced civic education programs. Ensuring consistency in the quality of public participation processes across the country remains a key challenge for strengthening Albania’s democratic governance at the local level.

Moreover, across all municipalities, greater efforts are needed to operationalize inclusivity principles, ensuring that public information and consultation practices are not only legally compliant but also socially responsive, particularly regarding gender equality and the participation of marginalized groups¹.

Conclusion

The assessment of transparency and participation practices in the municipalities of Korçë, Shkodër, Pukë, Vau Dejës, Kukës, Pogradec, and Kamëz reveals a complex picture of progress and persistent challenges. On the one hand, there is a clear and growing recognition among municipal authorities of the importance of transparency and civic engagement, as well as increased efforts to formalize procedures for public information and consultation. Larger municipalities in particular have demonstrated notable advances in establishing transparency programs, maintaining electronic registers, and organizing public consultations on key decisions.

On the other hand, the analysis highlights significant inconsistencies in implementation across municipalities, often reflecting disparities in institutional capacity, financial resources, and political commitment. Smaller and more resource-constrained municipalities face greater difficulties in meeting their legal obligations, with transparency programs often underdeveloped and consultation processes reduced to formalities. Moreover, the inclusive potential of transparency and consultation mechanisms remains largely unrealized. Vulnerable groups, particularly women and marginalized communities, are rarely the specific focus of participatory initiatives, and gender-sensitive approaches to transparency are virtually absent.

1. European Commission, 2023.

The findings also underscore systemic issues that limit the effectiveness of the existing legal framework. Although Albania’s legislation on access to information and public consultation is formally robust, the lack of strong enforcement mechanisms—particularly the inability to annul acts adopted without proper consultation—weakens the transformative power of these laws. Furthermore, the low levels of civic awareness and limited citizen engagement reinforce a cycle where transparency obligations are treated as administrative exercises rather than opportunities for substantive democratic deliberation.

Addressing these challenges requires a comprehensive approach that goes beyond legal compliance. Municipalities must invest in building their institutional capacities, developing effective communication strategies, and fostering a culture of openness and collaboration with citizens. Special attention must be given to ensuring the inclusivity of transparency and participation mechanisms, particularly through the integration of gender-responsive approaches. Strengthening the capacities of coordinators, enhancing public outreach efforts, and promoting civic education programs are essential steps toward making transparency and participation real and meaningful.

Ultimately, bridging the gap between legal guarantees and local realities is not only a technical challenge but also a democratic imperative. By strengthening transparency and participation at the local level, Albania can move closer to achieving a governance model that truly reflects the principles of accountability, inclusion, and citizen empowerment¹.

References

- Council of Europe (2022). *Monitoring Report on Albania: Democracy, Rule of Law, and Transparency*.
- European Commission (2022). *Albania 2022 Report*. Brussels: European Union.
- European Commission (2023). *Albania 2023 Progress Report*. Brussels: European Union.
- OECD (2017). *Trust and Public Policy: How Better Governance Can Help Rebuild Public Trust*. Paris: OECD Publishing.

1. European Commission, 2023.

UNDP (2016). Fostering Transparency and Accountability in Public Institutions.

UN Women Albania (2021). Gender Equality and Governance in Albania: Progress and Challenges.

Official Gazette of Albania (2014). Law No. 119/2014 “On the Right to Information”

THE PRINCIPLE OF LEGAL CERTAINTY - “THE MYTH OF SISYPHUS” IN OUR STATE OF LAW

PhD. Bernina Kondi¹

Abstract

Legal certainty as a separate term is not always understandable even for the elements it contains. Today it appears as one of the common terms that is part of the vocabulary of most politicians on the one hand and on the other hand from the judicial system in Albania. Albania in its journey to create and strengthen the rule of law continues to challenge the myth of Sisyphus regarding the principle of Legal certainty.

Legal certainty includes issues related to the level of access to legislation, the level of access to judicial decisions, the predictability of laws, the stability and consistency of laws, legitimate expectations, and the principle that ensures that there is no crime unless it is provided for by law and there is no punishment unless it is provided for by law, among other things.

Legal certainty in a democracy requires being set at a standard that ensures that citizens of a country have easy access to legislation and judicial decisions, and that the legislation of a country is based on the same principles in a consistent manner.

This implementation ensures that citizens of that country are not only informed in advance of the consequences of their behavior, but at the same time have clear expectations regarding institutional actions.

Legal certainty as a definition is not literally expressed in the Constitution, but we find it implied in the preamble of the Constitution where the term “rule of law” is mentioned and in this context legal certainty presupposes,

1. Doctor of Legal Sciences, Lecturer at the Faculty of Law, Luarasi University, Advisor to the Ombudsman.
kondi.bernina@hotmail.com

among other things, the trust of citizens in the state and the immutability of the law for regulated relations.

When talking about the Rule of Law and legal certainty as an integral part of it, everyone must understand that the legislator cannot unreasonably worsen the legal situation of persons, deny acquired rights or ignore their legitimate interests.

The Constitutional Court also plays an important role in elaborating this definition, having affirmed that the principle of legal certainty also interacts with other principles such as that of the social state, which provides the legislator with a wide and precisely undefined space to regulate the benefit of social goods to a certain extent and quantity.

According to the Court, in order to understand and apply this principle correctly, it is required, on the one hand, that the law in a society offers certainty, clarity and continuity, so that individuals can direct their actions correctly and in accordance with it and, on the other hand, that the law itself does not remain static if necessary. Not every measure with negative effects that the legislator takes for the subjects of the law is a violation of a right guaranteed by the Constitution.

The legislator not only has the right, but is obliged to regulate in detail through its acts the rights provided for in the Constitution. Only those rights, which are expressly provided as unlimited, cannot be affected by the legislator.

On the other hand, the main standards in the material sense of the principle of legal certainty are considered to be the non-infringement of acquired rights and legitimate expectations guaranteed by the acts in force. In a word, not only the specific norms, but the entire legal order is required to be understandable, predictable and non-contradictory. In this way, it is estimated that the trust of citizens in the stability of this order is also created, as well as their conviction in the need to respect and implement it in everyday life. At the same time, on this basis, citizens also determine the scope of freedom or the manner of their behavior in the state and society.

Within the framework of this principle, the above standards are required to be respected by all state mechanisms and institutions, especially by the central bodies of the three main branches of state power. That is, by the parliament in the exercise of its legislative function, by the Government in the adoption of acts it issues on the basis of and for the implementation of the Constitution and laws, by the judiciary in the exercise of its function of providing justice, and others.

Keywords: *Legal certainty, Constitution, European Court of Human Rights and Fundamental Freedoms, Constitutional Court.*

- Today's meaning and interpretation in Albanian jurisprudence.
- Implementation of this principle from its doctrinal aspect in fulfilling the legitimate expectations of every Albanian citizen.
- The role of the judiciary in the challenge of time in the function of the state of law.
- Challenges in the future of our state of law regarding the positions of the ECHR on the respect of this principle.

Today's meaning and interpretation in Albanian jurisprudence.

The notion of Legal Security comes nowadays not only as a special term, not always understandable but also as a challenge that stands between a reality and a myth.

Today it appears as one of the common terms that is part of the vocabulary of most politicians on the one hand and on the other hand in fragmentary quotes from the judicial system in Albania. Albania in its journey to create and strengthen the rule of law continues to challenge *the myth of Sisyphus* to overcome obstacles and to find the right strength to surpass the beautifully written quotes on the principle of Legal Security, in an efficient implementation as a shield of fundamental human rights and freedoms.

The meaning of legal certainty is primarily found in issues related to the level of access to legislation, the level of access to judicial decisions, the predictability of laws, the stability and consistency of laws, legitimate expectations, and the principle that ensures that there is no crime if it is not provided for by law and there is no punishment if it is not provided for by law, among others.

We find a definition of this principle in decision no. 29/2010 ¹ in which the request of the People's Advocate for the repeal of some provisions of the law "On the composition, manner of functioning,..... the review of the legal validity of the creation of titles on agricultural land" is rejected,

1. *Decisions of the Constitutional Court of the Republic of Albania 2010, ILAR Printing House, Tirana 2011, p. 585*

where it is emphasized that:... *“Legal certainty presupposes, among other things, the trust of citizens in the state and the immutability of the law on regulated relations. Trustworthiness has to do with the individual’s conviction that he should not be constantly worried or live in fear of the variability and negative consequences of legal acts, which may violate private or professional life and worsen a situation established by previous acts. Legal regulations that deal with the rights of citizens must have sufficient stability to ensure their continuity. As a rule, interests and legitimate expectations of citizens from changes in legislation and the state should aim to change a previously regulated situation only if the change brings positive consequences.....”*.

-The principle of legal certainty as a very important element of the rule of law.

If we were to conceive of Legal certainty as the “roof” of the rule of law, we would definitely look for its legal and primary definition in the Constitution, but we find that this principle does not find expression in the Constitution literally, in a concrete provision.

In the case of our country, the constitutional basis for the evidence of this important principle is made by referring to the commitment to respect the rule of law that is expressly mentioned in the Preamble of the Constitution.

Specifically, the citation of the term “rule of law” implies the embodiment of this principle and in this context, legal certainty presupposes, among other things, the trust of citizens in the state and the immutability of the law for regulated relations.

Also in many other provisions of the Constitution, such as, for example, in Article 29 of the Constitution, which states that *“No one may be accused or declared guilty of a criminal offense that was not considered such at the time of its commission.....”*, and that only *“the favorable criminal law has retroactive effect”*, the embodiment of the principle of legal certainty is noted. This implementation ensures that the citizens of that country are not only informed in advance about the consequences of their behavior, but at the same time have clear expectations regarding institutional actions.

- The principle of legal certainty as a standard of accuracy, clarity, and stability in the entirety of the entire legal order of a state governed by law.

When talking about the Rule of Law and legal certainty as a measuring tool of citizens’ trust in the state, it should be understood that the legislator cannot unreasonably worsen the legal situation of persons, deny acquired rights or

ignore their legitimate interests.

Therefore, legal certainty will be what should emphasize the existence of a legal state on the one hand and that of the social state on the other, trying to preserve the balance of fundamental human rights.

To understand and apply this principle correctly, it is required, on the one hand, that the law in a society offers security, clarity and continuity, so that individuals can direct their actions correctly and in accordance with it and, on the other hand, that the law itself does not remain static if it is required to reflect the necessary social changes in every aspect of life. It should never be misunderstood that any measure with negative effects that the legislator takes for the subjects of the law is a violation of a right guaranteed by the Constitution. This requires a careful case-by-case assessment.

The legislator not only has the right, but is obliged to regulate in detail through its acts the rights provided for in the Constitution. Only those rights, which are expressly provided as unlimited, cannot be affected by the legislator.

- The principle of legal certainty in the material sense must also be understood as non-infringement of acquired rights and legitimate expectations guaranteed by the acts in force.

This principle, assessed in this aspect, requires that the entire legal order be understandable, predictable and non-contradictory since only in this way is it assessed that the trust of citizens in the stability of this order is created. Consequently, their conviction also increases in the need to respect and implement it in everyday life and easily determine the scope of freedom or the way they behave in the state and society.¹

Within the framework of this principle, the above standards are required to be respected by all state mechanisms and institutions, especially by the central bodies of the three main branches of state power. That is, by the parliament in exercising its legislative function, by the Government in approving the acts it issues on the basis and for the implementation of the Constitution and laws, by the judiciary in exercising its function of providing justice, and others.

It should be emphasized that the legitimate expectations guaranteed by the acts in force, require, within the framework of the principle of legal certainty, the publication of normative acts, not being satisfied with simply publishing them in the official gazette, but also the application of

1. Degenhart C., *Staatsrecht I*, Published by CF Muller Verlag, Germany, 1998

transparency, public discussion and the participation of experts, interest groups or specific individuals, continuing this process even in the last link, which is the implementation in practice.

Implementation of this principle from its doctrinal aspect in fulfillment of the legitimate expectations of every Albanian citizen.

The challenges of the rule of law are focused on the successful realization of the implementation of the principle of legal certainty from the doctrinal aspect in function of protecting every individual who has the maximum expectations in a democracy¹

-Development of the doctrinal aspect by the Constitutional Court.

The Constitutional Court, by affirming the principle of legal certainty and its main constituent elements such as legitimate expectations and acquired rights, has gone further by highlighting the elements competing with this principle.

This Court, through the interpretation of constitutional provisions, has established principles not expressly stated in the Constitution, which are considered to be very important principles-guarantees to ensure the implementation of fundamental rights and freedoms.

It has emphasized on this occasion that *“The rule of law, which is guaranteed in the Preamble of the Constitution, is one of the fundamental and most important principles in a democratic state and society. As such, it constitutes an independent constitutional norm, therefore its violation constitutes in itself sufficient grounds for declaring a law unconstitutional”*.³ From the above, it clearly results that the Constitutional Court has been continuously engaged, in recent years, with the principle of legal certainty, as an important element of the rule of law.

The elaboration of this principle, the definition of standards and their comparison with the concrete situations imposed by constitutional control, have helped the Constitutional Court in many cases to reach final conclusions on the cases under trial.

Initially, this principle was briefly highlighted in the context of the order to prohibit the retroactive effect of the law, as well as the need to avoid

1. See Decision No. 34/2005 of the Constitutional Court, and subsequently Decisions No. 20/2006, 20/2009, 7/2010, etc.

legal vacuums that may be created in certain situations, thus undermining the stability of the legal system. However, it What is more important is the fact that the Constitutional Court now recognizes that the application of the material standards of this principle does not and cannot be absolute.

According to its already consolidated jurisprudence, a new law or the situation created by the adoption of an act may violate a certain right, but its violation is assessed to have to be balanced with the public interest as well as with the right and duty that the legislator or other state mechanisms have to respond to the dynamics of the country's development.

On the other hand, it certainly also depends on the nature and character of the right that is allegedly violated. However, we believe that despite the above, the elements of the principle of legal certainty still need to be further clarified and supplemented by the Constitutional Court, in order to better adapt them to international constitutional standards, and in particular the jurisprudence of the European Court of Human Rights and the European Court of Justice.

Legal sustainability is one of the greatest challenges of the rule of law itself, as it must go to the same level as legal certainty, and this has been a significant concern that has been addressed by the Constitutional Court.

The Constitutional Court of the Republic of Albania has also addressed the principle of legal certainty in its decision-making. The relatively short time during which it has dealt with this issue has not made it possible to consolidate a stable practice in this regard. However, as will be seen below, in many cases this constitutional principle has been used quite successfully and important standards have been established regarding its recognition and implementation in practice. And the Constitutional Court has done this particularly in recent years, both in reviewing the constitutionality of normative acts and in assessing the standards of due process in the constitutional sense.

The treatment that the Constitutional Court has given to the principle of legal certainty has been in several directions, specifically:

The first attempt of the Constitutional Court to directly refer to and give meaning and a constitutional basis to the principle of legal certainty is found in its **decision no. 26/2005**,¹ in which the request of the Tenants' Association for the repeal of Articles 1 and 9 of the Law "On the Restitution

1. *Decisions of the Constitutional Court of the Republic of Albania 2005, Tirana 2006*

and Compensation of Property” is accepted. Among other things, this decision states that: “The doctrine of constitutional law has recognized that legal certainty is one of the essential elements of the rule of law. This certainty presupposes, among other things, the trust of citizens in the state and the immutability of the law on regulated relations. Reliability has to do with the fact that the citizen should not be constantly concerned about the variability and negative consequences of normative acts that violate and worsen a situation established by previous acts. By affirming the principle of legal certainty and its main elements, the Constitutional Court points out that this principle cannot prevail in every case. the new provision brings about a conceptual change in the relations of the state with the tenants, a change that brings very important consequences”.

This standard, for the same problem (the issue of tenants), would be reconfirmed by the Constitutional Court in its **decision no. 11/2007** ¹. The Constitutional Court reiterates that the principle of legal certainty also interacts with other principles such as that of the social state, which provides the legislator with a wide and precisely undefined space to regulate the benefit of social goods to a certain extent and quantity. In this regard, the Constitutional Court assesses that not every measure with negative effects that the legislator takes for the subjects of the law is a violation of a right guaranteed by the Constitution. The legislator not only has the right, but is obliged to regulate in detail through its own acts the rights provided for in the Constitution. Only those rights, which are expressly provided as unlimited, cannot be affected by the legislator.

The same formulation would be used, among others, by the Constitutional Court in its **decision no. 4/2010**,² in which it rejected the request for the repeal of some provisions of the law “On compensation for former political prisoners”, presented before it by the Association of Former Political Prisoners.

- **Its decision no. 1/2003**, repealed Article 30 of the law “On games of chance, casinos and racetracks”, underlining that this article, by providing for the application of the new law also to permits granted under the previous law, gives the new law retroactive force, which is in contradiction with

1. *Decisions of the Constitutional Court of the Republic of Albania 2007, Tirana 2008.*

2. *Decisions of the Constitutional Court of the Republic of Albania 2010, ILAR Printing House, Tirana 2010.*

Article 155 of the Constitution. ***The conclusion was that the principle of legal certainty had not been respected, and consequently the provision should be repealed.***

-In decision no. 17/2010, the Constitutional Court reviewed the constitutionality of Law no. 7843, dated 13.7.1994 “On the registration of immovable property” amended by Law no. 9701, dated 2.4.2007, “On some additions and amendments to Law no. 7843, dated 13.7.1994 “On the registration of immovable property.” This court analyzed the relationship between a right acquired by a previous law and its infringement by the intervention of the new law, ***again reaching the conclusion that the principle of legal certainty had not been respected, and consequently the provision should have been repealed.***

Article 5 has amended Article 10 of the Law, adding two more paragraphs with the following content: “*In cases where, for the same property, more than one registration has been made, which have not resulted from each other, in accordance with the provisions of this law, the registrar, by a reasoned decision, requests the Chief Registrar to decide on the deletion of the registrations made after the first registration, when the latter is in accordance with Articles 192-197 of the Civil Code, by making a note in the relevant column.*

Until the Chief Registrar’s decision is issued to approve or reject this request, the registrar suspends the registration and no actions can be taken on the property, and notifies the interested party/parties within 10 days. Confirmation of receipt of the notification is filed in the relevant file. The Chief Registrar shall make a decision within 30 days of receipt of the request. In the event of failure to make a decision by the Chief Registrar, Article 328 of the Code of Civil Procedure shall apply. The decision of the Chief Registrar shall be notified to the interested party/parties within 10 days and confirmation of receipt of the notification shall be filed in the relevant file.”

According to the applicant-Ombudsman, Article 10 of the law, subject to review, creates an environment of uncertainty for a very large number of owners, which results in a loss of confidence in the state and leaves room for abuses, subjectivism and selectivity during its implementation.

The Court has stated in its jurisprudence: “*the constitutional principle of the rule of law shall be considered violated if legal certainty, legal stability*

and the protection of legitimate expectations are denied or violated. The legislator may not unreasonably worsen the legal situation of persons, deny acquired rights or disregard their legitimate interests.”¹

In this context, the Court considers that the deletion of property registration by an administrative structure limits the right to ownership and creates legal uncertainty for citizens, while at the same time violating acquired rights.

In the same decision, the Constitutional Court also expressed itself regarding the claim of the violation of the right to due process by the applicant. In the request of the Ombudsman, the concept of due process is seen in the sense of the judicial process.

The applicant claims that the right to due process has been violated, because the deletion of the registration of the property title is not done through a judicial decision, where the elements of due process are respected, but by an administrative structure. The suspension of actions on property and the deletion of the registration of overlaps by the registrars and the chief registrar, without a due judicial process, seriously violates the right to property.

The right to a fair trial, as a procedural right, sanctioned by the Constitution, to ensure the protection of another constitutional and legal right (*which in this case is the right to property*), is understood by the applicant in its “judicial” component.

The Court has elaborated and elaborated the constitutional principle of the right to a fair trial in connection with the elements of a fair trial, according to Article 42 of the Constitution and 6 of the ECHR. In its decisions, the Court has emphasized that every organ of public power, when exercising its constitutional and legal functions, is obliged to respect the universally accepted democratic standards related to the fair trial, which have found their reflection in the Constitution.²

The Court, based on the above arguments, according to which the principle of legal certainty is violated through the deletion by an executive body of the registration of the title of ownership, which constitutes one of

1. See further decision no. 36, dated 15.10.2007 of the Constitutional Court. 56 Decisions of the Constitutional Court of the Republic of Albania 2010, ILAR Printing House, Tirana 2011, p. 374. - CHAPTER II - 52 The Rule of Law in the Constitution of the Republic of Albania

2. See decision no. 75, dated 19.04.2002 of the Constitutional Court

the basic rights of the owner, acquired according to the forms provided for by law, considers the violation of the right to be unacceptable, even in excess of the constitutional standard for a due process of law. In this sense, the Court has assessed that the applicant's claim that the right to property, acquired through a public act or a final judicial decision, cannot be violated to this extent and for a such an indefinite period through an administrative procedure, in addition to a judicial procedure, is fair and must be accepted.

-Decisions no. 23/2007, no. 6/2006, 43/2007, 1/2009, 6/2009, 9/2009, the Constitutional Court *has cited that the obligation to execute final judicial decisions as well as the reasoning of decisions are elements of the principle of legal certainty.*

Considering that legal certainty implies, among others, the guarantee of the individual's trust in the state, its institutions and the acts they issue, this Court has cited that the assessment and reasoning by the courts regarding the judicial decision presented as evidence by the applicant is also important in the context of respecting the principle of legal certainty, as one of the fundamental aspects of the rule of law. While in the context of the case under consideration, legal certainty means that in cases where the court has finally decided on a case, its decision should not be questioned.

-In Decision No. 43/2007, the Constitutional Court *emphasized that the necessity of executing final court decisions is an essential and natural requirement of the principle of legal certainty, since their effect and validity "cannot be questioned by anyone."* ¹This decision concerns a situation in which the applicant claims that his right to a fair legal process, provided for by Article 42 of the Constitution, has been violated, since the competent authorities have not executed the final court decision, resulting in the non-realization of his judicially acquired right.

The Constitutional Court has cited that the execution of a final court decision is considered the final stage of the realization of a judicially acquired right. Only after the realization of this stage can it be considered that the individual has fully established his acquired right. In such cases, it can be said that the process of establishing a violated right includes not

1. *Decision of the Constitutional Court of the Republic of Albania no. 6 dated 31.3.2006. Summary of Decisions of the Constitutional Court of the Republic of Albania, year 2007, p. 65.*

only the decision-making of the courts in the specific case, but also the concrete actions of the responsible bodies charged with the execution of final court decisions.

The Constitutional Court has already accepted in its practice that the right to request the execution within a reasonable time of a final court decision is an integral part of the right to a fair legal process within the meaning of Article 42 of the Constitution and Article 6/1 of the ECHR. The Constitutional Court considers it appropriate to refer to one of the cases with the Albanian state as a party examined by the ECtHR, specifically the case of *Qufaj v. Albania* ¹

On this occasion, the necessity of executing these decisions was emphasized, among other things, as an essential and natural requirement of the principle of legal certainty, since their effect and validity “cannot be questioned by anyone”. In the above context, we emphasize that the Constitutional Court has found a violation of the principle of legal certainty even in cases where courts of ordinary jurisdiction have not properly justified their decisions, specifically when they have not provided a response to one of the parties to the trial for the claims related to the evidence presented by it, when such evidence was another final court decision related to the case. The arguments in this case clearly coincide with those given when the execution of court decisions is requested

The role of the judiciary in the challenge of time in the function of the rule of law

Legal certainty has been tested more than ever in the progress of the state of the judicial system in Albania, in the application of the numerous structural and substantial reforms that were applied and their impact on the lives of citizens.

Today we are faced with discussions at all levels about the violation of legal certainty in the country, precisely from the lack of implementation of legality and constitutionality, from the violation of the standards for which Albania has been fighting for more than three decades.

With the change of the communist system to democracy around 1991-1992, the entire judicial system was reformed both from a structural and substantial point of view.

1. *Case Qufaj v. Albania*, 54268/00, 18 November 2004

Then 2008 was again involved in structural changes by cutting the number of courts and reducing them nationwide.

The 2016 reform was described as a reform that provides organization within the framework of European standards, and within its framework, a new judicial map was also compiled, which has overturned all the expectations that were trumpeted for an efficient system and to increase public trust. The decision on the new judicial map should be based on basic criteria and national and international standards for the provision of justice and access to justice, such as: guaranteeing access to justice in terms of the proximity of citizens to the courts, reducing costs in order to use public resources effectively, as well as improving the quality and appropriateness of the services provided.

According to international standards on efficiency in justice and guaranteeing the rule of law, the primary importance in determining the location and number of first instance and appellate courts is first and foremost the principle of access to justice, in the analysis of which elements related to the location of the courts should be taken into account, so that they are as close as possible to citizens, good connections with public transport to the courts, and secondly, ensuring an equal workload between courts and judges so that justice is delivered within a reasonable time and delays due to workload are avoided.

The decision to merge several courts into a single one should not be based solely on the legal criterion of the minimum number of judges, but also on the geographical, climatic and infrastructure conditions of the area, elements that directly affect citizens' access to justice. Reform, both in laws and in human resources, should have as a major goal and priority the guarantee of access of persons to judicial services or other aspects of assistance related to it.

Closing a Court will mean even less institutional control over actions or inactions of the administration or other issues that affect the rights or interests of citizens, since most citizens of those cities will no longer be closer to the Court, but they will also have increased transportation and time costs that no one takes into account.

The creation of a single Court of Appeal violates the rule of law, since this Court is now the last opportunity for citizens to fight for their right to a substantive trial. The creation of only one Court of Appeal throughout the country will lead to delayed trials for citizens and increased costs.

The main goal of a judicial map is efficiency in the delivery of justice, which means guaranteeing access to justice and delivering justice within a reasonable time. The goal should be to provide quality judicial services, not only in the short term, but in the medium and long term.

In a decision of the ECtHR “*Canj v. Albania*”, the court found a violation of Article 6 on the right to a fair trial only because the presence of the party was not guaranteed in the proceedings before the court of appeal and later in the Supreme Court, despite the fact that he was represented by a lawyer at the trial. This means that, despite the fact that the appearance of the parties at the appeal hearing is not mandatory, the state cannot hinder citizens’ access to this court on this pretext.

Also, in an objective assessment of the economic impact and costs of establishing a single court of appeal, it is concluded that the negative economic impact would be significantly higher than the impact on the efficiency of the courts in delivering justice.

The question that arises is: Has this reform itself contributed to the legal certainty of persons?

On the other hand, in addition to the structural change in subject and territorial competence in the country, the Albanian judicial system is also identified with numerous legal changes.

Such changes in such short periods of time have resulted in them not always being justified. They affect both the implementers who must prepare for the changes and begin building judicial practice, as well as the legal certainty of persons and the impossibility of understanding whether an action is still legal or not.

On the other hand, other elements of the principle of legal certainty can also be considered the obligation to execute final judicial decisions, the reasoning of judicial decisions, and others.

Also, in its practice we can see how the international guarantees invoked by our Constitution have not only influenced, but also changed the position of the Constitutional Court. Here I would bring as an example its position on the execution of binding court decisions. Initially, this was not seen as related to Article 42 of the Constitution, which had expressly defined only the fundamental pillars of due process, without exhausting its elements. Moreover, our Constitutional Court had not even taken into account the fact that the European Court had interpreted Article 6 of the

European Convention on Human Rights since 1997, in the case of *Hornsby v. Greece*, in which it was stated that, “The execution of a decision, of any court whatsoever, must be considered as an integral part of the due process of law within the meaning of Article 6

In the case of “**Qufaj & Co, Shpk, v. Albania**”, the Court of Human Rights found that the Albanian Constitution and law contain the necessary basis to guarantee the citizen the execution of judicial decisions. This means that the Judge must interpret the right to a fair legal process not only with the elements expressly sanctioned by the Constitution, but also more broadly. The judge’s ability to interpret the Constitution in a creative way is not only welcome in Constitutional law, but also necessary. This makes it possible for a Constitution to withstand time for centuries. The Constitutional Court changed its position on this issue, with **decision 6/2006**, in which, among other things, it emphasized: “*The entire judicial process, often difficult and problematic, would have no value if it were not followed by a process directly related to the activity of the enforcement bodies, to the execution of the decision or the realization of the acquired right.*”

When a Constitutional Court expresses itself in this way, its reasoning is not valid only for the specific case, but for all state bodies that have the obligation to execute binding court decisions, since this is an obligation that stems from the Constitution itself.

The principle of legal certainty as an essential element of the right to due process of law.

The right to due process of law is a constitutional right – guarantee. Affirmed by the two paragraphs of Article 2 of the Constitution, it consists of two main aspects: the protection of the rights of citizens and the obligation of public authorities to respect these rights by complying with legal procedures. The meaning that the Constitution has given to the protection of rights by public bodies through the fulfillment of legal procedures, makes this right not to be reduced simply to the regular judicial process, but to take on a broader meaning, of the regular legal process exercised by other public bodies, which follow extrajudicial procedures (administrative, arbitration, parliamentary, mediation, etc.).

However, due process remains an essential part of this right. It is not a question of due process only in its procedural sense, but in its essential

sense. that "...One of the most essential elements of the principle of the rule of law is that of legal certainty, which, among other things, has as a necessary requirement the fact that the law as a whole, its parts or specific provisions, in their content must be clear, definite and understandable. Of course, they cannot foresee every case that can and should arise from their recognition and application in practice. Therefore, it is primarily the duty of the courts or other state and social bodies, charged with the law, to naturally fill certain shortcomings of a law through its interpretation and application in practice.

But in order for this to be achieved, first of all the law must be understood correctly and correctly. Therefore, the purpose of its drafting must be clear.

It must define the scope of the intervention, the subjects to whom it is addressed, the specific conduct reports 3 and the manner of its implementation. The intended result must be expected and the consequences foreseeable for the subjects to whom the law as a whole, or its specific provisions, is addressed.”¹

Challenges in the future of our rule of law in relation to the positions of the ECHR on the respect of this principle.

Building a Rule of Law does not only represent a contribution of state institutions, but also a contribution of all actors in the country, including individuals, civil society, professionals, intellectuals, universities and the Academy of Sciences.

Challenges in the future of our rule of law are of particular importance, due to the fact that Albania is in the process of integration into the European Union, and overcoming them directly affects the advancement or not of this process. Strengthening the rule of law and its connection with the principle of legal certainty require a serious implementation of all positions of the ECHR in every constituent element of this principle. The principle of the rule of law is one of the fundamental elements of democracy as a form of government.

Guaranteeing it through constitutional norms and other legal acts, as well

1. Article 2 “1. Sovereignty in the Republic of Albania belongs to the people. 2. The people exercise sovereignty through their representatives or directly. 3. For the preservation of peace and national interests, the Republic of Albania may participate in a collective security system, on the basis of a law approved by a majority of all members of the Assembly.”

as implementing this principle in everyday life, are necessary conditions for the functioning and development of a free society, for peace and social security, increasing the well-being of all segments of the population, and the best possible respect for the fundamental rights and freedoms of the individual.

Countries with consolidated democracies have long identified the main standards of the rule of law principle, have taken the necessary measures and have defined the relevant mechanisms for the most complete and effective guarantee of its specific elements. Their experience has been and remains a valuable aid also for new democracies, on their long and difficult path to join the civilized world with dignity.

Precisely for this reason, it is rightly emphasized that the practical implementation of the elements or standards of the rule of law principle constitutes one of the main challenges that the Albanian state and society are facing today.¹ It still remains one of the most important and necessary conditions for the construction of a democratic state and society, the development of the country and the final separation from the system.²

Countries with consolidated democracies have long identified the main standards of the rule of law principle, have taken the necessary measures and have defined the relevant mechanisms for the most complete and effective guarantee of its specific elements. Their experience has been and remains a valuable aid also for new democracies, on their long and difficult path to join the civilized world with dignity.

Precisely for this reason, it is rightly emphasized that the practical implementation of the elements or standards of the rule of law principle constitutes one of the main challenges that the Albanian state and society are facing today. It still remains one of the most important and necessary conditions for the construction of a democratic state and society, the development of the country and the final separation from the system

1-Increasing access and effectiveness in the judicial system through the reorganization of the courts in accordance with European standards.

2-Realizing a capillary extension of the judicial service throughout the inhabited territory of the Republic through its territorial reorganization, in order to guarantee citizens' access to this service, the effectiveness of the

1. D.Biba, Xh.Zaganjori, *Implementing the rule of law in Albania*, in "Political Thought", N. 32, Skopje, 2010.

2. See European Commission, *Analytical Report, SEC (2010) 1335*, 9 November 2010.

judicial service, increasing the speed of trial, effective control of legal and factual violations of lower courts by higher ones, as well as the proportional distribution of the average caseload per court and judge.

3-Constitutional and legal changes regarding the organization and functioning of the judicial power will aim at the reorganization and distribution of courts and judges in accordance with the new territorial division, their ratio to the number of population and the flow of cases in accordance with European standards.¹ One of the biggest challenges addressed by this project was ensuring the transparency of the judiciary and the right to due process in accordance with European standards (*Objective 5*).

Judicial transparency is a distinctive characteristic of developed democracies. Ensuring judicial transparency is a necessity not only for changing the image of the system and increasing public trust in the judiciary and the justice system as a whole, but also for increasing accountability, professionalism and quality in decision-making. Publicity of judicial activity, public access to justice and the opening of this activity to society through communication with the public are essential prerequisites for a functional justice system.

The report emphasized that the analysis of the Justice System until 2015 had identified problems related to the transparency of the judiciary, referring to the manner of conducting court hearings, the announcement of decisions, notifications of the parties, the reasonable time limit for the development of the trial, the relations of the courts with the public and the media, access to the judiciary, etc.

So until these moments, according to this report and according to the goals that this strategy sought to achieve, it was accepted that Albania, which passed from a totalitarian system to a democratic system, for almost 25 years was still in search of the rule of law which had failed to achieve or preserve many democratic principles such as legal certainty. Taking all these findings as true and trumpeting them as a major scourge of society, a series of objectives were designed to be achieved, such as:

- Increasing the transparency of the courts, the access of private persons to the justice system and the public's access to court hearings, as well as strengthening the relations between the courts, on the one

1. page 10 of the project 24 July 2015 "strategy of reform in the justice system".

hand, and the media and the public, on the other, through changes in procedural legislation.

- Guaranteeing an effective means of appeal against court decisions, increasing the efficiency and speed of trials by avoiding delays in judicial processes.
- Improving the notification system, providing effective means and mechanisms that prevent the postponement of trials through relevant changes in procedural legislation.
- Improving the quality of reasoning in court decisions and providing the reasoning simultaneously with the announcement of the decision.
- Establishing the obligation for the timely publication of court decisions online;¹

This analytical report also highlights the problems regarding the effectiveness of the justice system through the implementation of court decisions and arbitration awards in accordance with European standards. The execution of court decisions constitutes an essential element of the rule of law and is considered the final stage of the realization of a judicially acquired right. (*Objective 8*).

To achieve this objective, the strategy focuses on legal changes aimed at:

- Guaranteeing the implementation of administrative, civil, commercial and criminal court decisions within a reasonable time frame through the proposal of a package of legislative, infrastructural and budgetary measures, which initially requires the establishment of an efficient monitoring and control system for the implementation of court decisions.
- Clearly identifying the responsibilities, duties and sanctions of all entities and in particular of state institutions responsible for the execution of judicial decisions in accordance with international acts.
- Increasing professionalism through strengthening the capacities in providing the service of the enforcement system and preventing corruption within the private and state enforcement system.
- Legally providing for automatic mechanisms and clear procedures for the execution of ECHR decisions both for financial compensation

1. page 15 of the project July 24, 2015 “justice system reform strategy”

and for legislative measures of a general nature and the unification of practice.

- Guaranteeing the fair execution of criminal court decisions, which determine special treatment for medical, educational, rehabilitation or rehabilitation purposes of convicted persons through the establishment of specialized institutions in this regard.
- Reflecting the necessary legal changes in accordance with international acts, with the aim of executing arbitration awards, considering the possibility of drafting a new law on arbitration.¹ Today in 2025, after 9 years of implementing this reform, after a detailed analysis of each objective cited above, also seen in the comparative perspective of the situation before the start of the reform, it is easily concluded that we are still in the phase of expectations and not concrete realizations.

This is one more and stronger reason to assert that Albania still needs time in the future to challenge the myth of Sisyphus in creating the rule of law.

In this paper, we will not dwell on each target of this project to analyze the achievements or not, since this issue should be addressed in an even broader and more detailed analytical paper, but we will touch on some aspects that are actually indicators of the ongoing challenges of our country.

Any deviation or violation of any principle of the rule of law will subsequently translate into an economic bill, but above all into a moral bill that pushes Albania into an indefinite period of time for EU membership. The clearest and most lucid reflection of these findings are the positions of the ECHR, especially those after the implementation of the justice reform, which clearly show the panorama of where legal certainty is today and what concrete measures are being taken to increase its level.

Let us analyze some of the issues identified by the ECHR:

Duration of court processing is a very important element that shows the level of:

- efficiency and speed of trials,
- access of persons to justice bodies and public access to court sessions,
- guaranteeing an effective means of appeal against court decisions.
- providing effective means and mechanisms that prevent the

1. pp. 18-19 of the project July 24, 2015 "Justice System Reform Strategy".

postponement of trials through relevant amendments to procedural legislation.

- Improving the quality of reasoning in court decisions and providing the reasoning simultaneously with the announcement of the decision.
- Establishing the obligation for the timely publication of court decisions online.

• **Kokolari v. Albania, Application no. 22493/12, Court decision dated 30 January 2024**

Held: On the admissibility of the application under Article 6(1) of the ECHR, the Court noted that the proceedings for restitution/compensation concerned a right recognised under Albanian law and that the applicants had a clear interest in the subject-matter of those proceedings and their outcome. The administrative proceedings had been pending since 2012 (when the applicants lodged their application with the Court) until 2023 (*when the applicants re-established their claims for compensation/restitution*). The national administrative authorities are under an obligation to examine without delay claims for compensation/restitution of confiscated property. Failure to do so constitutes a violation of Article 6(1) of the ECHR (*Right to a fair trial within a reasonable time*). The requirement for a “reasonable time” under Article 6(1) of the ECHR applies to the duration of those proceedings. In the present case, the proceedings were pending before the ATP. Under Albanian law, this administrative authority has the (*special, if not exclusive*) competence to decide on the applicant’s claim over their property rights, which are of a civil nature (*see e.g. Ramadhi and Others v. Albania, Application no. 38222/02, 13 November 2017*).

In particular, the proceedings pending before the ATP concerned the existence and extent of the applicants’ property claims, which had not been resolved for many years. As of February 2019, there was no other administrative authority or court that could determine the applicants’ entitlement. As of February 2019, the applicants had the opportunity to challenge the ATP’s inaction before a national court, which would constitute a “dispute” within the meaning of Article 6(1) of the ECHR.

...However, States have an obligation to organize their legal systems in such a way that those authorities meet the requirements of Article 6 of the ECHR (*see, for example, Bara and Kola v. Albania, Applications Nos. 43391/18 and 17766/19, 12 October 2021*). Furthermore, between 2012

and 2019, the applicants did not contribute to the delays (*e.g. by failing to submit documents*).

In view of the above, the Court finds that Albania has violated Article 6(1) of the Convention in respect of the period between 2012 and 2019 on account of the excessive length of administrative proceedings for compensation/restitution of confiscated property.

• Vjola SH.P.K. and DE SH.P.K. v. Albania, Application no. 18076/12, Judgment of 30 January 2024

In cases of claims requiring a prompt response from the courts (*e.g., concerns about the possession and exercise of their rights arising from a lease concluded with the national authorities*), domestic courts are under an obligation to grant individuals the right to a hearing within a reasonable time.

Failure to act in this way constitutes a violation of Article 6(1) of the ECHR (*Right to a trial within a reasonable time*). In the context of the subsequent appeal proceedings, the national courts confirmed the findings of the District Court. In the present case, the proceedings lasted for more than seven years, of which more than three years before the Supreme Court.

In conclusion, the Albanian courts violated the applicant companies' right to a trial within a reasonable time under Article 6(1) of the ECHR.

• Spahiu v. Albania, Applications no. 79452/17 and 2 others, Judgment of 18 July 2024

The applicants complained about the non-enforcement or late enforcement of court decisions given against the Public Administration in employment matters. The first applicant complained about the almost four-year delay in enforcement of a 2014 domestic court decision annulling her transfer to another position and city (enforced in 2018). The second applicant complained about the almost two-year delay in enforcement of a 2015 court decision ordering her reinstatement and payment of back wages until reinstatement (enforced in 2018). The third applicant complained about the almost four-year delay in enforcement of a 2015 court decision ordering her reinstatement (*to the same or a similar position*) and payment of back wages until reinstatement.

The right to a fair trial includes the timely execution of final and binding decisions given against the Public Administration. Thus, national

authorities have an obligation, which applies in employment cases, to execute these decisions in full and within a reasonable time. Failure to act in this way constitutes a violation of Article 6 of the ECHR (Right to enforcement of court decisions)¹ The Court considered that the facts of the case indicated a delay in the execution of domestic decisions and noted that the domestic authorities had not made all necessary efforts to implement the decisions in the applicants' favour within a reasonable time.

In the light of the above, the Court finds that Albania has violated Article 6(1) of the Convention on account of the delay in the execution by the domestic authorities of the final, binding decisions in the applicants' favour. In its ongoing case-law, the ECtHR has considered the right to seek enforcement of a final judgment within a reasonable time as an integral part of Article 6(1) of the ECHR.²

The ECtHR has consistently held that an applicant should not be denied the right to benefit from a favourable outcome of the judicial process simply on the ground of the State's financial inability to do so.³

This Court has stressed that the State must constantly undertake the obligation to ensure that the parties participating in the proceedings will have a real opportunity to execute the final judicial decision and that the right of access to a court would be illusory if the legal system or its application in practice were to cause a final judicial decision to remain ineffective and unenforceable for an excessively long time. As also emphasized in well-known international documents, the full, effective and efficient implementation of judicial decisions is of essential importance for States in order to establish, strengthen and develop a judicial system respected by all.

The rule of law, as one of the fundamental principles of a democratic society, entails the obligation of public authorities to implement final judicial orders or decisions.⁴

1. See *ECtHR Hornsby v. Greece*, 19 March 1997; *Georgiadis v. Greece*, 28 March 2000.

2. See *Burdov v. Russia*, No. 59498, 2002 and *Shilyayev v. Russia*, No. 9647/02, 6 October 2005.

3. *Resolution of the Conferences of European Ministers of Justice*, 4-5 October 2001. Taken from the recommendation of the European Committee for Legal Co-operation concerning the enforcement of judicial decisions of the member states of the Council of Europe.

4. *ECtHR Hasan and Chaus v. Bulgaria*, No. 30985/96, p. 87.

LIABILITY ARISING FROM SERVICES

Nertila Ndrejoni¹

Abstract

Technological developments and the transformation of the service market have created new challenges for legal systems in terms of ensuring consumer safety. In Albania, Law no. 9902, dated 17.04.2008, “On Consumer Protection,” obliges service providers to offer services that are safe and do not pose a risk to the life or health of the user. This obligation is also sanctioned in the Civil Code, in the part that regulates certain specific contracts in the field of services, such as the contract for works, the supply contract, the transport contract, the commission contract, or the deposit contract.

However, judicial practice reveals considerable ambiguities regarding the boundaries between contractual and non-contractual liability, especially in cases where there is no direct relationship between the consumer and the service provider. The consequence of this ambiguity is the diametrically opposite resolution of disputes, precisely due to the essential differences between these types of liability, particularly regarding the statute of limitations for filing a lawsuit and the burden of proof related to fault.

This paper examines the Albanian normative framework on liability for damages resulting from unsafe services, with a particular focus on cases related to electricity supply and medical services. The analysis focuses not only on the different positions of the courts regarding the nature of the damage in these cases, but also on the clash between judicial practice and doctrinal treatment, especially in the distinction between the risk of the

1. Legal Advisor – Supreme Court of Albania
PhD Candidate in Public Law

activity and the quality of the service as a product.

The differing positions in judicial practice in this regard are not treated in this paper as statistical evidence, but solely with the aim of highlighting the need for the unification of judicial practice by the High Court, in accordance with its constitutional function of ensuring uniformity in the application of the law.

Additionally, through a comparative approach with European Union law and the jurisprudence of the European Court of Justice, the shortcomings of the current legislation are highlighted, and interventions are suggested to ensure more effective protection of consumer rights against damages arising from unsafe services, aiming for a more harmonized approach with European standards.

Keywords: *civil liability, unsafe services, non-contractual damage, contract, consumer, electricity, medical services, EU, jurisprudence*

Services, just like products, must be considered as being produced for the fulfilment of a need. It should be emphasized that all production processes aim at transforming inputs and raw materials in order to convert them into products or services used to satisfy a need.

Despite the common characteristic they share in relation to their production for the fulfilment of a need, they also have several distinguishing features, considering that products are tangible, homogeneous, transferable, and storable. On the other hand, services are intangible, heterogeneous, non-transferable, and cannot be stored, because in their essence they consist of actions or processes offered to different users.

In order to address the liability arising from services, we must first treat “the service provided” as a concept. It should be noted that, since early periods, evidence exists regarding service activities, among the oldest of which are those in the legal and banking fields. Adam Smith in 1776 considered services as “unproductive and incapable of generating valuable benefits.” Alfred Marshall, however, stated that “a person who provides a service is just as capable of giving benefit to the recipient as a person who produces a tangible product.” In modern times, economic sciences define a service as “the production of a fundamentally intangible utility, separate

or as an essential element of a tangible product, which through certain forms of exchange satisfies an identified consumer need.”

The Civil Code mentions services only in the case when it provides for misleading publications that may be made by the provider of a particular product or service, as foreseen in Article 635 of the Civil Code, without giving, however, its definition. The only definition of the notion “services” is found in Law no. 9902, dated 17.04.2008 “On Consumer Protection,” where in Article 3/13 it is provided that: “Services are services determined to be offered to consumers, according to any form provided in the Civil Code.” The notion of services according to this law is viewed in close connection with the service contract, the definition of which is given in Article 3/21, which states: “A service contract is any contract different from a sales contract, under which the trader supplies or undertakes to supply a service to the consumer, who pays or undertakes to pay the price.” Consequently, it may be said that such a definition of services under this law refers mainly to contracts for the performance of services provided by the Civil Code, among which, most commonly encountered in practice, are the contract of enterprise, the transport contract, the supply contract, the order contract, the deposit contract, the forwarding contract and the agency contract.

In today’s context, services may form part of the final product, given that many products prove to be a combination of elements of goods and services. The service element may be the essential element in such a combination or it may serve to support the provision of a tangible good (for instance, a loan taken to support the purchase of a new car). Because of the characteristics or common elements they share in this regard, the legislator in certain fields has equated the concept of services with that of products. We may mention here the definition of the concept of “product” from Article 3/6 of Law no. 9121, dated 28.07.2003 “On the Protection of Competition,” according to which:

“Product” is any good, sold or purchased, or any service offered or acquired in the market by enterprises.

**Among the characteristics that distinguish services,
we may mention:**

Intangibility is a defining key for determining whether an offering is a service or not. In fact, very few products are completely intangible or totally tangible. Services tend to be more intangible than manufactured products, and manufactured products tend to be more tangible than

services. This feature affects the consumer of the respective service, since he is not able to judge a service before he consumes it. A pure service cannot be evaluated by using physical senses. The level of intangibility present in the service offering derives from three main sources, namely:

Tangible goods that are included in the service offering and consumed by the user.

The physical environment in which the service production/consumption process takes place.

The tangible elements of the service performance.

As long as a service is intangible, the consumer often uses the service price as a measurement unit to understand its quality, and is also more inclined to rely on the publicity made about it.

Inseparability. The consumption of a service is inseparable from its production. In some types of services, the consumer must be present during the entire production process, thereby becoming in this moment a co-producer of the service.

Variability. Services are produced directly. There is often no possibility for errors to be corrected before these are perceived by consumers. Frequently, production depends on human inputs (which may err). In services, it is difficult to design the production process. This also brings difficulty in perceiving a consistent image and quality, as well as challenges in consolidating a brand.

Ownership. When a service is performed, ownership is not transferred from seller to buyer. The buyer merely purchases the right to a service process. However, the buyer may acquire rights to receive a service in the future.

Today, the distinctions between products and certain categories of services are gradually disappearing, to the point where it may be said that qualitative elements of both are intertwined in such a way that the service operates as a product. As an example in this regard, one may mention online language courses or professional trainings, which have acquired the status of a type of virtual product.

Quality of Services

The complexity of services leads to a complexity of their quality. Service quality is a desired objective of the company and an incentive for performance improvement. In order for quality to be improved, it must first be defined, that is, what quality is as perceived by consumers. Article 5, paragraph 2 of Law no. 9902, dated 17.04.2008 “On Consumer Protection,” establishes the obligation for service providers to offer only safe services. In determining whether a service is safe, aspects such as the following must be taken into account:

- a) the characteristics of the service;
- b) the effect of the service on other goods and services;
- c) the presentation of services, warnings or information in connection with the services;
- d) the categories of consumers at risk when using the service, particularly children and the elderly;
- e) the possible risks that the service may cause if it is not used properly.

With regard to quality, we have:

Technical quality, which refers to what consumers receive in their interaction with a service firm, such as waiting time in a supermarket, obtaining a loan in a bank, the repair of a vehicle in a workshop, the transport of a passenger to the destination, etc.

Functional quality, which refers to how the technical quality is delivered to consumers — for example, the accessibility of an ATM or a business consultant, the external appearance of bank staff, their behaviour, and the way in which service employees perform their duties.

Service quality, where the image of a company serves as a filter for determining this.

The consumer evaluates a service only after having consumed it, and this is the point at which the consumer develops attitudes toward the service. If he remains sufficiently satisfied with the service, then he will become its “advocate” and will recommend it to others, as well as place the service provider at the top of the list the next time he seeks that type of service.

Types of Services

Services are divided into two major categories:

Material services, which include those services offered to fulfil individual consumption needs, such as those related to the repair of a wide variety of products, services, foods, and transport.

Social and cultural services, which include those offered to fulfil spiritual and intellectual needs, those for the preservation and safeguarding of health, as well as those for the improvement of professional skills.

Among the services most widespread today, we may mention:

- services in the field of wholesale and retail trade;
- services in the field of transport, including road, rail, water, and air transport;
- services in the field of bank deposits;
- public services, including the provision of electricity, natural gas, steam, water, and waste disposal;
- services in the field of information, which include entities that produce and distribute informational and cultural products, provide means for distributing or transmitting these products and/or data processing;
- services in the financial field; these include financial and insurance transactions that carry risk, as well as real estate transactions, leasing, and renting;
- banking services. In the banking sector, regarding these services, the use of online banking services is increasingly expanding, which is part of the broader category of “Fintech.” The term “Fintech” is a term that has begun to be implemented and used as a combination of technology and finance, and it denotes any technology used to facilitate and improve any financial activity through automation. Companies such as ApplePay and PayPal are examples of companies that enable the user to make money transfers with just one click;
- professional and business services, including legal consulting, accounting, architecture, engineering, computer services, consultancy, health care, etc.;
- services within the framework of the management of companies and enterprises;
- other services consisting of performing routine activities for other organizations.

Before addressing the civil liability arising from the provision of defective services, it should be noted that EU Directive 85/374 excludes the field of services from its scope of application.

For the purposes of addressing this topic within the framework of the liability borne by the service provider, we will make a distinction between:

- damage arising from services provided on the basis of contracts and where a contract exists between the parties;
- damage arising from services where there is no contractual relationship between the parties.

Services Provided on the Basis of Contracts

These types of services constitute the largest part of relationships between subjects. Every service offered to the consumer is characterized, in most cases, by an agreement which varies in form depending on the service. Thus, services such as public or private transport, whether road, rail, sea or air transport, are carried out through a written agreement, which is represented by the corresponding ticket. Every other service received by the consumer is documented in one form or another through a written document which will be considered a contract between the parties.

In this way, a contractual relationship exists between the parties, in which the parties assume rights and obligations. In such cases, the parties will be obliged, on the basis of the respective contract for the provision of a specific service, to fulfil all obligations undertaken.

With regard to the damage that may be caused to the consumer in the context of the provision of a defective service — meaning that the service offered is not safe — then, based on the above reasoning, it will be considered contractual damage arising from the incomplete or improper fulfilment of obligations by the service provider. It is this contract which will determine the regulation of consequences in the event of disputes between the parties. If the conflict cannot be resolved through these clauses, then the parties must refer to the provisions of the Civil Code which regulate the respective contracts.

The injured consumer in this case has the right to address the court with a claim “for fulfilment of the obligation undertaken in the respective contract,” and in addition, he also acquires the right to seek compensation for the damage that he may have suffered as a result of the provision of a

service of poor quality (Article 476 of the Civil Code).

Among the services provided on the basis of contracts and which are foreseen in the Civil Code, we may mention the service offered through the contract of supply, the contract of transport, the contract of enterprise, the contract of order, and the contract of deposit.

Since the compensation of contractual damages is not the object of this topic, we will not dwell extensively on the treatment of cases where damage is caused as a result of the provision of these defective services, because as long as an agreement exists between the parties, the compensation to be sought will be made on the basis of the respective articles of the Civil Code which regulate the corresponding contract.

As types of services, we also mentioned the supply of consumers with electricity or water. It should be said that electricity, under the Civil Code, will be considered a product with regard to its production. Meanwhile, Law no. 9072, dated 22.05.2003 “On the Electric Power Sector,” in Article 25, provides that the activity of production, together with that of distribution, supply, etc., shall also be considered public services.

Below we will address the supply of electricity as a service. This qualification has also been made by the Civil Chamber of the Supreme Court in decision no. 204, dated 04.05.2010, where, among other things, it is stated that:

“The supply of users with electric energy is a public service, within the meaning of Article 25 of Law no. 9072, dated 22.05.2003, and as such must fulfil several obligations, such as: the security of supply, the protection of life, health, property of people, etc. (Article 25, letters a–dh of Law no. 9072, dated 22.05.2003). Precisely in order to guarantee the supply of electric energy as a public service and to avoid the harmful consequences that such supply may bring in cases of breakdowns or defects, the electric energy sector, as a sector specially monitored by the State, is structured and regulated through special legal and sub-legal acts that establish strict rules for all services related to electric energy.”

Further in this decision, it is reasoned that:

“In the analysis of the above provisions, it is clear that electric energy supplied as a public service must be within all normal parameters and levels corresponding to the user’s activity; the supply of electric energy must

be safe for life, the environment, and property. If the supply of electric energy outside the permitted parameters causes damage, the supplier bears responsibility toward the person to whom damage is caused to his person or property.”

In this decision there was debate regarding the contradictory nature of the lower courts’ reasoning, according to which, on the one hand, the damage found in the plaintiff’s residence as a result of overvoltage is considered contractual, since it relates to the defendant’s obligation arising from the contract of electricity supply within the permitted technical parameters, while on the other hand, it is considered damage arising from a dangerous activity under Article 622 of the Civil Code, applicable to non-contractual damage. The Chamber in this case did not hold a clear position regarding the nature of the damage in the concrete case, leaving this assessment to the Court of Appeal in the retrial of the case.

What is to be noted in relation to this case is not only the interpretation of the Chamber in considering the activity of the supply of electric energy by the defendant — the company holding the exclusivity of this activity — as a public service, according to Law no. 9072, dated 22.05.2003 “On the Electric Power Sector,” but also as an activity involving increased inherent risk, pursuant to Article 622 of the Civil Code. The Chamber reasons more specifically that:

“While both lower courts accept that we are dealing with contractual damage (and in such circumstances they should have investigated, on the basis of the evidence in the judicial file, which contractual obligations the defendant failed to fulfil), on the other hand, they reach the conclusion that the damage was caused by the defendant with reference to Article 622 of the Civil Code, which expressly states: ‘A person who carries out an activity that is dangerous by its nature or by the nature of the objects used and causes damage to other persons, is obliged to compensate the damage, except when he proves that he has used all appropriate and necessary measures to avoid the damage.’ The Civil Chamber of the Supreme Court considers it necessary to emphasize that the Court of Appeal erred in referring solely to the application of this provision, which in most cases applies to non-contractual liability.”

In this case, one of the members of the trial panel did not agree with the position of the majority, arguing that the damage has a contractual nature, due to the failure of the defendant to fulfil the obligation to supply electric

energy within the technical conditions, and that in such a case Article 622 of the Civil Code is also applicable, whose scope is not limited only to non-contractual liability, but also to contractual liability.

The position of the Chamber regarding the treatment of damage arising from the service of electricity supply as contractual damage is maintained further in decision no. 1353/189, dated 08.05.2014, where it is emphasized that the supply of electric energy, in contradiction with the technical quality parameters, results in the arising of contractual liability for compensation according to Article 476 of the Civil Code, and not non-contractual liability under Articles 608 et seq. of the Civil Code, since the damage is a consequence of the breach of the contractual obligation to supply electric energy in the required quality.

More concretely, the Chamber reasons that:

“This party, during the process, has clarified and argued that it seeks compensation for the damage caused by the defendant by claiming that the cause of the fire was the fluctuation of voltage, i.e., the improper quality of electricity supply by the defendant... In these conditions, the reasoning of the Court of Appeal is correct that: ‘The legal relationship that has arisen and exists between the parties is the contract for the supply of electric energy... the defendant has failed to fulfil its primary obligation arising from the supply contract, namely the quality of electric energy, due to the decrease in voltage level. Consequently, the defendant must bear liability for the damage caused by the non-fulfilment of the contractual obligation. Article 476 of the Civil Code establishes the debtor’s obligation to compensate the damage resulting from the deficiency in the execution of the obligation. This provision guarantees the plaintiff’s subjective right to compensation... the defendant should have proven that it was not at fault for the voltage fluctuation and, consequently, for the deficiencies in its service, a fact which was not established during the judicial process.’”

Non-Contractual Damage Caused by the Provision of a Service

As analyzed above, the majority of services are offered on the basis of a preliminary agreement, meaning a specific contract, and therefore any damage caused by defects in the service will be resolved on the basis of that agreement. However, there are also cases where the damage may

be non-contractual, arising as a result of defects in the provision of a particular service. Here we may mention the case where a person who has no contractual relationship with the service provider suffers damage as a result of the service that the provider performs for another person based on their agreement. Let us take a hypothetical case: if entity A (which supplies gas), during the supply carried out in the premises of entity B (with whom it has a supply contract), the gas catches fire, causing damage to the health and property of person C.

Regarding the civil liability that entity A will bear in relation to entity C, it must be stated that A will be liable on the basis of Articles 608 or 622 of the Civil Code. The service provider will be liable based on the respective contract with the party with whom it has signed the relevant agreement (depending on the type of service offered). Only in cases where the parties — specifically the provider and the recipient — are not bound by any contract, as in the example above, will the damage be sought based on the general provisions governing the tort liability regime. In such a case, all four conditions required by Articles 608 and 609 of the Civil Code — as treated in Chapter 2 of this work — must be proven as fulfilled.

Regarding non-contractual damage caused by the provision of services, Article 622 of the Civil Code must also be taken into account. This provision regulates the liability of subjects who carry out an activity dangerous by nature, due to the objects and means used or due to the nature of the hazardous activity exercised. Under this article, every subject that conducts an activity considered a source of increased risk to the environment — due to the objects used, transport means, machinery, equipment, or the energy used to operate such means — shall be liable for the damage caused as a result of this activity. Damage may be caused to persons, to the property of individuals, to plants, animals, etc. Such activity is considered one with increased inherent risk, due to its nature, which cannot be fully controlled by the human operator (the subject conducting the activity). This type of liability is considered strict liability, and as such, Article 622 provides a circumstance which may exempt the subject from civil liability. This exemption may apply only when the subject proves that, although all necessary and appropriate measures were taken to avoid the damage, the damage nevertheless occurred.

In decision no. 492, dated 26.07.2023, in a case where compensation was sought for damage relating to the loss of olive production belonging to

the plaintiff, as a result of harmful gas emissions during the extraction and processing of crude oil from wells administered by the defendant party, located near the plaintiff's land, the Civil Chamber, treating this claim as related to the strict liability of the defendant, reasoned that:

“Based on the way Article 622 of the Civil Code is formulated, the strict liability presumed in cases of a dangerous activity is accepted within the framework of a relative legal presumption, since the legislator has allowed the presentation of opposing evidence for the purpose of rebutting such presumption. It should be noted that, unlike the general rule, the injured party does not bear the burden of proving whether the conduct of the damage-causing party is unlawful and culpable; it is sufficient to prove the existence of a causal link between the damage suffered and the dangerous activity carried out by the presumed tortfeasor. Therefore, the causal link constitutes the determining criterion for the existence of this liability, in the sense that there can be no strict liability if the causal connection between the conduct of the presumed tortfeasor and the concrete harmful consequence is absent.”

Precisely on the basis of this criterion, the Civil Chamber concluded that the defendant bore no liability, reasoning that:

“The court of first instance correctly reasoned that the material causal link exists between the actions of the former state-owned enterprise that had administered the oil wells long before the defendant began its activity (as a result of accidental events — ‘fountains’ — in the years 1980 and 1982) and the harmful consequences suffered by the plaintiff, and that this causal link has not been interrupted, as the damage suffered is the direct and immediate result of the same unlawful fact, whose harmful effects had continued during the period under review (2011–2013), when these oil wells were operated by the defendant.”

Furthermore, in many decisions of the Supreme Court, regarding the activity of electricity supply — which, as discussed above, under Article 25 of the Law “On the Electric Power Sector,” is considered a public service — this activity is also considered dangerous, and the liability of the supplying entity is qualified based on Article 622 of the Civil Code.

In legal doctrine, it has been maintained that the service provider will bear civil liability for the damage that may be caused to a third party as a result of the provision of an unsafe service, under the provisions governing tort liability, and that the provider cannot bear liability under the provisions

governing producer's liability for defective products, since such provisions do not equate the producer with the service provider.

In fact, recent judicial practice, especially in cases involving damage caused by the supply of electric energy where the damage is of a non-contractual nature, has tended to move in the opposite direction from this theoretical treatment.

Decision no. 2036, dated 21.09.2022 of the Civil Chamber of the Supreme Court

Referring to the facts contained in the decision, it results that the main issue for discussion before the Civil Chamber was the determination of the nature of the damage caused to the plaintiffs' residence as a result of the burning of this residence due to overload in the electricity distribution network. The determination of the nature of the damage — contractual or non-contractual — conditioned the applicable prescription period, which, for non-contractual damage, is special (3 years under Article 115/dh of the Civil Code), and for contractual damage is the general 10-year term under Article 114 of the Civil Code.

The Civil Chamber concluded that the case concerns non-contractual damage, caused by electric energy as a product, since the damage did not arise as a consequence of non-fulfilment of the obligation to supply electric energy by the defendant — an obligation which, in this case, had been fulfilled — but as a consequence of the dangerous activity exercised by the defendant, giving rise to its strict liability under Article 622 of the Civil Code, viewed narrowly in relation to the condition or safety of electricity as a product according to Article 631 of the Civil Code. Based on such reasoning, it was accepted that liability for damage caused by electricity constitutes a special type of liability, since, in addition to the general rules applicable to strict liability for the exercise of a dangerous activity under Article 622 of the Civil Code, the rules of product liability are also supplementarily applicable, due to the specific nature of electric energy as a product within the meaning of Article 631 of the Civil Code.

More specifically, in this regard it is reasoned as follows:

“The Chamber considers that, referring to the provisions applied in the present case and to the nature of the activity exercised by the defendant as

an activity with increased inherent risk and with a monopoly character in the market for the supply of electric energy to final consumers, the elements of non-contractual damage are present, and not those of contractual damage, as the Court of Appeal partially reasoned. According to Article 476 of the Civil Code, contractual damage is the consequence of the non-execution of contractual obligations undertaken by the parties, as a result of which a party may seek specific performance and compensation for the damage arising from the late or improper execution of the obligation, or compensation for the damage arising from the non-fulfilment of the contractual obligation. Thus, the emphasis of this provision lies in the fulfilment of the obligation, and only if that obligation is not fulfilled does compensation serve to restore the condition caused by the non-fulfilment of the contractual obligation of the parties.”

In the present case, it results that the parties had entered into a contract for the supply of electric energy to the residential premises. The defendant fulfilled this obligation by supplying the plaintiff’s property with electric energy. Thus, it fulfilled the contracted obligation, whereas the purpose of the claim in this case is not to ensure the supply of electric energy or damage caused by non-supply, but to seek compensation for property damage caused by the burning of the residence, which, according to the plaintiffs, resulted from fluctuations in voltage, since high voltage had fallen onto the low-voltage line due to the absence of protective measures such as grounding, lack of fuse, etc.

Thus, it results that the damage to the immovable property does not arise directly from the non-fulfilment of contractual obligations for supply, but from the “activity with increased inherent risk” exercised by the defendant, which depends not only on the nature of the product “electric energy” but also on the state of the network in which such supply is carried out — both outside and inside the property of the injured party where the fire occurred — the condition of the product “electricity” transmitted to the plaintiff by other operators in the distribution network, etc.

Since the damage caused to the residence or to the lives of individuals residing therein is not a direct consequence of the rights and obligations regulated by the supply contract, but rather arises from the activity with increased inherent risk under Article 622 of the Civil Code and the quality of the product “electricity” under Article 631 of the Civil Code, the Civil Chamber considers that such damage has a non-contractual nature.

The parties have regulated through the contract all rights and obligations deriving from the supply agreement, and the damage to the residence or

to a person's life from electric energy does not arise from the normal contractual activity of supply, but from the risk inherent in the activity itself, due to the nature of the products being supplied. Therefore, the Civil Chamber considers that the property damage caused by the burning of the residence due to fluctuations in electric energy constitutes non-contractual damage, and not contractual damage, as reasoned by the Court of Appeal.

Decision no. 465/34, dated 19.04.2018 of the Civil Chamber

In this decision, the determination of the activity of supplying electric energy as a public service is once again emphasized, while at the same time the damage caused by electric energy is treated as non-contractual damage, arising from the use of electric energy as a product within the meaning of Article 631 of the Civil Code.

With regard to the elements of this liability, emphasis is placed on the necessity of proving the causal link, as an essential condition for the arising of such liability, ordering the conduct of a technical expertise as an important piece of evidence required in this direction in cases of this nature.

Thus, in this decision it is reasoned that:

“The supply of users with electric energy is a public service, within the meaning of Article 25 of Law no. 9072, dated 22.05.2003, and as such must fulfil several obligations such as: the security of supply, the protection of life, health, and property of persons, etc. (Article 25, letters a–dh of Law no. 9072, dated 22.05.2003). Precisely in order to guarantee the supply of electric energy as a public service and to avoid the harmful consequences that such supply may cause in cases of breakdowns or defects, the electric energy sector, as a sector specially monitored by the state, is structured and regulated by specific legal and sub-legal acts that establish strict rules for all services relating to electric energy. Likewise, referring to Article 631 of the Civil Code, ‘electric current is also understood as a product.’ Article 142 of the Civil Code provides that: ‘All other objects, including any other natural energy, are movable objects.’ From the analysis of the above provisions, it is clear that electric energy supplied as a public service must be within all normal parameters and levels consistent with the user's activity; the supply of electric energy must be safe for life, the

environment, and property. If the supply of electric energy outside the permitted parameters causes damage, the supplier is liable to the person who suffers damage to his person or property.”

Decision no. 1309/147, dated 20.04.2022 of the Civil Chamber

In this case, the object of adjudication was the shared liability between the employer and the employee when the damage arising from the supply of electric energy — considered a dangerous activity under Article 622 of the Civil Code — was also caused due to the lack of due care on the part of the injured employee himself.

More specifically, the Chamber reasoned as follows:

“The taking of organizational work measures and the implementation of technical safety rules is a joint responsibility of the work group engaged in repairing the defect. The plaintiff was part of this group, therefore his responsibility in the occurrence of the consequence cannot be excluded. As an employee of OSHEE, he possesses special knowledge for performing his duty and is aware of the technical safety rules required to be implemented in the activity of this company. For this reason, in the present case, Article 622 of the Civil Code cannot be applied as one of the cases of strict liability, due to the dangerous activity exercised by its nature or by the nature of the objects used. Its interpretation clearly shows that it refers to cases of liability of the damage-causing subject toward third persons who are not part of the working staff engaged in the dangerous activity. In the present case, the plaintiff Y.Gj., as part of the working group of the legal person conducting this activity, cannot be equated with the other persons contemplated by Article 622 of the Civil Code. These latter include those subjects who are not participants in the dangerous activity. Whereas in the present case, the plaintiff is an employee of the person carrying out the dangerous activity and who, according to technical safety regulations, was obliged to respect a series of measures before conducting the work for repairing the defect. In this context, the liability of the plaintiff as employee cannot be viewed separately from that of the employer for whom he performed his duty. According to Article 493 of the Civil Code, in cases of shared liability, the court may, as appropriate, reduce the amount of compensation or completely release the debtor from the obligation to compensate. In the

present case, it has been proven that the plaintiff himself did not exercise due care to prevent the damage, therefore the court could not compensate the plaintiff at the maximum levels as was done in the case at hand.”

As can be observed from the above-mentioned judicial practice, it results that there is no clear distinction with regard to:

- i) in which cases we are dealing with contractual damage and in which cases with non-contractual damage arising from electric energy being supplied beyond permitted parameters or not in the required quality;
- ii) whether we are dealing with damage arising from a dangerous activity, or with damage arising from electric energy as a product within the meaning of Article 631 of the Civil Code.

The questions that arise in reference to these positions are:

- i) Should the liability arising from the damage caused by electric energy be understood, according to the elements of the claim for non-contractual damage under Articles 608 and 609 of the Civil Code, as strict liability (without fault) under Article 622 of the Civil Code, or as liability arising from products, due to the particular qualification of electric energy as a product within the meaning of Article 631 of the Civil Code?
- ii) Can the liability of the electricity supplier for the damage caused — due to the dangerous nature of this activity or the unsafe quality of this service — under Articles 608, 609, and 622 of the Civil Code, be equated with the liability for the defects of electric energy as a product under Articles 628–634 of the Civil Code?

Other Types of Services

Another public service that presents significant risks regarding safety in the manner of its provision is the healthcare service offered in the framework of public service.

Liability for compensation of damage caused by medical service is regulated specifically by Article 50 of Law no. 9106, dated 17.07.2003 “On the Hospital Service in the Republic of Albania,” a provision which expressly provides that:

“Public and non-public hospitals shall compensate the injured patient, according to the Civil Code, when the damage has arisen from the non-

observance of rules during the performance of duty by medical staff, or from the failure to provide timely medical assistance, pursuant to Article 6 of this law.”

Article 6, to which this provision refers, establishes the legal obligation of public and non-public hospitals to provide medical assistance to Albanian or foreign citizens, insured or uninsured, who need emergency hospital service for any disease or accident.

From the way these provisions are formulated, it is understood that they refer to non-contractual liability, the conditions of which are those determined by Articles 608 and 609 of the Civil Code regarding the simultaneous existence of:

damage;

ii) unlawful act;

iii) causal link;

iv) fault.

Recent judicial practice has been oriented precisely toward treating this liability under these aforementioned provisions, closely linked with the requirements of Article 618 of the Civil Code.

Decision no. 296, dated 11.05.2023 of the Civil Chamber of the Supreme Court

In this case, where compensation was claimed for damage caused to a minor child by the actions of a nurse of the hospital where the child was hospitalised, the Civil Chamber accepted the liability of the hospital to compensate the damage on the basis of the criteria of non-contractual liability, as provided by Articles 608 and 609 of the Civil Code, reasoning that:

“The third person F.A. is found to have caused the damage during her work as a nurse of the UHC ‘Mother Teresa’, concretely in the mechanical act of injection. As a consequence, the latter, as the defendant party in the proceedings, bears derivative liability arising from its employee pursuant to Article 618 of the Civil Code. In order to individualise this type of liability, it is necessary to establish whether the damage is the result of negligent treatment by the third person, or as a consequence of some fortuitous event, or as a result of lack of equipment or inappropriate medication supplied by the contracting parties supplying the hospital.

Consequently, the person causing the damage could not be identified at the moment the damage occurred, and was determined beyond any doubt by the final criminal decision, in application of Article 70 of the Code of Criminal Procedure. Whereas the liability of the defendant to compensate this damage as a result of the negligent treatment by its employed worker is in accordance with Article 618 of the Civil Code.”

Of particular interest in this case is the issue of subject-matter jurisdiction, civil or administrative, of the court which should adjudicate this dispute, where the Civil Chamber, in response to the grounds raised in the recourse, accepted that the dispute is of a civil nature, reasoning that:

“The organ of state administration or the public organ is an organ vested with powers of state authority, which are expressed in its rights and duties to issue administrative acts through which the will of state authority is manifested and which protects and enforces the law against any violation by the use of coercive force. Evaluating the provisions of Law no. 8510/1999 as a whole, it results that this law regulates the liability of organs of state administration, a quality which the defendant does not have. Furthermore, the right alleged as infringed is not the consequence of the administrative functions performed by the defendant, but of the public service of health care, which is offered both in private and in public institutions, regardless of whether such care is the result of payment or of the state reimbursement scheme. The acts of the employee as the cause of the claim are directly related to the provision of health care and not to the performance of any duty of an administrative character. Consequently, the liability of the employer as a result of the negligent treatment by the nurse is regulated not by Law no. 8510/1999, but by Article 618 of the Civil Code, a provision of a general character for the protection of subjective rights in civil proceedings...”

Such a position is in coherence with the interpretation given by the Civil Chamber at the time of the beginning of the implementation of Law no. 49/2012 “On the adjudication of administrative disputes” in cases of claims of this nature.

Decision no. 1328, dated 22.04.2015 of the Civil Chamber

In this decision, the issue of subject-matter jurisdiction was addressed in relation to claims for compensation of non-contractual damage caused by medical error during the provision of medical service by hospital staff.

The Civil Chamber concluded that a case with this object and cause of action is of a civil nature, reasoning that:

“The activity of the defendant party in this trial in providing medical service to third parties, as outlined *ut supra*, is not an activity of an administrative character, and the dispute subject to adjudication has not arisen as a result of ‘non-action of a public organ’. On the contrary, as claimed by the plaintiff party, the cause of the dispute in trial is the result of the failure by the employees of the defendant party to respect medical care and the ‘treatment protocol’ in conformity with the developments of medical science towards the patient M.M.”

Decision no. 2786/610, dated 18.12.2012 of the Civil Chamber

In this decision, liability for damage arising from negligent medical or hospital service was discussed, according to the elements of non-contractual liability provided by Articles 608 and 609 of the Civil Code. The passive standing to be sued in this claim belonged to the hospital, since, although the wrongful and unlawful acts were committed by the nurse, the liability to compensate the harmful consequences arising from the performance of these acts in the course of duty lies with the employer, within the meaning of Article 618 of the Civil Code.

The Civil Chamber reasons that:

“The courts of first instance and of appeal have reached the conclusion that in the acts or omissions of the defendant party there has been a violation of the law, since the serious consequence arose as a result of the irregular fulfilment of duty by the nurse, therefore in the present case we are before the requirements of Article 608 of the Civil Code and, consequently, the defendant must be held liable for the damage caused to the plaintiff party. In determining the amount of damage, the courts have correctly applied the requirements of Articles 618 and 641 of the Civil Code, since the employer is liable towards third parties for the damage caused by its employees during the performance of their duties, and in the present case the nurse who forgot the tourniquet on the child’s forearm is an employee of the defendant, and she caused this bodily harm during the performance of the duty assigned by the defendant, which has the right of recourse against its employee. In the calculation of the damage, the

courts have taken into account the loss of working capacity of the injured party, the expenses incurred for his treatment, who was sent by his family for treatment abroad, and have applied the guidelines given by the Joint Chambers of the Supreme Court in the unifying decision no. 12, dated 13.09.2007, therefore the conclusions reached by the lower courts are based in law.”

Decision no. 2403, dated 14.06.2023 of the Civil Chamber

The object of discussion and evaluation in this case was the liability of the defendant, Lushnjë Hospital, for the damage caused by the death of their relative as a consequence of the medical service received from the medical staff of this hospital.

In relation to this fact, criminal proceedings were registered for the criminal offence of “negligent treatment” against the surgeon who had followed the case of this patient.

The civil claim for compensation of damage was filed after the moment when the Court of Appeal decided to amend the decision of the court of first instance and to declare the surgeon guilty for the criminal offence of negligent treatment.

With the final decision of the Supreme Court, which quashed the decision of the Court of Appeal and upheld the decision of the court of first instance, it was ultimately decided to declare the surgeon not guilty.

The District Court of Lushnjë, referring to the above-mentioned facts, accepted the plaintiffs’ claim for compensation of the damage caused by the death of their relative as a consequence of medical errors by the medical staff of the hospital summoned as the defendant party.

The Court of Appeal of Vlorë amended the decision and dismissed the claim, reasoning that:

“Referring to Articles 618 and 620 of the Civil Code, the defendant is released from liability because it is not at fault for the occurrence of the consequence—the death of the deceased Ç.G.—since its representative, the doctor S.O., is not at fault in the occurrence of this consequence. The court of first instance errs in reasoning that the surgical expert A.B., summoned in this judicial process, concluded that the death of the deceased resulted from improper medical treatment ... etc., in general by the entire assisting medical staff of Lushnjë Hospital and for this reason the defendant should

be held civilly liable. The Court of Appeal considers that, since neither the forensic medical experts nor the final criminal decision determined the guilt of the doctor S.O. employed by the defendant, this fact cannot be overturned by the doctor summoned and questioned as expert in this civil process...”

The Civil Chamber, having assessed that in the plaintiffs’ recourse there do not exist legal grounds as those provided by Article 472 of the Code of Civil Procedure for the admissibility of the recourse for review, decided to reject the recourse.

From the above reasoning, it is observed that the divergence in the opposing positions taken by the courts of fact regarding the element of fault, as a condition for the arising of liability for compensation of non-contractual damage, resulted from the fact that the court of first instance did not view this element as closely linked or dependent on the manner of conclusion of the criminal proceedings against the surgeon, but treated it in conformity with the elements of strict liability provided by Article 622 of the Civil Code, being satisfied with the analysis of the causal link between the acts as a whole of the entire medical staff (not only of the surgeon) and the resulting consequence — the death of the plaintiffs’ relative.

The question arising from these opposing positions of the courts is whether the medical service constitutes a dangerous activity regulated as such by Article 622 of the Civil Code, or whether it relates to cases of ordinary non-contractual liability for compensation of damage regulated by Articles 608 and 609 of the Civil Code, for which the cumulative fulfilment of the four conditions is required:

- damage;
- ii) unlawful act;
- iii) causal link;
- iv) fault.

The position held by the Court of Appeal of Vlorë, supported by the Supreme Court, that in this case the provisions of Articles 608 and 609 of the Civil Code, in close connection with Article 618 of the Civil Code, shall apply, is the most correct position, since the discussion relates to damage caused by the acts or omissions of the persons employed by the defendant and not damage arising from a dangerous activity.

A problem that has arisen in judicial practice regarding the treatment of

these cases is the issue of passive standing of the defendant party; that is, whether the defendant in such claims should be the hospital, the medical personnel, or whether both should be summoned simultaneously under the conditions of solidary liability for compensation of damage.

Referring to the employment relationship that exists between the hospital as employer and the medical staff as employees, in the present case Article 618 of the Civil Code is applicable, which regulates the liability of the employer for the damage caused to third parties by the fault of its employees during the performance of the duty entrusted to them, as one of the categories of strict (no-fault) liability. Consequently, only the hospital has passive standing in such claims, in its capacity as employer, which, under a final judicial decision obliging it to compensate the damage, may file a recourse claim, pursuant to Article 627 of the Civil Code, seeking the return of the amount paid as compensation from the responsible medical personnel, in their capacity as employees

THE USE OF ARTIFICIAL INTELLIGENCE IN MEDIATION!

MSc. Ingrida Behri Mustafa¹
PhD Candidate Lira Spiro²

The use of artificial intelligence (AI) is permeating all aspects of the legal profession, and many professionals are debating the current and future application of AI within each specific practice area. In the dispute resolution space, the truth is that AI has already been part of this practice area for some time. In fact, AI-based mediators, also known as “virtual mediators” or “digital mediators,” have used advanced algorithms and machine-learning techniques to help parties reach a resolution to various disputes. for more than two decades.

Tools like predictive analytics and automated negotiation algorithms like SmartSettle One, Negobot, Modria, etc. have assisted mediators, especially in collaborative negotiations, rather than replacing them.

As this field develops, continued evaluation and adaptation will be essential to ensure that the integration of artificial intelligence into mediation serves to augment, rather than undermine, the human element that is so vital to conflict resolution. Following this article, the use of AI in mediation, the advantages and disadvantages of using AI in mediation, the areas where it can be used, etc. will be discussed in detail.

Keywords: mediation, solution, intelligence, artificial, etc

1. Lawyer at Legal Studio “INGRIDA BEHRF” & Assistant professor at Faculty of Political and Legal Sciences at “Aleksander Moisiu” University
Studioligjorebehri@gmail.com

2. Lawyer at Legal Studio “Temis&AOK” & Assistant professor at Faculty of Law, University of Tirana
liraspiro@yahoo.com

Introduction

The use of Artificial Intelligence (AI) is spreading across all aspects of the legal profession, and many professionals are currently debating its present and future applications within every specific field of practice. In the area of dispute resolution, the truth is that AI has already been a part of this practical field for quite some time. In fact, AI-based mediators, also known as “virtual mediators” or “digital mediators,” have been using advanced algorithms and machine learning techniques to help parties reach a resolution for various disputes for more than two decades.

Historically, technological advances have both displaced and created jobs. The Industrial Revolution, for example, replaced many manual jobs but also created new opportunities in factories and industries. In the field of AI, we observe a similar pattern. AI has replaced some jobs, particularly those involving repetitive tasks, but it has also created new roles such as AI trainers and ethicists. Mediation and neutral work, in many cases, rely on human attributes such as empathy, emotional intelligence, and the ability to navigate complex social dynamics. These skills are essential for understanding the subtleties of conflict and facilitating solutions that are acceptable to all parties involved.

However, we now live in a world of interruptions, information overload, misinformation, numerous false choices, biases, and particularly, dependence on mobile phones and social media. The use of social media has made us especially vulnerable to confirmation bias, or the tendency to interpret evidence in a way that supports our pre-existing beliefs. In this situation, the question arises: can artificial intelligence, with its current capabilities, mitigate the harmful effects of social media influence and replace the natural human skills necessary for successful mediation? Can artificial intelligence be used in mediation? And if so, how effective can it be?

The evolution of artificial intelligence in mediation is likely to follow the historical model of technological reshaping rather than job elimination, leading to a transformed landscape where human mediators use artificial intelligence for efficiency and expanded reach. As this field develops, continuous evaluation and adaptation will be essential to ensure that the integration of artificial intelligence in mediation serves to enhance, rather than undermine, the human element that is so vital to conflict resolution.

I. The use of Artificial Intelligence in mediation

The use of AI in mediation has the potential to revolutionize the way disputes are resolved. AI-based mediators, also known as “virtual mediators” or “digital mediators,” use advanced algorithms and machine learning techniques to help parties reach a resolution for their disputes. There is a variety of approaches used by AI mediation platforms. For example, a rule-based system can be used, where a set of predefined rules (laws and regulations) guide the AI in its decision-making process.

Another approach is the use of a machine learning-based system, where the AI is trained on a dataset of previous mediation cases and uses that training to inform its decision-making process. In its current form, AI-assisted mediation should not be seen as a replacement for human mediators but rather as a complementary tool that can assist in the mediation process. However, as with any new technology, the use of AI in mediation raises a number of practical, ethical, and legal implications that must be considered.¹

In the most basic terms, the mechanics of AI-based mediation are not drastically different from traditional mediation. The parties provide information to a neutral person who uses their knowledge, experience, and skills to help the parties identify a fair solution to their dispute. AI platforms that use natural language processing, along with machine learning algorithms to automate the dispute resolution process, function similarly:

- The parties involved in the dispute provide information about the case, including their arguments, evidence, and the relevant laws or regulations. This information can be entered into the AI platform in various formats such as text, audio, or video. The AI platform can also eliminate challenges related to any language barriers.
- The AI platform uses natural language processing and machine learning algorithms to analyze the information provided by the parties and to identify the key issues, as well as the strengths and weaknesses in their arguments. The AI can also compare the case to similar past cases and identify the relevant laws, regulations, and precedents.
- Based on its analysis, the AI platform generates a resolution

1. <https://www.jdspura.com/legalnews/artificial-intelligence-IA-and-1573917/>

suggestion that is fair, grounded in the parties' input, and aligned with the relevant laws and regulations. The suggestion may take the form of a summary of key findings, an assessment of the parties' positions, or a proposed solution. It may also be asked to generate a list of possible solutions or options for resolving a conflict. This can be especially useful if the parties involved in the conflict are struggling to come up with ideas themselves.

- Alternatively, or in addition to this, the AI platform can be used to facilitate communication between parties in a conflict by providing a neutral third party that listens to both sides and generates responses that encourage productive dialogue.
- A human mediator, benefitting from emotional intelligence and the ability to understand the nuances of the issue and to think of solutions that may include any subjective considerations motivating one or both parties, can then adjust the suggested solutions.¹ Once the parties agree on a resolution, the outcome and relevant case information can also be used by the AI platform to continuously improve its algorithms and decision-making process.

II. Legal and ethical considerations in the use of Artificial Intelligence in mediation

The use of AI-based mediators can raise concerns regarding privacy and data protection. For example, if an AI-based mediator collects personal data from the parties involved in mediation, how is that data protected, and who has access to it? To address these concerns, developers of AI-based mediators should be required to comply with relevant data protection laws and regulations and to provide clear and transparent information about how personal data is collected, used, and protected.

Another legal implication of using AI-based mediators is the admissibility of evidence generated by the system. For instance, if an AI-based mediator generates a document or recording used during mediation, there may be uncertainty as to whether such a document or record can (or should) be admissible in court. The use of AI-based mediators can also raise questions about the professional responsibility of lawyers and other legal professionals who use the system. For example, if a lawyer is

1. Ibid.

responsible for ensuring that the system functions properly and that the advice it provides is accurate.

Likewise, a key legal implication of using AI-based mediators is the issue of liability and/or accountability in case of error. For example, if an AI-based mediator incorrectly advises a party during mediation, who is responsible for the mistake? Is it the developer of the AI-based mediator, the party who implemented the system, or the party that relied on the advice? These questions have not yet been fully answered and may vary depending on the jurisdiction. However, one possible solution is to require developers of AI-based mediators to provide indemnification and insurance coverage to address any potential liability.

Ethical Criteria

The use of AI-based mediators also raises a number of ethical criteria that have not yet been fully resolved. As the use of AI-based mediators becomes more widespread, it will be important for legal professionals to remain informed about these ethical criteria and to take them into account when deciding whether to use an AI-based or human mediator. It is also essential that the development and implementation of AI-based mediators take into consideration these ethical issues and include measures to mitigate any potential negative impacts on the parties involved.

Bias can enter the decision-making process through the data used to train the system or through the design of the algorithm. This raises questions about whether the AI-based mediator treats the parties fairly and whether the decision it makes is impartial.

Another ethical criterion of using AI-based mediators is the lack of transparency. AI-based systems often rely on complex algorithms that are not easily understood by the parties or by the legal professionals involved in mediation. This raises questions about the transparency of the decision-making process and whether the parties have a clear understanding of how the AI-based mediator reached its decision.

In traditional mediation, the parties have autonomy to make their own decisions and to reach an agreement that is acceptable to them. However, when an AI-based mediator is used, the autonomy of the parties may be limited by the system's decision-making process. This raises questions about the extent to which the parties are truly making their own decisions and whether the AI-based mediator respects the autonomy of the parties.

III. Which categories of dispute resolution currently use Artificial Intelligence?

At present, there are three categories of dispute resolution that use some form of AI.

- First, there is Online Dispute Resolution (ODR), which gained traction in the early 1990s. It uses algorithms written by programmers to analyze and process data in order to support a neutral third party who then uses this data to provide a resolution for the parties in dispute. This is most commonly seen in e-commerce forums such as eBay and Amazon.¹
- Second, there is Blockchain ODR, where the system uses cryptography to make decisions derived from human input for an arbitration panel specifically created for dispute resolution.
- Third, there is Facilitative ODR², where information and communication technology is used to bring the parties together, allowing a neutral third party to determine the claim through a digital online forum. In ODR, the first branch of AI-based dispute resolution, the neutral party's ability to use the provided data has several advantages. In these cases, the AI process can take large datasets and analyze them quickly. By using artificial intelligence, patterns can be identified and distinguished that humans simply could not recognize due to the volume of information being processed at once. With this data sorted and processed quickly, the mediator can gain valuable insights into the strengths and weaknesses of each party's position, which can then help inform and guide the negotiation process.³

By using information as a guide or data source, the human mediator can then apply their own intelligence and life experience to engage the disputing parties and propose a solution (or multiple solutions). The collaboration between AI-sourced data and human experience and emotional intelligence can yield an effective outcome. The more users contribute data to the system over time, the more information it will have to potentially generate

1. <https://libraryguides.missouri.edu/c.php?g=557240&p=383224>

2. <https://odrguide.com/online-dispute-resolution-and-blockchain-technology-what-do-we-know/>

3. Leslie A., Berkoff "Artificial Intelligence in the Dispute Resolution Space: Can Robots Replace the Professionals?" Nov.2023, New York Journal.

and process, thereby improving the resulting procedures.

However, in this scenario, the data merely assists the human mediator in navigating the process rather than replacing or displacing them.

In Blockchain ODR, the second branch of AI-based dispute resolution, blockchain and smart contracts provide a means to resolve disputes that might otherwise be unsuitable for traditional dispute resolution systems. For example, blockchain ODR may be more appropriate for resolving disputes involving pseudonymous participants located across different jurisdictions who seek a rapid resolution.

The use of blockchains is valuable due to their ability to collect decisions in a manner unrestricted by time zones or geography.¹ These disputes often involve lower-value claims, making it essential to find quick and inexpensive methods of resolution. However, since this form of ODR typically deals with low-value disputes, participants may not dedicate the same attention and priority as they would to other forms of dispute resolution.

Moreover, given that one of the fundamental benefits of the original contract is inherent anonymity, the platform introduces an additional complication in obtaining data to resolve the underlying disputes and may sometimes prevent or hinder the uploading of key information.² Nevertheless, even in blockchain ODR, the process is not entirely AI-based. Human mediators remain at the top of the decision-making chain after the data is gathered and organized for review and consideration.³

In the third branch of AI-based dispute resolution, Facilitative ODR simply connects the parties remotely and facilitates the communication processes to promote resolution. This is the form most closely associated with judicial systems. Although it existed before the pandemic, its significance increased greatly during COVID-19 and it has remained a fixture in dispute resolution after the pandemic. Before COVID-19, many courts had already begun offering mediation as an alternative means for parties to resolve their disputes—some to lower legal costs and others to reduce the overall burden on the courts. After COVID-19, backlog became an ongoing issue.

The dispute resolution process in general has offered several advantages,

1. *ibid*

2. *ibid*

3. *ibid*

including allowing parties to design or create an individualized solution, accelerating the overall process, and reducing legal expenses.

In certain types of disputes—such as domestic violence or family disputes—facilitative ODR can provide a layer of protection for those with safety concerns or where imbalances of power and resources could hinder the ability to achieve outcomes. Naturally, the loss of personal contact (as with any online forum) can often be a significant drawback of facilitative ODR, as it can lead to misreading body language or physical cues that might otherwise be critical to a constructive process. There are also additional potential variables that must be considered. AI may introduce unwanted or unidentified demographic variables that would not otherwise be accounted for. For example, at the most basic level, beginning with the developers themselves, women and Latinos are underrepresented in tech companies—meaning there is less diversity among those creating these programs.

Thus, whereas in traditional dispute resolution, parties seeking diverse perspectives can invite individuals from different backgrounds to participate in the process, in AI-based models such diversity of perspective is regrettably lacking and much harder for the parties to identify or achieve.

Furthermore, while AI can analyze data and information, suggest solutions based on similar cases or situations, and perhaps even assess risks based on statistical data from comparable cases, it fundamentally lacks the human touch—it cannot truly listen to a party that needs to express themselves, nor can it offer empathy, compassion, or understanding in response. Nor can it provide a shared life experience to address the emotions of the parties. To be clear, addressing emotions is not limited to family or personal injury/sexual harassment contexts—it often arises in business-related cases such as business divorces, closely held business disputes, and even in high-stakes commercial matters.

The key dividing line between humans and computers lies precisely here—our emotions and emotional intelligence. Setting aside the fact that using any online platform and uploading or exchanging data carries a range of risks (there are differences in the security of individual users' systems and/or unsecured Wi-Fi networks), we must also consider the AI/ODR system host itself.

If an AI-based ODR mediator collects personal data from the parties in a mediation, how is that data protected and who has access to it?

Thus, at present, AI is not replacing humans. What is clear from all these examples is that human mediators have not become obsolete. Instead, AI processes or programs are simply tools to assist mediators in the resolution process.

Ultimately, at least as we can see now, AI has limitations and can only produce solutions based on what currently exists and is available within the known and published universe. Therefore, its solutions are not truly innovative, even if the technology and structure themselves appear to be. Meanwhile, humans have the ability to imagine and continue creating new, untested, and unseen solutions—the only limit being the scope of their creativity and individual experience.

IV. Advantages and limitations of using Artificial Intelligence in mediation

Advantages

AI-based mediators can process large amounts of data quickly and efficiently, which can result in a faster and more effective mediation process. This increased efficiency is a major advantage of AI-based mediation. AI algorithms can analyze vast amounts of data and provide valuable insights into the strengths and weaknesses of each party's position, which can help inform the negotiation process.

Moreover, AI-powered chatbots can help facilitate communication between parties in a dispute and can also assist in the negotiation process by offering information and suggestions for possible resolution options. The natural byproduct of efficiency is the potential for corresponding cost savings. AI-based mediation can lead to faster resolution times and lower costs for the parties involved.¹ Additionally, AI-based mediators can be used to automate certain aspects of the mediation process—such as document management and scheduling—which can further reduce costs.

-Another benefit of AI-assisted mediation is that AI can provide a more objective and impartial analysis of the dispute and the parties' positions.² Because AI systems are not influenced by emotions or personal biases, they are less likely to make decisions based on subjective factors.

AI-based mediators can be programmed to take into account relevant

1. <https://www.nexlaw.ai/benefits-of-ai-in-cross-border-mediation/>

2. Ibid

legal principles and regulations, analyze large quantities of data (including historical case data), and identify patterns and trends that can further enhance the accuracy and fairness of decisions.

The use of AI in direct communications between parties can also play a role in reducing conflict, or at least avoiding language that may escalate tensions. The absence of tone and body language in written messages can unintentionally lead to miscommunication of intent. Imagine an algorithm that can detect hostility signaled by word choice and syntax, as well as resistance to engagement in compromise, and can provide alternative phrasing before the message reaches the other side. The sender could then choose whether to keep the original message or adjust it if the system indicates that the original wording might lead the reader to a misunderstanding.

Limitations

The accuracy and “fairness” of an AI platform are only as good as the data it is fed.¹ An AI program is limited by the information provided both by the programmer and by the parties.

As is true in nearly all mediations, parties tend to hold certain information back to strengthen the strong points of their case while minimizing aspects that challenge their perception of the likelihood of a favorable outcome. Furthermore, it is impossible to account for potential programmer biases in selecting the data entered into the platform. It would be interesting to consider whether certain platforms might become known as plaintiff-friendly or defendant-friendly. Additionally, while AI-based mediators can be programmed to identify patterns and make predictions, they lack the emotional intelligence of human mediators. Human mediators can read and interpret nonverbal cues, which can be critical for understanding the perspectives of the parties and building trust.

Human mediators bring empathy and an ability to respond to emotions that technology cannot replicate. Often, the successful resolution of a dispute may depend on one or both parties feeling “heard” and understood before they can accept an outcome that they might otherwise view as a failure to acknowledge the emotions connected to the underlying conflict.

1. <https://www.silverberry.ai/responsible-ai-podcast/algorithmic-trade-offs-between-accuracy-and-fairness-in-responsible-ai-dr-shaina-raza-shavan-mashatian>

Therefore, one of the main limitations of AI is its inability to fully understand and interpret human emotions and cultural nuances. AI systems are also only as good as the data on which they are trained, which can lead to biased results if the data is not diverse and inclusive.

Moreover, AI decision-making processes (in recognizing patterns and correlations) can be opaque, leading to issues of trust and credibility. Likewise, human mediators offer a level of flexibility and adaptability that technology cannot achieve. Human mediators can adjust their approach in real time to meet the specific needs of each case, resulting in a more tailored and effective mediation process.

A human mediator also has the capacity to create creative solutions for a dispute that take into account the subjective motivations of the parties. We have all participated in mediations in which a non-monetary factor played a key role in the successful resolution of a dispute. Creative solutions can overcome absolutes.

Hallucinations: In artificial intelligence (AI), a hallucination or artificial hallucination¹ (also called confabulation or delusion) is a confident response by an AI that does not appear to be justified by its training data. A hallucination can occur when an AI model generates results that are not supported by any known facts. This can happen due to errors or mismatches in the training data or biases within the model itself.

Bias Bias can occur when there are errors or deficiencies in the training data or biases inherent in the model itself. For example, if a large language model is trained on biased data, the AI may produce biased results.

Conclusions

In conclusion, while AI brings efficiency and a data-driven approach to mediation, it is not ready to completely replace human mediators. The current limitations of AI in understanding the full spectrum of human emotions and cultural contexts, along with legal and ethical concerns, suggest a future where AI functions more as an assistant rather than as a replacement.

The evolution of AI in mediation is likely to follow the historical pattern of technological reshaping rather than job elimination, leading to

1. <https://www.sciencenewstoday.org/what-are-ai-hallucinations-and-why-do-they-happen>

a transformed landscape where human mediators use AI for efficiency and expanded reach. As this field continues to develop, continuous assessment and adaptation will be essential to ensure that the integration of AI in mediation serves to enhance—rather than undermine—the human element that is so vital to conflict resolution.

Bibliography

<https://mediate.com/will-IA-replace-mediators-and-neutrals/>

<https://core.ac.uk/download/pdf/29656008.pdf>

<https://irilaw.org/wpcontent/uploads/2022/02/law-in-the-era-of-artificial-intelligence.pdf>

https://www.biicl.org/documents/70_use_of_artificial_intelligence_in_legal_practice_final.pdf

<https://libraryguides.missouri.edu/c.php?g=557240&p=3832247>

<https://odrguide.com/online-dispute-resolution-and-blockchain-technology-what-do-we-know>

<https://www.silverberry.ai/responsible-ai-podcast/algorithmic-trade-offs-between-accuracy-and-fairness-in-responsible-ai-dr-shaina-raza-shayan-mashatian>

<https://www.nexlaw.ai/benefits-of-ai-in-cross-border-mediation/>

<https://www.sciencenewstoday.org/what-are-ai-hallucinations-and-why-do-they-happen>

THE ROLE OF PUBLIC ADMINISTRATION IN THE MANAGEMENT AND CONTROL OF EUROPEAN FUNDS

Jona Gashi¹

Abstract

Integration into the European Union has been and remains one of the most important priorities of our national and foreign policy over the past two decades. According to various reports, Albania has made good progress but there are still challenges and problems that seem to hinder the achievement of this goal. One of these challenges includes the management and control of European funds by public administration bodies. This paper makes a modest analysis of the current situation regarding the management and control of EU funds by the main public administration bodies. This includes the main funds provided to our country by the European Union, what are the specific responsible bodies that ensure the smooth running and transparency of this process and what are some of the problems currently encountered. This paper also analyzes how important the principle of transparency, information and legality is as fundamental principles of law, including the effective implementation of acts issued by the main instances of the European Union in parallel with our national law within the framework of the “Acquis Communautaire” file.

Keywords: *European Union, IPA Funds, IPARD Funds, Acquis Communautaire, Public Finance, Financial Control, Public Administration*

1. PhD Candidate, Assistant-Lecturer, Faculty of Law, University of Tirana, Minister of State and Chief-Negotiator Cabinet, Prime Minister's Office ; jona.gashi@icloud.com

1. Brief introduction

Albania has started to benefit from European funds for the first time after the fall of the communist regime. In 1991, the first diplomatic relations were established with the European Union, which at that time was called the European Economic Community. After the signing of the trade and cooperation agreement in 1992, Albania became a beneficiary of the PHARE program. Later, the European Union donated other funds to the Western Balkan countries, such as those of the CARDS program (reconstruction, development, stabilization) where about 5.13 million Euros were donated. The CARDS program resulted in higher performance in areas related to the *acquis communautaire* than in public administration¹. In Albania, this program played an important role, but its performance presented both achievements and challenges. Many projects faced delays in implementation and inefficient management. Albanian structures lacked experience and capacity to absorb aid efficiently, which affected the quality and sustainability of results. These shortcomings meant that overall effectiveness was not at the expected level, although the impact in some key areas such as justice and public administration was positive. In a situation like Albania's, where challenges to good governance, limited institutional capacities and the fight against corruption continue to affect reform processes, public administration constitutes a key link in ensuring EU standards. Quality management of funds is not only a technical obligation, but a concrete proof of the institutions' commitment to the principles of the rule of law and sustainable development. Albania obtained the status of candidate country for the European Union on 27 June 2014.

This decision was taken by the European Council, following a positive recommendation from the European Commission, which positively assessed the progress made in key reforms such as the fight against corruption, judicial reform and public administration. Negotiations for accession to the European Union were officially opened on 19 July 2022. On this date, the First Intergovernmental Conference between Albania and the European Union took place — a historic moment marking the formal start of the legislative screening process. As a result, Albania became more

1. European Commission, *Ad Hoc Evaluation of the CARDS Programmes* (Brussels: Enlargement Directorate -General, 2017), p. 9, https://enlargement.ec.europa.eu/system/files/2018-12/ad_hoc_albania_cards_final_report_171208_en.pdf.

committed to improving budgetary transparency, medium-term financial planning, and public debt management. The EU began to demand more accountability for the use of funds, especially under the Instrument for Pre-Accession Assistance (IPA), which accompanied Albania at every stage.

In December 2018, the Government started the analytical review of the legislation for Chapter 32 (screening) in line with the EU *acquis*, a process which has not been completed. Due to its importance, Chapter 32 has been included in the first negotiating cluster “Fundamental rights first”¹, which opens first and closes last in the negotiation process with the European Commission. As a key weapon in the fight against corruption, the main goal of Chapter 32 is to ensure financial stability, stop abuses of financial resources and carry out a more effective, efficient and accountable allocation of funds.

2. Funds provided by the European Union to Albania

With the start of the implementation of the Instrument for Pre-Accession Assistance (IPA I), Albania was given the opportunity to benefit not only from the main funds of this instrument, but also to engage in a number of other European Union programs. During the period 2007–2013, the country has actively participated in seven EU community programs, including programs such as Erasmus+, Tempus, and Europe for Citizens, further strengthening cooperation with European institutions and increasing the capacities for the absorption of funds in various sectoral areas.

The role of the public administration in this process has been essential, both in inter-institutional coordination and in the technical implementation of co-financed projects, reflecting the importance of effective management of financial resources for the country’s European integration. Involvement in these programs has also required increased commitment on the part of the public administration to meet the technical and procedural requirements related to the management and auditing of funds, making this experience an important component of the integration process.

1. The first cluster includes: Chapter 23 – Judiciary and Fundamental Rights; Chapter 24 – Justice, Freedom and Security – Economic Criteria – Functioning of Democratic Institutions – Public Administration Reform; Chapter 5 – Public Procurement; Chapter 18 – Statistics; and Chapter 32 – Financial Control.

2.1 The 7th Framework Programme for Research and Technological Development (FP7)

The Seventh Framework Programme for Research and Technological Development (FP7) represented the European Union's main instrument for financial support for scientific research in the period 2007–2013. It was conceived to address the EU's strategic challenges in areas such as increasing employment, strengthening competitiveness and improving the quality of life for European citizens. It was designed to contribute to strategic objectives such as increasing employment, improving the competitiveness of the economies of the Member States and improving living standards¹. A concrete example of this involvement is the Polytechnic University of Tirana, which has been part of several multilateral research projects funded by FP7, in areas such as renewable energy and information technologies, creating opportunities for the exchange of expertise and knowledge transfer with European partners.

2.2 Entrepreneurship and Innovation Programme (CIP-EIP)

The Entrepreneurship and Innovation Programme (CIP-EIP), developed under the Competitiveness and Innovation Programme of the European Union, aims to increase the competitiveness of European enterprises in an increasingly challenging global environment. The programme focuses particularly on small and medium-sized enterprises, which are supported by promoting innovation, improving access to finance, and providing services that support business development. Another important aspect of the CIP-EIP has been the promotion of the use of information and communication technologies, as well as the strengthening of the renewable energy and energy efficiency sectors, in line with the EU's green priorities².

2.3. Financial assistance provided under the IPA 1 Programme

2.3.1 'Europe for Citizens' Programme

The "Europe for Citizens" Programme was initially implemented during

1. European Commission, *FP7 Final Evaluation: Final Report* (2015), p.11 https://ec.europa.eu/research/evaluations/pdf/archive/fp7-evidence-base/evaluation_studies_and_reports/fp7_final_evaluation_expert_group_report.pdf

2. European Commission, *Competitiveness and Innovation Framework Programme (CIP) 2007–2013: Final Evaluation Report* (2013), <https://eur-lex.europa.eu/EN/legal-content/summary/competitiveness-and-innovation-framework-programme-cip-2007-2013.html?fromSummary=27>

the period 2007-2013 and was continued for the period 2014-2020. This programme aims to promote tolerance and mutual understanding among citizens, contributing to the strengthening of intercultural dialogue. In this context, it supports a wide range of activities that promote the values of active citizenship, with particular emphasis on the involvement of citizens and civil society organisations in the European integration process, creating opportunities for a direct engagement of citizens in the challenges and opportunities of the European Union.

2.3.2 Culture Programme

The Culture Programme, which was launched in 2007, was integrated into the Creative Europe Programme for the period 2014–2020. This programme aims to foster cultural cooperation between the countries of the European Union, by supporting the preservation and promotion of the common European cultural heritage. Through its funding schemes, the programme provides support to a range of cultural sectors and actors that contribute to strengthening cultural ties between Member States, enabling the development of projects that favour interaction, diversity and the enrichment of cultures across Europe.

2.3.3 Customs Programme

The “Customs 2013” programme aimed to provide technical assistance to the customs administrations of the EU Member States, as well as those in the accession process, with the aim of facilitating legitimate trade and speeding up customs procedures. In essence, the programme contributed to the establishment and strengthening of an integrated electronic customs system at pan-European level, harmonising customs practices with the requirements of the EU internal market. This system aimed not only to improve the efficiency and transparency of customs operations, but also to protect the financial interests of the European Union and guarantee a higher level of security in the movement of goods.

2.3.4 ‘Youth in Action’ Programme

The ‘Youth in Action’ Programme focuses on young people, aiming to strengthen their sense of active European citizenship, solidarity, tolerance and involvement in the policy-making processes of the European Union. This programme has promoted mobility and non-formal learning through

exchanges and intercultural dialogue, both within and outside the EU. It has also encouraged the inclusive inclusion of young people, regardless of religious, social or cultural background, by creating equal opportunities for participation and personal development.

2.3.5 Lifelong Learning Programme

The Lifelong Learning Programme is designed to provide learning opportunities for citizens of all ages, encouraging their involvement in educational experiences that stimulate personal and professional development. This programme has contributed to the improvement of education and training systems at European level. With a budget of nearly €7 billion for the period 2007–2013, it has supported a wide range of activities, including exchanges, cooperation partnerships and study visits. Since 2014, its activities have been integrated into the new Erasmus+ programme.

2.4 Financial Assistance under IPA 2, the programmes for 2014-2020 in which Albania has participated are:

2.4.1 Horizon 2020

The “Horizon 2020” programme, funded by the European Union, represents one of the most important initiatives for research and innovation in Europe, offering wide opportunities to researchers from EU and non-EU countries, including Albania. This programme aims to strengthen international cooperation between key actors in the scientific and technological field, promoting scientific progress and innovative development. Albania’s participation in “Horizon 2020” has served as an important instrument for consolidating research capacities, improving the quality of scientific work and advancing innovation, helping the country to integrate more deeply into the European Research Area and increase its impact on technological and scientific developments.

2.4.2 COSME

The “COSME” programme (Programme for the Competitiveness of Enterprises and Small and Medium-sized Enterprises) aims to increase the competitiveness and strengthen small and medium-sized enterprises (SMEs) at European level. Through this programme, the EU provides direct

support to entrepreneurs through access to finance, training, mentoring and the development of managerial skills. COSME focuses on empowering groups that face higher barriers to entry into entrepreneurship, such as young people, women and the elderly. The programme also promotes the use of digital technology and the internationalisation of businesses, helping SMEs adapt to the demands of the internal and global markets, further strengthening their competitive position.

2.4.5 Creative Europe

The Creative Europe Programme aims to support the cultural, audiovisual and creative sectors at European level, contributing to the development of artistic expression and creativity. This programme is divided into two main sub-programmes: Culture and Media. The Culture sub-programme provides support to cultural and creative organisations, encouraging cross-border cooperation and exploiting the opportunities offered by globalisation to increase cultural exchange. It also promotes the cross-border circulation of cultural works. The Media sub-programme supports the audiovisual and multimedia sector, providing funding opportunities for initiatives that promote the distribution of works in different markets, support for the production of television programmes and video games, and capacity-building for professionals in this sector. The program also supports Albania's cultural objectives, contributing to increasing cultural and linguistic diversity, improving the quality of artistic works and promoting Albanian authors at the European level and vice versa.

2.4.6 Fiscalis 2020

“Fiscalis 2020” is a programme adopted by the European Commission on 29 August 2012, with the aim of supporting the tax administrations of the Member States of the European Union. This programme focuses on strengthening the capacity of tax administrations to face future challenges, such as preventing tax fraud and collecting revenue for the budgets of the Member States. It is a key element in the efforts to strengthen the EU's internal market, by addressing issues of double taxation and distortion of competition, which often arise due to the coexistence of 28 national tax systems.

3. Financial control as a key link in Albania's integration into the European Union

Financial control aims to improve the financial discipline of public administration, ensure transparency in the use of public funds, and protect the financial interests of the EU¹.

As a candidate country for EU membership, Albania is obliged to fully meet the “Copenhagen Criteria”², a phase which aims to assess the progress made and the preparation of the Albanian state in meeting the membership criteria.

Fulfilling obligations is a priority for the Albanian Government, not only as a condition for EU membership, but as an internal obligation of good governance of the country, in order to achieve financial stability, prevent misuse of financial resources, and spend public funds efficiently and transparently³.

In this context, Albania has undertaken important institutional and legal reforms to strengthen Public Internal Financial Control, according to the PIFC model (Public Internal Financial Control), which is a standard requirement for candidate countries. This model aims to establish a comprehensive control system, which includes financial management and control, internal audit and a central coordinating authority, which in the case of Albania is the Ministry of Finance.

The effective implementation of this system contributes to ensuring that public funds and EU financial assistance are used responsibly, by strengthening mechanisms of transparency, accountability and efficiency. A functional financial control system is also a condition for the receipt and management of Instrument for Pre-Accession (IPA) funds, which are

1. Albanian Institute of Science (AIS), Albania's path towards European integration: Financial control and the process of opening negotiations for Chapter 32 (policy document, 2022), 2, (p.2) https://ais.al/new/wp-content/uploads/PP_VERSION_SHQIP_FINAL_Kontrolli-financiar-dhe-procesi-i-hapjes-se-negociatave-per-Kapitullin-32.pdf

2. Member States must ensure: institutions to guarantee democracy, the rule of law, human rights and respect for and protection of minorities (Political Criterion); a functioning market economy capable of coping with competition in the EU market (Economic Criterion); and administrative and institutional capacities capable of implementing the EU acquis.

3. Government of Albania. (2021). National Plan for European Integration 2021–2023 (VKM No. 90, dated 17.2.2021). <http://planifikimi.gov.al/index.php?eID=dumpFile&t=f&f=6170&token=5fde9f7a2fd7e514f53b853364e79ca24>

vital for structural reforms and institutional development in the country. Moreover, by strengthening the financial control system, Albania not only meets the technical requirements of the accession process, but also improves the investment climate, public governance and citizens' trust in the state administration.

When we talk about financial control we include:

3.1.Internal Control

To increase trust and ensure that public funds are managed with due care, the implementation of an effective system of internal financial control is needed¹, as a mechanism to monitor the activity carried out by central and local government units that use public funds. Public Internal Financial Control is a concept formulated and developed by the European Commission, with the aim of creating a clear and comprehensive framework for the understanding and implementation of internal control systems in the public sector.

This concept aims to promote good financial management and control practices, ensuring the efficient, effective and legal use of public funds, in accordance with European Union standards. The heads of public entities, both at central and local level, are accountable to the relevant institutions – namely the Council of Ministers, Parliament or the Council of Local Government Units – for the achievement of the set objectives. This accountability extends in particular to the management of public funds, which must be carried out in accordance with the principles of legality, economy, efficiency and effectiveness, thus ensuring a responsible and sustainable administration of public financial resources.

The term “Internal Audit” is relatively new in Albania. The legal regulation of the internal audit function in the public sector was achieved in 2003, with the adoption of the Law “On Internal Audit in the Public Sector”².

1. Law on “Financial Management and Control” No. 10 296, dated 08.07.2010, as amended, p.2 <https://qbz.gov.al/eli/ligj/2010/07/08/10296/27de5875-ca02-4182-a2fa-86c3522997c1>

2. Law No. 114/2015 on Internal Audit in the Public Sector (amended by Law No. 12, dated 2.02.2023, “On some amendments and additions to Law 114, dated 22.10.2015 ‘On internal audit in the public sector’”).

3.2 External Audit

Financial audit also includes the role of the external auditor, institutionally, operationally and financially independent, who reports to parliament on the use of resources in the public sector, in accordance with the standards of the International Organization of Supreme Audit Institutions (INTOSAI). External audit is an essential element in ensuring the transparency, accountability and reliability of institutions, especially public ones. It is important for several key reasons that complement and strengthen the role of internal audit.

4. Main management and control institutions in the use of European funds

In the indirect management mode, responsibility for budget implementation (IPA funds) is transferred from the European Commission to the indirect management structures of IPA funds, established for this purpose, in the beneficiary country of the funds¹.

In Albania, the Ministry of Finance and Economy is one of the main institutions managing EU funds and is also the Lead Institution for Chapter 32.

The Ministry of Finance plays a key role in the institutional structure of Public Internal Financial Control in Albania, relying on the legal basis provided by the Law on Budgetary System Management and the Law on Internal Audit. As the main body for the administration of public finances, it covers numerous functions that include the drafting, implementation and supervision of the state budget, the administration of public sector accounting, as well as the management of public borrowing and tax and customs policies.

The Law on Budgetary System Management provides a clear framework for financial control and monitoring procedures at all levels of public administration, including internal audit and financial inspections, with the aim of strengthening transparency and accountability in the use of public funds. Furthermore, the Minister of Finance is obliged to report annually to the Council of Ministers and the Supreme State Audit Office on the overall performance and functioning of the system in general government units.

1. Supreme State Audit Office, Performance Audit Report: Monitoring of foreign projects (2020), p.9.

Also, under its authority is the Directorate of Financing and Contracting, which has an important function in financial management processes.

4.1 Indirect management and control structures and authorities

The structures for indirect management of IPA III are subject to audit by the European Commission, OLAF, and the European Court of Auditors and the Albanian Supreme Audit Institution.

4.1.1 IPA National Coordinator

The responsibilities of the NIPAC for IPA III programs are currently assigned to the Director General of the State Agency for Strategic Programming and Aid Coordination (SASPAC), in accordance with Decision No. 642, dated 29.10.2021, of the Council of Ministers, “On the establishment, organization and functioning of the State Agency for Strategic Programming and Aid Coordination”¹. The National IPA Coordinator (NIPAC) is responsible for coordinating the use of IPA assistance and supporting the accession process, coordinating programming, preparing strategic responses and programming documents. He ensures that state structures benefit from funds efficiently and has an active role in monitoring, reporting and evaluating IPA programmes. He is also engaged in ensuring the involvement of stakeholders and coordinating measures for the absorption of funds, including monitoring the sustainability of projects after completion.

4.1.2 National Authorising Officer

Within the framework of indirect management of the Instrument for Pre-Accession Assistance (IPA) funds, the Ministry of Finance and Economy (MFE) contains the function of National Authorising Officer (NAO), who is the authority responsible for supervising the management and control systems of EU funds. This function is defined and regulated in the Framework Agreement, ratified by Law No. 37/2015, “On the ratification of the Framework Agreement between the Republic of Albania and the European Commission, on the rules for implementing the EU

1. Government of the Republic of Albania, Decision of the Council of Ministers, dated 20.09.2023, on the functions and responsibilities of the structures for the indirect management of IPA III funds, available at: <https://www.kryeministria.al/newsroom/47343-2/>.

financing agreement for Albania under IPA II”. The NAO is responsible for signing the annual declaration of assurance of the financial system and for ensuring that European Union funds are managed in accordance with the principles of good governance, transparency and effective internal control. The Chief Authorizing Officer, as defined in the Law on Budgetary System Management and the Law on the Status of Civil Servants, represents the highest administrative figure within the Ministry of Finance, who bears direct responsibility for the comprehensive management of the state budget. The responsibilities of the Chief Authorizing Officer for IPA III programs are assigned to a deputy minister of the ministry responsible for finance¹.

4.1.5 Heads of Local Units

Heads of local units play a key role as management and control mechanisms for European Union (EU) funds. They are responsible for managing EU funds, ensuring that they are used properly and meet the objectives of the programmes. Through supervision, monitoring and audits, heads ensure that financial processes and project implementation are transparent and in line with European Union regulations.

4.1.6 Supreme Audit Institution

Responsibility for supervising and ensuring that funds are used in accordance with EU rules falls on the Supreme Audit Institution Office (SAI) and audit units within ministries. In cases of irregularities, funds can be suspended or recovered. SAI is the highest economic and financial control institution in the country, which exercises control over all economic activities of state institutions and other state legal entities.

4.1.7 Audit Agency for Assistance Programmes

The AA is an independent and functionally autonomous authority, established in accordance with the framework agreements between the Republic of Albania and the European Commission. This authority has the responsibility for auditing EU funds, but in accordance with Law No. 90/2016 on the AA, it is audited only by the Supreme State Audit Office, thus ensuring a high level of independence and control in the management

1. Ibid., Article 6

of the funds. The Audit Agency is responsible for auditing European Union funds and covers several areas of management, including the legality, regularity and effectiveness of the use of these funds. It operates in accordance with international standards of organizations such as INTOSAI and IFAC. In its audits, it covers a wide range of entities, including general and local government units, as well as direct and indirect beneficiaries of IPA funds, including private individuals and entities.

5. Why is the principle of transparency a fundamental principle when dealing with the management and control of public funds, and in particular European funds?

As a candidate country for EU membership, Albania is obliged to respect the *acquis communautaire*, including the regulations relating to the management of pre-accession assistance (IPA). These require each beneficiary country to ensure sound financial management, based on transparency, efficiency and internal control. Lack of transparency can lead to the suspension of funds, as has happened in the case of IPARD funds and in several other countries of the Western Balkans.

In the enlargement process, the European Commission carefully assesses the degree of transparency in the administration as an indicator of the fight against corruption, accountability and institutional capacity. An administration that functions transparently shows that it is able to absorb and administer EU financial assistance fairly and efficiently, without abuse or political influence. The lack of transparency, on the contrary, undermines trust in institutions, increases the perception of corruption and creates uncertainty for investments and long-term cooperation.

Transparency creates trust among citizens and in the European Union as a donor, by showing that funds are being used fairly, honestly and according to the purpose for which they were provided and is an essential tool in preventing abuse, misuse and corruption, as it helps to identify irregularities and increases civic and institutional control.

In conclusion, transparency is not simply an ethical principle, but a functional necessity for a modern and European administration, which aims at development, justice and the trust of citizens.

6. Why is proper management and control of European funds an essential element for Albania in the context of European integration?

The approval of IPA III funds for Albania is essential for several strategic reasons that are directly related to the internal reform process and progress towards membership in the European Union.

Firstly, IPA III funds serve as a powerful financial and technical instrument to support Albania in fulfilling the EU membership criteria. In particular, these funds target reforms in key areas such as the rule of law, public administration, economic development, environment, education and innovation. Without this support, Albania would find it much more difficult to make sustainable progress in the accession negotiations process.

Secondly, IPA III is designed on the principle of performance and results. This means that funding is conditional on the fulfilment of standards and the achievement of clear objectives. This pushes the Albanian public administration to focus not only on policy design, but also on their concrete and measurable implementation, strengthening accountability and transparency.

Thirdly, the benefit from IPA III is evidence of the EU's increased trust in Albanian institutions. The fact that Albania manages part of these funds through indirect management (i.e., under the responsibility of the Albanian authorities themselves) shows that there is a positive assessment of administrative capacities and commitment to the principles of good governance. This is an important political and diplomatic signal for the integration process.

Fourth, IPA III funds have a direct impact on the economic and social development of the country. They finance projects that improve infrastructure, increase human capacities and boost the competitiveness of the Albanian economy, creating more employment opportunities and increasing welfare. In this way, IPA III contributes to reducing the economic gap between Albania and the EU Member States. Finally, through IPA III, Albania is obliged to further integrate EU standards into its laws and practices, which promotes the country's structural adaptation to European rules and values. This gives membership a much more substantial character than a purely political one, making the process irreversible.

7. Where does our Administration currently stand when it comes to the principle of transparency in the management/control of European funds?

The “Transparent Albania”¹ platform is an initiative presented by the Ministry of Public Administration and Anti-Corruption, aiming to increase transparency and citizens’ access to public information, which is in line with the measures to fight corruption and is part of the National Reform Agenda 2024–2027, approved by Council of Ministers No. 621, dated 10.10.2024, within the framework of the EU instrument “Reform and Growth Facility for the Western Balkans”.

Presented during an official ceremony, this digital platform gives citizens the opportunity to have immediate access to detailed information on public spending, decision-making processes and official documentation of institutions at central and local level. This Platform has also been adapted for use on mobile devices where users can monitor the allocation, use of budgets and the progress of public projects in real time.

The challenge remains the continuous and timely updating of data, which requires the active involvement of the administration in the publication of information. Through this platform, considerable efforts have been undertaken to ensure that data on the use of public funds, both planned and actual, are clear and accessible to citizens, businesses, the media and civil society.

The electronic public procurement system (e-Procurement) has also been implemented, which has reduced manual interventions and increased real-time monitoring of tendering procedures. The “Albania We Want” platform and the “Co-Governance Platform” are also tools that give citizens the opportunity to submit complaints, suggestions or problems in real time and receive responses from the relevant institutions.

It is also worth mentioning that the platforms “Open Data Albania” and “Transparency with Citizens” offer open data on the budget, public tenders and financial data of institutions.

1. Government of the Republic of Albania. (n.d.). Transparent Albania: Platform that promotes accountability and provides clear information on the work of the government. Retrieved from <https://www.kryeministria.al/en/newsroom/transparent-albania-platforma-qe-promovon-llogaridhenien-dhe-ofron-informacion-te-qarte-mpi-punen-e-qeverise/>

8.1 Significant problems with conflicts of interest

During the audit conducted by the Supreme Audit Institution¹ on the FINREP project consultancy contracts (7 contracts), a serious problem of the concentration of decision-making functions in a single individual, Mr. D.F., who simultaneously exercised the roles of representative of the Ministry of Finance and Economy and member of the evaluation committee and contract coordinator, was identified. In four contracts with a total value of 368,958 euros, Mr. D.F. had full powers for monitoring, approving activities, certifying products and authorizing payments, thus creating a potential environment for conflict of interest and lack of internal control guarantees.

The risk of conflict of interest was further reinforced in two other cases, where the company EXFC shpk, in which Mr. D.F. had owned 35% of the shares until just one month before the opening of the tender procedures, resulted in the winner of the competition. Although he had formalized the transfer of shares, this action did not significantly eliminate the perception of conflict of interest and suspicions about the company's favoritism in the evaluation and contracting process. In the absence of effective corrective measures by the relevant authorities, the situation was not handled in accordance with standards of integrity and transparency, raising serious questions about the regularity and impartiality of the procurement procedures within the project.

8.2 Low absorption of funds

The audit of the process of monitoring progress, financing and reporting of projects financed under IPA programmes revealed several irregularities and shortcomings that affected the use of available funds. One of the main problems was the delay in the implementation of projects and negligence in their administration, which led to the non-full use of funds, namely an amount of 1.78 million euros². This problem is even more pronounced when compared to the low absorption rate of funds, which by the end of 2018 was only 61%. This shows the incapacity of the state structures established to manage IPA funds, which have not been able to successfully

1. Supreme Audit Institution, Final audit report on the compliance of the activities of the General Directorate of Financing and Contracting with EU, WB and other donors' funds for the year 2017-2018, Tirana, 2019, p. 30.

2. Ibid.,p.86

implement projects financed by the European Union. In addition, a damage to the state budget of 1 million euros has been found, a loss that cannot be recovered. This situation highlights the need for further improvements in the administration and monitoring of foreign funds, as well as strengthening the capacities of state institutions to effectively manage EU financial resources. Albania must improve its ability to absorb funds within the established deadlines, otherwise it risks losing them.

8.3 Negligence and Delays

The audit of IPA-funded projects revealed non-use of funds amounting to 1.78 million euros, due to negligence and delays in the submission and approval of the necessary procurement documentation, in violation of PRAG rules. A specific case was the failure of the “Upgrade of Albanian Gateway” contract under IPA 2014, with a fund of 900,000 euros¹, due to delays by the AKSHI in reviewing the technical specifications and lack of cooperation with the CFCU, which led to the cancellation of the contract.

Another case where delays in the implementation of tasks are indicated is the case regarding the on-the-spot visits for the Water Supply and Sewerage Construction project in Vlora, where the audit found not a lack of field visits, but their inadequate completion, failing to identify delays in the implementation of the project, which constitutes the main purpose of these visits².

8.4 Frequent change of key experts in the field

The audits found that in some contracts financed by IPA funds, the practice of replacing key experts after the completion of procurement procedures is frequent, leading to significant delays in the implementation of projects. These cases have not been addressed by the contracting directorate, as foreseen by PRAG (Practical Guide to procurement and grant award).

In the contract for the Supervision of the construction of the sewerage system in Vlora, Phase 2 (started on 11.12.2015), the Team Leader was replaced very early, according to Amendment no. 1, dated 29.02.2016³.

1. Ibid.,p.87

2. Ibid.,p.122

3. Ibid.,p.126

Another case was in the contract for the “Improvement of the Statistical Information System” with INSTAT (started on 06.06.2016), the replacement of the Team Leader and two other key experts occurred within the first year. The replacement of the expert responsible for a key component failed to be secured in time, postponing the implementation for more than a year. In the absence of a suitable candidate, the contracting directorate approved the recruitment of an expert who did not fully meet the initial criteria, applying a penalty of 10% on the payment.

In all the above cases, it does not appear that the CFCU requested the contractor to deploy a temporary expert.

The audit of the SAI from 01.01.2021 to 30.06.2024 resulted in two projects having a change of project manager of the Directorate for the Management of EU Funds, which risks the successful implementation of the projects and the effective use of funds, as frequent changes can cause a loss of continuity in project management and coordination between the parties involved; loss of knowledge and experience accumulated by previous managers; and delays in the execution of project activities, due to the need for time to familiarize themselves with the project and adapt previous procedures and planning¹.

10. Conclusions

- The inclusion of Albania in the European Union financial assistance programs has also required increased commitment from the public administration to meet the technical and procedural requirements related to the management and auditing of funds, making this experience an important component of the integration process.
- Fulfilling the obligations for financial control constitutes a priority for the Albanian Government, not only as a condition for EU membership, but as an internal obligation of good governance of the country, in order to achieve financial stability, prevent misuse of financial resources, and spend public funds efficiently and transparently
- In the indirect management modality, the main responsibility for the implementation of the budget (IPA funds) is transferred from the European Commission to the indirect management structures of IPA

1. Supreme Audit Institution (SAI), Final Audit Report: On Compliance Audit in the General Directorate of Financing and Contracting for EU, WB and Other Donor Funds, Tirana, February 2025, p.6

funds, established for this purpose, in the beneficiary country.

- In the enlargement process, the European Commission carefully assesses the degree of transparency in the administration as an indicator of the fight against corruption, accountability and institutional capacity. An administration that functions transparently shows that it is able to absorb and administer EU financial assistance fairly and efficiently, without abuse or political influence. The lack of transparency, on the contrary, undermines trust in institutions, increases the perception of corruption and creates uncertainty for investments and long-term cooperation.
- The approval of IPA III funds for Albania is essential for several strategic reasons that are directly related to the internal reform process and progress towards membership in the European Union.
- Some challenges in the management and control of European funds according to various reports include mainly the failure to identify conflicts of interest, poor absorption of funds, negligence and delays in the implementation of projects, etc. These shortcomings indicate institutional weaknesses in controlling the integrity of procurement procedures and raise concerns about the respect of the principles of transparency, fair competition and management of the risk of conflict of interest in the use of foreign funds.

11. Recommendations

- Based on various reports, it is estimated that although there is a significant improvement in terms of the principle of transparency, the entities dealing with the management of European funds still have significant problems, especially with the part of the evidentiary documentation, both for field inspections and other routine procedures, and with the reflection of incorrect information. It is recommended to maintain complete and accurate physical and online records for every step of the use of funds.
- Although Albania has reached a satisfactory level in transparent digital platforms, it is still difficult to find regular financial reporting and publication of results in real time by the institutions.
- Authorities such as the Albanian Supreme Audit Institution Office and the European Commission conduct routine audits periodically and for

each problem they provide their respective recommendations, but again Albanian institutions fail to fulfill them in a short time and a continuous delay is noted. Timely implementation of the recommendations of the EU audit and independent national or international auditors would significantly improve the management/control procedure.

- Institutions should be very careful during procurement procedures because, based on the reports of national audit institutions, many cases are clearly noted regarding the failure to report conflicts of interest and the failure to justify the exclusion of other candidates. Failure to implement the principles of law in the procurement process and private-public partnerships seriously undermines the principle of transparency and civic and institutional trust.
- Albanian institutions still show incompetence in the effectiveness of state structures created for the management of IPA funds, which have not been able to successfully implement a significant part of the projects financed by the European Union. In addition, damage to the state budget has also been found. Given that part of this incompetence is due to the continuous negligence of high-level employees and unreasonable delays, there should be increased care on the part of these bodies for ongoing projects.
- The audits found that in some contracts financed by IPA funds, the practice of replacing key experts after the completion of procurement procedures is frequent, leading to significant delays in the implementation of projects. These cases have not been properly addressed, leading to further problems. Ideally, the replacement of key employees in these projects should be avoided as it requires a long time to adapt and continue these projects properly.

Bibliography

1. European Commission. *Ad Hoc Evaluation of the CARDS Programmes*. Brussels: Enlargement Directorate-General, 2017. https://enlargement.ec.europa.eu/system/files/2018-12/ad_hoc_albania_cards_final_report_171208_en.pdf.
2. Government of Albania. *National Plan for European Integration 2021–2023*. Decision of the Council of Ministers No. 90, dated

- February 17, 2021. <http://planifikimi.gov.al/index.php?eID=dumpFile&t=f&f=6170&token=5fde9f7a2fd7e514f53b853364e79ca24>.
3. European Commission. *FP7 Final Evaluation: Final Report*. 2015. https://ec.europa.eu/research/evaluations/pdf/archive/fp7-evidence-base/evaluation_studies_and_reports/fp7_final_evaluation_expert_group_report.pdf.
 4. European Commission. *Competitiveness and Innovation Framework Programme (CIP) 2007–2013: Final Evaluation Report*. 2013. <https://eur-lex.europa.eu/EN/legal-content/summary/competitiveness-and-innovation-framework-programme-cip-2007-2013.html?fromSummary=27>.
 5. Council of the European Union. *Council Conclusions of 24.06.2014 on Albania*. June 24, 2014. <https://data.consilium.europa.eu/doc/document/ST-8288-2014-INIT/en/pdf>.
 6. Law No. 114/2015 on Internal Audit in the Public Sector, as amended by Law No. 12, dated 2.02.2023, “On Amendments and Additions to Law No. 114, dated 22.10.2015 ‘On Internal Audit in the Public Sector’.”
 7. Supreme State Audit. *Performance Audit Report: Monitoring of Foreign Projects*. 2020.
 8. Government of the Republic of Albania. *Decision of the Council of Ministers, dated 20.09.2023, on the Functions and Responsibilities of Structures for Indirect Management of IPA III Funds*. 2023. Available at: <https://www.kryeministria.al/newsroom/47343-2/>.
 9. Government of the Republic of Albania. *Transparent Albania: A Platform that Promotes Accountability and Provides Clear Information on Government Work*. Available at: <https://www.kryeministria.al/en/newsroom/transparent-albania-platforma-qe-promovon-llogaridhenien-dhe-ofron-informacion-te-qarte-mbi-punen-e-qeverise/>.
 10. Supreme State Audit. *Final Audit Report on Compliance of Activities of the Directorate General of Financing and Contracting of EU, WB and Other Donor Funds for 2017–2018*. Tirana, 2019.
 11. Albanian Institute of Science (AIS). *Albania’s Path toward European Integration: Financial Control and the Negotiation Process for Chapter 32 [Policy Paper]*, p. 2. 2022. Retrieved from https://ais.al/new/wp-content/uploads/PP_VERSION_SHQIP_FINAL_Kontrolli-

- financiar-dhe-procesi-i-hapjes-se-negociatave-per-Kapitullin-32.pdf.
12. ALTAX. *Analysis of Public Finance Management and Expenditures in Albania (2014–2024)*. ALTAX. February 28, 2025. <https://altax.al/analiza-e-menaxhimit-te-financave-publike-dhe-shpenzimeve-neshqiperi-2014-2024/>.
 13. Ministry of Finance of the Republic of Albania. *Sectoral Strategy for Public Finance Management 2023–2030 and Action Plan 2023–2026*. Ministry of Finance, 2023. <https://financa.gov.al/wp-content/uploads/2023/06/Strategjia-Sektoriale-e-Menaxhimit-te-Financave-Publike-2023-2030-dhe-Plani-i-Veprimit-2023-2026.pdf>.
 14. Ministry for Europe and Foreign Affairs. “Albania–EU Agreements.” Ministry for Europe and Foreign Affairs. Accessed April 10, 2025. <http://integrimi-nebe.punetegashtme.gov.al/anetaresimi-ne-be/dokumente/marrevshjet-shqiperi-be/>.
 15. Ministry for Europe and Foreign Affairs. “Chapters of the Acquis Communautaire.” Ministry for Europe and Foreign Affairs. Accessed April 10, 2025. <http://integrimine-be.punetegashtme.gov.al/negociatat/>.
 16. Law No. 10294/2010, *On Public Financial Inspection*, dated July 1, 2010. https://kqk.gov.al/sites/default/files/publikime/ligji_nr_10_294_dt.01.07.2010_per_inspektimin_financiar.pdf.
 17. Law No. 114/2015, *On Internal Audit in the Public Sector*, dated October 22, 2015. https://financa.gov.al/wp-content/uploads/2018/06/Ligji_114_22.10.2015.pdf.
 18. Law No. 112/2015, *On Public Financial Inspection*, 2015. https://arsimi.gov.al/wp-content/uploads/2018/02/E.1_Ligji_nr._112_-_2015.pdf.
 19. Law No. 8417, *Constitution of the Republic of Albania*, dated November 22, 1998. Articles 162–164. <https://qbz.gov.al/eli/ligj/2007/01/13/9675/7107091e-96b4-4853b651-a4f2f3814b0b>.
 20. Law No. 154/2014, *On the Organization and Functioning of the Supreme State Audit*, revised, dated November 27, 2014. https://dap.gov.al/images/LegjislacioniAP/ligj_154_27.11.2014.pdf.
 21. Ministry of Finance and Economy. *Partnership Platform for European Integration*. Ministry of Finance and Economy. Accessed April 13, 2025. <https://financa.gov.al/platforma-e-partneritetit-per-integrimineuropian/>.
 22. OECD. *The Principles of Public Administration*. Paris: OECD,

2023. <https://sigmaweb.org/publications/Principles-of-Public-Administration-2023.pdf>.
23. European Commission. *Albania 2023 Progress Report*. European Commission. Accessed April 13, 2025. https://enlargement.ec.europa.eu/albania-report-2023_en.
24. INTOSAI. *Principles of Transparency and Accountability in Public Audit*. 2019. https://www.intosai.org/fileadmin/downloads/documents/open_access/INT_P_11_to_P_99/INTOSAI_P_20/INTOSAI_P_20_en_2019.pdf.
25. Decision No. 541. *On Defining the Functions, Responsibilities, and Relationships Between Authorities and Structures for Indirect Management of EU Assistance under IPA II (2014–2020)*. Dated June 18, 2015.
26. Supreme State Audit (SSA). *Final Audit Report: On the Compliance Audit of the Directorate General of Financing and Contracting for EU, WB and Other Donor Funds*. Tirana, February 2025.
27. EU for Albania. *EU Financial Support for Albania*. Accessed April 20, 2025. <https://www.euforalbania.info/mb%C3%ABshtetja-financiare-e-be-s%C3%AB-p%C3%ABr-shqip%C3%ABrin%C3%AB>.

RECENT CHANGES IN THE LEGAL FRAMEWORK IN PUBLIC PROCUREMENT AND THE USE OF THE E-PROCUREMENT SYSTEM

MSc. Rezelina Uka¹

Introduction

Public procurement is an essential instrument of public administration and one of the main mechanisms for achieving public policy objectives, economic development and social well-being. The connection of this field with the theme of the International Scientific Conference is particularly important, as public procurement processes directly affect social justice, citizen security and the protection of human rights. The use of digital technology and the implementation of international standards contribute to better respect for human rights throughout the public procurement cycle, helping to build a more just, secure and equal society.

In the Republic of Kosovo, public procurement represents a strategic segment of public finance management, where the public sector spends a significant percentage of the state budget through procurement procedures. This makes procurement an area of high importance for good governance and for safeguarding the public interest.

Given the importance of this field, this research aims to analyze the use of the E-Procurement system in Kosovo, with a focus on its impact on transparency, efficiency and management of public funds. The aim is to identify the advantages and challenges presented by this system, as well as its potential to improve public procurement procedures in accordance with the principles of the rule of law and institutional integrity.

The E-Procurement system aims to advance transparency and

1. Municipality of Gjilan, Kosovo, Public Procurement Officer, rezelina.uka@rks-gov.net

efficiency in the administration of public contracts, reducing opportunities for corruption and abuse of public funds. In accordance with the Law on Public Procurement No. 04/L-042 and its subsequent amendments, all contracting authorities are obliged to follow clear and legally based procedures, to guarantee a fair, controlled and accountable expenditure of public money.

In this context, the public procurement system can be seen as one of the fundamental pillars of maintaining integrity and credibility in public administration, while contributing at the same time to respecting the rights of individuals and to social equality.

Public procurement in Kosovo remains an area of high strategic and economic importance, with a direct impact on public spending and institutional integrity. The role of institutions such as the Public Procurement Regulatory Commission (PPRC), the Procurement Review Body (PRB) and procurement units within contracting authorities is crucial for maintaining transparency and fair competition. However, challenges such as procedural delays, lack of professional capacity and the risk of misuse of public funds require an integrated and systematic approach to improving procurement practices.

In a democratic state, public procurement represents not only an economic mechanism, but also a tool for promoting the values of responsibility and accountability. In the context of Kosovo, where institutional challenges and the economic context continue to impact the optimal functioning of the system, it is essential to ensure careful risk management and a continuous commitment to sustainable improvement. Key elements of a successful system include transparency, efficiency and professionalism, supported by strong legal and institutional mechanisms.

Procurement Process: From Planning to Contract Signing

1. Procurement Planning

Planning is the initial and one of the most important stages in the public procurement cycle. In this stage, the contracting authority identifies the needs for goods, services or works, and ensures that the relevant funds are allocated in accordance with the annual budget of the institution. This data is included in the Annual Procurement Plan, which is approved and published as part of institutional transparency.

2. Initiation and Preparation of Tender Documents

After completing the planning, the contracting authority begins the preparation of the relevant documents. This includes:

- Drafting the statement of needs;
- Determining the estimated value of the contract;
- Classifying the contract as for goods, services or construction works;
- Choosing the procurement procedure in accordance with the legal thresholds.

3. Drafting and Publication of Tender Documents

Tender Documents (TD) are prepared in accordance with the standard formats and instructions published by the PPRC. They contain the technical specifications, the qualification and selection criteria, as well as the deadlines. The publication of the TD and the Contract Notice is carried out through the Electronic Procurement Platform.

4. Submission of Bids and Evaluation

After the expiry of the deadline for submission of bids, the contracting authority forms the Bid Evaluation Committee. This committee evaluates the bids based on the criteria previously set out in the TD. The selection is made according to the principle of the lowest price or the most economically advantageous bid.

5. Decision and Award of the Contract

After the evaluation of the bids:

- All economic operators are notified through the Standard Letter of the Contract Award Decision;
- After the expiry of the appeals deadline, a draft contract is prepared;
- The contract is signed and the Contract Manager and the Direct Supervisor are appointed.

2. Public Procurement Concept and Legal Framework

2.1 Definition

According to Law No. 04/L-042, public procurement is the process through which contracting authorities purchase goods, services and construction works for public needs.

2.2 Legal and Institutional Framework

The procurement system in Kosovo is based on:

- The Law on Public Procurement;
- PPRC Regulations and Guidelines;
- Standard Tender Documents.

3. Steps of Public Procurement

3.1 Planning

Preparation of the annual procurement plan and securing funds are essential steps in this phase.

3.2 Tender Documents

The phase includes drafting the statement of needs, calculating the contract value, determining the type of procedure and preparing the relevant documents.

3.3 Publication and Submission of Bids

Publication occurs through e-Procurement, while operators have set deadlines for submitting bids.

3.4 Evaluation and Signing of the Contract

After the evaluation process is completed and the appeals deadline has passed, the contract is signed by the parties.

4. Advantages and Disadvantages of Public Procurement in Kosovo

4.1 Advantages

- Transparency through the electronic platform;
- Harmonization with European Union practices;
- Promotion of competition and equal access;
- Supervision by PPRC, PRB and NAO.

4.2 Disadvantages

- Limited professional capacity in procurement units;
- Lengthy and bureaucratic procedures;
- High level of complaints;

- Lack of effective supervision in contract implementation;
- Political influences in the selection of bidders.

5. Risks and Risk Management in Public Procurement

Pre-tender risks

- Lack of accurate planning and lack of realistic assessments.

Risks during the tendering process

- Unclear procedures or possible manipulation of bids.

Risks in bid evaluation

- Irregularities in evaluation and lack of objectivity.

Corruption

- Corruption undermines the integrity of the system. The law sanctions it as a criminal offense.

6. The Role of Technology and Transparency in Procurement

The electronic procurement system has significantly improved transparency and public access to information. This has contributed to reducing opportunities for corruption and improving institutional accountability.

7. Professionalism in Public Procurement

Increasing professionalism is essential to guarantee a fair and efficient system. This is achieved through regular training and the involvement of experts in the field of procurement.

8. Efficiency and Transparency as Core Values

Transparency and efficiency are core values that enable the optimal use of public funds and the sustainable development of the public sector.

Blacklist of Economic Operators and Conflict of Interest in Public Procurement in Kosovo

According to Law No. 04/L-042 on Public Procurement in the Republic of Kosovo, the competent authorities may apply sanctions to economic operators that commit serious violations of the legal provisions on public

procurement. One of the most effective measures is their inclusion in the blacklist, which temporarily or for a certain period excludes their participation in procurement procedures.

According to Article 86 of the LPP, the Procurement Review Bodies (PRB), upon request of the Anti-Corruption Agency (ACA), have the competence to include an economic operator in the blacklist. This mechanism aims to strengthen the integrity of the procurement system and curb corrupt practices. Inclusion in the blacklist comes as a result of verification of the integrity of the economic operator and includes cases where the latter has provided false information, submitted forged documents or has been involved in manipulations during the tendering process.

A concrete example includes situations where an economic operator submits false documentation as part of an application for a public contract. In such cases, it may be excluded from participating in tenders for a period of up to one (1) year. Contracting authorities are obliged, before signing any contract, to verify the suitability of bidders through the relevant required documents. Failure to comply with this criterion may result in the application of legal sanctions.

This mechanism not only strengthens control over the integrity of participants in public procurement, but also helps to create a fairer and more competitive environment for economic operators acting in accordance with the law.

Conflict of Interest and Prevention of Corruption

Conflict of interest constitutes one of the most common sources of corruption in the public procurement sector. It occurs when a public official has personal interests that may unfairly influence official decision-making. This can lead to unfair favoritism and misuse of official position for personal gain or for the interest of third parties.

The Law on Prevention of Conflict of Interest (Law No. 04/L-051) stipulates that public officials must avoid any situation that creates or is perceived as a conflict of interest and declare any personal interest that may affect their official activity.

The Law on Public Procurement provides clear measures for managing this phenomenon within the framework of public procurement procedures:

- Declaration and avoidance of conflict of interest: Procurement officials are obliged to declare any personal or indirect relationship with any bidder and to be excluded from the relevant procedures, if they are in such a situation.
- Institutional handling of conflict of interest: If the existence of a conflict is established, contracting authorities are obliged to take measures to exclude the relevant official and to guarantee a fair and impartial procedure.
- Control and monitoring mechanisms: To prevent and identify situations of conflict of interest, mechanisms such as internal and external audit, as well as supervision by relevant institutions, are implemented.

These measures are an integral part of the institutional accountability system and help maintain the integrity of the public procurement process.

Recommendations and Conclusions:

This study highlights the importance of establishing a strong legal and operational framework to manage public procurement in a fair and transparent manner. Implementing the above recommendations will help improve the efficiency and integrity of the procurement process and contribute to preventing opportunities for corruption and abuse of public funds. In order to achieve sustainable improvements in the field of public procurement and to facilitate its processes, several strategic and innovative measures can be taken. Some ideas that can improve and accelerate the procurement process, focusing on transparency, efficiency and eliminating opportunities for abuse, can be outlined:

1. Digitalization and Automation of the Procurement Process

The use of electronic platforms for tendering and contract management can be an important step in facilitating procurement procedures. Participants can submit and review documents online, enabling a faster and more transparent process. Automating some steps, such as document review, compliance verification, and timeline tracking, can help eliminate opportunities for delays and abuse.

2. Implementation of Real-Time Monitoring Systems

An advanced system for monitoring contractor performance and contract progress in real time can help identify delays and potential problems that may arise during implementation. This could include an online platform where regular project progress reports can be posted and users (including citizens and stakeholders) can follow and assess the status of the contract.

3. Increasing Transparency and Increasing Public Participation

Many procurement practices are often closed to the public and can create opportunities for corruption and favoritism. In this regard, it would be important to create opportunities for any interested citizen or organization to have access to tender data, processes and opportunities to comment or provide suggestions. This can be achieved through open and accessible online platforms that display information in real time.

4. Training and Education of Procurement Officers

To ensure that procurement processes are fair and impartial, it is important to have ongoing training for procurement officials. Training them in contract management, preventing conflicts of interest, and identifying opportunities for corruption can significantly improve the efficiency and transparency of the process.

5. Using Data Analytics to Predict and Identify Risks

Implementing an advanced data analytics system can help identify trends and potential risks that may occur during the procurement process. This can help predict delays, increased costs, or potential contract violations. Data analytics can also include auditing previous tenders and verifying the performance of previous contractors.

6. Using Strong Regulations to Combat Conflicts of Interest

To minimize opportunities for corruption and ensure that officials and those involved in tendering processes act without being influenced by private interests, it is important to establish clear and enforced rules to prevent conflicts of interest. This could include mandatory declarations of interests and a ban on senior officials from participating in tenders where they may have personal or financial influence.

Increasing the Engagement of Independent Auditors

To ensure the integrity of the process, independent audits of procurement and contracts can be encouraged. This will help identify abuses, misappropriation of funds and non-compliance with contract terms. Audits can include checking prices, quality and compliance with contracts, as well as monitoring payments and invoices.

8. Improving the Connection with Public Services and Stakeholders

For a successful and credible public procurement process, it is important to have continuous communication with stakeholders and citizens. In this regard, regular forums for consultation with the private sector, civil society and citizens can be established to discuss best practices and gather recommendations that can improve the process.

9. Development of Support Services for Service Providers

Rather than relying solely on responding to violations or problems, support services could be created for service providers and contractors, helping them better understand procurement procedures and requirements. This could be a step towards ensuring a better experience for all stakeholders and increasing compliance with procurement rules.

Conclusion:

If these ideas and recommendations are implemented, they can contribute to more efficient, straightforward and honest procurement, which will help reduce opportunities for corruption, improve the quality of services and reduce unnecessary public spending. Implementing these changes may require significant commitment from the relevant authorities, but will provide sustainable and positive results for the public procurement system in general.

As a procurement officer or researcher in this field, there are several ideas and proposals that can have a positive impact and bring improvements to procurement procedures. Here are some new ideas that can help improve efficiency, transparency and accountability in this area:

1. Use of Artificial Intelligence (AI) and Data Analytics

To speed up and improve the tender review process, tools that use artificial intelligence to automatically analyze and compare bids can be developed. These tools can examine data and provide suggestions for

the best options, reducing the possibility of human error and increasing efficiency. Data analysis can also help predict opportunities for corruption by identifying suspicious patterns in previous tenders and payment reports.

2. Feedback System from Participants in the Procedures

Another idea is to create a platform where bidders and other interested parties can provide feedback on procurement processes. This could be done after each tender and contract is completed. Feedback could include comments on review time, clarity of documents, and response to requests. This feedback can be used to identify weaknesses and make improvements in future procedures.

ANALYSIS OF LEGAL AND INSTITUTIONAL FRAMEWORK OF FOREIGN STUDENTS' ENROLMENT IN ALBANIAN HEI: HOW COMPETITIVE IS THE INTERNATIONALIZATION SECTOR ON THIS ISSUE AND WHAT ARE THE CHALLENGES AHEAD?

**Agim Alia¹
Geron Kamberi²**

Abstract

The Albanian National Education Strategy 2021-2026 emphasizes the struggle of Albanian Higher Education Institutions (HEIs) to attract a significant number of foreign students, aside from ethnic Albanians from neighboring countries. Key objectives of the Strategy are to increase the number of foreign students enrolled in Albanian HEI and to position Albania as a competitive regional education hub within the Western Balkans and beyond. Foreign students seeking to enroll in Albanian universities need to follow specific procedures and meet certain requirements provided by the legal framework in power. The issue posed here is to analyze if these requirements and procedures are facilitating or hindering the enrollment of foreign students.

The main purpose of this paper is to research the current developments and challenges of legal and institutional framework in Albania to ensure an effective and attracting environment, particularly in creating a suitable environment for foreign students to study in Albania. The research explores the legislative framework on this issue, identifying main achievements and challenges. This paper attempts to provide an assessment of the current

1. Luarasi University (LU), Albania, e-mail: agim.alia@luarasi-univ.edu.al

2. Luarasi University (LU), Albania, e-mail: geron.kamberi@luarasi-univ.edu.al

legal and institutional challenges of attracting foreign students and make comparisons to other European countries. The research hypothesis here is that, although there are real facts and premises to increase the number of foreign students enrolled in Albanian HEI, this process is slowed down due to obstacles of legal and institutional framework and weak implementation of legal framework.

Keywords *Foreign Students · Internationalization · HEI · enrolment · legal framework · challenges*

Introduction:

Higher education has a central role in accomplishing the 2030 Agenda for Sustainable Development, in its three integrated and indivisible dimensions of economic, social and environmental development. The higher education sector has the responsibility of co-creating knowledge and innovations that allow progress in the 17 Sustainable Development Goals (SDGs). It has the mission of educating citizens as social agents who can become leaders for sustainable development [UNESCO, 2022]. Higher education has always been international in scope [Guruz 2008; Matthews and Sidhu 2005]. Nevertheless, against the backdrop of globalization and neoliberalism, nation-states, and, by extension, universities—have faced pressure to internationalize their practices at an increasing pace [Altbach et al. 2009; Brooks and Waters 2011]. As such, higher education internationalization is talked about as a strategic priority for governments and is considered to be at the forefront of policy agendas around the world [Brooks and Waters 2011]. Since the beginning, the main goals of the Bologna Process—specifically the harmonization and mobility aspects have underscored an interest in internationalizing national higher education systems in Europe [Crăciun, D. 2018].

From the start of the Bologna Process in 2000, the success of Europe in the development of these areas has been the result of a mix of top-down and bottom-up policies, with the active involvement of a diversity of key stakeholders: universities and their associations, students and their associations, faculty, the private sector and the European Commission in particular. On the other hand, in this evolution, national governments and their legislations have been more obstacles and challenges than

drivers. Nijboer and Girotti (2023, p. 348) stated, “The EUI was calling on European universities to implement all the internationalization actions, previously fragmented in small short-term projects, in one single, long-term Alliance [*de Wit, H. and Wang, L. (2024)*].

Over the past decades, two mains, and to a certain extent contradictory, trends have dominated the development of international higher education: its massification, and its role in the global knowledge economy. The increasing demand of a rising middle class for access to higher education, particularly in contexts where the supply of higher education is insufficient to meet such demand, has motivated a dramatic increase in the number of students seeking higher education across borders, with the number of internationally-mobile students surpassing 5 million in 2017 [*Delaquil, T. C., Gelashvili, M., Altbach, P., Blanco, G., de Wit, H., & Schendel, R. (2022)*].

Universities may consider themselves essentially international institutions, but they act within national regulatory frameworks. Characteristics of internationalization these past 30 years; More ad hoc, fragmented, and marginal than strategic, comprehensive, and central in the policies of universities and governments. Primarily a strategic choice and focus of institutions of higher education, but increasingly also a priority of national governments (for reasons of soft power, reputation and/or revenue) [*Hans de Wit & Philip G. Altbach (2020)*]. A 2015 study for the European Parliament on the state of internationalization in higher education reflects this new line of thinking. It promoted a new agenda for the future, with the following definition for internationalization: The intentional process of integrating an international, intercultural or global dimension into the purpose, functions and delivery of post-secondary education, in order to enhance the quality of education and research for all students and staff and to make a meaningful contribution to society [*De Wit et al. 2015, 29*].

The number of internationally mobile students tripled from 2000 to 2019, from two to six million. Internationally mobile students’ share of total world enrolments rose from 2.09% in 2000 to 2.58% in 2019 (UIS database). North America and Western Europe hosted 49% of internationally mobile students in 2019, while 13% of internationally mobile students came from these regions (UIS database) [*UNESCO, 2022, p. 3*]. The proportion of mobile students – international or foreign – among all tertiary enrolments has risen in nearly all countries between 2013 and 2022. Many Central and

East European countries saw very large increases in mobile students, albeit from low levels in 2013. In Estonia, the share of international students increased from 3% in 2013 to 11% in 2022. Similarly, the share increased from 4% to 13% in Latvia, and from 10% to 19% in Canada [*OECD (2024), Education at a Glance, p. 236*]. \$196B International Education Market set to reach \$433B by 2030. The resurgence of international education will see today's 5+ million enrollments recover and reach more than 8 million enrollments by 2030 [*Holon IQ*].

There were 1.66 million students from abroad who were undertaking tertiary level studies across the EU in 2022. As is the case for all students, not just those from abroad, the highest shares of these students were studying for either a bachelor's degree (43.8%) or a master's degree (44.7%), while 9.1% were studying for doctoral degrees and 2.4% followed short-cycle tertiary courses. In 2022, a total of 403 500 tertiary education students from abroad (24.3% of the total number of students from abroad in the EU) were studying in Germany. The next largest populations of tertiary education students from abroad were recorded in France (263 500; 15.9% of the EU total) and the Netherlands (163 900, excluding students studying for a doctoral or equivalent education; 9.9% of the EU total). [*Statistics Explained, Eurostat*].

The internationalization of higher education is a strategic direction for the development of Albania and a stimulating factor in the development of the higher education system, as stated in the Albanian Education Strategy. Based on this strategy, internationalization is considered a necessary element in improving education and the competitiveness of HEIs. The purpose of this study is to identify the main challenges of legal and institutional framework for attracting foreign students to the Albanian higher education system. It is very evident that the active enrolment of foreign students is an ambition of the Albanian government and is determined by the needs of economic interests of the country.

The key research objectives were as follows:

1. identifying current development and challenges of legal and institutional framework in attracting foreign students to Albanian higher education institutions.
2. proposing policies to attract foreign students and the impact and relationship between attracting foreign students and Albanian's economic development.

The methodology of this paper takes the form of depth desk research on the matter, including data from official sources and experts' views expressed in various academic and research papers, in addition to academic literature on foreign student policies.

1. Albanian Legal Framework on Foreign Students

The first question raised in this paper is whether the legal and institutional framework in Albania provides a favorable environment for attracting foreign students. In order to approximate the national legislation with the EU acquis, Albania has adopted in November 2021 the Law on Aliens [*Law no.79/2021 "On Aliens"*], which contains specific provisions for foreign students who intend to study in the country. This law is partly aligned with the Directive (EU) 2016/801 of the European Parliament and of the Council [*Directive 2016/801*]. The legal framework for migration is partially aligned with the EU acquis and needs updating in line with the latest EU developments. Following the entry into force of the Law on foreigners in November 2021, 30 pieces of implementing legislation have been adopted so far: 7 in 2023 and 4 in 2024. A revised draft Law on foreigners is in preparation. [*Commission Staff Working Document, Albania 2024 Report, p.42*].

Under this law "On Foreigners," specific provisions are established for international students intending to study in Albania, focusing on three elements, student visa, student residence permit, and employment of foreign students. These provisions aim to facilitate the entry, stay, and potential employment of foreign students, aligning with European Union standards and procedures. The law specifies the type of visa that is issued for study purposes. Article 39, letter b of the law provides that the residence permit is issued for study purposes as student. Article 46 of this law regulates the residence permits for students. This article provides that:

1. *Foreign nationals who enter and reside in the Republic of Albania for the purpose of pursuing studies at a public or private educational institution recognized by the Albanian state are entitled to apply for a residence permit. This application must comply with the general criteria stipulated in Articles 36 and 37 of the law.*
2. *Individuals admitted to an educational institution, or participating in vocational training or professional internships, are granted*

a residence permit valid for a period of up to one year upon first issuance. This permit may be renewed annually until the conclusion of the respective academic program or internship. In instances where the course duration is less than one year, the residence permit is issued for a period equal to the length of the course.

- 3. Applicants are required to demonstrate proof of admission from the educational institution, adequate proficiency in the language of instruction or training, and possession of sufficient financial resources to support their living expenses while residing in Albania. Furthermore, the renewal of the residence permit is contingent upon evidence of satisfactory academic progress, in accordance with national legislation.*
- 4. Following the completion of the first year of studies, foreign students are permitted to engage in part-time employment outside of their academic schedule, provided they obtain the relevant work permit. They may also be authorized to undertake self-employment, within a limit of 15 hours per week, or the equivalent measured in days or months annually, without the need for approval from the National Employment and Skills Agency. Employers are obliged to notify the competent state authorities of both the commencement and termination of employment.*
- 5. It is important to note that, during the study period, a residence permit issued for educational purposes cannot be converted into a residence permit for employment purposes. However, upon successful completion of studies, and provided all legal employment criteria are met, foreign nationals may apply for a single permit that allows them to reside and work in Albania”.*

In alignment with European directives, Law No. 79/2021 “On Foreigners” provides for the issuance of a post-study residence permit that enables international graduates and researchers to remain in Albania for a transitional period following the completion of their academic or research programs. This legal provision seeks to promote the integration of highly educated foreign nationals into the Albanian labor market or entrepreneurial system. Specifically, Article 36 of the law allows foreign students and researchers to apply for a temporary residence permit valid for at least nine months, during which they may seek employment or

establish a business. Eligibility for this permit requires the applicant to hold a qualification not exceeding Level 7 of the European Qualifications Framework. The competent migration authority may request additional documentation, such as a diploma or confirmation of research completion from a recognized institution. Furthermore, the law provides mechanisms for monitoring and enforcement. After a minimum of three months, the migration authority may require the applicant to demonstrate a credible opportunity for employment or business development, and it may also assess whether the proposed activity aligns with the individual's field of study or research. Failure to meet these criteria may result in revocation of the residence permit, in accordance with Article 34 of the same law. This provision reflects Albania's broader commitment to fostering knowledge mobility and retaining international talent, while also ensuring legal compliance and alignment with national development priorities.

The legal framework governing the status and rights of foreign nationals in Albania has increasingly aligned with European directives, regulations and standards, particularly in the domain of education and labor mobility. Article 74 of Law No. 79/2021 "On Foreigners" plays a significant role in this regard by offering facilitated access to the labor market for foreign students. Specifically, the article stipulates that foreign students are exempt from the requirement to obtain prior approval from the National Employment and Skills Agency for employment purposes. This exemption is designed to ease administrative procedures and promote greater integration of international students into the Albanian socio-economic environment. This legal provision complements other sections of the law, particularly those that permit students to work part-time (up to 15 hours per week) after completing the first year of their studies. It reflects a strategic policy approach aimed at enhancing the attractiveness of Albania as a destination for international students, while also allowing them to acquire professional experience and contribute to the domestic economy during their studies.

The Decision No. 858, dated 29.12.2021, [*CMD no.858/2021 "On the Determination of the Criteria, Procedures, and Documentation for the Entry, Stay, and Treatment of Foreigners in the Republic of Albania, amended"*]. includes provisions specifically tailored for foreign students regarding their entry, stay, and documentation requirements in Albania. It outlines:

- The documentation needed for student visa and residence permit applications (e.g., admission letters from recognized institutions, proof of sufficient financial means, health insurance, etc.).
- Procedures and timelines for submitting and renewing residence permits for study purposes.
- Conditions for part-time work, aligning with the main law (Law 79/2021), allowing students to work up to 15 hours per week after the first study year.

Chapter 2, Section C, article 3, point 3.5 of Council of Ministers Decision No. 858/2021 stipulates the specific additional documentation required for foreign nationals applying **for a study visa** (type D/ST). This includes evidence of admission to an Albanian educational institution, proof of sufficient financial means to cover living and study expenses, and certification of language proficiency relevant to the language of instruction, which may also be verified through a consular interview.

The Joint Instruction No. 28, dated 24 February 2023, as amended by Joint Instruction No. 112, dated 9 July 2024, establishes a framework for institutional cooperation among the Ministry for Europe and Foreign Affairs, the Ministry of the Interior, and the Ministry of Finance and Economy of Albania. It specifically regulates procedures related to the assessment of the financial guarantee required for foreign nationals during the visa application and evaluation process. Point 2, chapter 2, of this Joint Instruction provide that: *“Exceptionally, the amount of the financial guarantee required for foreign students admitted to public or private universities in the Republic of Albania must be no less than 300,000 leke”*. Point 4, chapter 2, provides that: *“The financial guarantee document must specify the amount based on the legislation for covering living expenses, as well as an additional amount to cover any damages that may arise from actions or omissions by the foreign national in violation of applicable laws. This sum must be deposited in the same bank account and cannot be withdrawn by the foreign national or their guarantor in the Republic of Albania until the expiration of the visa’s validity period”*.

This amendment was provided by Joint Instruction no. 112, dated 9 July 2024, making a very positive impact by reducing the financial guarantee from 18000 euro to 3000 euro.

Chapter 3, Section C, Article 2, Point a of Council of Ministers Decision No. 858/2021 outlines the specific documentation required for foreign nationals applying for a residence permit for study purposes. It mandates submission of:

- an official acceptance letter from an accredited Albanian educational institution,
- proof of adequate financial resources for the intended stay,
- evidence of language proficiency or enrollment in a preparatory language course,
- and confirmation of tuition payment.

Chapter 3, Section C, Article 2, Point e of CMD No. 858/2021 specifies the additional documentation required for foreign students and researchers applying for a residence permit to seek employment or start a business after completing their studies or research. Applicants must provide:

1. Proof of sufficient financial means for the duration of stay,
2. Evidence of having attained an educational level not exceeding Level 7 of the European Qualifications Framework (EQF),
3. Certification from the research institution confirming completion of research activities, or an accredited diploma/certificate for students.

In line with **Chapter 3, Section A, point 10 of Council of Ministers Decision No. 858/2021**, foreign students seeking residence permits in Albania are required to demonstrate financial self-sufficiency. This includes providing a **bank deposit certificate from a second-level bank in Albania**, confirming a minimum amount of **300,000 ALL per person** for a **one-year period**. This stipulation ensures that students have sufficient financial resources to cover living expenses and other costs associated with their stay in Albania. The original regulation, **point 10**, required foreign nationals applying for a residence permit in Albania to provide proof of sufficient financial resources, which could be demonstrated through a **bank deposit certificate** from a second-level bank in Albania, without specifying any amount.

In the amendment introduced by **Decision No. 243, dated 20.04.2022**, **Point 10** was expanded to include two key conditions: A **bank deposit certificate** confirming a minimum of **300,000 ALL per person** for one calendar year, **Proof of monthly income** of at least **32,000 ALL per**

person. These modifications enhance clarity regarding financial self-sufficiency requirements for residence permit applicants.

2. The Application of Directive (EU) 2016/801 of the European Parliament and of the Council

The Council and the European Parliament adopted in 2016 the Students and Researchers Directive, which clarifies the admission and residence requirements by setting out general conditions for admission, and specific conditions for researchers, students, school pupils, trainees, volunteers and au pairs. The new Directive still follows a sectoral approach. While it sets uniform and binding rules on conditions for admission for students, researchers, trainees and volunteers participating in the EU's voluntary scheme, provisions on other volunteers, school pupils and au-pairs are optional. The Directive aims to make the EU a more attractive destination for students, in particular by improving their mobility conditions, allowing them to stay at least nine months after the completion of the studies period and allowing them to work (for at least 15 h/week). Furthermore, procedural guarantees have been reinforced for all categories (decision on an application within 90 days and provision of a justification of a negative decision) [*Attracting and retaining international students in the EU: National Report 2018 - EMN Croatia*].

The Council of Ministers Decision No. 858 dated 29.12.2021 is partly aligned with the Directive 2016/801 of the European Parliament and the Council. Directive (EU) 2016/801 establishes common EU rules for the entry and residence of third-country nationals who come for research, studies, training, voluntary service, pupil exchanges, or au pairing. It aims to facilitate legal migration for educational and research purposes, making the EU more attractive to talented individuals from outside Europe. The Directive sets out uniform admission conditions, enhances intra-EU mobility, and ensures equal treatment regarding working conditions and social security, while also introducing procedural safeguards for applicants. The question raised here is how much this Directive is incorporated into the internal legislation, and specifically to the Council of Ministers Decision No. 858, dated 29.12.2021.

The definition of the student in the Law of Aliens is the same with the definition given in the article 3, point 3 of the Directive as: “*student*’ means a third-country national who has been accepted by a higher education institution and is admitted to the territory of a Member State to pursue as a main activity a

full-time course of study leading to a higher education qualification recognized by that Member State, including diplomas, certificates or doctoral degrees in a higher education institution, which may cover a preparatory course prior to such education, in accordance with national law, or compulsory training”.

Additional documentation for a study visa of students, as provided in the internal legislation are in full accordance with the provisions of article 11, point 1 of the Directive, which provides that: *“In addition to the general conditions laid down in Article 7, as regards the admission of a third-country national for the purpose of studies, the applicant shall provide evidence: (a) that the third-country national has been accepted by a higher education institution to follow a course of study; (b) if the Member State so requires, that the fees charged by the higher education institution have been paid; (c) if the Member State so requires, of sufficient knowledge of the language of the course to be followed; (d) if the Member State so requires, that the third-country national will have sufficient resources to cover the study costs”.*

Article 7, point 1, letter e, of the Directive, provides that: *“the applicant shall provide the evidence requested by the Member State concerned that during the planned stay the third-country national will have sufficient resources to cover subsistence costs without having recourse to the Member State’s social assistance system, and return travel costs. The assessment of the sufficient resources shall be based on an individual examination of the case and shall take into account resources that derive, inter alia, from a grant, a scholarship or a fellowship, a valid work contract or a binding job offer or a financial undertaking by a pupil exchange scheme organization, an entity hosting trainees, a voluntary service scheme organization, a host family or an organization mediating au pairs”.* This article is transposed in internal legislation, as it provided that student, who applies for a study visa should submit documentation of financial evidence demonstrating the ability to cover living and educational expenses.

What is evident in the internal legislation (law on aliens and the CMD 858/2021 amended), is that it does not provide specific provisions for the refusal or withdraw of visa and residence permits for students yet make reference to the general provisions. As specifically it is provided in the directive: *“with regard to students, the time limits imposed on access to economic activities under Article 24 are not respected or a student does not make sufficient progress in the relevant studies in accordance with national law or administrative practice”.*

Another important aspect provided by article 24 of the Directive is the economic activity by the students. Point 3 of this article provides: *“Each Member State shall determine the maximum number of hours per week or days or months per year allowed for such an activity, which shall not be less than 15 hours per week, or the equivalent in days or months per year. The situation of the labor market in the Member State concerned may be taken into account”*. In transposing this provision in internal legislation, the case is that the student is allowed to work after completing the first year of study and a maximum limit of 15 hours per week. Specifically, article 46, point 4 provides that: *“A foreign national holding a residence permit as a student, after completing the first year of studies, may, outside of study hours and on the basis of the relevant work permit, engage in employment or self-employment activities, respecting a maximum limit of 15 hours per week, or the equivalent calculated in days or months annually, without requiring the approval of the National Employment and Skills Agency. The employer must notify the competent state authorities regarding the commencement and termination of the employment relationship*. Regarding this we propose an amendment to this article, allowing the student to work in the first year of their studies and to have at least a maximum limit of 20 hours per week.

Another point to discuss here is the stay for the purpose of job searching for students as it is provided in article 25 of the Directive. This article is transposed in article 51 of the Law of Aliens. According to Article 25 of Directive 2016/801, researchers and students are entitled to remain within the territory of the Member State that issued their initial residence authorization for a minimum period of nine months after the completion of their research or studies, specifically to seek employment or establish a business. Furthermore, Member States retain the discretion to impose a minimum educational qualification for students to access this right, provided that the required level does not exceed Level 7 of the European Qualifications Framework (EQF). Points 1 and 2 of the article 51 of the Law on Aliens provides that: *“Upon the completion of their research or studies, foreign researchers and students are granted the possibility to remain within the territory of the Republic of Albania based on a residence permit issued pursuant to Article 36 of this law, for a period of at least nine months, in order to seek employment or establish a business. In order for students to benefit from the application of this provision, they must possess an educational qualification that does not exceed Level 7 of the European Qualifications Framework”*.

3. International students in Albania, Laws and policies across different countries

An analysis of Table 1 reveals that Albania hosts 1,872 foreign students, a number that is significantly lower than that of North Macedonia and Serbia, which report 4,707 and 11,247 foreign students, respectively. Albania does not provide disaggregated data on the geographic origin of its foreign students, yet we notice that the largest number of students belong to the second cycle.

Table 1:

Education and training in the EU – facts and figures
Learning mobility statistics

Table 1: Tertiary education students from abroad by sex and level of education, 2022
(number)

	Short-cycle tertiary			Bachelor's or equivalent			Master's or equivalent			Doctoral or equivalent		
	Total	Men	Women	Total	Men	Women	Total	Men	Women	Total	Men	Women
EU	39,164	17,794	21,371	728,186	351,700	376,486	742,850	362,688	380,161	151,780	80,692	71,089
Belgium	1,414	381	1,033	28,435	10,674	17,761	21,004	9,323	11,681	4,894	2,674	2,220
Bulgaria	–	–	–	5,653	3,301	2,352	12,826	6,171	6,655	683	359	324
Czechia	55	15	40	27,519	13,496	14,023	20,201	8,861	11,340	5,594	3,039	2,555
Denmark	3,646	1,715	1,931	10,364	4,490	5,874	13,835	6,379	7,456	3,530	1,869	1,661
Germany	0	0	0	151,263	84,009	67,254	206,563	110,047	96,516	45,647	23,885	21,762
Estonia	–	–	–	1,843	1,068	776	2,463	1,237	1,227	756	456	300
Ireland	728	366	362	13,563	6,067	7,496	8,977	4,113	4,864	3,891	1,870	2,021
Greece	–	–	–	25,280	11,771	13,509	575	279	296	930	513	417
Spain	6,854	2,579	4,275	24,099	11,014	13,085	41,046	19,002	22,044	19,693	10,314	9,379
France	15,120	7,320	7,800	86,432	39,837	46,594	137,894	69,359	68,535	24,013	12,748	11,265
Croatia	0	0	0	2,653	1,181	1,472	2,720	1,132	1,588	362	172	190
Italy	0	0	0	39,718	17,990	21,728	45,738	20,565	25,173	4,490	2,561	1,929
Cyprus	898	617	281	6,318	3,976	2,342	3,058	1,460	1,598	457	226	231
Latvia	224	147	77	4,497	3,312	1,185	4,831	2,486	2,345	258	184	74
Lithuania	–	–	–	4,681	2,591	2,090	4,195	2,155	2,040	253	151	102
Luxembourg	77	23	54	772	323	449	2,121	1,003	1,118	936	532	404
Hungary	134	62	72	19,011	9,588	9,423	18,071	8,348	9,723	3,074	1,640	1,434
Malta	257	143	115	2,222	1,116	1,106	1,561	688	873	492	291	201
Netherlands	4,771	1,994	2,777	104,463	47,015	57,448	54,641	23,888	30,753	–	–	–
Austria	1,391	499	892	38,065	17,241	20,824	37,740	16,967	20,773	8,000	4,115	3,885
Poland	53	23	30	63,303	29,196	34,107	27,524	13,078	14,446	871	535	336
Portugal	3,054	1,649	1,405	21,081	10,100	10,981	17,651	8,021	9,630	8,130	4,330	3,800
Romania	–	–	–	12,957	6,401	6,556	20,845	10,385	10,460	970	594	376
Slovenia	434	231	203	4,232	1,662	2,570	2,301	901	1,400	762	367	395
Slovakia	43	24	19	9,414	4,204	5,210	6,361	2,717	3,644	878	572	306
Finland	–	–	–	12,735	7,066	5,669	8,719	4,601	4,118	5,320	2,925	2,395
Sweden	11	6	5	7,613	3,011	4,602	19,389	9,523	9,866	6,897	3,770	3,127
Iceland	156	65	91	864	245	619	792	272	520	290	142	148
Liechtenstein	0	0	0	358	185	173	276	170	106	197	141	56
Norway	102	50	52	4,283	1,824	2,459	6,633	3,461	3,172	2,261	1,298	963
Switzerland (*)	0	0	0	22,597	11,351	11,246	26,486	12,595	13,891	15,764	8,292	7,472
North Macedonia	–	–	–	3,755	2,184	1,571	670	233	437	282	147	135
Albania	12	5	7	475	263	212	1,306	551	755	79	47	32
Serbia	–	–	–	7,429	3,528	3,901	3,058	1,332	1,726	760	411	349
Türkiye	31,656	18,904	12,752	153,704	99,568	54,136	48,024	28,371	19,653	10,643	7,046	3,597

(-) not available.

(–) not applicable.

Note: based on country of upper secondary diploma unless otherwise stated. Based on country of usual residence in Estonia, Ireland, Spain (not for short-cycle tertiary), Italy, Slovenia, and Liechtenstein. Based on country of citizenship in Bulgaria (for Master's or equivalent), Hungary, Slovakia, Serbia and Türkiye. Based on country of upper secondary/prior education in Bulgaria (for Doctoral or equivalent), Latvia and Poland. Based on country of upper secondary diploma and/or citizenship in France and the Netherlands. Other criteria: Sweden. No information provided: North Macedonia.

(*) Short-cycle tertiary: negligible, reported as 0. Bachelor's or equivalent and master's or equivalent: only covers students in universities or universities of applied sciences.

Source: Eurostat (online data code: educ_uae_mobso2)

Some countries have succeeded in attracting international students to fields aligned with employers' needs, helping to close skill gaps. Across OECD countries, digital proficiency, medical knowledge and scientific expertise are in high demand and some countries are making use of the pool of mobile students to address local skill shortages. In Bulgaria and Romania, over 40% of mobile students have enrolled in health and welfare programmes, aligning with the most-needed skills in their labor markets [*OECD (2022), Skills for Jobs database*].

In view of growing labour market challenges, the EU and its Member States have increasingly looked at migration as a means to address ageing populations, sustain welfare systems and find skilled workforce. According to the OECD, the EU welcomes more migrants than any other single OECD destination, with more than two million permanent-type migration flows to EU countries in 2016 [*OECD (2022), International Migration Outlook 2022, OECD Publishing, Paris,*]. One way to tackle this shortage in skills is through the attraction and retention of third-country nationals who choose the EU for the purpose of higher education. While the EU/EFTA as a whole is becoming an increasingly attractive destination for international students, with a 4% increase of flows in 2016, the competition with other OECD countries, such as the United States, Australia and Japan persists [*OECD (2022), International Migration Outlook 2022, OECD Publishing, Paris,*].

The retention of international students in the EU also remains a challenge, as only a small fraction of graduates resides in an EU Member State to take up employment. In recent years, the EU and its Member States have been working on several comprehensive strategies to enhance the attractiveness of Europe's higher education system. The most prominent example at EU level is the EU's new students and researcher's directive adopted in 2016 (Directive (EU) 2016/801), which notably seeks to improve and harmonise minimum legal standards for welcoming and retaining international students. At national level, some Member States have developed new national strategies for the attraction of students, and many universities have increased their efforts to attract international students, for instance by organising information campaigns in third countries and increasing their social media presence [*Attracting and retaining international students in the EU: National Report 2018 - EMN Croatia*]

OECD countries have implemented a number of initiatives to attract and retain international students. Factors such as language instruction, cultural

affinity and post-study job opportunities influence student mobility. Institutions often adapt language requirements and work restrictions to accommodate the needs of international students. Some countries also offer family residence permits and access to the labor market to encourage student retention [*OECD (2022), Skills for Jobs database*]]. Mobile students in the Slovak Republic can automatically access the labor market without applying for a permit or a labor-market test [*OECD (2022), Skills for Jobs database*]]. Brazil has dedicated programmes for students from developing countries to pursue further studies [Ministry of External Relations of Brazil, 2024]. In Finland, several measures have proven effective in attracting international students, including adjusting application periods, facilitating joint degree programmes and establishing a centralized English-language application platform [European Commission, 2018]).

There was an important policy change regarding international students in 2014, which started having some impact in 2015 and subsequent years. Students who have completed a programme of studies at a Swedish higher education institution (lasting at least two terms) have since been able to receive a residence permit for the purpose of looking for employment or investigating opportunities to start a business. According to a provision in the Aliens Ordinance, this “jobseeker’s” permit can be valid for a maximum of six months. Previously, international students were only allowed to stay in Sweden when they had found work in Sweden already during their studies and applied for a residence permit for work reasons before the study-related permit expired. Since the legal amendment of 2014 took effect, almost 1 500 third country nationals who had previously held a residence permit for studies in Sweden received a new residence permit to stay and look for work. 122 such permits were granted in 2014, 334 in 2015, 445 in 2016, and 562 in 2017. Incoming international students have a right to be accompanied by members of their core family, i.e. the student’s wife or husband, cohabiting partner, registered partner, and unmarried children under the age of 18. In 2017, the Swedish Migration Agency granted 10,404 first time residence permits for study purposes (students at universities/university colleges and doctoral students), and another 1,954 permits for family members of international students. Third-country nationals holding a residence permit for study purposes are exempted from the requirement to hold a work permit. This means that they can engage in any kind of work for an unlimited number of hours a week. The Swedish Migration Agency has recently managed to

shorten the processing times for residence permits for study purposes. This was achieved through an effort to work off “old cases” that had been pending for a long time, and through intensified cooperation with higher education institutions and other actors. Since 2017, doctoral students can be granted residence permits with a validity period of two years, instead of one year. This has reduced the number of applications for residence permit extensions and can certainly be considered good practice. Another positive aspect in Sweden in the context of migration law is that international students are exempted from the requirement to hold a work permit, which means that they have unrestricted access to all sectors of the labor market during and upon completion of their studies. They can also be granted a permit to look for work in Sweden after their final exams. Students can be accompanied by close family members, if they can support themselves while staying in Sweden [*Country Report Sweden 2018*]).

Opportunities for family members can be one incentive for choosing a specific country as a place to study. The study therefore also looks at the topic of international students’ family members. Such incentives can include the option of family reunification but also aspects of labor market access and general assistance programmes for family members [*National Report 2018 - EMN Austria*]).

Unrestricted access to the labour market, Retention is supported by the current legislation. A significant incentive is more flexible access to the labor market. The requirement to determine the availability of home market labor (i.e. labor market test) does not apply when the residence permit applicant has completed a degree in Finland. A third country national who has studied and completed a degree in Finland, and who has worked at the same time, may continue in the same employment while applying for an extended permit. Graduates may be granted a residence permit to look for employment. Furthermore, a third-country national who has been issued a residence permit for the purpose of job searching and self-employment is allowed to start working immediately when they find employment or start self-employment [*National Report 2018 - EMN Finland*].

With regard to citizenship, the number of years under the student status are taken into consideration and can even reduce the requested number of years before submitting an application. Article 21-17 of the French Civil Code stipulates that: “Subject to the exceptions provided by articles 21 18, 21-19 and 21-20, citizenship may only be granted to a foreign national who proves

habitual residence in France during the five years prior to the application filing”. Moreover, article 21-18 of the same code stipulates the reduction in the period indicated in article 21-17 to two years: For the foreign national who has successfully completed two years of higher education in view to acquiring a diploma issued by a French university or higher education institution [*National Report 2018 - EMN France*].

Estonia serves as a notable example of a country that offers comprehensive rights and supportive measures for international students, ensuring favorable conditions for their academic, social, and professional integration. In order to encourage foreign students and researchers to stay in Estonia, a number of amendments have been made to the legislation to simplify the process of applying for a visa and residence permit, to facilitate the bringing of family members to Estonia and to facilitate their entry to the labor market. Estonia has established an immigration quota which limits the number of foreign workers coming to Estonia. However, foreigners who have come to study in Estonia and wish to stay here to work are exempt from this. The exemption from the quota also applies if the foreigner leaves Estonia and then returns to Estonia to apply for a new residence permit. For instance, a foreigner may study in Estonia for a year or two on the basis of a residence permit for studying, return to his or her homeland to complete the studies and then come to Estonia to work here. An alien who has been issued a residence permit for study may take employment in Estonia without a specific permit on condition that such employment does not interfere with the studies (Aliens Act § 175). It is the same for students who are studying on basis of visa. Students who use mobility as described in the Directive 2016/801 and are studying in Estonia on the basis of a visa or a residence permit issued by the first Member State, may work with the same conditions as Estonian students (provided that the employment does not interfere with the studies). No specific limitations for work hours per week or per other period have been set for incoming students. Students do not need to obtain prior authorization for the right to work in accordance with national law. TCN students can exercise self-employed economic activity in the same manner Estonian citizens can. While in general, foreigners are allowed to stay in Estonia for another 90 days after the expiry of the validity of their residence permit, in order to apply for a new residence permit, foreigners who have obtained a residence permit for studying may stay in Estonia for up to 270 days after the expiry of the validity of their residence permit in order to seek employment

here and apply for a residence permit on new grounds. If the foreigner finds work during the additional period of stay and submits an application for a residence permit, he or she does not have to leave the country and can stay in Estonia until a decision is made on the residence permit application. Those students may commence their employment in the same conditions as EE inhabitants (without any requirement for the minimum income established for foreigners or permission from the unemployment fund, etc.) ((Aliens Act § 43(5), §181(1) 11)). [National Report 2018 - EMN Estonia].

An important shift in rationales for student mobility among national/local governments and institutions, is the gradual move away from considering it exclusively as a source of revenue, toward focusing on the human capital aspect. This is reflected in an effort to increase the stay rate of international students. Although there is a trend toward restricting low skilled immigration, governments tend to stimulate skilled immigration in response to aging populations and in order to build up skills for the knowledge economy. Measures include poststudy job-search schemes that allow international students to stay in the country after graduation for the purposes of job seeking; streamlining procedures for obtaining student visa and highly skilled work permits; amended naturalization and permanent residency laws that take into account the number of years of residence as an international student.

Easing up work restrictions during study abroad and poststudy periods; new visa categories specifically designed to attract and retain international students; and privileges for international graduates when accessing certain visa schemes (Sykes 2012, 9). Canada and the UK are clear examples of such policies. Hans de Wit & Philip G. Altbach (2020):

4. Obstacles for applying Foreign Students law/policy in Albania, Rationale and Proposal for Change

From a legal perspective, although the country has undertaken important reforms to create a more favorable framework for attracting foreign students, significant challenges remain. The complexity and fragmentation of visa, residence, and employment regulations, coupled with occasional inconsistencies in implementation, can create barriers for international students. Moreover, the financial requirements and administrative procedures, despite recent clarifications, may still pose difficulties for students seeking

to study and remain in Albania, indicating the need for further legal and institutional improvements to fully realize the country's potential as an international education destination.

The issue of attracting foreign students will be examined from two perspectives: first, the extent and quality of study programs offered by Albanian universities in foreign languages; and second, the legal and institutional framework, particularly in light of Albania's commitments toward the European Union. Albania would benefit from the creation of joint programs between Albanian and European higher education institutions, which would enhance the quality of the educational offer in the country. Moreover, if these programs are offered in English, they could also attract international students, whose presence would be an added value for Albanian higher education. The impact of the internationalization process would also help reduce the outflow of students abroad [*Albanian National Education Strategy 2021-2026*].

At present, Albania offers 139 study programs delivered in foreign languages, including joint and double degree programs. Of these, 87 are at the undergraduate level, 86 correspond to second cycle (master's) degrees, and 42 pertain to doctoral studies. The languages of instruction include, but are not limited to, English, Italian, French, and German, reflecting efforts to enhance the international dimension of higher education in the country.

Table 2

Nr.	Higher Education Institution	Type of Diploma	Language of Instruction
	New York University	Bachelor	English
	New York University	Bachelor	English
	New York University	Master of Science	English
	New York University	Bachelor	English
	New York University	Master of Science	English
	New York University	Bachelor	English
	New York University	Master of Science	English
	New York University	Master of Science	English
	New York University	Doctorate	English
	New York University	Bachelor	English

	New York University	Bachelor	Albanian/English/ Turkish
	New York University	Professional Master	Albanian/English/ Turkish
	New York University	Master of Science	English
	New York University	Doctorate	English
	New York University	Doctorate	English
	New York University	Master of Science	English
	New York University	Doctorate	English
	New York University	Bachelor	English
	New York University	Bachelor	English
	New York University	Master of Science	English
	New York University	Master of Science (IP)	English
	New York University	Bachelor	English
	New York University	Master of Science	English
	New York University	Doctorate	English
	New York University	Bachelor	English
	New York University	Master of Science (IP)	English
	New York University	Bachelor	English
	New York University	Master of Science	English
	Luarasi University	Bachelor	English
	Luarasi University	Bachelor	English
	Luarasi University	Bachelor	English
	Albanian University	Master of Science (IP)	Italian
	Catholic University Our Lady of Good Counsel	Master of Science (IP)	Italian
	Catholic University Our Lady of Good Counsel	Bachelor	Italian
	Catholic University Our Lady of Good Counsel	Bachelor	Italian
	Catholic University Our Lady of Good Counsel	Master of Science	Italian
	Catholic University Our Lady of Good Counsel	Master of Science	Italian
	Catholic University Our Lady of Good Counsel	Master of Science (IP)	English/Italian
	Catholic University Our Lady of Good Counsel	Master of Science (IP)	Italian
	Catholic University Our Lady of Good Counsel	Bachelor	Italian
	Catholic University Our Lady of Good Counsel	Master of Science	Italian

	European University of Tirana	Master of Science	Albanian/English
	Polis University	Doctorate	English
	Epoka University	Master of Science	English
	Epoka University	Master of Science (IP)	English
	Epoka University	Doctorate	English
	Epoka University	Bachelor	English
	Epoka University	Professional Master	English
	Epoka University	Professional Master	English
	Epoka University	Master of Science	English
	Epoka University	Doctorate	English
	Epoka University	Bachelor	English
	Epoka University	Bachelor	English
	Epoka University	Bachelor	English
	Epoka University	Professional Master	English
	Epoka University	Master of Science	English
	Epoka University	Master of Science	English
	Epoka University	Doctorate	English
	Epoka University	Bachelor	English
	Epoka University	Professional Master	English
	Epoka University	Master of Science	English
	Epoka University	Bachelor	English
	Epoka University	Master of Science	English
	Epoka University	Doctorate	English
	Epoka University	Bachelor	English
	Epoka University	Master professional	English
	Epoka University	Master of Science	English
	Epoka University	Doctorate	English
	Epoka University	Bachelor	English
	Epoka University	Bachelor	English
	Epoka University	Bachelor	English
	Epoka University	Professional Master	English
	Epoka University	Master of Science	English
	Epoka University	Doctorate	English

	Epoka University	Master of Science (IP)	Albanian/English
	Academy Nehemiah Gateway	Bachelor	English
	Academy Nehemiah Gateway	Master of Science	English
	Mediterranean University of Albania	Bachelor	Albanian/English
	Mediterranean University of Albania	Doctorate	Albanian/English
	Mediterranean University of Albania	Master of Science	Albanian/English
	University College Logos	Bachelor	Greek
	University College Logos	Master of Science	Albanian/English
	Metropolitan University	Master of Science	English
	Metropolitan University	Bachelor	English
	Metropolitan University	Master of Science	English
	Metropolitan University	Master of Science	English
	Metropolitan University	Bachelor	English
	Metropolitan University	Bachelor	English
	Metropolitan University	Master of Science	English
	Metropolitan University	Doctorate	English
	University College Beder	Bachelor	English
	University College Beder	Master of Science	English
	University College Beder	Bachelor	English
	University College Beder	Professional Master	English
	University College Beder	Master of Science	English
	University College Beder	Bachelor	English
	University College Beder	Bachelor	English
	University College REALD	Master of Science	Italian
	University College REALD	Master of Science (IP)	Albanian/Italian
	University College REALD	Bachelor	Italian
	University College REALD	Master of Science (IP)	Albanian/Italian
	University College REALD	Bachelor	Albanian/Italian
	University College REALD	Bachelor	Albanian/Italian
	University College REALD	Master of Science (IP)	Italian
	University College Canadian Institute of Technology	Bachelor	English
	University College Canadian Institute of Technology	Bachelor	English

	University College Canadian Institute of Technology	Master of Science	English
	University College Canadian Institute of Technology	Master of Science	English
	University College Canadian Institute of Technology	Bachelor	English
	University College Canadian Institute of Technology	Master of Science	English
	University College Canadian Institute of Technology	Master of Science	English
	University College Canadian Institute of Technology	Bachelor	English
	University College Canadian Institute of Technology	Bachelor	English
	University College Canadian Institute of Technology	Bachelor	English
	University College Canadian Institute of Technology	Master of Science	English
	University College Canadian Institute of Technology	Master of Science	English
	University College Canadian Institute of Technology	Bachelor	English
	University College Canadian Institute of Technology	Bachelor	English
	University College Canadian Institute of Technology	Bachelor	English
	Tirana University	Master of Science (IP)	Albanian/English
	Tirana University	Executive Master	English
	Tirana University	Executive Master	English
	Tirana University	Executive Master	Albanian/English
	Tirana University	Master of Science	English
	Tirana University	Professional Master	French
	Tirana University	Bachelor	French/Sign Language Albanian
	Tirana University	Master of Science	French/English
	Tirana University	Bachelor	Turkish
	Tirana University	Bachelor	Russian
	Tirana University	Master of Science	Albanian/Turkish

	Tirana University	Bachelor	Spanish
	Tirana University	Master of Science	Albanian/English
	Tirana University	Master of Science	Albanian/English
	Tirana University	Master of Science	Albanian/English
	Tirana University	Master of Science	Albanian/English
	Tirana University	Master of Science	Albanian/English
	Tirana University	Master of Science	English
	Tirana University	Master of Science	Albanian/English
	Tirana University	Professional Master	Albanian/English
	Tirana University	Professional Master	Albanian/English
	Tirana University	Bachelor	Albanian/English
	Tirana University	Bachelor	Albanian/English
	Tirana University	Bachelor	Albanian/English
	Tirana University	Bachelor	Albanian/English
	Tirana University	Bachelor	Albanian/English/ Greek
	Tirana University	Master of Science	Albanian/Greek
	Polytechnic University of Tirana	Master of Science	Albanian/English
	Polytechnic University of Tirana	Master of Science	Albanian/English
	Agricultural University of Tirana	Bachelor	English
	Agricultural University of Tirana	Professional Master	Albanian/English
	Agricultural University of Tirana	Master of Science	Albanian/English
	Agricultural University of Tirana	Professional Master	Albanian/English
	Agricultural University of Tirana	Master of Science	Albanian/English
	Agricultural University of Tirana	Bachelor	English
	Agricultural University of Tirana	Bachelor	English/Italian
	Agricultural University of Tirana	Long-Term Specialized Studies	Albanian/English
	University of Elbasan Aleksandër Xhuvani	Professional Diploma	Albanian/German
	University of Shkoder Luigj Gurakuqi	Professional Master	Albanian/English
	University of Shkoder Luigj Gurakuqi	Bachelor	Albanian/English
	University of Gjirokastrë Eqrem Çabej	Doctorate	English
	University of Gjirokastrë Eqrem Çabej	Executive Master	Italian
	University of Gjirokastrë Eqrem Çabej	Bachelor	Albanian/English

	University of Gjirokastrë Eqrem Çabej	Bachelor	Albanian/English
	University of Gjirokastrë Eqrem Çabej	Master of Science	Albanian/Italian
	University of Korçë Fan S. Noli	Master of Science	Albanian/English
	University of Korçë Fan S. Noli	Professional Master	Albanian/English/ Bulgarian
	University of Vlorë Ismail Qemali	Master of Science	English
	University of Vlorë Ismail Qemali	Master of Science	Albanian/Italian
	University of Vlorë Ismail Qemali	Bachelor	English
	University of Durrës Aleksandër Moisiu	Master of Science	Albanian/English
	University of Durrës Aleksandër Moisiu	Master of Science	Albanian/German/ English
	University of Durrës Aleksandër Moisiu	Doctorate	Albanian/English
	University of Durrës Aleksandër Moisiu	Bachelor	Albanian/Italian
	University of Durrës Aleksandër Moisiu	Master of Science	Albanian/English
	University of Durrës Aleksandër Moisiu	Doctorate	Albanian/Italian/ English
	University of Durrës Aleksandër Moisiu	Bachelor	English
	University of Durrës Aleksandër Moisiu	Master of Science	English
	University of Durrës Aleksandër Moisiu	Master of Science	English
	University of Durrës Aleksandër Moisiu	Bachelor	English
	Medicine University of Tirana	Doctorate	Albanian/Italian/ English
	Medicine University of Tirana	Doctorate	Albanian/Italian/ English
	Medicine University of Tirana	Doctorate	Albanian/Italian/ English
	Medicine University of Tirana	Professional Master	Italian
	Medicine University of Tirana	Executive Master	Italian
	Western Balkans University	Master of Science (IP)	English
	Western Balkans University	Master of Science (IP)	English
	Western Balkans University	Bachelor	Albanian/English
	Western Balkans University	Master of Science (IP)	English
	Western Balkans University	Bachelor	Albanian/English
	Western Balkans University	Bachelor	Albanian/English
	Western Balkans University	Master of Science	Albanian/English
	Western Balkans University	Bachelor	Albanian/English

	Western Balkans University	Bachelor	Albanian/English
	Western Balkans University	Bachelor	English
	Western Balkans University	Bachelor	English
	Western Balkans University	Bachelor	English
	Western Balkans University	Bachelor	English
	Western Balkans University	Bachelor	English
	Western Balkans University	Bachelor	English
	Western Balkans University	Bachelor	English
	Western Balkans University	Bachelor	Albanian/English
	Western Balkans University	Bachelor	English
	Western Balkans University	Master of Science	English

A major challenge for higher education institutions (HEIs) in Albania is not only to expand the number of study programs offered in foreign languages, but also to enhance their academic quality. Efforts should focus on attracting foreign universities to offer their programs within Albania, as well as on encouraging the engagement of international faculty and, in particular, members of the Albanian academic diaspora. The Albanian scientific diaspora is relatively young, mainly located in OECD countries yet highly mobile between them, diverse in terms of field of study, and mainly employed in universities and research institutes. Members of the diaspora maintain close links to Albania, yet only a small minority realistically foresee return, due to a combination of economic and political obstacles [Gëdeshi, I., & King, R. (2019)]. Achieving these objectives requires amendments to the Law on Higher Education, specifically by formally recognizing and facilitating blended learning and online teaching modalities. Such reforms would enable Albania to fully leverage the expertise of distinguished Albanian scholars currently teaching at leading universities abroad.

A significant concern for the Albanian government is the potential misuse of student visa applications by individuals who, instead of pursuing genuine academic objectives, may intend to use Albania as a transit point to seek asylum in other European countries. This risk has contributed to a relatively high rate of visa application refusals.

As for student visas that have resulted in issues such as overstaying or departure to another country, during the period 2023–2024, there are

43 citizens from Egypt, Syria, India, Sierra Leone, Nepal, or Sri Lanka who have irregularly left the Republic of Albania [*Source by e-mail: General Directorate of State Police*]. “Furthermore, data obtained from the Ministry of Foreign Affairs indicate a significant number of student visa refusals, as presented in the table below.” [*Source by e-mail: Ministry of Foreign Affairs*].

Table 3

Year	Number of generated student visa	Number of refused student visa
2014	TIMS-MB	TIMS-MB
2015	TIMS-MB	TIMS-MB
2016	TIMS-MB	TIMS-MB
2017	TIMS-MB	TIMS-MB
2018	TIMS-MB	TIMS-MB
2019	TIMS-MB	TIMS-MB
2020	TIMS-MB	TIMS-MB
2021	26	32
2022	180	150
2023	120	175
2024	193	80

The data on visa refusals highlights the challenges faced in regulating and monitoring the inflow of international students. As shown in the table, refusal rates vary significantly, ranging from 29.3% to 59.3%, with an average refusal rate of approximately 47.3%. This variation reflects differences in applicants’ profiles, supporting documentation, and the perceived risk of misuse of the visa process. High refusal rates, particularly among applicants from certain countries, underscore the need for more robust screening mechanisms while ensuring that genuine students are not unduly discouraged from pursuing higher education in Albania. Addressing these issues is crucial for balancing national security concerns with the objective of internationalizing Albanian higher education institutions.

5. Rationale and Proposal for Change

In order to align with international practices and policies, Albania must take concrete steps to attract and foster a supportive environment for international students. The transposition status of Directive (EU) 2016/801 in Albanian national law is in process, which is partly approximated and includes the DCM 858/2021 that has some specific provisions on foreign students. We propose that the attraction and retention of international students be established as a national policy priority, either as a distinct component within Albania's national migration policy or as a complementary priority aligned with broader national development strategies. This recommendation is grounded in several key considerations: the significant number of Albanian students pursuing education abroad has led to a decline in domestic student enrollment; sustaining the viability and competitiveness of Albanian universities requires a more diverse and robust student population; and the presence of international students can generate substantial economic and social benefits, contributing positively to both the higher education sector and the national economy.

According to the 5th Global Survey of Internationalization of Higher Education by the International Association of Universities (IAU), based on data from 2018, more than 90 percent of institutions mention internationalization in their mission/strategic plan, with the exception of North America, where only one-third do so. National strategies and plans represent the most tangible and direct attempts by governments to play an active and decisive role, but there are substantial differences in their approaches, rationales, and priorities [*Marinoni 2019*].

A worldwide census of national policies carried out by Crăciun (2018) reveals that only 11 percent of countries worldwide have an official strategy for internationalization, most of them adopted in the past decade. These strategies have been developed predominantly by high-income countries – 75 percent by members of the OECD, and two-thirds by European countries, with programs such as Erasmus+ and Horizon 2020 furthering the regional harmonization of higher education systems in that region (Ilieva et al. 2017).

Currently Albania does not have a National Strategy Document for Higher Education Internationalization, yet some parts of it are included in the National Strategy Document. As an initial measure, it is proposed

that a comprehensive document, entitled the *Internationalization Strategy for Education*—be developed to outline the key policies, objectives, and actions necessary to position internationalization as a national priority. This approach reflects a widely adopted best practice in many countries, serving as a strategic framework to guide governmental and institutional efforts in this domain. The internationalization of higher education is widely considered as a strategic priority for governments around the world because of the economic, political, social, and academic benefits associated with it. First, thinking about higher education internationalization strategically is mainly a European phenomenon. If we look at the distribution of countries according to world regions (based on United Nations Country Grouping) we find the following distribution of countries which have a national higher education internationalization strategy: 13 are in Europe. The countries that have a higher education internationalization strategy receive the lion's share of internationally mobile students. If data were openly available for all the countries, it is safe to say that the 22 countries with national internationalization policies probably receive more than half of the internationally mobile students worldwide [Crăciun, D. 2018]. Having a well-defined and coherent strategy has been shown to be an important ingredient for moving forward with internationalization efforts [*British Council 2011; Henard et al. 2012*]. This national strategy document would serve as a supportive framework for higher education institutions, guiding the development and refinement of their internal policies and procedures related to internationalization.

Drawing on best practices from other countries, another key proposal is the adoption of specific legislation, namely, a Council of Ministers Decision, on the determination of criteria, procedures, and required documentation governing the entry, residence, and treatment of foreign students in the Republic of Albania. Building on these best practices, Albania should adopt dedicated legislation aimed at attracting foreign students, while simultaneously adhering to its obligations as part of the European Union integration process.

A notable development was the amendment introduced through Joint Instruction No. 112, dated 9 July 2024, which reduced the required financial guarantee from €18,000 to €3,000, in the application for residence permits. This policy change is believed to have positively influenced the increase in the number of applicants pursuing studies in Albania. It is proposed that

the current Council of Ministers Decision (CMD) be amended to include a specification in point 3.5, letter “b”, whereby the phrase “...in the amount of 300,000 ALL...” is inserted following the words “...of education...”. This amendment would enhance clarity regarding the required financial threshold for student visa applicants.

A critical issue highlighted in this paper is the refusal of student visas, often based on concerns that applicants may not intend to pursue genuine academic purposes. This paper raises a critical question regarding the extent and effectiveness of cooperation between migration authorities and higher education institutions (HEIs), emphasizing the need to strengthen this collaboration to support internationalization efforts. To address this, it is proposed that a new regulatory framework be established to facilitate cooperation between relevant authorities, such as those responsible for visa issuance and residence permits—and higher education institutions. Such coordination would help ensure more accurate assessments and strengthen the integrity of the student visa process. It is proposed that higher education institutions (HEIs) be assigned specific responsibilities to enhance coordination with local border and migration authorities. These responsibilities should include: (a) submitting biannual reports on the academic progress of enrolled pupils and students; (b) providing end-of-semester and end-of-year reports detailing any issues encountered with foreign students; (c) promptly notifying authorities in cases where foreign students have temporarily or permanently discontinued their studies; and (d) supplying information on the academic status of foreign students at any time upon official request.

Drawing on best practices from other countries, Albania should introduce provisions for family reunification rights, allowing incoming international students to be accompanied by core family members, including spouses, cohabiting or registered partners, and unmarried children under the age of 18. As it is currently there are no any incentives with regard to family reunification in place, we strongly urge the introduction of these incentives. Such measures should be complemented by policies aimed at retaining these individuals’ post-graduation, aligning their integration with the needs of the national economy, particularly in light of the country’s ongoing challenges with brain drain. Furthermore, facilitating family reunification reinforces the legitimacy of study-related migration and supports the broader goal of enabling graduates to contribute meaningfully

to Albania's socio-economic development. This paper proposes that, in the future, Albania should establish targeted support mechanisms for the spouses and other family members of international students. Such measures could include assistance with employment opportunities, access to further education, participation in voluntary or community activities, social and networking programs, and support in enrolling children in kindergartens or schools. Implementing these initiatives would not only facilitate the integration of international students and their families but also enhance Albania's competitiveness as a welcoming and supportive study destination.

An additional recommendation, informed by the best international practices, is the revision of current regulations concerning student employment during studies. At present, international students in Albania are restricted to working a maximum of 15 hours per week and only after completing their first year of study. In contrast, countries such as Sweden impose no such limitations, allowing international students to work without hourly restrictions from the outset of their enrollment. Adopting a similar approach in Albania would enhance students' financial autonomy, facilitate their integration, and contribute to the local labor market.

Another issue touched upon in this paper is the academic recognition of foreign diplomas for international students, which is currently managed centrally by the Center for Educational Services in Albania. While this matter falls outside the primary scope of this research, we propose that the responsibility for recognizing foreign qualifications, particularly for the purpose of admission to graduate or postgraduate study programs delegated to higher education institutions (HEIs). This would align Albania more closely with practices in other European countries, where Offices for Academic Recognition of Foreign Higher Education Qualifications operate within HEIs and manage the recognition process for students seeking to continue their studies at advanced levels. In 31 out of the 50 countries, the assessment and recognition criteria and procedures are regulated. There are some countries where there are rules either for criteria or for procedures but not for both. In 13 countries the criteria and procedures are established by HEIs, and in most of these countries there is no oversight of their implementation of the LRC provisions at national level [Monitoring the Implementation of the Lisbon Recognition Convention, UNESCO and the Council of Europe, 2019].

Another issue raised in this paper is the need for Albania to adopt concrete measures and incentives aimed at retaining international graduates. In the future, policy efforts should focus on improving existing frameworks and introducing new mechanisms that facilitate access to the national labor market, self-employment opportunities, start-up or spin-off ventures, and participation in research projects after graduation. Furthermore, it is proposed that strategies be developed to encourage former international graduates—those who have returned to their home countries or moved elsewhere—to maintain or re-establish connections with the Albanian labor market, thereby contributing to knowledge transfer, innovation, and economic development.

6. Conclusion

a) Main findings

The conclusions presented in this paper are derived from a comprehensive analysis of the legal and institutional framework governing the enrollment of foreign students in Albanian higher education institutions. This analysis draws upon best practices from European Union law and OECD member states, as well as recommendations outlined in European Commission reports aimed at legislative approximation. Additionally, the study identifies key challenges impeding Albania's ability to attract international students and proposes targeted legal and policy solutions to address these shortcomings.

The primary findings of this research, which also serve as the main conclusions of the paper, indicate that Albania currently hosts a relatively low number of international students. This is attributed to a range of legal, institutional, and procedural barriers, as outlined and analyzed throughout the study.

- Absence of a National Strategy: Albania lacks a National Strategy Document for Higher Education Internationalization, limiting coordinated policy development and institutional support.
- European Trend in Strategic Internationalization: Most countries with comprehensive internationalization strategies are in Europe, and they attract the majority of globally mobile students.
- No dedicated act of legislation for International Students: There is

currently no dedicated Council of Ministers Decision outlining clear procedures for the entry, stay, and treatment of international students.

- **Reduced Financial Guarantee Requirement:** The 2024 policy change lowering the financial guarantee for residence permits from €18,000 to €3,000 has increased application numbers, though clarity in the legal text is still needed. This provision should be inserted for the Visa requirement.
- **Frequent Visa Refusals:** Student visa applications are often refused due to concerns about the applicant's genuine academic intent.
- **Lack of Institutional Coordination:** Higher education institutions are not currently required to collaborate closely with migration authorities, leading to gaps in monitoring and reporting on international students.
- **No Family Reunification incentives:** Current policies do not provide incentives for international students to be accompanied by family members, which may deter potential applicants.
- **Restrictive Employment Rules:** International students in Albania face significant restrictions on employment, including a 15-hour per week limit and a requirement to complete the first year of studies before being eligible to work.
- **Improvement of diploma recognition timing and procedures.**

Main recommendations

Based on the analysis presented in this paper, several recommendations can be proposed to enhance Albania's capacity to attract international students. It is anticipated that the implementation of these measures would contribute significantly to the country's economic development and improve the overall quality of higher education. We recommend the following actions to effectively prepare Albania for the next phase of higher education internationalization.

- **Develop a National Internationalization Strategy:** Create a comprehensive policy document to define goals, priorities, and coordinated actions for higher education internationalization.
- **Adopt Dedicated Legislation:** Introduce a Council of Ministers Decision to formalize the procedures, criteria, and documentation for international student entry and residence, based on the best

experience of legislation and good practices of other countries.

- Amend Financial Guarantee Regulations: Update existing legislation for visa application to explicitly state the reduced financial guaranteed threshold of 300,000 ALL, ensuring clarity and legal consistency.
- Enhance Visa Assessment Frameworks: Establish mechanisms for regular cooperation between HEIs and immigration authorities to verify academic intent and support the visa process.
- Assign Monitoring Duties to HEIs: Require institutions to report on academic progress, disciplinary issues, and enrollment status of international students to relevant authorities.
- Introduce Incentives for Family Reunification Rights: Permit international students to bring core family members, aligning with international standards and supporting long-term integration.
- Revise Employment Restrictions: Allow international students to work without the current limitations, particularly removing the first-year restriction and increasing or removing hourly limits.
- Review of procedures and criteria of diploma recognition regulation.

Bibliography

Albanian National Education Strategy 2021-2026,

https://arsimiparauniversitar.gov.al/wp-content/uploads/2021/12/Vendim-621_date-22.10.2021_Per-miratimin-e-SKA-2021-2026.pdf

Altbach, P. G., Reisberg, L., & Rumbley, L. E. (2009). Trends in global higher education: Tracking an academic revolution. A report prepared for the UNESCO 2009 world conference on higher education. Paris: UNESCO.

Attracting and retaining international students in the EU: National Report 2018 - EMN Croatia

https://home-affairs.ec.europa.eu/document/download/d01076ec-6cc6-484f91f787c86846719e_en?filename=04a_croatia_international_students_en.pdf

Attracting and retaining international students in the EU: National Report 2018 - EMN Austria

<https://home-affairs.ec.europa.eu/document/download/4bfbf0d7->

98c9-4035-b32b9e37489549b2_en?filename=01a_austria_attracting_international_students_en.pdf

Attracting and retaining international students in the EU: National Report 2018 - EMN Finland

https://home-affairs.ec.europa.eu/document/download/21f670f3-7381-4617-a6bc-47e620f63f06_en?filename=FI_Attracting%20and%20retaining%20international%20students_EN_FI_FINAL.pdf

Attracting and retaining international students in the EU: National Report 2018 - EMN France

https://home-affairs.ec.europa.eu/document/download/2cf96b05-bbf6-4eac-b337-68d1554deaff_en?filename=10_france_national_contribution_students_study_en.pdf

Attracting and retaining international students in the EU - Country Report Sweden 2018,

https://home-affairs.ec.europa.eu/system/files/2019-05/27a_sweden_attracting_retaining_students_final_en.pdf

Attracting and retaining international students in the EU: National Report 2018 - EMN Estonia

https://home-affairs.ec.europa.eu/document/download/5a6be275-20c2-46e8-b3d0-3885e0576936_en?filename=08a_estonia_attracting_retaining_students_final_en.pdf

British Council. (2011). Global gauge.

Brooks, R., & Waters, J. (2011). Student mobilities, migration and the internationalization of higher education. Basingstoke: Palgrave Macmillan.

Commission Staff Working Document, Albania 2024 report, Brussels, 30.10.2024, SWD (2024) 690 final commission staff working document Albania2024 report-7_EN_autre_document_travail_service_part1_v7.pdf

Crăciun, D. (2018). National Policies for Higher Education Internationalization: A Global Comparative Perspective. In: Curaj, A., Deca, L., Pricopie, R. (eds) European Higher Education Area: The Impact of Past and Future Policies. Springer, Cham.

https://doi.org/10.1007/978-3-319-77407-7_7

CMD no.858/2021 “On the Determination of the Criteria, Procedures, and Documentation for the Entry, Stay, and Treatment of Foreigners in the Republic of Albania, amended”

<https://qbz.gov.al/eli/vendim/2021/12/29/858/fe2bb0f5-80db-4384-a67e-580cde34b0af;q=vkm%20858,%20date%2029.12.2021>

de Wit, H. and Wang, L. (2024), «Lessons from over 70 years of regional alignment processes in Europe for international higher education», *Journal of International Cooperation in Education*, Vol. 26 No. 1, pp. 5-19.

<https://doi.org/10.1108/JICE-09-2023-0023>

De Wit, H., F. Hunter, L. Howard, and E. Egron Polak. 2015. *Internationalisation of Higher Education*. Brussels: European Parliament, Directorate-General for Internal Policies.

Directive (EU) 2016/801 of the European Parliament and of the Council of 11 May 2016 on the conditions of entry and residence of third-country nationals for the purposes of research, studies, training, voluntary service, pupil exchange schemes or educational projects and au pairing, CELEX number 32016L0801, Official Journal of the European Union, L series, No. 132, dated 21 May 2016, pages 21–57
<https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:02016L0801-20211117>

Delaquil, T. C., Gelashvili, M., Altbach, P., Blanco, G., de Wit, H., & Schendel, R. (2022). *The future of international higher education and academic collaboration: Strong partnerships for common goals*.
<https://www.guni-call4action.org/article/future-international-higher-education-and-international-academic-collaboration>

Gëdeshi, I., & King, R. (2019). *The Albanian scientific diaspora: can the brain drain be reversed?* *Migration and Development*, 10(1), 19–41.
<https://doi.org/10.1080/21632324.2019.1677072>

Guruz, K. (2008). *Higher education and international student mobility in the global knowledge economy*. Albany: SUNY Press, State University of New York Press.

Hans de Wit & Philip G. Altbach (2020): *Internationalization in higher education: global trends and recommendations for its future*, Policy

Reviews in Higher Education,

DOI: 10.1080/23322969.2020.1820898

Holon IQ

<https://www.holoniq.com/notes/196b-international-education-market-set-to-reach-433b-by-2030>

Henard, F., Diamond, L., & Roseveare, D. (2012). Approaches to internationalisation and their implications for strategic management and institutional practice: A guide for higher education institutions. Paris.

Ilieva, J., V. Tsiligiris, P. Killingley, and M. Peak. 2017. The Shape of Global Higher Education (vol. 2): International Mobility of Students, Research and Education Provision. British Council.

https://www.britishcouncil.org/sites/default/files/h002_transnational_education_the_ihe_report_final_web_2.pdf

Law no.79/2021 “On Aliens”

https://mb.gov.al/wp-content/uploads/2024/10/Ligj-per-te-Huajt-%E2%80%9379.2021_English.pdf

Marinoni, G. 2019. IAU The 5th Global Survey, Internationalization of higher education: An evolving land scape, globally and locally. International Association of Universities/DUZ Medienhaus. Marinoni, G., and H. de Wit. 2019, January 11. “Is Internationalization Creating Inequality in Higher Education.” University World News. <https://www.universityworldnews.com/post.php?story=20190109100925536>

Matthews, J., & Sidhu, R. (2005). Desperately seeking the global subject: International education, citizenship and cosmopolitanism. Globalisation, Societies and Education, 3(1), 49–66.

Ministry of External Relations of Brazil (2024), *Selection process*,

<https://www.gov.br/mre/en/subjects/culture-and-education/educational-themes/studyopportunities-for-international-applicants/pec-g/selection-process#requisitos>

Monitoring the Implementation of the Lisbon Recognition Convention, UNESCO and the Council of Europe, 2019, Council of Europe Higher Education Series No. 23

Nijboer, A., & Girotti, F. (2023). *European universities initiative (EUI) alliances: A new type of multilateral cooperation with a 'transformational potential'?* In Hunter, F., Ammigan, R., de Wit, H., Gregersen-Hermans, J., Jones, E., & Murphy, A. (Eds), *Internationalisation in Higher Education, Responding to New Opportunities and challenges. Ten Years of Research by the Centre for Higher Education Internationalisation (CHEI)*. (pp. 339-358), Milan: EDUCatt.

OECD (2024), *Education at a Glance 2024: OECD Indicators*, OECD Publishing, Paris, p. 236,
<https://doi.org/10.1787/c00cad36-en>

OECD (2022), *International Migration Outlook 2022*, OECD Publishing, Paris,
<https://doi.org/10.1787/30fe16d2-en>.

OECD (2022), *Skills for Jobs database*,
<https://www.oecdskillsforjobsdatabase.org/>

Sykes, B. 2012. *Mobile talent? The staying intentions of international students in five EU Countries*. Sachverständigenrat Deutscher Stiftungen für Integration und Migration.

Statistics Explained, Eurostat
https://ec.europa.eu/eurostat/statisticsexplained/index.php?title=Learning_mobility_statistics#SE_MAIN_TT

UNESCO, 2022, *Higher education global data report (Summary)*. A contribution to the World Higher Education Conference 18-20 May 2022,

Higher education global data report, working document - UNESCO Digital Library

ENVIRONMENTAL SECURITY AS A CONTEMPORARY PERSPECTIVE OF NATIONAL SECURITY

Msc.Kejsi Rizo¹

Abstract

National security is related to the protection of state interests and the stability of the country in all its aspects, including public order; the economy, critical infrastructure, the protection of national interests, and more. The concept of security has evolved throughout history, alongside the social, economic, and technological development of societies. Today, it is not only viewed through the traditional lenses of military defense. Ensuring national and international security requires a comprehensive approach that integrates many factors of social life. At the national level, security involves protecting the state from external and internal threats, such as military attacks, terrorism, economic crises, environmental crises, etc. At the international level, there have been, and continue to be, efforts to define mechanisms for maintaining international peace and stability, as well as the sovereignty of states.

Environmental security, as an important aspect of security issues, is closely related to one of the fundamental human rights, which is the right to a clean, healthy, and safe environment. It also impacts other fundamental rights, such as the right to life, health, food, housing, etc. If environmental security is threatened by pollution, climate change, uncontrolled exploitation of natural resources, etc., its consequences not only directly harm the quality of life but can also cause even greater crises.

This paper addresses the issue of security, focusing on one of the most

1. Ndhimëskomisionere pranë institucionit të Avokatit të Popullit
Doktorante pranë Departamentit të së Drejtës Publike, FDUT
kejsi.rizo.dr@gmail.com

contemporary dimensions of national and international security issues, which is related to the environmental factor. This factor has increasingly been placed at the center of international attention in recent decades, due to the consequences it entails. Environmental changes, especially climate changes, seem to be a mosaic composed of many factors that cause a lack of essential resources for the survival and sustainable development of human societies, thus driving the risk of insecurity and instability at local, national, and global levels.

Keywords: *National security; Environmental security; Climate change; Human rights.*

Introduction

The dimensions of the concept of security have evolved significantly throughout history, reflecting changes in the international architecture, the experiences of global wars, technological transformations, and the emergence of non-traditional factors such as the environment, climate, and migration. Initially conceived as the protection of state sovereignty and territorial integrity, today, security has transformed into a multidimensional concept that encompasses not only military threats but also economic, social, and environmental risks, requiring interdisciplinary approaches and complex response mechanisms.

In the classical understanding of national security, which was consolidated after World War II, the emphasis was placed on protecting the state against military threats, with a focus on safeguarding sovereignty, territorial integrity, and survival in the face of aggression from external actors. When we speak of national security, the first association is often linked to military threats or potential aggression from other states. However, the concept of national security extends far beyond merely defending against military threats. The latter represent only one part of the broad mosaic of elements that affect the security and stability of a state. National security encompasses a wide variety of factors that are essential to ensuring the proper functioning of the state, maintaining public order, and safeguarding social stability. Within security studies, there is considerable debate regarding the factors that are directly or indirectly related to national security. Moreover, over time, with economic development and

particularly technological advancement, the dimensions of risks that may threaten national security have become increasingly diverse, and in some cases, not yet fully known or predictable. Barry Buzan, one of the most influential theorists in the field of security studies and a representative of the Copenhagen School¹, considers this approach problematic, emphasizing that states are “extremely different as security objects” and, for this reason, the nature of security cannot be the same for all states. According to him, security is not merely a matter of military defense. He proposes an analysis based on five dimensions: military, political, economic, societal, and environmental, which he considers to be interdependent and equally vulnerable to internal as well as external threats². Buzan highlights that the institutions, ideologies, and territorial order of a state can be threatened not only through the use of force but also through the “manipulation of ideas,” underlining that security is a complex and highly contextualized process that cannot be understood without taking into account the structural and political specificities of each state³.

National security represents a dynamic notion, closely intertwined with the political, economic, and geostrategic context of each state, and therefore it is not defined in a universal manner. However, there are several international documents, such as the UN Charter, the North Atlantic Treaty (NATO), the Helsinki Final Act, and the EU Global Strategy for Foreign and Security Policy, among others, which define national security through various dimensions, including military, economic, environmental, and human security. These documents emphasize that national security is not merely a matter of military defense but is closely connected to human rights, economic development, and the preservation of environmental stability. In practice, it is observed that the definition of national security varies from state to state, but it is always related, *at a minimum, to sovereignty, stability, and the protection of citizens’ rights*.

The 1945 Charter of the United Nations states that the UN’s main objective is to guarantee peace, international security, and the economic

1. The Copenhagen School of security studies is a theoretical approach developed in the 1990s, which has brought a profound shift in the way security is conceptualized and analyzed in international relations.

2. Buzan B., *New patterns of global security in the twenty-first century*, International Affairs, Volume 67, Issue 3, July 1991, p.431-451.

3. Buzan B., *People, States and Fear: The National Security Problem in International Relations*, London: Harvester Wheatsheaf, 1983, p. 65-83.

prosperity of humanity (Article 1 of the Charter). This document, among other things, establishes several principles of collective security and aims to prevent war and maintain international peace. Although it does not directly define the concept of national or international security, it emphasizes that the protection of peace and sovereignty is a key aspect of its mission, and it contains important provisions concerning international security and state sovereignty. Article 51 guarantees the right of states to self-defense in the event of an armed attack, while Chapter VII (Articles 39–51) grants the UN Security Council the authority to take measures in cases of threats to international peace and security. The North Atlantic Treaty (NATO) is another key international instrument closely linked to both national and international security. Signed in 1949, this treaty was created to provide collective defense against military threats from foreign states. According to Article 5 of the NATO Treaty, an attack on one member state is considered an attack on all members, ensuring a joint defense¹. Similarly, the Helsinki Final Act², adopted by the Organization for Security and Co-operation in Europe (OSCE) in 1975, addresses national security in a broad sense, including not only the military dimension but also respect for human rights, economic cooperation, and peaceful international relations. This document emphasizes that the stability of a state cannot be viewed separately from the broader international context. The principle of “indivisible security” is one of its core concepts, highlighting that the security of one state influences and is influenced by the security of other states; therefore, countries must cooperate to preserve peace and stability. It is also worth mentioning the European Union’s 2016³ Global

1. Article 5 of the NATO Treaty: “The Parties agree that an armed attack against one or more of them in Europe or North America shall be considered an attack against them all and consequently they agree that, if such an armed attack occurs, each of them, in the exercise of the right of individual or collective self-defense recognized by Article 51 of the Charter of the United Nations, will assist the Party or Parties attacked by taking such action as it deems necessary, including the use of armed force, to restore and maintain the security of the North Atlantic area. Any such armed attack and all measures taken as a result thereof shall immediately be reported to the Security Council. These measures shall be terminated when the Security Council has taken the measures necessary to restore and maintain international peace and security”.

2. Organization for Security and Co-operation in Europe (OSCE). (1975). *Helsinki Final Act*.

3. European Union External Action (EEAS). (2016). *Shared Vision, Common Action: A Stronger Europe – A Global Strategy for the European Union’s Foreign and Security Policy*.

Strategy for Foreign and Security Policy, which stresses that national security is interconnected with global security and addresses challenges such as terrorism, climate change, and cyber security. The EU adopts a broad approach to national and international security, incorporating human security, economic security, and the protection of human rights as essential components of national stability.

National security is of paramount importance for the functioning of a democratic society. It plays a key role in maintaining order and stability, guaranteeing the operation of democratic institutions, and protecting the interests of citizens. It is closely connected to the protection of human rights and the assurance that individuals can live in a safe environment where they can freely express their opinions, develop, and fulfill their potential. On the other hand, national security can serve as an indicator of a state's level of democracy, as it constitutes one of the few conditions that can justify restrictions on human rights in cases of threats to public order and safety. However, to limit state power in restricting the fundamental rights and freedoms of their citizens, several criteria or standards must be respected. For example, the European Convention on Human Rights (1950), although allowing for certain rights to be restricted in situations of national security risk, requires that these restrictions always be reasonable, necessary, and temporary, maintaining a balance between national security and the protection of individual rights and freedoms, and informing the Council of Europe about the measures taken, the reasons for them, and the date when these measures will cease and the full application of the Convention will resume¹. Another example is the International Covenant on Civil and Political Rights (1966), whose Article 4 allows for the restriction of certain rights in cases of public emergencies, such as during wartime, to preserve order and security. However, this article stipulates that any such restrictions must be temporary and may not infringe upon non-derogable rights, such as the right to life, the prohibition of torture, the right to humane treatment, etc. Restrictions must also be justified and reported

1. Article 15 of the European Convention on Human Rights (ECHR). Some examples of situations where the ECHR allows the restriction of rights include freedom of movement (Article 2 of Protocol 4), freedom of expression (Article 10), and the right to respect for private life (Article 8). In all these cases, the ECHR requires that any restriction must be proportionate and respect the principle of necessity, ensuring that state actions are aimed solely at achieving legitimate objectives justified by the situation.

to the United Nations. Likewise, the UN Human Rights Committee, in General Comment No. 29 of 2001 regarding Article 4 of the Covenant, emphasized that restrictions on human rights for security reasons must be proportionate and justified¹.

2. Environmental and climate security

Threats to national security (unlike threats to physical security) are always caused by state or non-state actors (and, therefore, by human factors). However, the conditions that give rise to these threats may originate from other factors, including non-human sources, such as pandemics, famine, or water scarcity resulting from climate change, etc².

One of the most significant factors, which due to its potential to jeopardize national security has attracted major international attention in recent decades, relates to the environment and climate change. Although traditionally considered an environmental issue, their impact on security has become an increasingly important concern. Climate change affects security by influencing natural resources such as water, food, and energy, which are essential for the livelihood and stability of states. Moreover, natural disasters create considerable concern for states and societies and require them to be prepared to cope with the consequences of such disasters. A key aspect that is often emphasized relates to energy and fuel reserves, which are crucial to maintain the normal functioning of a state during crises or conflicts. A concrete example is the European Union's requirement, through a 2009 Directive³, that each member state must maintain sufficient energy reserves to ensure the protection of national interests and the possibility of survival in emergency situations.

The link between climate change and conflict has been the subject of discussion and study by many security scholars and analysts. In Alan Collins' book *Contemporary Security Studies*⁴, in a chapter dedicated to

1. UN Human Rights Committee, General comment no. 29, States of emergency (article 4) : International Covenant on Civil and Political Rights, 2001.

2. Miller S. *On National Security Intelligence Concepts and Contexts*, The Ethics of National Security Intelligence Institutions, p.39.

3. Council Directive 2009/119/EC of 14 September 2009 imposing an obligation on Member States to maintain minimum stocks of crude oil and/or petroleum products.

4. Collins, A. *Contemporary Security Studies*, UET Press, no year of publication, p. 236–259.

environmental security, different approaches of scholars and experts on security and environmental issues regarding the impact of environmental changes on national security are analyzed. Some argue that environmental issues are closely linked to security concerns, while others claim that the causal link between them is not absolute. One of the scholars who considers security to include environmental threats is Richard Ullman, who in his famous article *Redefining Security*¹ argues that security should not be limited only to military threats but should also encompass environmental threats, which can cause destabilization and lead to conflict. Ullman emphasizes that the environment and natural resources, including water and food, are closely linked to national security, and that resource scarcity can exacerbate international tensions and lead to conflict. Following Ullman, numerous other scholars have argued that environmental degradation can lead to violent conflict. For example, Thomas Homer-Dixon, one of the most renowned experts in this field, in his book *Environment, Scarcity, and Violence* (1999)², emphasizes that scarcity of essential resources for survival, such as water and arable land, can create competition between states, which may lead to violence and wars. Homer-Dixon argues that limited resources can cause tensions at various levels, including increased migration, competition for resources, and the formation of extremist groups that exploit the situation for political and economic gain. Similarly, a well-known study by Marc Levy³ (1995) argues that the impact of climate change on security can create a “new source” of conflict, especially in the poorest countries that have limited capacities to cope with environmental consequences, making them more vulnerable to social and political destabilization.

Another scholar in this field presents an interesting, slightly different perspective, arguing that the causal link between environmental issues and national security is not absolute. Daniel Deudney (1990)⁴ argues

1. Ullman R., *Redefining Security*, International Security, Vol. 8, No. 1 (1983), pp. 129-153, cited from Collins, A. Contemporary Security Studies, UET Press, no year of publication, p.241-242.

2. Dixon Thomas H., “*Environment, Scarcity, and Violence*” (1999), cituar nga revista Contemporary Human Ecology.

3. Levy M., *Is the Environment a National Security Issue?* (1995), International Security. 20. 35. 10.2307/2539228.

4. Cited from Collins, A. Contemporary Security Studies, UET Press, no year of publication p.249.

that linking environmental issues to national security is problematic from several aspects. *First, he emphasizes that military and environmental threats are fundamentally different, as the former are intentional and have an identifiable source, while environmental threats occur accidentally and often have unclear causes. Second, integrating environmental issues into security discourse may not lead to greater mobilization for action but may, on the contrary, strengthen existing security structures without bringing about real changes. Third, Deudney argues that environmental changes are unlikely to cause wars between states. Thus, while environmental issues may be addressed as aspects of national security, the main challenge remains how this concept is interpreted and how its boundaries are defined.*

In addition to the inclusion of the concept of climate security in academic doctrine, at the international level, it is widely recognized that climate change represents a growing threat to global security.

The United Nations Security Council has held several special sessions on this issue, where the link between climate change and peace has been discussed, emphasizing that climate change can contribute to insecurity and exacerbate situations of instability, particularly in regions where natural resources are already scarce, and tensions are high. Specifically, the issue of climate change and national security was discussed at the UN Security Council on July 11, 2018¹, where it was emphasized that the impact of climate on global stability is becoming increasingly important and requires a coordinated response. The discussion focused on the link between environmental degradation and its consequences for security, including food insecurity, population displacement, and the escalation of conflicts. During the debate, it was emphasized that climate factors act as “risk multipliers” that exacerbate existing political, social, and economic tensions, especially in already vulnerable regions. For example, frequent droughts and floods in regions such as the Sahel and the Lake Chad Basin have reduced natural resources, leading to intense competition for land and water, as well as forced migration. These conditions create fertile ground for the recruitment of individuals by extremist groups and the escalation of violence. In response to these challenges, several measures were proposed, including the appointment of a Special Representative

1. United Nations Security Council, 8307TH MEETING (AM) SC/13417, 11 July 2018, *Addressing Security Council, Pacific Island President Calls Climate Change Defining Issue of Next Century, Calls for Special Representative on Issue.*

of the UN Secretary-General for Climate and Security, who would help coordinate international efforts. The creation of an institutional mechanism within the UN to monitor and address climate risks as factors of peace and security was also discussed. Furthermore, the need for more in-depth analysis and early warning systems to better understand the links between climate change and conflicts was highlighted. The majority of participating countries supported the idea that climate change is a direct threat to national and international security, but there were also opposing views. Some countries argued that climate issues should not be addressed by the Security Council but by specialized UN agencies, emphasizing that this issue should not be used as a justification for interference in the internal affairs of states.

*In the same line, the European Union has institutionalized the link between climate and security in its strategic security documents. In the European Security Strategy adopted in December 2003, the EU warned that “competition for natural resources, particularly for water, will be exacerbated by global warming and could lead to unrest and population movements in various regions¹.” This early recognition was an important starting point for integrating the environmental dimension into the Union’s security architecture. This vision was significantly expanded in the EU’s 2016 Global Strategy for Foreign and Security Policy, which refers to climate change as a *complex and escalating threat that affects the stability of states and societies, particularly in regions neighboring the EU. The strategy explicitly states: “Climate change and environmental degradation exacerbate potential conflicts due to their impact on desertification, land degradation, water scarcity, and food insecurity.”*²*

The first European Climate Risk Assessment report (EUCRA, 2024) by the European Environment Agency offers a new dimension to the institutionalization of the link between climate and security. This report identifies 36 major climate risks for Europe and highlights that these risks are now systemic in nature and escalate in a cascading manner, affecting not only ecosystems but also public health, economic stability, and social

1. Cituar nga Council of the European Union, A Secure Europe in a Better World: European Security Strategy, Brussels, 2008, p. 30.

2. European External Action Service, Shared Vision, Common Action: A Stronger Europe – A Global Strategy for the European Union’s Foreign and Security Policy, Brussels, June 2016, p. 30.

cohesion within the Union. By treating climate as a “risk multiplier,” EUCRA reinforces the position that climate adaptation is no longer a developmental option but a necessity for protecting the foundations of social and institutional security on the continent.¹

The Paris Agreement, adopted in 2015 within the framework of COP21, includes not only efforts to reduce emissions but also a strong emphasis on adaptation, enhancing absorptive capacity, and reducing vulnerability to climate effects, all measures that contribute to stabilizing national and regional security. Fundamentally, Article 7 establishes adaptation as an equal pillar alongside emissions reduction in addressing the climate crisis, recognizing its dimensions in terms of human, institutional, and ecosystem security. Although the Convention does not explicitly use the language of “national security”, *it clearly states that climate change has consequences that affect vital systems of survival: food, water, health, and habitat, positioning climate as a factor that can cause insecurity, inequality, and new tensions, especially in countries with limited response capacities. In this way, international acts such as the Paris Agreement do not conceive of climate merely as an environmental challenge but also as a threat intertwined with the global security architecture.*

Similarly, at the recent COP30 Conference, the idea that climate spending should be included in defense budgets was clearly articulated, marking an important shift in how security is conceptualized in the era of the climate crisis. Ana Toni, Executive Director of COP30 and a senior official in the Brazilian government, stated that climate can no longer be treated as a separate issue from national security but as an essential part of it. According to her, climate change is an “accelerator of inequality and poverty”, two factors that have historically led to destabilization and armed conflicts². She warned that states that increase military defense budgets while reducing investments in climate are actually risking fueling future wars, as reducing efforts to curb the climate crisis deepens long-term insecurity. In this context, climate is no longer a matter for the future or for environmental sectors but a real challenge with a direct impact on global order, migration management, access to vital resources such as water and

1. European Environment Agency, *European Climate Risk Assessment – Executive Summary*, Luxembourg: Publications Office of the European Union, 2024.

2. Fiona Harvey, “Countries Must Bolster Climate Efforts or Risk War, Cop30 Chief Executive Warns,” *The Guardian*, 18 March 2025.

food, and the resilience of governance systems. Toni called this a “greater war, not of a single state but of all humanity.”

In this context, the inclusion of climate in defense budgets is above all a political acknowledgment that security infrastructure must be re-conceptualized to face non-military but potentially destabilizing risks. If armed forces, emergency systems, logistical capacities, and supply chains are not prepared to cope with extreme climate events, then the very notion of national defense remains incomplete. The COP30 call represents a challenge to the traditional security architecture, placing climate not on the periphery but at the center of strategies for stability, peace, and resilience. Through these efforts, the United Nations is encouraging states to adopt frameworks that promote sustainable development while ensuring the rights of individuals, particularly those most vulnerable to climate change.

3. Climate Change as a Threat to National Security in Albania

Environmental and climate-related risks present critical challenges to national security in Albania due to their broad impact on sustainable development and human security.

In recent years, Albania has faced a series of natural disasters, from frequent floods and forest fires during the summer to heatwaves and devastating earthquakes. These events have tested the capacity of institutions to respond to emergencies. Studies show that Albania is among the most exposed and vulnerable countries in Europe to natural hazards and extreme weather¹. Consequently, with the passage of time and the intensification of the frequency and severity of natural phenomena, climate security represents an important dimension of national security in the country.

Being a country vulnerable to natural hazards, Albania has begun to articulate a more comprehensive understanding of national security that includes the environmental dimension, which is reflected both in the legal framework and in strategic documents, where climate change is identified not only as an environmental issue but as a destabilizing factor with consequences for the population’s well-being, the functioning of the state, and economic integrity.

1. United Nations Albania. (2025). Op-Ed: Urgent Call for Albania to Prioritize Climate Adaptation Amid Growing Risks.

According to Albanian legislation, natural disasters are defined as disasters caused by extreme natural phenomena, including earthquakes, floods and water overflows, extreme and prolonged temperatures, landslides, avalanches, strong winds on land and at sea, massive forest fires, large-scale infectious diseases, and other phenomena that affect human life, livestock, property, cultural heritage, and the environment¹.

The National Security Strategy of the Republic of Albania² clearly addresses non-traditional threats, including environmental and climate-related ones. In the strategic environment analysis, the strategy emphasizes that environmental degradation and natural disasters (such as earthquakes, floods, massive fires, and landslides) are emerging as increasing threats to national security, accompanied by high uncertainty and challenges to be addressed at the national level. The document underlines that climate change is negatively affecting the country's natural balance, leading to higher temperatures, prolonged droughts, and intensive flooding (posing risks to dams and drainage systems) with significant human and economic costs. The strategy also warns that climate change causes a global chain reaction: from global warming and environmental degradation to competition for natural resources, increased migration, the spread of pandemic diseases, and the intensification of natural disasters, factors that increase instability and geopolitical tensions. These findings demonstrate that Albania's national security concept seeks to integrate the environmental dimension by treating environmental degradation and climate change as serious threats to people's safety, the economy, and stability.

Compared to the previous National Security Strategy of 2014³, the current strategy (2023–2028) represents a significant evolution in how Albania conceptualizes and articulates climate risk within its national security agenda. The 2014 strategy, approved by Law No. 103/2014, although it mentions the environment as a factor that may affect stability, does not treat climate change as an independent or large-scale threat. It remains within the framework of a classical security approach, positioning climate more as a factor of sustainable development than as an inherently destabilizing element, and categorizes

1. Law no. 45/2019 “On Civil Protection”, Article 3, point 9.

2. The National Security Strategy of the Republic of Albania 2023–2028, adopted by Law No. 14/2024, pp. 5–9.

3. National Security Strategy, Tirana, July 2014, adopted by Law No. 103/2014.

climate change as a third-level priority risk to national security.¹

In the same line, the National Strategy for Disaster Risk Reduction 2023–2030² clearly recognizes the impact of climate change as a factor that increases the frequency and intensity of natural disasters in Albania. The document states that: “...the impacts of disasters are assessed to be increasing due to (i) the increased exposure of people and economic assets to vulnerable areas; (ii) insufficient risk reduction financing over the years; and (iii) the effects of climate change.”

Beyond recognizing climate change as a growing threat, the National Strategy for Disaster Risk Reduction 2023–2030 integrates climate as an inseparable component of risk analysis across a range of vital sectors. Climate change is treated as a multidimensional factor that exacerbates existing risks, from urban flooding due to an outdated drainage system, to increased frequency of landslides threatening not only rural communities but also the country’s cultural heritage. The strategy also highlights the connection between droughts, mismanagement of water resources, and food insecurity, emphasizing the role of climate change in increasing forest fires, the spread of infectious diseases, and the pressure on hydroelectric energy infrastructure. Moreover, the document clearly states that effective risk management is impossible without incorporating long-term climate scenarios, inter-institutional coordination, and the integration of climate adaptation measures into spatial development and local plans. This approach marks a shift from a disaster response model towards a preventive and resilient architecture that recognizes climate not only as an environmental challenge but as a determinant factor of national risk.

The 2019 National Climate Change Strategy and Albania’s 2021 National Adaptation Plan address the impacts of climate change in key sectors such as agriculture, infrastructure, health, biodiversity, etc. These documents address water security, food security, and public health risks as dimensions affected by climate, for which increased resilience is targeted. The National Adaptation Plan identifies 15 priority measures, including increasing forestation to prevent erosion and flooding, improving hydro-meteorological forecasting systems,

1. Idem p. 26. According to the clarification provided in the text of the strategic document itself, this category of risks constitutes a third-level priority for the country’s security. The likelihood of occurrence and the consequences are assessed to be lower than those of the first and second levels.

2. National Disaster Risk Reduction Strategy (DRR Strategy 2023–2030), Tirana, October 2022, p.7.

*climate-resilient urban planning, etc*¹. These measures have clear indicators and deadlines, but their implementation depends on available resources.

The first monitoring report of the National Adaptation Plan, published in 2023², provides a detailed overview of the progress in implementing these 15 priority measures set out in the 2021 strategic document. The empirical analysis of this report clearly shows that although the framework is ambitious and includes interventions with real potential to reduce climate impacts in the country, the implementation of these measures has been slow, fragmented, and in many cases unequal. Of the 118 actions identified under the priority measures, only 15% had been fully implemented by 2023, while 22% had not yet been initiated, particularly those with complex cross-sectoral characteristics, such as flood protection (VP7), development of the climate monitoring system (VP4), and improving resilience in the agriculture sector (VP9), all of which have a direct impact on environmental security and critical infrastructure.

One of the most concerning findings of the report is the lack of clear definitions and operationalization of performance indicators, creating methodological difficulties in accurately measuring progress and a gap between setting objectives and assessing their actual impact. Furthermore, the impact of other crises, such as the 2019 earthquake and the COVID-19 pandemic, have redirected financial and material resources, delaying the implementation of a significant portion of the measures. These data suggest that, despite political will to build a strategic adaptation framework, Albania remains unprotected in the face of climate risks, as a result of the lack of an effective implementation mechanism, inter-institutional coordination, and sustainable financial support.

4. The Challenges of Climate Budgeting in Albania

Although strategic documents increasingly recognize and mention climate change as a growing risk in the national security discourse, the evaluation and treatment of this risk as a strategic threat are directly linked to the level of budgeting and concrete actions through dedicated budgetary allocations. To understand whether there is a discrepancy between the theoretical articulation or acknowledgment and its operationalization in financial terms, Albania's approach to climate must be viewed through the lens of

1. Climate Change Strategy and Action Plans, National Adaptation Plan, p.177.

2. Albania's National Adaptation Plan, First Progress Report, March 2023, Ministry of Tourism and Environment.

securitization theory. Securitization, as conceptualized by Barry Buzan¹ and critically developed by authors such as Simon Dalby², implies not only the declaration of a threat as a security issue but also the undertaking of measures to address it³. In Albania's case, climate is already included in national security strategic documents and long-term planning, but it still needs to be structurally embedded in resource allocation. This phenomenon can be described as a form of "rhetorical securitization"⁴, driven more by pressure for international harmonization than by a genuine transformation of the security apparatus.

Albania has integrated climate change into its national strategic framework. The National Security Strategy, as well as strategic climate documents such as the National Adaptation Plan⁵, the Nationally Determined Contribution⁶, and the National Energy and Climate Plan⁷, emphasize that climate change and environmental risks are among the main threats to national security and require the integration of climate adaptation, disaster risk reduction, and green transition measures into

1. Does, A. *The Construction of the Maras, Chapter 3 "Securitization theory"* Genève: Graduate Institute Publications, 2013.

2. Dalby S., *Reframing climate security: The "planetary" as policy context*, Geoforum, Volume 155, 2024, 104102, ISSN 0016-7185.

3. The theory of securitization, developed by the Copenhagen School, argues that an issue becomes a security threat not because of its objective nature, but through a discursive act—when it is publicly described as an existential risk by an actor with authority and is accepted as such by the audience. This theory helps us understand why and how climate change can be treated as a security issue: not merely as an environmental problem, but as a threat that legitimizes extraordinary measures, such as the reorganization of state structures or the mobilization of emergency resources. In this way, the securitization of climate change becomes a political tool that can encourage faster and more coordinated institutional action, but which also carries risks of exceeding democratic norms.

4. The term "rhetorical securitization" refers to a form of articulating threats that remains at the discursive level, meaning in political statements or strategic documents, without being accompanied by material, institutional, or financial measures that translate this threat into real public policy priorities. This concept was developed by Simon Dalby, who criticizes the "superficial" securitization of climate change, which serves more for international legitimacy than for building real capacities. See: Dalby, S. (2012). Environmental Security, in P. D. Williams (ed.), *Security Studies: An Introduction*, Routledge.

5. Climate Change Strategy and Action Plans, National Adaptation Plan, p 168-215.

6. Albania National Determined Contribution, 2022, UNFCCC.

7. National Energy and Climate Plan 2020 – 2030.

public policies.

In this context, it is expected that strategic priorities for climate security will be reflected through dedicated budgetary allocations for climate adaptation, civil emergency management, disaster prevention, and environmental protection. However, it appears that although the government declares it is considering the effects of climate change and aims to promote a green economy¹, direct public financing for climate remains limited. The main budget program for climate and environmental issues is administered by the Ministry of Tourism and Environment and has historically represented a very small portion of the total budget. According to a 2022 study, over the past four years, this program has accounted for only around 0.18–0.23% of the government's total budget², a level lower than the average of other Balkan countries. The same study highlights that, to date, there is no dedicated climate budgeting program in the budget law, and climate expenditures are identified within existing sectoral programs³. Institutional capacities and monitoring systems for green budgeting are still under development, while, according to the first Progress Report of the National Adaptation Plan, the Ministry of Finance and Economy has yet to create an internal budgetary mechanism to separate and monitor funds dedicated to climate adaptation, highlighting a structural gap in institutionalizing climate as a fiscal and national security priority⁴.

Alignment with national strategies⁵ remains partial: some positive steps have been taken, but further progress is needed to reach the level required by declared strategic priorities. The first Progress Report of the National Adaptation Plan (NAP) emphasizes that, beyond the measures planned in the strategic document itself, a number of additional interventions have been implemented by the government, the private sector, and non-governmental organizations. These projects, categorized by regional, cross-border, national, or local dimensions, have contributed to enhancing

1. Explanatory report on draft-law "On the state budget for 2025".

2. Westminster Foundation for Democracy (WFD), *Green Budgeting in Albania: A Review of Practices and Opportunities*, September 2022. p. 21.

3. *idem*, f.33-34.

4. Albania's National Adaptation Plan, First Progress Report, March 2023, Ministry of Tourism and Environment, p.21

5. i.e. objectives of the National Energy and Climate Plan, for clean energy or of National adaptation plan for adaptation.

capacities for climate adaptation and resilience in various fields such as agriculture, energy, transport, tourism, urbanization, health, and civil protection. However, the report underlines that the real impact assessment of these interventions remains limited due to the lack of a clear monitoring and evaluation (M&E) framework, as well as the absence of agreed-upon strategic objectives during the period prior to drafting the NAP. Some of the projects, although categorized according to OECD *Rio Markers*¹ criteria for adaptation, were not initially designed with clear climate objectives, leading to a fragmented approach. They have been mainly funded by international sources (EU, international financial institutions, development organizations), demonstrating Albania's high dependence on external assistance to cope with climate risks.

A comparative look at the state budgets for 2023, 2024, and 2025 can help assess the degree of alignment between strategic commitments and financial realities.

*The 2023 budget did not reveal any dedicated program or specific budget line for climate and environmental security challenges. Analyses by monitoring organizations indicated that insufficient measures were taken regarding climate change in the 2023 budget*². According to this analysis, public funds were primarily focused on economic recovery after the pandemic and on infrastructure and social projects, without a clear “climate label.”

*The 2024 budget*³ shows some positive steps, especially in the Civil Emergencies Program and the increase in funds for reforestation and environmental rehabilitation. There were increases in funds for dams, flood response, and fire protection. Firstly, funds for Civil Emergencies increased to 5.3 billion ALL (from ~4.3 billion the previous year). This increase included 800 million ALL in transfers to municipalities (to be used in cases of natural disasters) and 1 billion ALL dedicated to disaster

1. The so-called “Rio markers” are statistical indicators developed by the Development Assistance Committee of the OECD (OECD-DAC), which are used to identify and track funding that contributes to climate-related objectives, specifically adaptation and mitigation. These markers help measure the extent to which climate goals are integrated into development aid and public policies.

See: OECD DAC, *Handbook on the OECD-DAC Climate Markers*, 2016.

2. Global Network of Women Peacebuilders (GNWP), *Breaking the Climate–Security–Gender–Peace Cycle in Albania*, 2023.

3. Law no 97, dated 7.12.2023 “On the state budget for 2024”

prevention projects (e.g., for forest fires, floods, earthquakes). For the first time, a specific fund of 500 million ALL was created to strengthen dam security¹. These measures demonstrate progress towards integrating natural disaster management into the budget, aligning with the National Security Strategy objectives to enhance emergency response capacities. Secondly, in the environmental sector, there was a 35% budget increase for the Ministry of Tourism and Environment. This was mainly influenced by investments for promoting tourism and waste management, but also included climate-related initiatives: for example, 172 million ALL were allocated to the “Year of Forests 2024” initiative, dedicated to reforestation and raising awareness of the importance of forests (which contributes both to ecosystem protection and climate change adaptation)². However, beyond these elements, the 2024 budget still did not present a comprehensive program for climate. No explicit budget lines were identified for climate adaptation (e.g., climate-resilient infrastructure or climate-smart agriculture), and investments in the “green economy” remain fragmented.

The 2025 budget³ aims to consolidate some of the directions started but still does not represent a significant shift towards climate budgeting. Civil Emergency funds were projected at around 5.4 billion ALL⁴, a slight increase from 2024, mainly to continue financing preventive projects and disaster response. The Director of the National Civil Protection Agency pointed out the need for additional resources, for example, additional funds were requested for the purchase of two “Air Tractor” aircraft for extinguishing forest fires, implying that even with 5.4 billion ALL, capacities remain limited to cope with growing disasters. This year’s budget does not include any mechanism to identify or track climate expenditures according to methodologies recommended by international partners⁵.

1. See: “Shteti ndan 5.3 mld lekë për emergjencat civile, 800 mln u shkojnë bashkive për fatkeqësitë natyrore në 2024, fond 500 milionë lekë për digat,” Shqiptarja.com, 4 nëntor 2023.

2. See: “Ministrja Kumbaro prezanton buxhetin e Ministrisë së Turizmit dhe Mjedisit për vitin 2024,” Ministria e Turizmit dhe Mjedisit, 27 nëntor 2023.

3. Law no. 115, dated 3.12.2024 “On the state budget for 2025”

4. See: “5.4 miliardë lekë për emergjencat civile, Çako: Kërkohen fonde shtesë për të blerë dy avionë ‘Air Tractor’,” Agjencia Telegrafike Shqiptare (ATA), 12 nëntor 2024..

5. See: Albania’s National Adaptation Plan, First Progress Report, March 2023, Ministry of Tourism and Environment p.21

5. Conclusions

In recent decades, climate change has moved beyond the narrow framework of being treated solely as an environmental issue, positioning itself as a complex, multidimensional, and growing factor that challenges national and international security. Climate is now recognized as a “risk multiplier” that interacts with political, social, and economic factors, contributing to conflicts, population displacement, and economic insecurity.

In this global context, Albania has made significant steps toward recognizing climate change as a threat to national security. However, despite the rhetoric regarding the importance of climate within national security, concrete measures for climate adaptation, disaster risk management, and resilience-building remain limited and fragmented. Dedicated programs for climate still occupy a very small percentage of the state budget, while the absence of a mechanism for budgeting and tracking climate expenditures makes effective progress monitoring difficult. Albania remains highly dependent on international funding for the implementation of adaptation and climate risk reduction measures, making the country vulnerable if external support were to be reduced or conditioned.

In these conditions, it is clear that to progress from rhetorical securitization toward a real and sustainable securitization of climate, Albania needs to strengthen the integration of climate measures into the public budgeting process by developing a clear system for identifying and tracking climate expenditures. Moreover, domestic financial resources dedicated to climate adaptation and natural disaster risk management need to be gradually increased, reducing reliance on international funding. In this regard, consolidating inter-institutional cooperation and strengthening technical capacities for implementing adaptation measures at the national and local levels are essential to improving effectiveness.

Only through this approach can Albania effectively address the climate security challenge and guarantee a more sustainable and secure future for its citizens.

Bibliography

Primary Sources

1. *Albania National Determined Contribution*. Retrieved from: <https://unfccc.int/sites/default/files/2022-08/Albania%20Revised%20NDC.pdf>, accessed on: March 3, 2025.
2. United Nations Charter. Retrieved from: <https://www.un.org/en/about-us/un-charter>, accessed on: May 21, 2025.
3. Law no. 45/2019 “On Civil Protection”.
4. Law no. 84/2022 “On the State Budget for 2023”.
5. Law no. 97/2023 “On the State Budget for 2024”.
6. Law no. 115/2024 “On the State Budget for 2025”.
7. North Atlantic Treaty Organization (NATO). (1949). The North Atlantic Treaty. Retrieved from: https://www.nato.int/cps/ua/natohq/official_texts_17120.htm, accessed on: April 26, 2025.
8. Organization for Security and Co-operation in Europe (OSCE). (1975). Helsinki Final Act. Retrieved from: <https://www.osce.org/helsinki-final-act>, accessed on: May 19, 2025.
9. National Energy and Climate Plan 2020–2030. Retrieved from: <https://www.infrastruktura.gov.al/wp-content/uploads/2024/12/Plani-kombetar-per-Energjine-dhe-Klimen.pdf.pdf>, accessed on: April 1, 2025.
10. Albania’s National Adaptation Plan. (2023). First Progress Report. Retrieved from: <https://napglobalnetwork.org/wp-content/uploads/2023/09/napgn-al-2023-albania-progress-report.pdf>, accessed on: May 15, 2025.
11. Explanatory Report on the Draft Law “On the State Budget for 2025”. Retrieved from: <https://kuvendiwebfiles.blob.core.windows.net/webfiles/202410281010351699RELACION%20-%20BUXHETI%202025.pdf>, accessed on: April 12, 2025.
12. Climate Change Strategy and Action Plans. (2019). Retrieved from: https://turizmi.gov.al/wp-content/uploads/2021/10/2.-Strategjia-e-Ndryshimeve-Klimatike-dhe-Planet-e-Veprimit_Qershor-2019_-1.pdf, accessed on: May 4, 2025.
13. National Security Strategy of the Republic of Albania 2023–2028. Retrieved from: <https://www.mod.gov.al/images/PDF/2024/strategjia-kombetare-2024.pdf>, accessed on: May 16, 2025.

14. National Security Strategy, Tirana, 2014. Retrieved from: https://www.mod.gov.al/images/PDF/strategjia_sigurise_kombetare_republikes_se_shqiperise.pdf, accessed on: May 17, 2025.
15. National Disaster Risk Reduction Strategy (DRR Strategy 2023–2030). Tirana, October 2022. Retrieved from: <https://qbz.gov.al/eli/vendim/2023/02/22/94/2a8ffe24-e174-4d40-81b6-c8f6fce7b5bc>, accessed on: April 29, 2025.
16. United Nations. (1945). Charter of the United Nations. Retrieved from: <https://www.un.org/en/about-us/un-charter>, accessed on: May 21, 2025.

Secondary Sources

17. Buzan, B. (1983). *People, States and Fear: The National Security Problem in International Relations*. London: Harvester Wheatsheaf. Retrieved from: http://213.55.90.4/admin/home/Dmu%20Academic%20Resource/Postgraduate%20Studies/Political%20Science/IR_People%2C_States_and_Fear_National_Security_Problem_in_International_Relations__1983.pdf
18. Buzan, B. (1991). New patterns of global security in the twenty-first century. *International Affairs*, 67(3), 431-451.
19. Collins, A. (no year). *Contemporary Security Studies*. Tirana: UET Press.
20. Council Directive 2009/119/EC. Imposing an obligation on Member States to maintain minimum stocks of crude oil and/or petroleum products. Retrieved from: <https://eur-lex.europa.eu/eli/dir/2009/119/oj/eng>, accessed on: April 22, 2025.
21. Council of the European Union. A Secure Europe in a Better World: European Security Strategy. Retrieved from: <https://www.consilium.europa.eu/media/30823/qc7809568enc.pdf>, accessed on: April 15, 2025.
22. Dalby, S. (2012). Environmental Security. In P. D. Williams (Ed.), *Security Studies: An Introduction*. London: Routledge.
23. Dalby, S. (2024). Reframing climate security: The ‘planetary’ as policy context. *Geoforum*, 155, 104102. Retrieved from: <https://doi.org/10.1016/j.geoforum.2024.104102>, accessed on: May 25, 2025.
24. Dixon, T. H. (1999). *Environment, Scarcity, and Violence*. Cited by: *Contemporary Human Ecology*. Retrieved from: <https://>

- ww.humanecologyreview.org/pastissues/her71/71bookreviews.pdf, accessed on: May 16, 2025.
25. Does, A. (2013). The Construction of the Maras, Chapter 3 'Securitization theory'. Retrieved from: <https://books.openedition.org/iheid/719?lang=en>, accessed on: May 9, 2025.
 26. European Environment Agency. (2024). European Climate Risk Assessment – Executive Summary. Retrieved from: <https://www.eea.europa.eu/en/analysis/publications/european-climate-risk-assessment>, accessed on: April 9, 2025.
 27. European External Action Service (EEAS). (2016). Shared Vision, Common Action: A Stronger Europe – A Global Strategy for the European Union's Foreign and Security Policy. Retrieved from: https://www.eeas.europa.eu/sites/default/files/eugs_review_web_0.pdf, accessed on: June 20, 2025.
 28. Harvey, F. (2025). Countries Must Bolster Climate Efforts or Risk War, Cop30 Chief Executive Warns. The Guardian. Retrieved from: <https://www.theguardian.com/environment/2025/mar/18/countries-must-bolster-climate-efforts-or-risk-war-cop30-chief-executive-warns>, accessed on: May 11, 2025.
 29. Global Network of Women Peacebuilders (GNWP). (2023). Breaking the Climate–Security–Gender–Peace Cycle in Albania. Retrieved from: <https://gbwn.net/wp-content/uploads/2023/06/GBWN-BC-ALBANIA-EN.pdf>, accessed on: May 11, 2025.
 30. Levy, M. (1995). Is the Environment a National Security Issue? *International Security*, 20, 35. Retrieved from: https://www.researchgate.net/publication/274797034_Is_the_Environment_a_National_Security_Issue, accessed on: April 4, 2025.
 31. Miller, S. (2023). On National Security Intelligence Concepts and Contexts. In *The Ethics of National Security Intelligence Institutions*, p. 39. Retrieved from: <https://library.oapen.org/bitstream/handle/20.500.12657/88270/1/9781040021958.pdf>, accessed on: May 23, 2025.
 32. OECD DAC. (2016). Handbook on the OECD-DAC Climate Markers. Retrieved from: https://www.oecd.org/dac/environment-development/Revised%20climate%20marker%20handbook_FINAL.pdf, accessed on: April 20, 2025.
 33. United Nations Albania. (2025). Op-Ed: Urgent Call for Albania to

- Prioritize Climate Adaptation Amid Growing Risks. Retrieved from: <https://albania.un.org/en/295646-op-ed-urgent-call-albania-prioritize-climate-adaptation-amid-growing-risks>, accessed on: June 6, 2025.
34. United Nations Security Council. (2018). 8307th Meeting (AM) SC/13417: Addressing Security Council, Pacific Island President Calls Climate Change Defining Issue of Next Century. Retrieved from: <https://press.un.org/en/2018/sc13417.doc.htm>, accessed on: March 4, 2025.
 35. Ullman, R. (1983). Redefining Security. *International Security*, 8(1), 129-153. Cited by: Collins, A., *Contemporary Security Studies*. UET Press.
 36. UN Human Rights Committee. (2001). General Comment No. 29: States of emergency (article 4), *International Covenant on Civil and Political Rights*. Retrieved from: <https://digitallibrary.un.org/record/451555?ln=en&v=pdf>, accessed on: April 18, 2025.
 37. Westminster Foundation for Democracy (WFD). (2022). Green Budgeting in Albania: A Review of Practices and Opportunities. Retrieved from: https://www.wfd.org/sites/default/files/2022-09/EN_Green-Budgeting-in-Albania_Final.pdf, accessed on: April 3, 2025.
 38. Albanian Telegraphic Agency (ATA). (2024). “5.4 billion ALL for civil emergencies, Çako: Additional funds needed to buy two ‘Air Tractor’ firefighting aircraft.” Retrieved from: <https://ata.gov.al/2024/11/12/5-4-miliarde-leke-per-emergjencat-civile-cako-kerkohen-fonde-shtese-per-te-blere-dy-avione-air-tractor>, accessed on: March 22, 2025.
 39. Ministry of Tourism and Environment. (2023). “Minister Kumbaro presents the Ministry’s 2024 budget.” Retrieved from: <https://turizmi.gov.al/ministrja-kumbaro-prezanton-buxhetin-e-ministrise-se-turizmit-dhe-mjedisit-per-vitin-2024>, accessed on: March 26, 2025.
 40. Shqiptarja.com. (2023). “The state allocates 5.3 billion ALL for civil emergencies, 800 million go to municipalities for natural disasters in 2024, 500 million fund for dams.” Retrieved from: <https://shqiptarja.com/lajm/shteti-ndan-53-mld-leke-per-emergjencat-civile-800-mln-u-shkojne-bashkive-per-fatkeqesite-natyrore-ne-2024-fond-500-milione-leke-per-digat>, accessed on: March 27, 2025.

MISUSE OF PUBLIC RESOURCES DURING THE ELECTORAL PERIOD

MSc. Dhimitër Zguro¹

Abstract

The issue of the misuse of public resources has proven to be a challenge for many European democracies, including those countries with a well-established electoral tradition. In order to prevent this phenomenon, with a view to guaranteeing the integrity of the electoral process and equality in it, both in international instruments and in domestic law, obligations have been foreseen for both public authorities and political parties. In Albania, despite the implementation of legislative interventions, international election observation reports have repeatedly identified the misuse of public resources as a significant concern during the electoral process. The discrepancy between international standards, legal provisions and their practical implementation creates a context conducive to the misuse of public resources. This paper therefore examines Albanian electoral legislation and compares it with international electoral standards. It aims to highlight the discrepancies between the two and provide concrete recommendations for increasing legal guarantees for a fair electoral process.

Keywords: *electoral law, Electoral Code, electoral campaign, public resources.*

Introduction

Elections, although a modern phenomenon,² lie at the foundation of a democratic society and serve as the primary instrument through which citizens express their will and participate in governance by delegating representation to their elected officials. Beyond the exercise of a right

1. Legal Associate at Halimi Ahmetaj Law and Tax, dhimiterzguro@gmail.com

2. Przeworski A., *Why Bother with Elections?*, Cambridge: Polity Press, 2018, p. 13.

through the choice of a preferred programme or candidate, elections function as a mechanism that structures the relationship between the citizen and the state, holding the government accountable for its actions. Nevertheless, elections do not always reflect the will of the sovereign, as various inequalities that arise throughout the electoral process may undermine the fairness of the process and, consequently, the voters' will. In this regard, one of the main sources of such inequality observed during elections is the misuse of public resources.

In Albania, the use of public resources during elections has long been a matter of public debate. The existence of a legal framework intended to prohibit the misuse of public resources and limit the advantages derived from incumbency, together with periodic revisions of electoral legislation, has not prevented such misuse. Moreover, as evidenced in the Final Reports of the ODIHR Limited Election Observation Missions, instances of misuse of public resources have continued to increase.¹ This practice not only undermines the integrity of elections but also distorts equality among electoral subjects, due to the unfair advantage enjoyed by governing parties compared to their opposition counterparts.

In this context, the legal framework governing the misuse of public resources assumes particular importance, playing a decisive role in safeguarding equality and the integrity of the electoral process. Legislative omissions, including gaps in secondary legislation, as well as shortcomings in legislative drafting techniques, create opportunities for the misuse of public resources to such an extent that the electoral legislation appears to facilitate it. The misuse of public resources is further exacerbated by the lack of consistent institutional practice regarding the relevant prohibitions.

1. Organization for Security and Co-operation in Europe, *Albania, Local Elections, 8 May 2011: Final Report*, 2011, p. 14; Organization for Security and Co-operation in Europe, *Albania, Parliamentary Elections, 23 June 2013: Final Report*, 2013, pp. 13 - 14; Organization for Security and Co-operation in Europe, *Albania, Local Elections, 21 June 2015: Final Report*, 2015, p. 13; Organization for Security and Co-operation in Europe, *Albania, Local Elections, 21 June 2015: Final Report*, 2015, p. 13; Organization for Security and Co-operation in Europe, *Albania, Parliamentary Elections, 25 June 2017: Final Report*, 2017, pp. 13 - 14; Organization for Security and Co-operation in Europe, *Albania, Local Elections, 30 June 2019: Final Report*, 2019, pp. 11 - 12; Organization for Security and Co-operation in Europe, *Albania, Parliamentary Elections, 25 April 2021: Final Report*, 2021, pp. 13 - 16; Organization for Security and Co-operation in Europe, *Albania, Local Elections, 14 May 2023: Final Report*, 2023, pp. 15 - 16.

By analysing the electoral legislation and the practice of the bodies of the Central Election Commission in applying this legislation, this article aims to shed light on the manner and impact of the existing legal framework and its deficiencies on the misuse of public resources. By identifying the issues that arise, the article seeks to provide concrete recommendations that the competent authorities should address in order to strengthen the integrity of the electoral process and enable genuinely equal elections.

1. The definition of public resources and their misuse

The will of the people constitutes the foundation of the authority of government.¹ This principle, enshrined in the Universal Declaration of Human Rights, serves as the basis for the legitimacy of governance by ensuring that those who govern derive their authority from the consent of the governed, who, through elections, exercise control over their leaders. From these premises, international law has established the most important standards related to the right to vote, which have subsequently been reflected in the domestic legislation of States.

One of these standards is the conduct of free elections, which ensures a fair, equal and impartial electoral process. According to the Venice Commission, free elections comprise two aspects: first, the freedom of the voters to form an opinion; and second, the freedom to express their wishes.² The freedom of the voters to form an opinion implies an obligation on the State not only to remain impartial but also to undertake concrete measures related to access to information about the candidates standing in elections, etc. Similarly, the freedom of voters to express their opinions obliges state authorities to respect voting procedures and protect individuals from threats or pressure that could impede the exercise of their will.³

In this respect, it is important to clearly separate the State from political parties. This separation guarantees that political parties are not fused with the state and is one of the essential elements of justice, securing human

1. General Assembly of the United Nations, Universal Declaration of Human Rights. Accessed October 21, 2024, <https://www.un.org/sites/un2.un.org/files/2021/03/udhr.pdf>.

2. Venice Commission, *Electoral Law*, Strasbourg: Council of Europe Publishing, Strasbourg: 2013.

3. Venice Commission, *Electoral Law*, Strasbourg: Council of Europe Publishing, Strasbourg: 2013.

dignity and equal, inalienable rights for all.¹ In this context, the Venice Commission's Code of Good Practice in Electoral Matters provides that equal opportunities in elections must be guaranteed for both parties and candidates. To this end, state authorities should adopt an impartial stance, particularly with regard to election campaigns, media coverage and the public funding of parties and campaigns.²

Despite existing guarantees, the freedom to vote may be undermined by actions that interfere with the voter's will, either directly or indirectly. Actions such as coercion, corruption and other forms of compulsion directly affect the voter's will by attempting to alienate it. Indirect forms of influence include the misuse of public resources and other actions intended to influence voters in a less direct manner. While direct attempts to influence voters are clearly addressed in criminal and electoral legislation, the misuse of public resources is a widespread and well-established phenomenon in many European countries, including those with a long tradition of democratic elections. This is because governments and civil servants consider providing public resources to political parties or electoral candidates to be normal practice.³

Public resources, within the meaning attributed by the Venice Commission, comprise administrative resources encompassing human, financial, material, in-kind and other non-material assets available to incumbents and civil servants in elections, arising from their control over public-sector personnel, public finances and allocations, access to public facilities, and the prestige or public visibility inherent in their position as elected or public officials, which may be converted into political endorsements or other forms of support.⁴

Unlike the broader definition adopted by the Venice Commission, Albanian legislation has opted for a more limited definition of public resources. This definition covers only the movable and immovable assets of public bodies and entities, as well as the human resources of institutions.⁵

1. OSCE, *Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE*, Copenhagen: 1990. <https://www.osce.org/files/f/documents/9/c/14304.pdf>

2. Venice Commission, *Code of Good Practice in Electoral Matters, as amended*, Strasbourg: 2018.

3. Venice Commission, *Report on the Misuse of Administrative Resources during Electoral Processes*, Strasbourg: 2013.

4. Ibid.

5. Law no. 101/2020, dated 23.07.2020, "On certain additions and amendments to

The meaning of the use of human resources evolved as early as 2003, when Albanian electoral legislation first prohibited the use of public resources in support of candidates, political parties, or coalitions. Initially, the use of human resources meant the engagement of state administration personnel during working hours for electoral purposes, and the hiring, dismissal, leave, transfer or reassignment of employees, except in cases of duly justified reasons.¹

Subsequently, owing to concerns that pupils in the pre-university education system were being compelled and organised to participate in electoral activities, the legislator included these actions within the concept of the use of human resources,² together with other behaviours related to promising or offering benefits in exchange for participation in the campaign, or exerting pressure on administrative employees to support a particular political party, thereby undermining the integrity of the electoral process.³

Although the legislator does not specify the nature of the use of public resources, based on practice, the use of public resources in electoral processes may be classified into lawful use of public resources and unlawful use, which is otherwise known as ‘misuse.’ For the purposes of the provisions of the Electoral Code, only the misuse of public resources is prohibited, since lawful use implies the exploitation of resources in accordance with the principles of impartiality and equality among all candidates, guaranteeing access to those resources to all candidates without any form of discrimination. The State Election Commissioner has also taken this position, stating that:

“(...) it is proven that the Palace of Culture has been made available also to other subjects; an administrative review that determines an administrative infringement within the election campaign creates the belief

Law no. 10 019, dated 29.12.2008, ‘The Electoral Code of the Republic of Albania’, as amended”, FZ no. 143, dated 04.08.2020.

1. Law nr. 9087, dated 19.06.2003, “Electoral Code of the Republic of Albania”, FZ no. 54, dated 01.07.2003.

2. Law no. 74/2012, dated 19.07.2012, “On certain additions and amendments to Law no. 10 019, dated 29.12.2008, ‘The Electoral Code of the Republic of Albania’, as amended”, FZ no. 103, dated 17.08.2012.

3. Law no. 101/2020, dated 23.07.2020, “On certain additions and amendments to Law no. 10 019, dated 29.12.2008, ‘The Electoral Code of the Republic of Albania’, as amended”, FZ no. 143, dated 04.08.2020.

that there is no favoritism of a particular electoral subject. The provision itself foresees the possibility of “cases provided by law” when the use of public resources may be permitted. Premises that, because of their function and accommodating capacity, and when provided for use according to certain conditions and criteria, may be used by electoral subjects.”¹

Failure to respect the principle of equality in granting access to public resources gives rise to liability for their misuse. According to the Albanian Language Dictionary, the word “misuse” (alb. *shpërdorim*) means not only the excessive or improper use of something by exceeding the permissible measure, but also acting contrary to the law or to the norms of social morality, exploiting the duty or trust of others for personal gain.² It is precisely the element of unjust enrichment, or undue advantage, as a result of the use of a state position that the legislator punishes, with the aim of ensuring the separation between the State and political parties.

In this context, in order to secure equality among electoral subjects and preserve the integrity of the electoral process, both international and domestic law have established specific standards that regulate the use of public resources. These standards will be analyzed in detail below, having regard to their objectives.

2. International instruments for the protection of public resources from misuse

2.1. Standards on the protection of public resources in international law

By establishing general principles governing elections, international law provides legal protection for public resources, with the aim of preventing their misuse. In the following, we shall examine the protection afforded to public resources under international instruments that have been ratified by, or to which, the Republic of Albania has acceded.

The Universal Declaration of Human Rights was adopted by the United Nations General Assembly on 10 December 1948.³ Although it did not have binding force and was considered soft law, it served as a basis for

1. Decision no. 409, dated 25.04.2023, of the State Election Commissioner.

2. Albanian Language Dictionary. <http://www.fjalori.shkenca.org/>

3. Schabas A. W. (ed.), *The Universal Declaration of Human Rights: The Travaux Préparatoires*, Vol. I, Cambridge: Cambridge University Press, 2013, p. lxxviii.

other international treaties, establishing certain standards concerning elections and the right to vote.¹ Consequently, this instrument has been selected for consideration as part of binding international law. Article 21 of the Universal Declaration of Human Rights provided, for the first time, for citizens' right to participate in the governance of their country, either directly or through freely chosen representatives.² Recognising the will of the people as the foundation of state authority, paragraph 3 of Article 21 required that this will be expressed through periodic and genuine elections, which must be universal, equal, and conducted by secret ballot.

The International Covenant on Civil and Political Rights guarantees the right and opportunity of every citizen, without distinction of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth, or other status, to participate in the conduct of public affairs, either directly or through freely chosen representatives.³ In this context, Article 25(b) of the Covenant ensures the right of every citizen to vote and to be elected at genuine periodic elections, conducted by universal and equal suffrage and by secret ballot, guaranteeing the free expression of the will of the electors. These electoral standards, among other things, relate to the prohibition of the misuse of public resources.

According to General Comment No. 25, adopted by the Human Rights Committee, in order to ensure free and fair elections, voters must be free to support or oppose the government, without being subjected to any influence or coercion that could distort or impede the free expression of their will. Similarly, Article 25(b) of the Covenant requires that voters be able to form their opinions independently, free from violence, threats of violence, compulsion, inducements, or manipulative interference of any kind.⁴ Furthermore, States have an obligation to ensure the integrity of

1. Schwelb, E., *The Influence of the Universal Declaration of Human Rights on International and National Law*, *Proceedings of the American Society of International Law at its annual meeting (1921-1969)*, nr. 54, 1959, pp. 217 – 229; Hannum, H., *The Status of the Universal Declaration of Human Rights in National and International Law*, (1995) 25 *Georgia Journal of International and Comparative Law*, nr. 25, 1995, pp. 289 – 354.

2. General Assembly of the United Nations, *Universal Declaration of Human Rights*. Accessed October 21, 2024, <https://www.un.org/sites/un2.un.org/files/2021/03/udhr.pdf>.

3. Law no. 7510, dated 8.8.1991, “*On the accession of the Republic of Albania to the International Covenant on Civil and Political Rights*”, FZ no. 6, dated 29.8.1991.

4. United Nations Human Rights Committee, *General Comment adopted by the Human*

domestic democratic processes.¹

In line with the Universal Declaration of Human Rights, the European Convention on Human Rights also guarantees electoral rights. According to the Preamble of the Convention, democracy and the common understanding and respect of human rights further secure fundamental human freedoms. Within this framework, the right to free elections, due to disagreements mainly concerning formulation, was not included in the version of the Convention adopted on 4 November 1950,² but was subsequently incorporated in the Additional Protocol, adopted on 20 March 1952.³ Moreover, according to the European Court of Human Rights, the Convention was designed to promote the ideals and values of a democratic society.⁴ Article 3 of the Additional Protocol provides that: “*The High Contracting Parties undertake to hold free elections at reasonable intervals by secret ballot, under conditions which will ensure the free expression of the opinion of the people in the choice of the legislature.*”⁵

From the content of this provision, it is clear that the State bears the duty not only to organise democratic elections, but also to ensure that such elections are conducted under conditions guaranteeing the free expression of the people’s will in the selection of the legislature.⁶ Thus, unlike the general obligation of non-interference applicable to civil and political rights, in the case of Article 3 of the Additional Protocol, the State has a positive obligation to take measures enabling the holding of democratic elections.⁷

Rights Committee pursuant to article 40, paragraph 4, of the International Covenant on Civil and Political Rights: General Comment No. 25 (57), Geneva: 1966.

1. *Mario Staderini and Michele de Lucia v. Italy*, Communication no. 2656/2015, dated 21.01.2020, para. 9.4.

2. Schabas A. W., *The European Convention on Human Rights: A Commentary*, Oxford: Oxford University Press, 2015, p. 1014.

3. Council of Europe, *Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms*, Paris: 1952.

4. *United Communist Party of Turkey and Others v. Turkey*, application no. 133/1996/752/951, dated 30.01.1998, para. 45.

5. Law no. 8137, dated 31.07.1996, “*On the Ratification of the European Convention for the Protection of Human Rights and Fundamental Freedoms*”, FZ nr. 20, dated 12.08.1996.

6. *Mathieu-Mohin and Clerfayt v. Belgium*, application no. 9267/81, dated 30.01.1998, para. 54.

7. *Informationsverein Lentia and Others v. Austria*, application no. 3914/88; 15041/89;

Considering the importance of free elections as the foundation of any democracy, in interpreting the phrase ‘free expression of the opinion of the people’ regarding how elections must be conducted, the European Court of Human Rights has held that elections cannot be conducted under any form of pressure to select one or more candidates, and that voters must not be unjustly compelled to vote for one party over another.¹ Similarly, voters must, under no circumstances, be forced regarding the choice of candidate or political party.² In reaching this conclusion, the Court noted that the very term ‘elections’ implies that different political parties must be afforded a reasonable opportunity to present their candidates.³

To guarantee equality and neutrality of authorities in electoral processes, the European Court of Human Rights has emphasised, in certain cases, that some officeholders, pursuant to the principle of separation of powers, may be disqualified from the right to stand for election while holding another public office. For example, the Court has considered it incompatible to simultaneously hold a legislative mandate and a position within the judiciary.⁴ Such measures serve a dual purpose that is essential for the proper functioning and safeguarding of the democratic system, in that they ensure that candidates with different political views enjoy equal means of influence, while also acknowledging that public officeholders may occasionally have an undue advantage over other candidates, and that they protect the electorate from pressure by officials who, by virtue of their public position, enjoy significant prestige in the eyes of ordinary citizens whose choice might be influenced.⁵

In addition to international human rights instruments, the issue of misuse of public resources during elections is also addressed in international anti-corruption law. Alongside the Council of Europe Criminal Law Convention

15717/89; 15779/89; 17207/90, dated 24.11.1993, para. 38; *Sitaropoulos and Giakoumopoulos v. Greece [GCH]*, application no. 42202/07, dated 15.03.2012, para. 60.

1. *X v. the United Kingdom*, application no. 7140/75, dated 08.10.1976.

2. *Yumak and Sadak v. Turkey*, application no. 10226/03, dated 08.07.2008, para. 108.

3. *X v. Iceland*, application no. 8941/80, dated 08.12.1981.

4. *Ahmed and Others v. United Kingdom*, application no. 65/1997/849/1056, dated 02.09.1998, para. 73; *Briķe v. Latvia*, application no. 47135/99, dated 29.06.2000.

5. *Gitonas and Others v. Greece*, application no. 18747/91; 19376/92; 19379/92, dated 01.07.1999, para. 29.

on Corruption,¹ the United Nations Convention Against Corruption² provides specific protection for public resources by including provisions relevant to the political sector. Under Article 7 of the Convention, States are required, inter alia, to adopt, maintain, and strengthen systems of recruitment and promotion in the public service based on principles of efficiency, transparency, and objective criteria, as well as to train and rotate individuals performing sensitive functions. Of particular importance to the prohibition of misuse of public resources are paragraphs 2 and 3 of this Article, which require States to take appropriate legislative and administrative measures, not only to establish criteria for appointment to public office, but also to increase transparency in the financing of elected officials and political parties.³ Furthermore, Article 19 of the UN Convention Against Corruption obliges states parties to criminalise the abuse or misuse of public office for the purpose of obtaining an undue advantage for oneself or for a third party.

All standards provided in international instruments concerning elections operate under the presumption that free elections presuppose the existence of a representative legislature freely elected at reasonable intervals as the foundation of a democratic society.⁴

2.2. Soft law on the prevention of misuse of public resources

Soft law instruments, also referred to as non-binding legal instruments, play a fundamental role in complementing binding international acts by providing guidance, best practices, and recommendations on the prevention of misuse of public resources during the electoral process. Although these instruments are not enforceable in the same manner as international treaties ratified by Parliament, their principles or guidelines serve to define electoral standards, including by serving as a basis for the reform of domestic legislation. In this context, it is worth recalling that the clear separation between the State and political parties, preventing the conflation of a political party with the State, is an essential element of

1. Law no. 8778, dated 26.04.2001, “*On the Ratification of the ‘Criminal Law Convention on Corruption’*”, FZ no. 24, dated 20.05.2001.

2. Law no. 9492, dated 13.03.2006, “*On the Ratification of the ‘United Nations Convention against Corruption’*”, FZ no. 27, dated 10.04.2006.

3. Ibid.

4. *Greek Case*, application no. 3321/67; 3322/67; 3323/67; 3344/67, dated 18.11.1969.

justice, that guarantees human dignity and equal rights for every individual, and represents a commitment that Albania, inter alia, has undertaken under the Copenhagen Declaration.¹

One of the most important and fundamental standards of elections, by their very nature, is the freedom of voting. This standard constitutes one of the five core principles of the European electoral heritage.²

In itself, the freedom of voting, as previously analysed, consists of two components: the freedom of voters to form their own opinion, and the freedom of voters to express their will. Regarding the first component, it encompasses three obligations: (i) First, the duty of state authorities to maintain their impartiality, particularly in relation to the media, the placement of posters, the right of assembly, and the financing of political parties; (ii) Second, the duty of authorities to present registered candidates to voters and to enable voters to become acquainted with the respective candidates, including through materials in their native language; and (iii) Third, the duty to take punitive measures in the event of breaches of impartiality obligations or infringements on voters' freedom to form their own opinion.³ The second component requires that voters be protected from threats or pressures that may impede the exercise of their right to vote or compel them to vote contrary to their will.

As also reflected in binding international instruments, another fundamental principle of electoral heritage is the equality of the vote. According to the Code of Good Practice in Electoral Matters,⁴ this principle comprises several components, including equality of opportunity. Equality of opportunity implies the obligation of the State to remain impartial between parties and candidates, applying the law equally to all actors. Referring to the Venice Commission's position, equality may be either strict or proportional. Under the principle of strict equality, which applies in relation to the use of public resources for electoral purposes, all parties must be treated equally, regardless of their electoral results. Under proportional equality, equality specifically concerns, inter alia, the time allocated for

1. OSCE, *Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE*, Copenhagen: 1990. <https://www.osce.org/files/f/documents/9/c/14304.pdf>

2. Venice Commission, *Code of Good Practice in Electoral Matters, as amended*, Stasbourg: 2018.

3. Ibid.

4. Ibid.

campaign coverage in regular and special broadcasts, and financial support, and is applied in accordance with the electoral performance of political parties.¹ In all cases, it is essential to guarantee equality of opportunity for all candidates and political parties.² The implementation of this principle requires addressing the misuse of public resources.

In this context, the 11th Conference of Electoral Management Bodies recommended, *inter alia*, that:

*“legislation should provide measures for counteracting the misuse of administrative resources during electoral processes in a clear, foreseeable and proportionate manner, inter alia through: a. explicit requirements for all public bodies including the civil service to act impartially and independently; b. mechanisms for preventing the State and local authorities from holding official public events for campaign purposes; c. meaningful and dissuasive but proportionate sanctions in full respect of the principle of freedom of association and in line with international standards; d. an effective complaints and appeals system, including the possibility of bringing cases before an independent and impartial tribunal; and e. rules for the protection of individuals who report cases of misuse of administrative resources to the competent authorities.”*³

Regarding the temporal scope of obligations to refrain from misusing public resources, both the Venice Commission⁴ and the Congress of Local and Regional Authorities of the Council of Europe⁵ have held that this obligation extends throughout the electoral period, which is a concept broader than the electoral campaign itself. This is because the process of electing a representative at the central or local level extends beyond the campaign period, beginning earlier with various actions, including, but

1. Venice Commission, *Code of Good Practice in Electoral Matters, as amended*, Strasbourg: 2018.

2. Venice Commission, *Fourth Eastern Partnership Facility Seminar on the “Use of Administrative Resources during Electoral Campaigns”*, Tbilisi: 2013.

3. Venice Commission, *11th European Conference of Electoral Management Bodies “Combating the Misuse of Administrative Resources during Electoral Processes”*, Helsinki: 2014.

4. Venice Commission, *Report on the Misuse of Administrative Resources during Electoral Processes*, Strasbourg: 2013.

5. Congress of Local and Regional Authorities of the Council of Europe, *The misuse of administrative resources during electoral processes: the role of local and regional elected representatives and public officials*, Strasbourg: 2016.

not limited to, the registration of political parties as electoral entities, coalitions, or candidates.

Furthermore, to assist lawmakers in adopting legislation and implementing concrete measures to prevent and address the misuse of public resources during electoral processes, the Venice Commission adopted a set of guidelines, divided into three parts: the first part sets out fundamental principles, the second provides guidance on preventing misuse of public resources and sanctioning violations, and the third sets out specific measures and sanctions.¹ According to the guidelines, legislative measures addressing the misuse of public resources must respect the rule of law, be clear, predictable and consistent, uphold impartiality and neutrality, ensure transparency, equality of opportunity, and political freedoms, and strike a fair balance between these principles and the need for a fair electoral process.

Given the possibility of the use of public activities for electoral purposes, the Venice Commission has advised that the legal framework must provide effective mechanisms to prevent such public activities. These mechanisms, however, should not be construed as a general prohibition on public functions, which must continue during the electoral period.² In this context, only announcements that relate to, or aim to create, a more favourable perception for a particular political party or candidate should be prohibited. In all cases, political parties and candidates must comply with the prohibitions set out in electoral legislation in good faith, while authorities must possess the political will necessary to prevent the misuse of public resources or to sanction violations. Furthermore, while civil servants and their relatives should be protected from covert sanctions, pressure or intimidation when reporting breaches of provisions protecting public resources, state authorities must not tolerate any pressure on this category of public officials.³

In view of the widespread misuse of public resources, not only in general elections, but also in local and regional elections, the Congress of Local and Regional Authorities of the Council of Europe, through Resolution 402 (2016), called for the application of international standards

1. Venice Commission, *Joint Guidelines for Preventing and Responding to the Misuse of Administrative Resources during Electoral Processes*, Venice: 2016.

2. Ibid.

3. Ibid.

and best practices preventing the misuse of public resources in electoral processes at the local and regional levels. It also invited all authorities to encourage civil servants and public officials to remain neutral during electoral processes, in order to ensure equality of opportunity and a fair electoral process.¹

3. Legal protection of public resources under Albanian electoral law

As previously addressed, the protection of public resources from misuse is a requirement stemming from the general principle that elections shall be conducted by free, secret, equal and direct suffrage. In this context, based on these general principles laid down in international law and in the Constitution, the Electoral Code provides, in Point 8 of Article 3, entitled “General Principles”, that public administration institutions, at every level, shall not, through their activity, impair the conduct of elections. Likewise, pursuant to this point, the State Police shall exercise its duties in the service of elections with complete impartiality towards electoral subjects, in accordance with the Electoral Code. In the spirit of these provisions, Article 91 of the Electoral Code establishes the prohibition on the use of public resources in support of electoral subjects.

Point 1 of Article 91 of the Electoral Code provides that:

“Except when otherwise provided by law, resources of central or local public bodies or entities, or of any other type of entity in which the state holds capital or shares or/and appoints the majority of the supervisory or administrative body of the entity, regardless of the source of the capital or ownership, may not be used or made available to support candidates, political parties, or coalitions in elections.”²

As can be observed from the above provision, the prohibition on the misuse of public resources—that is, making them available or using them in support of candidates, parties, or coalitions—applies both to general

1. Congress of Local and Regional Authorities of the Council of Europe, *The misuse of administrative resources during electoral processes: the role of local and regional elected representatives and public officials*, Strasbourg: 2016.

2. Law no. 101/2020, dated 23.07.2020, “On certain additions and amendments to Law no. 10 019, dated 29.12.2008, ‘The Electoral Code of the Republic of Albania’, as amended”, FZ no. 143, dated 04.08.2020.

elections for the Assembly and to elections for local self-government units. In this respect, the legislator draws no distinction regarding the ownership of the public resource or the entity in possession thereof, encompassing not only central and local public bodies or entities, but also other entities in which the State holds capital or shares, or appoints the majority of the supervisory body.

The making available of a public resource does not solely entail the use of public resources for the organisation of an electoral activity; it also includes any other form of utilisation of public resources for electoral purposes, such as the use of premises, equipment, infrastructure or State personnel, for the creation of promotional materials supporting a candidate or a particular political subject, or for other activities that influence the electoral campaign directly or indirectly. In practice, two divergent positions have been identified on this matter. On the one hand, the State Election Commissioner has held that the production of electoral spots within the premises of public institutions constitutes a violation of the provisions of the Electoral Code.¹ On the other hand, contrary to the position of the State Election Commissioner, the Appeals and Sanctions Commission, when examining the Commissioner's request for imposing a sanction, stated that the production of an electoral spot does not constitute the use of an asset, as the message reflects the individual stance of the person towards a candidate.² However, in the author's assessment, this position of the Appeals and Sanctions Commission finds no support in law, as, for the legislator, referring to Article 91 of the Electoral Code, the manner in which a public resource is made available or used in support of a party, candidate, or coalition is of no relevance whatsoever.

For the purposes of this paper, it is of particular interest that the official social media pages of public institutions fall within the meaning of public resources.³ For the purposes of this paper, it is of particular interest that the official social media pages of public institutions fall within the meaning of public resources. This classification signifies that these pages, being managed and maintained with public funds, are subject to the same legal standards as all other public resources. As official communication platforms, the institutional pages serve to inform and engage the public

1. Decision no. 182, dated 30.06.2022, of the State Election Commissioner.

2. Decision no. 22, dated 14.09.2022, of the Appeals and Sanctions Commission.

3. Decision no. 115, dated 18.05.2023, of the Appeals and Sanctions Commission.

on issues within the scope of institutional responsibility. For this reason, official pages must not be used for political or electoral purposes, but may only disseminate content aligned with the mission of the institution and serving the public interest, rather than private agendas. In this context, in the elections for the local self-government organs of 2023, the State Election Commissioner decided to prohibit posts or reposts on the social media accounts of a public institution concerning activities reflected on the personal profile of the head of that public institution.¹

With the aim of improving and addressing all concerns encountered during the four-month period preceding election day with respect to the use of social networks and online media by public institutions, with the objective of preventing the misuse of public resources and promoting impartiality and equal treatment of candidates and political parties during the electoral campaign, the State Election Commissioner adopted Decision No. 240, dated 04.03.2025.² According to this Decision, public officials may not in any way use their official social media accounts for electoral purposes. Likewise, the decision prohibits the publication not only of prohibited activities, but also of political or electoral activities, as well as electoral messages, on the social media pages of the public institution and on the official pages of the public official.³

Furthermore, point 2 of Article 91 of the Electoral Code, as previously discussed in this paper, provides the meaning of public resources, which, although narrower than the understanding provided by the Venice Commission, nevertheless reflects the standards set out in the United Nations Convention against Corruption and the guidance of the Venice Commission, by considering as an electoral violation the promising or offering of benefits in exchange for participation in electoral activities. In this regard, point 1.3 of Article 3 of Decision No. 9, dated 24.12.2020, of the Regulatory Commission *“On the rules for reporting public-character activities by any public institution or State-owned entity, agencies, State bodies, the categories of prohibited activities, and the monitoring of activities, conduct, and the use of human, financial and logistical resources*

1. Decision no. 421, dated 03.05.2023, of the State Election Commissioner.

2. State Election Commissioner, *Explanatory Report on the Draft Decision “On the Rules Governing the Use of Social Media and Online Media by Public Institutions during Elections”*, Tirana: 2025.

3. Decision no. 240, dated 04.03.2025, of the State Election Commissioner.

of the State administration”, as amended (“Decision no. 9/2020, of the Regulatory Commission”), provides that misuse of public resources may take one of the following forms:

- “(a) the distribution, in public activities, of legalisation permits within four (4) months prior to election day;*
- (b) the distribution, in public activities, of acts on the registration of agricultural land, property certificates, or any type of property title under the legislation in force, within four (4) months prior to election day;*
- (c) the making available, for electoral purposes, of movable or immovable assets owned or administered by central public bodies or local self-government units, or other entities in which the State holds capital, shares and/or appoints the majority of the supervisory or administrative body;*
- (ç) the compulsory use, in electoral campaigns, of central and local State administration during working hours for activities for electoral purposes, including through electronic means of communication, as well as the compulsory and organised use during school hours of pupils of the pre-university education system for activities in support of elections, or the promising or offering of benefits to civil servants or pupils to participate in activities for electoral purposes outside working or school hours, as well as exerting pressure upon them for such purpose.*
- (d) during the electoral campaign, recruitment, dismissal, release, transfer in position within public institutions or entities, or changes to the staffing structure of any public institution or State body, or provisional appointments, except in duly justified cases or emergencies arising from unforeseen circumstances requiring employment.*
- (dh) inspections and verifications of commercial businesses and operators in breach of legal procedures and institutional activity.”¹*

Furthermore, with a view to preventing the use of public works to

1. Decision no. 9, dated 24.12.2020, of the Regulatory Commission “*On the rules for reporting public-character activities by any public institution or State-owned entity, agencies, State bodies, the categories of prohibited activities, and the monitoring of activities, conduct, and the use of human, financial and logistical resources of the State administration*”, as amended.

generate support, or a more favourable perception, for a particular candidate or political party, as compared with others, the Regulatory Commission, in point 1.1 of Article 3, has also established a prohibition on the promotion of a range of public activities for which funds have been newly or specifically allocated, or transferred outside the approved budget plan, during the four-month period prior to election day. This prohibition, laid down in the Regulatory Commission's Decision, is intended to prevent the creation of unfair advantages for political parties or candidates in power, as compared with other electoral subjects.

The Electoral Code, in point 4 of Article 91, provides that:

“Four months before the election date until establishment of the new government after the elections, it shall be prohibited to propose, approve, or issue legal or secondary legislation which stipulate the provision of benefits to certain categories of population, such as acts stipulating increases in salaries, pensions, economic and social aid, tax reduction or removal, fiscal amnesty, privatisation or provision of assets or rewards, etc., except for when such an initiative is conditioned by a state of natural disaster.”¹

From the standpoint of legislative technique, it is clear that this prohibition, unlike the other prohibitions relating to the prevention of misuse of public resources, applies only to general elections for the Assembly, thereby creating the potential for the adoption of such acts in elections for local self-government units, as will be analysed below. It is equally important to note that, for the purpose of this prohibition, Regulatory Commission Decision No. 9/2020 provides that: *“(...) The Speaker of the Assembly and the Secretary-General of the Council of Ministers shall take measures to ensure that the acts mentioned above are not placed, or proposed to be placed, on the agenda of the respective institutions for examination and approval.”²*

1. Law no. 101/2020, dated 23.07.2020, “On certain additions and amendments to Law no. 10 019, dated 29.12.2008, ‘The Electoral Code of the Republic of Albania’, as amended”, FZ no. 143, dated 04.08.2020.

2. Decision no. 9, dated 24.12.2020, of the Regulatory Commission “On the rules for reporting public-character activities by any public institution or State-owned entity, agencies, State bodies, the categories of prohibited activities, and the monitoring of activities, conduct, and the use of human, financial and logistical resources of the State administration”, as amended.

Another important aspect concerns the prohibition of granting public concession/public–private partnership contracts for which no prior public notice has been given, which are not a continuation of an identified and commenced concession procedure, or which are not foreseen to be financed through the budget of the electoral year. This prohibition, pursuant to point 4 of Article 3 of the Regulatory Commission’s Decision, applies from four months prior to election day until the day of the elections.

Notwithstanding these provisions, as observed from its practical implementation, Albanian legislation contains significant gaps, which enable the misuse of public resources, both by State authorities and by political parties or candidates. These gaps in the electoral legislation—although capable of being partially addressed through interpretation and application of the law, in its spirit—remain unfilled for reasons primarily linked to political will. Such issues not only undermine the integrity of the electoral process, but also contribute to the erosion of public trust in public bodies and political parties, which risk becoming indistinguishable from one another. Therefore, the following chapter will analyse the contrasts between the electoral legislation and its interpretation in relation to international electoral standards.

4. Contrasts between the electoral legislation and its interpretation in relation to electoral standards

4.1. The contract regarding the period during which the misuse of public resources is prohibited

As noted above, point 1 of Article 91 of the Electoral Code provides that public resources may not be used or made available in support of candidates, parties, or coalitions in elections. This provision is further elaborated in letter “c” of point 1.3 of Article 3 of Decision No. 9, dated 24.12.2020, of the Regulatory Commission. According to the latter, the making available of resources must not be carried out for electoral purposes. From the reading of this provision, it follows that point 1 of Article 91 of the Electoral Code, unlike the other provisions of the same article, does not establish any time limit from which the prohibition on the misuse of public resources begins to take effect.

In the absence of such a determination, which would place the commencement of the prohibition at an earlier date, the Complaints

and Sanctions Commission has stated that: “(...) *electoral subjects and institutions are free to extend the deadline to its legal limit, which is the date marking the start of the electoral campaign, that is, 30 days before election day. This would not constitute a violation of the law, because the ‘PERIOD OF THE ELECTORAL CAMPAIGN’, as defined by the Electoral Code, encompasses the concept of ‘ELECTIONS’ under point 1 of Article 91.*”¹ On this basis, the majority of members of the Complaints and Sanctions Commission concluded that: “*In the absence of a legal determination of the period during which the prohibition under point 1 of Article 91 of the Electoral Code applies, it is impossible for the Commission to qualify the reported activity as ‘a prohibited activity’, except after the commencement of the ‘electoral campaign period’.*”²

In contrast to the above, the dissenting members of the Complaints and Sanctions Commission assessed that, given the existence of a relative omission, the provision set out in Point 1 of Article 91 of the Electoral Code had to be interpreted in harmony with the other provisions of the same Article, as well as with Article 92 of the Electoral Code. In this regard, the dissenting members stated that: “*So long as the reporting of public activities must be carried out throughout the four-month period prior to election day until election day, the prohibition on the use of public resources shall apply for the same period.*”³ Reasoning a contrario, the dissenting members asked why activities should be reported for the earlier period of four months prior to election day. Such an interpretation, in their assessment, would render the provision illogical and effectively meaningless.

In the author’s assessment, the Complaints and Sanctions Commission erred for several reasons when it considered that, since the provision does not contain a specific date from which its effects begin, its application must commence only with the beginning of the electoral campaign.

First, as noted by the dissenting members, had the legislator intended the prohibition on making public resources available to political parties to apply only during the electoral campaign, it would have chosen to use the term “electoral campaign,” as it did in the other provisions of the same article.

Second, referring to the rule of ordinary meaning in legal interpretation,

1. Decision no. 45, dated 04.04.2023, of the Appeals and Sanctions Commission; Decision no. 54, dated 11.04.2023, of the Appeals and Sanctions Commission.

2. Decision no. 45, dated 04.04.2023, of the Appeals and Sanctions Commission.

3. Ibid.

according to which the words in a legal text must be understood in their usual and everyday meaning,¹ the concept of “elections” is broader than that of the “electoral campaign.” Elections constitute the entirety of actions carried out in the framework of the electoral process, including, but not limited to, actions such as the drafting and publication of the extract of electoral constituents, pursuant to Article 51 of the Electoral Code, the written notification of voters regarding their electoral constituents, pursuant to Article 52 of the Electoral Code, and the registration of political parties, candidates, or coalitions as electoral subjects, pursuant to Articles 63–65 of the Electoral Code. In this sense, the electoral campaign is encompassed within the concept of elections and not vice versa, as the electoral campaign, according to Article 77 of the Electoral Code, begins 30 days prior to election day and is therefore subsumed under the notion of elections. Moreover, Decision No. 9, dated 24.12.2020, of the Regulatory Commission, which was adopted on the basis of and in implementation of Article 91 of the Electoral Code, explicitly uses the notion “for electoral purposes.” At no point are electoral purposes limited solely to the electoral campaign, since the electoral purpose concerns participation in elections and the attainment of power through democratic means. This purpose cannot be realised in advance without the registration of the political party as an electoral subject.

Finally, referring to the principles and guidelines of the Venice Commission, which served as a basis for the reform of the Electoral Code, the electoral process is a period that extends beyond the electoral campaign and encompasses all activities conducted in support of a particular candidate, political party, or coalition.² In all cases, according to these principles, as analysed above, the prohibition on the misuse of public resources must apply not only to the electoral campaign, but to the electoral process as a whole, as the only means of guaranteeing the general principles of elections, as provided for in international instruments and domestic law.

1. Mërkuri, E., Buxhuku, Gj., Thirty years of interpretation: an analysis of the interpretative methods used by judicial jurisprudence on the Civil Code of Albania, *National Scientific Conference “Developments and innovations in private law”*, Tirana: 2024, p. 54.

2. Venice Commission, *Report on the Misuse of Administrative Resources during Electoral Processes*, Strasbourg: 2013.

4.2. The contrast regarding the use of human resources

In the first chapter of this paper, it was noted that the concept of the use of human resources as one of the aspects of the misuse of public resources has undergone several changes since 2003. According to the 2003 Electoral Code, the use of human resources referred to the use of the institution, during working hours, for electoral purposes.¹ Likewise, under Article 5 of that Code, the activities of a public administration institution also included recruitment, dismissal, release, movement and transfer to duty, except in justified cases.² This formulation was reflected without change in Article 88 of the 2008 Electoral Code.³

In 2012, the second sentence of paragraph 2 of Article 88 was amended as follows:

“Use of human resources means the compulsory participation of the administration of the institution during working hours for electoral purposes, as well as the compulsory and organised participation during school hours of pupils of the pre-university school system in the electoral campaign.”⁴

From the wording of this provision, it is evident that the use of human resources comprised, first, the compulsory use of the institution’s administration during working hours for electoral purposes, and, second, the compulsory and organised participation of pupils in the pre-university education system during school hours. However, the legislator also introduced an additional criterion for establishing the misuse of public resources. Thus, the compulsory use of the institution’s administration during working hours, or the compulsory and organised participation of pupils during school hours, would fall within the meaning of misuse of human resources, only if it occurred during the electoral campaign.

The temporal criterion, as the determining element regarding the commencement of the legal prohibition on the misuse of human resources,

1. Law no. 9087, dated 19.06.2003, “*The Electoral Code of the Republic of Albania*”, FZ no. 54, dated 01.07.2003.

2. Ibid.

3. Law no. 10019, dated 29.12.2008, “*The Electoral Code of the Republic of Albania*”, FZ no. 189, dated 29.12.2009.

4. Law no. 74/2012, dated 19.07.2012, “*On certain additions and amendments to Law no. 10 019, dated 29.12.2008, ‘The Electoral Code of the Republic of Albania’, as amended*”, FZ no. 103, dated 17.08.2012.

remained unchanged with the adoption of Law no. 101/2020, dated 23 July 2020, “*On certain additions and amendments to Law no. 10 019, dated 29.12.2008 ‘Electoral Code of the Republic of Albania’, as amended*”. Notwithstanding this, the law expanded the concept of the use of human resources to include the promising or offering of benefits to public employees or pupils in order to induce their participation in activities related to the electoral campaign outside working or school hours, as well as exerting pressure on them for this purpose.¹

Similarly, the current legal provision in paragraph 3 of Article 91 of the Electoral Code, which stipulates that during the electoral campaign, recruitment, dismissal, release, movement, and transfer to duty in public institutions are prohibited, except in justified cases, originates from paragraph 3 of Article 88 of the Electoral Code, as amended in 2012. Through these amendments, the legislator, for the first time, expressly defined what constitutes a justified case in the context of recruitment, movement, or release from duty during the electoral campaign.

According to the Guidelines of the Venice Commission, public authorities must have the possibility to issue written instructions to ensure that no pressure or threat is tolerated against civil servants or citizens which could create fear regarding their employment or access to social support schemes.² These guidelines go even further by requiring protection against pressure or intimidation not only for civil servants, but also for their relatives. With regard to the period during which these Guidelines must apply, the Venice Commission consistently maintains the same position for all prohibitions: that obligations aimed at preventing the misuse of public resources should apply throughout the entire electoral process and not be confined solely to the electoral campaign.

In this context, the divergence between the meaning of the use of human resources under the Electoral Code and the understanding of the use of human resources according to the Venice Commission undermines not only electoral integrity, but also exposes public administration employees, regardless of their status, to risks of potential pressure or coercion to engage

1. Law no. 101/2020, dated 23.07.2020, “*On certain additions and amendments to Law no. 10 019, dated 29.12.2008, ‘The Electoral Code of the Republic of Albania’, as amended*”, FZ no. 143, dated 04.08.2020.

2. Venice Commission, *Joint Guidelines for Preventing and Responding to the Misuse of Administrative Resources during Electoral Processes*, Venice: 2016.

in and participate in the electoral process, thereby creating or reinforcing a perception of support for a particular candidate, political party, or coalition.

The situation is further aggravated by the fact that, in order for misuse of human resources to be established, the actions must occur during the electoral campaign,¹ leaving the remainder of the electoral process entirely unprotected, precisely at a time when political parties begin intensifying their activities. Albanian legislation also requires that the use of human resources be compulsory. The absence of this element has, in practice, led to the termination of administrative investigations. For instance, in Decision No. 375, dated 28.05.2021, the State Election Commissioner held that: *“In the absence of evidence of an electoral purpose and compulsory participation in these activities, the State Election Commissioner cannot continue the administrative review of the reported violation.”*² This position has been further consolidated in the Commissioner’s subsequent decisions.³

Given that proving compulsion is complex and difficult, particularly because employees or pupils, who are in a weaker position compared with the authorities, often refrain from reporting such cases, it is necessary to consider shifting the burden of proof from the reporting party to the reported public body. Although the reporting party has the obligation to provide evidence supporting its allegations, in the author’s assessment the Central Election Commission, where there are reasonable suspicions based on evidence that pressure or another form of coercion may have been exercised by representatives of a public authority, should shift the burden of proof to the public institution, requiring the latter to demonstrate the legality of its conduct in the alleged case.

Such an approach is justified for several reasons. First, public bodies have unrestricted access to internal information and documentation, which is often inaccessible to affected individuals, who are in a more vulnerable position to gather and present evidence. Second, fear of sanction or professional and social consequences frequently deters whistleblowers from reporting instances of misuse of human resources, creating a gap in oversight and accountability mechanisms. By shifting the burden of proof

1. Decision no. 337, dated 04.04.2021, of the State Election Commissioner.

2. Decision no. 373, dated 28.05.2021, of the State Election Commissioner.

3. Decision no. 375, dated 28.05.2021, of the State Election Commissioner; Decision no. 418, dated 24.06.2021, of the State Election Commissioner.

to the public authority in cases concerning the misuse of human resources, the legislator would strengthen safeguards against abuse of power and create a more effective mechanism for preventing misconduct. In this way, if a public institution is unable to provide clear evidence demonstrating that no misuse or undue pressure occurred, it should be presumed that the violation took place. Such a mechanism would enhance transparency, reinforce protection against pressure or intimidation for employees and pupils, and ensure a more equitable implementation of electoral legislation.

4.3. Contrasts regarding normative acts creating benefits

Following the identification of discrepancies between the legal provisions in the Electoral Code and their practical application in relation to the standards set out in various international instruments, attention must once again be drawn to paragraph 4 of Article 91 of the Electoral Code. According to this paragraph, for a period of four months prior to election day until the formation of the new government after the elections, the proposal, adoption or issuance of legislative or sub-legislative acts that provide benefits to specific categories of the population is prohibited.

In Decision No. 7 of 19 February 2025, the Appeals and Sanctions Commission stated that the purpose of this provision is to prohibit the granting of financial and/or material concessions, aid or benefits to specific categories of the population during a specified period before and after the elections. Such concessions, aid or benefits may be provided with the intention of influencing voters' decisions in parliamentary elections.¹ The Appeals and Sanctions Commission interpreted the content of paragraph 4 of Article 91 of the Electoral Code as defining the nature and type of prohibited acts. The Appeals and Sanctions Commission further stated:

“By type, the provision prohibits, as applicable, the proposal, adoption or issuance of legislative or sub-legislative acts. The acts that are prohibited are normative in character; regulating one or more legal relationships, establishing general rules of conduct, and are not exhausted by their implementation (paragraph 2 of Article 3 of the Administrative Procedural Code). By nature, the prohibited acts relate to increases in salaries, pensions, economic or social support, reductions or waivers of taxes, the establishment of fiscal amnesties, privatisation, or the granting

1. Decision no. 7, dated 19.02.2025, of the Appeals and Sanctions Commission.

of assets or rewards, the forgiveness of interest, fines, or tax and customs obligations, etc.”¹

In examining the appeal seeking the annulment of the decision of the State Election Commissioner recommending that the Albanian Parliament not include two draft laws for consideration in plenary session, the Appeals and Sanctions Commission held that:

“As a rule, a government measure, in the form of a legislative or sub-legislative act, is adopted with general effect or affecting a large number of subjects. However, measures may benefit a small number of individuals, who, in turn, have the ability to influence a large number of voters. In this context, the prohibition would cover, for example, the granting of fiscal benefits to an exclusive category of privileged subjects, who, by virtue of their employment, may influence a significant number of voters. For this reason, the term “specific category of the population” must be assessed on a case-by-case basis according to the motivation and factual ability of the category to influence the electoral will of the larger population.”²

Unlike the majority of the Appeals and Sanctions Commission members, who considered that the category of the population must be specifically identifiable, the author of this paper is of the view that legislative or sub-legislative measures need not target a specific population category concretely. It is sufficient that the measure targets a population category which, although not concretely defined, exists abstractly as a legal possibility. In this respect, the position taken by the minority members in Decision No. 7, dated 19 February 2025, is considered correct by the author.

Furthermore, the element of providing a benefit implies the impact that normative measures have on the state budget, either in terms of revenue or expenditure, or on state or public assets.³ This impact is fundamental to the management of public funds, which must be used transparently, comprehensively, fairly, and for purposes serving the public interest. For this reason, it is necessary for the legislation to provide limitations during the electoral period concerning the use of the state budget or state/public assets, aiming to ensure that normative measures with financial effects are

1. Ibid.

2. Ibid.

3. Decision no. 7, dated 19.02.2025, of the Appeals and Sanctions Commission.

not used by authorities to create an unfair advantage for a specific electoral subject. These requirements are also expressed in the Guidelines of the Venice Commission, which provide that during elections, no decisions or initiatives should be taken that aim to create a more favourable perception for a particular party or candidate, except in cases of emergency.¹

Finally, another contrast highlighted in relation to paragraph 4 of Article 91 of the electoral code is that it is limited to parliamentary elections and does not apply to local elections, although international instruments and standards suggest a broader approach. Such a limitation creates the conditions for the misuse of public funds or the State budget during local government elections. In these circumstances, expanding the scope of this provision to include elections for local government bodies would serve as an important mechanism to prevent the misuse of public resources and ensure a level playing field for all electoral subjects. Considering the direct impact of local governance on citizens' lives, it is necessary that paragraph 4 of Article 91 of the Electoral Code be harmonised with international standards, including the prohibition of adopting sub-legislative acts that create benefits for specific population categories in local government elections.

4.4. Protection of individuals reporting violations of electoral legislations

Reporting violations plays a crucial role in preserving the integrity of the electoral process by exposing the misuse of public resources and state budget revenues, the unlawful acquisition of interests, active and passive corruption, as well as other breaches of electoral legislation. In any electoral system, violations such as the misuse of public resources, voter coercion, and other unlawful actions significantly undermine public confidence both in the elections and in the legitimacy of the government. Those best placed to identify such violations are public officials, who, due to the nature of the information they hold in the exercise of their public duties, are often in the strongest position to detect and report breaches.

In this context, in order to ensure that anyone made aware of potential violations of electoral legislation, regardless of their nature, had the

1. Venice Commission, *Joint Guidelines for Preventing and Responding to the Misuse of Administrative Resources during Electoral Processes*, Venice: 2016.

possibility of reporting directly to the central election commission as an additional safeguard for transparency and electoral integrity, a specific provision was added to the electoral code through amendments introduced by Law no. 101/2020, dated 23 July 2020.¹ Under this provision, anyone reporting such violations to the Central Election Commission would enjoy the same protection as whistleblowers under existing legislation. To give effect to this provision, the Parliament also amended Law no. 60/2016, “*On whistleblowing and whistleblowers protection*”.² These amendments established a dedicated unit within the Central Election Commission responsible for receiving and processing whistleblowing reports, allowing all reports concerning elections to be submitted directly.

Although these amendments were intended to take into account international standards on the protection of whistleblowers, they do not fully reflect the guidance or recommendations contained in various international instruments. According to the Venice Commission, in addition to public officials, reporting violations of electoral legislation, protection should also extend to their relatives, as retaliatory actions may target them.³ Similarly, the Council of Europe, through Recommendation CM/Rec(2014)7, has advised member states that, alongside whistleblowers, their relatives should also benefit from legal protection.⁴ Furthermore, according to European standards in this field, in addition to the whistleblower, protection from retaliation should extend to all persons assisting the whistleblower in reporting, persons related to the whistleblower, such as colleagues and family members, and legal entities in which the whistleblower holds shares or has a connection.

However, under Article 18 of Law no. 60/2016, “*On whistleblowing and whistleblowers protection*”, protection from retaliatory measures applies only to the whistleblower, categorically excluding those assisting

1. Law no. 101/2020, dated 23.07.2020, “*On certain additions and amendments to Law no. 10 019, dated 29.12.2008, ‘The Electoral Code of the Republic of Albania’, as amended*”, FZ no. 143, dated 04.08.2020.

2. Law no. 150/2020, dated 17.12.2020, “*On certain additions to Law no. 60/2016 ‘On whistleblowing and whistleblowers protection’*”, FZ no. 5, dated 13.01.2021.

3. Venice Commission, *Joint Guidelines for Preventing and Responding to the Misuse of Administrative Resources during Electoral Processes*, Venice: 2016.

4. Council of Europe, *Recommendation CM/Rec (2014)7 adopted by the Committee of Ministers of the Council of Europe on 30 April 2014 and explanatory memorandum*, Strasbourg: 2014.

in reporting, as well as all related persons, whether colleagues, family members, or legal entities. This approach significantly reduces the effectiveness of the whistleblowing mechanism, as individuals who could assist in exposing violations may be discouraged by the fear of potential consequences that could be imposed on persons connected to them. In some cases, reporting a violation requires the cooperation of several persons, due to information being fragmented across different sectors and evidence collection requiring collaboration with third parties.

Moreover, the approach of the Albanian legislator significantly overlooks reality, as retaliation does not always occur directly. Individuals reporting violations may often face indirect pressure through retaliatory measures against their relatives, colleagues or entities in which they have interests. This creates a situation in which those committing violations can avoid consequences by exerting pressure on third parties, who, due to the lack of legal protection, may be more vulnerable to such tactics. Consequently, this legal limitation on protection against retaliatory measures not only undermines the purpose of whistleblowing, but also fosters a culture of silence, where fear of indirect retaliation may prevent the reporting of violations and damage the credibility of the electoral process as a whole.

In this context, and particularly given the low number of reports made by whistleblowers compared to other entities in the 2021 parliamentary elections¹ and the 2023 local government elections,² it is necessary that Albanian legislation on whistleblower reporting violations of electoral legislation provide special protection against retaliation that extends to all persons connected to them, including those who have assisted them, colleagues, family members, as well as other legal entities in which the whistleblower has an interest.

Equally important is the need to raise awareness of provisions protecting whistleblowers in the electoral process. Citizens, public officials, and actors involved in the electoral process should be informed of their legal ability to report identified violations of electoral legislation, as well as the legal rights and guarantees available to protect them from retaliatory actions or measures. In this regard, the Central Election Commission, in cooperation with civil society organisations and other stakeholders involved in the electoral process, may organise awareness campaigns through various

1. Central Election Commission, *Annual Activity Report 2021*, Tirana: 2022, p. 13.

2. Central Election Commission, *Annual Activity Report 2023*, Tirana: 2024, p. 23.

communication channels and undertake activities aimed at strengthening capacities, empowering individuals, and encouraging them to report violations.

5. Conclusions and recommendations

In conclusion, from the analysis of the legal framework on the misuse of public resources in elections and its interpretation in practice by administrative bodies, it is evident that, despite the amendments adopted over the years, the Electoral Code, through a legislative vacuum, favours the misuse of public resources, as the provisions have become ineffective and illusory. The approach chosen by the legislator to adopt a narrower definition of public resources, in contrast with the standards of the Council of Europe, creates gaps that legitimise the use of various forms of public resources, thereby hindering the effective implementation of electoral legislation and undermining the integrity of elections. Therefore, to strengthen the guarantees aimed at preserving the integrity of the electoral process, the legislator should review and broaden the definition of public resources in the Electoral Code, in accordance with the standards of the Venice Commission, including a wider range of assets and influences, such as intangible resources deriving from control over the administration, as well as prestige or other advantages.

From the interpretation of Article 91 of the Electoral Code, it appears that the legislator has prohibited any form of making public resources available for electoral purposes, regardless of ownership. Despite this prohibition, in practice, two different approaches regarding the use of public premises have been observed. While the State Election Commissioner has adopted a strict position, recognising that the making available is not limited solely to the organisation of activities for electoral purposes, but also includes the use of premises, equipment, or public infrastructure for the production of campaign materials, the Appeals and Sanctions Commission has interpreted the provision more flexibly, creating room for indirect use of public resources.

In the context of protecting public resources from misuse, the Regulatory Commission adopted Decision no. 9, dated 24.12.2020, defining some of the classic forms of misuse of public resources, as well as other elements relevant to establishing administrative violations. Among these elements

is the timeframe within which the act must be carried out. However, in cases where public resources are made available in support of political parties, candidates, or coalitions, both the legislator and the Regulatory Commission have opted not to express a clear position, providing that the prohibition applies only when the making available occurs for electoral purposes. Consequently, the Appeals and Sanctions Commission, in its consistent practice, has maintained that the prohibition on making public resources available applies only during the electoral campaign. Nevertheless, in the author's assessment, this interpretation is incorrect, as it not only renders the provision ineffective and facilitates the misuse of public resources but also because the notion of elections is broader than that of the electoral campaign.

In this regard, it is necessary for the legislator or the body designated by it for the adoption of normative acts, namely the Regulatory Commission, to clarify that the making available of public resources does not include only the organisation of activities in such resources, but also the use of public resources for the preparation of campaign materials for electoral purposes. Moreover, for the effective implementation of the provision laid down in paragraph 1 of Article 91 of the Electoral Code, it is necessary that the prohibition on making public resources available applies for a period of at least four months prior to the election day, as the electoral process and the formation of public opinion do not occur solely during the electoral campaign.

Although the provisions of the Electoral Code have gradually expanded to include the compulsory use of public administration staff and pre-university students during working or school hours, as well as promises or pressures to participate in the electoral campaign, the limitation of prohibitions solely to the campaign period excludes from legal protection the use of human resources during the electoral period, creating a significantly unfair advantage for one party compared with other parties involved in elections. Limiting the scope of this provision through the definition of the campaign as the only period when a violation may be considered such, coupled with the requirement that whistleblowers prove the element of compulsion in the use of human resources, in the author's view, renders this provision almost unenforceable, as evidenced by the practice of the Central Election Commission bodies. Therefore, this prohibition cannot be limited to the campaign period. Furthermore, to improve monitoring

and accountability mechanisms regarding the use of public resources, Albanian legislation should provide for a reversal of the burden of proof in cases where there are suspicions of misuse of human resources. This mechanism would require public institutions to demonstrate that no undue influence, pressure, or abuse of authority occurred, rather than placing the burden of proof on individuals, who often face difficulties accessing internal documentation or fear professional or social repercussions when reporting violations.

Furthermore, the contrast between Albanian legislation and its implementation in practice by the Central Election Commission bodies regarding standards is also evident in paragraph 4 of Article 91 of the Electoral Code. The application of this provision solely to general elections for Parliament, excluding local government elections, undermines the standards provided in international instruments, which require that prohibitions on measures affecting voters' perception during electoral processes be comprehensive. By harmonising this provision and making it applicable to all electoral processes, the Electoral Code would strengthen transparency, equality, and public trust, thereby providing a stable and robust framework to prevent unfair electoral advantages at both national and local levels.

Finally, for all the reasons outlined above, the protection afforded to whistleblowers reporting violations of electoral legislation is insufficient, as it not only fails to comply with international standards but also significantly disregards reality. Retaliatory measures may target not only whistleblowers but also individuals connected to them, such as colleagues or family members, or entities in which the whistleblower may have interests. Therefore, it is necessary to revise whistleblower protection standards, including protection against retaliation for collaborators, colleagues, family members, and other relevant entities in which whistleblowers have interests, in accordance with the standards of the Venice Commission, the Council of Europe, and European legislation. In addition to expanding legal protection, as a guarantee to increase trust in the electoral process, the Central Election Commission, in cooperation with civil society organisations and electoral stakeholders, should implement broad awareness campaigns through media, online platforms, and public forums, as well as targeted training for citizens and public officials.

Bibliography

1. *Ahmed and Others v. The United Kingdom*, application no. 65/1997/849/1056, dated 02.09.1998;
2. Albanian Language Dictionary.
3. *Briqe v. Latvia*, application no. 47135/99, dated 29.06.2000.
4. Central Election Commission, *Annual Activity Report 2021*, Tirana: 2022.
5. Central Election Commission, *Annual Activity Report 2023*, Tirana: 2024.
6. Congress of Local and Regional Authorities of the Council of Europe, *The misuse of administrative resources during electoral processes: the role of local and regional elected representatives and public officials*, Strasbourg: 2016.
7. Council of Europe, *Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms*, Paris: 1952.
8. Council of Europe, *Recommendation CM/Rec (2014)7 adopted by the Committee of Ministers of the Council of Europe on 30 April 2014 and explanatory memorandum*, Strasbourg: 2014.
9. Decision no. 115, dated 18.05.2023, of the Appeals and Sanctions Commission.
10. Decision no. 182, dated 30.06.2022, of the State Election Commissioner.
11. Decision no. 22, dated 14.09.2022, of the Appeals and Sanctions Commission.
12. Decision no. 240, dated 04.03.2025, of the State Election Commissioner.
13. Decision no. 337, dated 04.04.2021, of the State Election Commissioner.
14. Decision no. 373, dated 28.05.2021, of the State Election Commissioner.
15. Decision no. 375, dated 28.05.2021, of the State Election Commissioner.
16. Decision no. 409, dated 25.04.2023, of the State Election Commissioner.
17. Decision no. 418, dated 24.06.2021, of the State Election Commissioner.

18. Decision no. 421, dated 03.05.2023, of the State Election Commissioner.
19. Decision no. 45, dated 04.04.2023, i Komisionit të Ankimimeve dhe Sanksioneve;
20. Decision no. 45, dated 04.04.2023, of the Appeals and Sanctions Commission.
21. Decision no. 54, dated 11.04.2023, of the Appeals and Sanctions Commission.
22. Decision no. 7, dated 19.02.2024, of the Appeals and Sanctions Commission.
23. Decision no. 7, dated 19.02.2024, of the Appeals and Sanctions Commission.
24. Decision no. 7, dated 19.02.2024, of the Appeals and Sanctions Commission.
25. Decision no. 9, dated 24.12.2020, of the Regulatory Commission “*On the rules for reporting public-character activities by any public institution or State-owned entity, agencies, State bodies, the categories of prohibited activities, and the monitoring of activities, conduct, and the use of human, financial and logistical resources of the State administration*”, as amended.
26. General Assembly of the United Nations, *Universal Declaration of Human Rights*. Paris: 1948.
27. *Gitonas and Others v. Greece*, application no. 18747/91; 19376/92; 19379/92, dated 01.07.1999.
28. *Greek Case*, application no. 3321/67; 3322/67; 3323/67; 3344/67, dated 18.11.1969.
29. Hannum, H., *The Status of the Universal Declaration of Human Rights in National and International Law*”, (1995) 25 *Georgia Journal of International and Comparative Law*, nr. 25, 1995.
30. *Informationsverein Lentia and Others v. Austria*, application no. 3914/88; 15041/89; 15717/89; 15779/89; 17207/90, dated 24.11.1993.
31. Law no. 10019, dated 29.12.2008, “*The Electoral Code of the Republic of Albania*”, FZ no. 189, dated 29.12.2009.
32. Law no. 8778, dated 26.04.2001, “*On the Ratification of the ‘Criminal Law Convention on Corruption’*”, FZ no. 24, dated 20.05.2001.
33. Law no. 9492, dated 13.03.2006, “*On the Ratification of the*

- ‘United Nations Convention against Corruption’*”, FZ no. 27, dated 10.04.2006.
34. Law no. 101/2020, dated 23.07.2020, “*On certain additions and amendments to Law no. 10 019, dated 29.12.2008, ‘The Electoral Code of the Republic of Albania’, as amended*”, FZ no. 143, dated 04.08.2020.
 35. Law no. 150/2020, dated 17.12.2020, “*On certain additions to Law no. 60/2016 ‘On whistleblowing and whistleblowers protection’*”, FZ no. 5, dated 13.01.2021.
 36. Law no. 74/2012, dated 19.07.2012, “*On certain additions and amendments to Law no. 10 019, dated 29.12.2008, ‘The Electoral Code of the Republic of Albania’, as amended*”, FZ no. 103, dated 17.08.2012.
 37. Law no. 7510, dated 8.8.1991, “*On the accession of the Republic of Albania to the International Covenant on Civil and Political Rights*”, FZ no. 6, dated 29.8.1991.
 38. Law no. 8137, dated 31.07.1996, “*On the Ratification of the European Convention for the Protection of Human Rights and Fundamental Freedoms*”, FZ nr. 20, dated 12.08.1996.
 39. Law nr. 9087, dated 19.06.2003, “*Electoral Code of the Republic of Albania*”, FZ no. 54, dated 01.07.2003.
 40. *Mario Staderini and Michele de Lucia v. Italy*, communication no. 2656/2015, dated 21.01.2020.
 41. *Mathieu-Mohin and Clerfayt v. Belgium*, application no. 9267/81, dated 30.01.1998.
 42. Mërkuri, E., Buxhuku, Gj., Thirty years of interpretation: an analysis of the interpretative methods used by judicial jurisprudence on the Civil Code of Albania, *National Scientific Conference “Developments and innovations in private law”*, Tirana: 2024.
 43. Organization for Security and Co-operation in Europe, *Albania, Local Elections, 8 May 2011: Final Report*, 2011.
 44. Organization for Security and Co-operation in Europe, *Albania, Local Elections, 21 June 2015: Final Report*, 2015.
 45. Organization for Security and Co-operation in Europe, *Albania, Local Elections, 30 June 2019: Final Report*, 2019.
 46. Organization for Security and Co-operation in Europe, *Albania, Local Elections, 14 May 2023: Final Report*, 2023.

47. Organization for Security and Co-operation in Europe, *Albania, Parliamentary Elections, 23 June 2013: Final Report*, 2013.
48. Organization for Security and Co-operation in Europe, *Albania, Parliamentary Elections, 25 June 2017: Final Report*, 2017.
49. Organization for Security and Co-operation in Europe, *Albania, Parliamentary Elections, 25 April 2021: Final Report*, 2021.
50. OSCE, Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE, Copenhagen: 1990. <https://www.osce.org/files/f/documents/9/c/14304.pdf>
51. Przeworski A., *Why Bother with Elections?*, Cambridge: Polity Press, 2018.
52. Scalia, A., Garner, Bryan A., *Reading the Law: The Interpretation of Legal Texts*, Thomson/West, St. Paul: 2012.
53. Schabas A. W. (ed.), *The Universal Declaration of Human Rights: The Travaux Préparatoires, Vol. I*, Cambridge: Cambridge University Press, 2013.
54. Schabas A. W., *The European Convention on Human Rights: A Commentary*, Oxford: Oxford University Press, 2015.
55. Schwelb, E., The Influence of the Universal Declaration of Human Rights on International and National Law, *Proceedings of the American Society of International Law at its annual meeting (1921-1969)*, nr. 54, 1959.
56. *Sitaropoulos and Giakoumopoulos v. Greece [GCH]*, application no. 42202/07, dated 15.03.2012.
57. State Election Commissioner, *Explanatory Report on the Draft Decision "On the Rules Governing the Use of Social Media and Online Media by Public Institutions during Elections"*, Tirana: 2025.
58. *United Communist Party of Turkey and Others v. Turkey*, application no. 133/1996/752/951, dated 30.01.1998.
59. United Nations Human Rights Committee, *General Comment adopted by the Human Rights Committee pursuant to article 40, paragraph 4, of the International Covenant on Civil and Political Rights: General Comment No. 25 (57)*, Geneva: 1966.
60. Venice Commission, *11th European Conference of Electoral Management Bodies "Combating the Misuse of Administrative Resources during Electoral Processes"*, Helsinki: 2014.

61. Venice Commission, *Code of Good Practice in Electoral Matters, as amended*, Strasbourg: 2018.
62. Venice Commission, *Electoral Law*, Strasbourg: Council of Europe Publishing, Strasbourg: 2013.
63. Venice Commission, *Fourth Eastern Partnership Facility Seminar on the "Use of Administrative Resources during Electoral Campaigns"*, Tbilisi: 2013.
64. Venice Commission, *Joint Guidelines for Preventing and Responding to the Misuse of Administrative Resources during Electoral Processes*, Venice: 2016.
65. Venice Commission, *Report on the Misuse of Administrative Resources during Electoral Processes*, Strasbourg: 2013.
66. *X v. Iceland*, application no. 8941/80, dated 08.12.1981.
67. *X v. The United Kingdom*, application no. 7140/75, dated 08.10.1976.
68. *Yumak dhe Sadak v. Turkey*, application no. 10226/03, dated 08.07.2008.

CONSTITUTIONAL JUSTICE AND THE PROTECTION OF THE RIGHT TO A HEALTHY ENVIRONMENT AS A FUNDAMENTAL RIGHT

Esmeralda Metko¹
Subian Dalani²

Abstract

Third-generation rights, also referred to as modern rights, constitute a category of rights that are legally intricate to address, given that they are both “new” in terms of their legal recognition and “old” in the sense that they have inherently coexisted with human existence.

The right to a healthy environment, within the framework of constitutional law, gives rise to compelling legal debates, including theories concerning the legal personality of nature. In this regard, this paper initially examines the right to a healthy environment by analyzing legal doctrines and jurisprudential trends that conceptualize nature as a “legal entity” vested with specific rights.

Subsequently, the paper delves into the Albanian legal framework, assessing how this right is embedded within the national legal order and scrutinizing relevant judicial precedents, particularly cases where legal standing has been conferred upon nature. Given that this right is of a modern character, meaning its legal treatment remains relatively recent, the study also explores fundamental and ethical conflicts in relation to the normative framework governing environmental protection.

Throughout the analysis, the central inquiry revolves around the question: Who speaks for the environment? The study ultimately presents key conclusions and recommendations, advocating for a legal approach whereby the right to a healthy environment in the Albanian constitutional

1. Student, Faculty of Law, University of Tirana, esmeraldametko5@gmail.com

2. Student, Faculty of Law, University of Tirana, dalanisubian@gmail.com

order is not merely perceived as a socio-political objective but is formally recognized and safeguarded as a fundamental constitutional right.

1. What is the right to a healthy environment?

The right to a healthy environment or, in other words, the right to have access to a clean environment, includes all components that constitute the environment (water, soil, air, etc.). All people have the right to a clean, healthy, and sustainable environment. Since human rights and the environment are interdependent, a clean, healthy, and sustainable environment is essential for the full enjoyment of a range of fundamental human rights, such as the right to life, health, food, water and hygiene, development, and others.¹ The right to a healthy environment falls within the category of third-generation rights, a modern right that has evolved starting from 1979. In the last decade, it has been recognized by the United Nations as a fundamental human right. The right to a healthy environment is included in the category of rights encompassed by the rights-based approach for environmental protection. The right to a healthy environment, conceived as the right to live in a clean, safe, and sustainable environment, includes essential elements of human life such as air, water, soil, and biodiversity. This right is closely linked to a range of fundamental human rights such as the right to life, health, sufficient and safe food, clean water, and sustainable development.²

The right to a healthy environment is part of third-generation rights, a category linked to international solidarity, sustainable development, and the common interests of humanity. It began to be gradually recognized starting from the United Nations Conference on the Human Environment in Stockholm in 1972.³ Recently, through UN General Assembly Resolution 76/300 in 2022, this right was recognized as a universal human right. The modern legal approach to protecting this right is the rights-based approach, which obliges states not only to avoid impairing it but also to take active measures to guarantee it. Within this approach, two groups of rights emerge

1. <https://www.undp.org/sites/g/files/zskgke326/files/2023-01/UNDP-UNEP-UNHCHR-What-is-the-Right-to-a-Healthy-Environment.pdf>

2. United Nations General Assembly, *The Human Right to a Clean, Healthy and Sustainable Environment*, A/RES/76/300, New York, 2022, pg. 2.

3. United Nations, *Declaration of the United Nations Conference on the Human Environment*, Stockholm, 5–16 June 1972, United Nations Publication, New York, 1973, pg. 3.

from the human-environment relationship: substantive rights and procedural rights. The first includes the right to clean air, a safe climate, sufficient and clean water, healthy biodiversity, and a non-toxic environment.¹ The second includes the right to information on environmental issues, the right of public participation in decision-making, and the right of access to justice. In this context, the Aarhus Convention (1998) represents one of the most important international instruments, codifying these three pillars of procedural rights. These instruments give citizens the ability to demand transparency, influence decision-making processes, and seek legal accountability in cases of environmental rights violations.

The article focuses on a specific aspect of these rights: access to environmental justice through constitutional courts as mechanisms for guaranteeing this fundamental right. International judicial practice has recognized several key rulings in which courts have directly linked the right to a healthy environment with the rights to life and health.²

In doctrine, the right to a healthy environment is seen, firstly, as a vital and fundamental right for human existence and, secondly, as a modern right belonging to the third generation, reflecting contemporary developments in international human rights and environmental law. Despite international recognition, the implementation of this right faces serious challenges. Among these are air pollution, soil contamination, poor management of urban and industrial waste, including plastics and pharmaceuticals, as well as the consequences of mass consumerism.³ Meanwhile, humans themselves are a key factor in pollution and environmental degradation, negatively impacting ecological balance.

2. History of the right to a healthy environment

The right to a healthy environment or the right to a sustainable and healthy environment is a human right protected by human rights and environmental organizations to safeguard the ecological systems that

1. David R. Boyd, *The Environmental Rights Revolution: A Global Study of Constitutions, Human Rights, and the Environment*, UBC Press, Vancouver, 2012, pg. 147.

2. Supreme Court of Colombia, *Future Generations v. Ministry of the Environment and Others*, STC4360-2018; District Court of The Hague, *Urgenda Foundation v. The State of the Netherlands*, C/09/456689 /HA ZA 13-1396, 2015.

3. James Salzman, *Environmental Law and Policy*, Foundation Press, New York, 2010, pg. 205

ensure human health.¹ It is often the basis for human rights protection by environmental defenders, such as land protectors, water protectors, and indigenous rights activists.² The right to a healthy environment uses a human rights-based approach to protect environmental quality; this approach addresses the impact of environmental harm on individuals, compared to the more traditional environmental regulatory approach, which focuses on impacts on other states or the environment itself. Another approach to environmental protection is the rights of nature, which seek to extend rights enjoyed by humans and corporations to nature as well.³ Related rights included in these proposals often encompass the right to a sustainable climate, clean air and water, environmental justice, and the preservation of the natural, scenic, aesthetic, and historical values of the environment.⁴

The right to a healthy environment may be implemented in constitutional law in various ways, such as by being explicitly incorporated into constitutions during their drafting, as in Tunisia, or through climate litigation, as in Colombia. In the United States, most legal advocates focus on amending existing state constitutions or enforcing current state constitutional provisions, as demonstrated in the *case of Held v. Montana*, where young plaintiffs won a court ruling requiring the implementation of the existing state constitution.

The origins of the right to a healthy environment at the international level are relatively recent, emerging in the normative sphere only in the second half of the twentieth century. Unlike civil and political rights - such as freedom of expression or the right to a fair trial - which have roots in the Western liberal tradition, the right to a healthy environment is the product

1. "The Case for a Right to a Healthy Environment". Human Rights Watch. 2018-03-01. Retrieved 2021-02-10.

2. "The Time is Now for the UN to Formally Recognize the Right to a Healthy and Sustainable Environment". Center for International Environmental Law. 2018-10-25. Retrieved 2021-02-10.

3. Boyle, Alan (2012-08-01). "Human Rights and the Environment: Where Next?". *European Journal of International Law*. 23 (3): 613–642. doi:10.1093/ejil/chs054. ISSN 0938-5428.

4. Jones, Katelyn Joanna (2017-03-04). "Changing the Nature of Our Constitutional Default: The Fight for a Right to a Healthy Environment". *USURJ: University of Saskatchewan Undergraduate Research Journal*. 3 (2). doi:10.32396/usurj.v3i2.172. ISSN 2292-1141.

of growing global awareness of the consequences of environmental degradation and its interconnection with human health and dignity.

It is important to emphasize that the right to a healthy environment is not included in the foundational human rights documents, such as the Universal Declaration of Human Rights (1948) and the International Covenant on Civil and Political Rights (1966), because at the time these instruments were drafted, societal awareness of the seriousness, pace, and harmful consequences of environmental degradation was not sufficiently advanced. As a result, these documents do not incorporate such a right. However, although the core human rights instruments do not refer to a specific right to a safe and healthy environment, since 1972 a significant number of international documents have recognized environmental protection as an essential component of human rights. More specifically, they view certain human rights as fundamental elements for achieving environmental protection, with the primary aim of safeguarding human health.

The first significant step was marked by the **Stockholm Declaration on the Human Environment (1972)**¹, which in Principle 1 proclaimed that “*man has the fundamental right to freedom, equality and adequate conditions of life in an environment of a quality that permits a life of dignity and well-being.*” Although it was not a legally binding instrument, it established a normative foundation linking environmental protection with human rights.

Following this, the **Rio Declaration (1992)**² reinforced the concept of sustainable development, yet once again did not explicitly recognize the right to a healthy environment as a human right. This reflects a political hesitation among major powers to transform an environmental norm into a subjective right that individuals could claim.

Similarly, in recent decades a series of documents, guidelines, and declarations have been issued by various international organizations and agencies, all of which incorporate the core elements of environmental protection, ranging from waste management and transport, recycling, transboundary air pollution, protection of groundwater, to the rational use of water, among others. The Food and Agriculture Organization (FAO)

1. <https://docs.un.org/en/A/CONF.48/14/Rev.1>

2. https://www.un.org/en/development/desa/population/migration/generalassembly/docs/globalcompact/A_CONF.151_26_Vol.I_Declaration.pdf

adopted the International Code of Conduct on the Distribution and Use of Pesticides, followed by the Organisation for Economic Co-operation and Development, which issued Guidelines for Action to Reduce Emissions of Sulphur Oxides, among others.

Despite the absence of global consensus, several regional systems have taken bolder steps. The African and Inter-American systems are pioneers in this regard: the **African Charter on Human and Peoples' Rights (Banjul, 1981)**¹, in Article 24, guarantees the right to a “general satisfactory environment.” Although this formulation is somewhat vague, it has served as the basis for several cases before the African Court on Human and Peoples Rights. The **San Salvador Protocol (1988)**², annexed to the American Convention on Human Rights, recognizes the right to a healthy environment in Article 11, providing individuals with a more direct legal basis for claiming this right within the inter-American system.

Meanwhile, Europe has followed a more indirect path. The European Convention on Human Rights does not expressly mention the environment, but the European Court of Human Rights has interpreted several of its provisions (such as Article 8 on private and family life) to protect individuals from pollution and harmful environmental interference. This normative pluralism demonstrates that the right to a healthy environment is neither uniform in its formulation nor in its implementation, but depends on the institutional and political context of each region.

Moreover, recent developments have led to a clearer and more consolidated recognition. In 2021, the UN Human Rights Council adopted a historic resolution recognizing the right to a clean, healthy, and sustainable environment as a human right. This was followed by an important decision of the UN General Assembly in July 2022, which overwhelmingly approved a resolution formally acknowledging this right at the global level.³

These developments represent a significant advance toward the integration of environmental rights into the global human rights system,

1. <https://au.int/en/treaties/african-charter-human-and-peoples-rights>

2. <https://www.oas.org/en/sare/social-inclusion/protocol-ssv/docs/protocol-san-salvador-en.pdf>

3. “Warming Across Generations”. Climate Central. 22 March 2023. Archived from the original on 13 June 2024.

reflecting a growing recognition that human dignity and well-being cannot be realized without a healthy environment.

In the context of Albanian law, environmental legislation is grounded in constitutional principles, international agreements, and national laws regulating environmental protection, the sustainable use of natural resources, and the guarantee of citizens rights to a healthy environment. Environmental legislation has undergone significant evolution over the past two decades, gradually aligning with international standards and the requirements of the European integration process.

The highest level of the normative hierarchy in Albania, the Constitution of the Republic¹, contains explicit provisions related to environmental protection. The Constitution also establishes the foundation for the development of further legislation in this field, providing the necessary legal authority for environmental protection policies.

In particular, Article 56 of the Constitution clearly stipulates that: *“Everyone has the right to be informed about the state of the environment and its protection.”*

Article 59 clearly states that: *“The State, within its constitutional competencies and available means, and in complement to private initiative and responsibility, aims to: d) ensure a healthy and ecologically suitable environment for present and future generations; e) promote the rational use of forests, waters, pastures, and other natural resources based on the principle of sustainable development.”*

These specific objectives are to be achieved by the State *“within its constitutional competencies and available means, and in complement to private initiative and responsibility.”* By establishing these objectives, the Constitution emphasizes that environmental protection is a permanent duty, intrinsically linked to the life and health of the population. It sets as fundamental requirements the continuous preservation of a healthy and ecologically suitable environment, as well as sustainable development, thereby ensuring the protection and conservation of the environment for present and future generations.²

1. <https://qbz.gov.al/preview/635d44bd-96ee-4bc5-8d93-d928cf6f2abd>

2. Council of Ministers of the Republic of Albania, Albania's Answers to EC Questionnaire, April 2010, f.3291, në faqen e internetit <http://www.mie.gov.al/>.

3. International Legal Recognition of the Right to a Healthy Environment as a Universal Right

Although the right to a clean, safe, and healthy environment constitutes a fundamental right, both in its nature and in its substantive content, it is still not explicitly recognized in the majority of international and national legal instruments. International human rights law does not explicitly guarantee this right. Most United Nations human rights treaties - adopted before environmental protection became an international priority - do not directly include the right to a healthy environment, although some make indirect references to it. For example, the **International Covenant on Economic, Social and Cultural Rights (1966)**, in Article 12, recognizes the right to the highest attainable standard of physical and mental health and obliges States Parties to take steps for the improvement of all aspects of environmental and industrial hygiene. Similarly, the **Convention on the Rights of the Child (1989)**, in Article 24, requires States Parties to take measures to combat disease and malnutrition through the provision of adequate food and clean drinking water, taking into account the risks posed by environmental pollution.

The United Nations has contributed to a process of “greening human rights,” arguing that many fundamental rights - such as the rights to life, health, private life, water, and property - depend on a healthy environment. A historic step in this direction was the **UN Human Rights Council resolution of 8 October 2021**, which, with 43 votes in favor and 4 abstentions, recognized the right to a healthy and sustainable environment as a universal right. The link between human rights and the environment is now widely acknowledged by international bodies and is based on two fundamental principles: first, environmental protection is essential for the enjoyment of a range of human rights, making it an important instrument in itself; second, the exercise of human rights - particularly procedural rights such as access to information, public participation, and access to justice - is crucial for effective environmental protection, a principle strongly embodied in the **Aarhus Convention**.

There also exists a number of international instruments that have recognized this link: the **Stockholm Declaration on the Human Environment (1972)**, the first international document acknowledging the connection between human rights and the environment; the **Paris**

Agreement on Climate Change (2015), the first legally binding international environmental agreement to include direct references to human rights; and the **Glasgow Climate Pact (COP26, 2021)**, which reaffirmed these obligations. At the regional level, recognition is stronger but not uniform. More than 120 states are parties to at least one regional treaty that acknowledges the right to a healthy environment. In Europe, the **Aarhus Convention** stands out for its emphasis on procedural rights. The **European Convention on Human Rights** contains no specific provisions on the right to a healthy environment; however, on 29 September 2021, the Parliamentary Assembly of the Council of Europe recommended the drafting of an additional protocol on this matter. Meanwhile, **Article 37 of the EU Charter of Fundamental Rights** provides that a high level of environmental protection must be integrated into EU policies, though it does not establish it as an individual right.

Despite the lack of formal recognition in many national legal systems, the explicit acknowledgment and direct incorporation of this right into domestic legislation would strengthen the legal protection of the environment. This has become even more evident through the growing body of international case law linking climate change and environmental issues to human rights. An illustrative example is the decision of the **Committee on the Rights of the Child** concerning an international complaint filed by a group of young people, who alleged that States had failed to take the necessary measures to reduce greenhouse gas emissions. The Committee determined that children are victims of foreseeable threats to their rights to life, health, and well-being, establishing an important precedent that connects state responsibility with international human rights obligations in the context of climate change.¹

1. Columbia Law School, *Major Developments for Global Climate Litigation: The Human Rights Council Recognizes the Right to a Healthy Environment and the Committee on the Rights of the Child Publishes its Decision in an International Climate Case*, Columbia University, 12 October 2021. E aksesuar në: <https://blogs.law.columbia.edu/climatechange/2021/10/12/major-developments-for-global-climate-litigation-the-human-rights-council-recognizes-the-right-to-a-healthy-environment-and-the-committee-on-the-rights-of-the-child-publishes-its-decision-in-an-inter/> (accessed on: 29 prill 2025).

4. Conclusions and Recommendations

From the above discussion, several conclusions and findings can be drawn regarding the constitutional right and contemporary developments in environmental protection. First, the right to a healthy environment emerges as a **third-generation right**, that is, a collective and intergenerational right. Although relatively new in legal treatment, it is essential for human existence and dignity. This right can no longer be regarded merely as a social objective but as a **fundamental constitutional right** that requires direct protection. Second, the article addresses the innovative concept of **nature as a rights-bearing entity**, through theories that recognize nature as a “living being” and grant it legal personality. This approach helps shift the focus from humans as the central subject of law toward a more balanced and respectful relationship with the environment. Third, the authors analyze the **Albanian context** and the manner in which this right is incorporated into the constitutional and legal framework, highlighting gaps and deficiencies in its practical implementation. Finally, through the review of jurisprudence and specific cases, it is evident that the absence of a robust constitutional and legal framework complicates the effective guarantee of this right. Therefore, it is recommended to **strengthen the constitutional protection of the right to a healthy environment** as an integral part of fundamental human rights.

WORKPLACE ACCIDENT DAMAGES UNDER ALBANIAN LEGISLATION: TYPES OF EMPLOYER LIABILITY AND CHALLENGES IN JUDICIAL PRACTICE

Enton Dhimitri¹

Abstract

Occupational health and safety represent a crucial component of employees' social protection, enjoying safeguards provided by both national and international legal instruments. The right to social protection is a "positive" right. Beyond its recognition and inclusion in legal acts, the state bears the obligation to take all necessary measures not only to acknowledge this right but also to ensure its effective implementation. The national legal framework, in principle, has foreseen a series of laws and bylaws that aim to protect the health and lives of employees in the workplace. However, practical implementation reveals numerous issues that have led to the infringement of employees' health, even resulting in loss of life.

The number of workplace accidents continues to rise, creating a problematic situation that requires urgent legal and administrative measures to prevent their occurrence. In addition to prevention, the compensation of material and non-material damages suffered by employees, their family members, or third parties present at the workplace is of fundamental importance in cases of accidents.

This paper focuses on the analysis of the legal framework regarding employer civil liability, the compensation of damages caused to employees due to workplace accidents or, in the event of death, to their family members. It identifies contradictory provisions and highlights

1. Member of the High Court of Albania, enton_gj@live.com

the appropriate methods of interpretation with the aim of ensuring their effective application in practice.

Judicial practice has lacked a clear demarcation in determining the nature of this civil liability—whether contractual or non-contractual—creating confusion regarding the allocation of the burden of proof and the applicable statute of limitations for each type of claim, both of which carry different legal consequences with respect to employees' rights.

Furthermore, accurately determining the type of liability in such cases helps avoid double compensation under both the social insurance legislation and the Civil Code, which would contravene the principle of full compensation for damages.

Employer liability may also arise irrespective of fault, and this study gives particular importance to the conditions under which such strict liability arises, especially when the employer's activity is considered inherently hazardous due to its nature or the tools used.

In Albanian judicial practice, there is no clear distinction between strict liability and fault-based liability, often equating the two erroneously and unfairly burdening the employee, given the lighter evidentiary burden placed on the employer in cases involving fault-based liability.

A particular form of liability addressed in workplace accident cases is contributory liability, where the employer's fault in causing the damage is combined with the contributory negligence of the employee. In addition to legal gaps regarding the conditions for the emergence of non-contractual liability, judicial practice has also failed to correctly interpret this type of liability, often confusing it with strict liability.

Employer liability is also analyzed in the context of vicarious liability, which applies when the employer is held responsible for damages caused by employees during the course of their employment.

Judicial practice has not maintained a consistent stance on whether Article 618 of the Civil Code applies when the injured party is an employee other than the one at fault, nor whether the employer's liability in such cases is contractual or non-contractual. Uncertainty also remains about how this liability interacts with Article 39/2 of the Labor Code, particularly concerning deductions from the total damage award in cases where the injured party has received a disability pension.

In conclusion, the theoretical aspects and distinctions between various types of liability in cases of workplace accident damages have been

interwoven and analyzed using concrete examples from both Albanian and foreign judicial practices. The objective is to highlight the shortcomings of the existing legal framework in guaranteeing the health and safety of employees and third parties and to provide concrete recommendations for improvement.

I. International standards and albanian legislation in the field of protection and safety of employees' life and health during employment relationships

In order to obtain a clearer overview and a more accurate understanding—both from a substantive and an evolutionary perspective—of the rights infringed in cases of occupational accidents, the fundamental principles underlying their protection, the injured parties, and the nature of the damage, it is necessary to be acquainted not only with domestic legislation, but also with the internationally recognized standards widely accepted in this field. The protection of employees' rights related to occupational safety and health began with the adoption of several international instruments which, due to the position they occupy in the hierarchy of norms of the domestic legal order—within the meaning of Articles 116 and 122 of the Constitution—prevail over national laws that are inconsistent with them and therefore deserve primary consideration.

1. International Instruments

Following the adoption of the Universal Declaration of Human Rights, States undertook initiatives to approve a series of international instruments aimed at creating a protective framework for the safeguarding and guarantee of human rights and fundamental freedoms. One of the areas to which particular attention was devoted was the regulation of employment relationships, as well as the protection and guarantee of employees' rights, given that employees constitute the more vulnerable party within the contractual employment relationship. With the aim of guaranteeing and protecting employees' rights, and in particular safeguarding their health and life, a number of international instruments were adopted, which set out specific standards and placed the signatory States under the obligation to take measures for their incorporation into domestic legislation and for their effective implementation. According to the Constitution of the Republic of

Albania, ratified international agreements, once published in the Official Gazette, become an integral part of the domestic legal system. This principle is also enshrined in the Labour Code of the Republic of Albania, which provides that the Code is based on the respect for international conventions ratified by the Republic of Albania and on the generally accepted norms of international law.

1.1. Universal Declaration of Human Rights

The Universal Declaration of Human Rights, adopted on 10 December 1948, as the first instrument to elevate the recognition and protection of human rights to the international level, enshrines general principles relating to safety at work; however, it does not lay down specific rules or mechanisms for their implementation by Member States. Article 23 of this instrument, inter alia, provides that: *“Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment.”* Despite this general provision concerning the right to satisfactory and favourable working conditions, this provision does not specifically guarantee the protection and safety of health and life at work.

1.2. International Covenant on Economic, Social and Cultural Rights

States that have signed the International Covenant on Economic, Social and Cultural Rights (adopted on 16 December 1966) recognize the right of everyone to the enjoyment of just and favourable conditions of work, which must, at a minimum, ensure, inter alia, safe and hygienic working conditions. Thus, unlike the Universal Declaration, the International Covenant on Economic, Social and Cultural Rights expressly recognizes the right of everyone to favourable working conditions, explicitly including the right to safe working conditions.

1.3. Acts of the International Labour Organization in the field of occupational safety and health and the prevention of occupational accidents

The conventions of the International Labour Organization constitute another highly significant source of international standards that form part of the national legislation. Some of the conventions that provide for

general and specific regulation in the field of the prevention of occupational accidents include:

1.3.1. Convention No. 155 “On occupational safety and health and the working environment” (adopted in 1981, ratified by Albania by Law No. 9147, dated 30.10.2003)

This Convention applies to all employees in all branches of economic activity covered by the International Labour Organization. Notwithstanding the fact that certain branches are excluded from its scope of application, the Convention also covers the measures that must be taken to ensure the effective protection of workers operating in excluded branches of economic activity.

Article 4, Part II of the Convention provides that: *“Each Member shall, in the light of national conditions and practice, and in consultation with the most representative organizations of employers and workers, formulate, implement and periodically review a coherent national policy on occupational safety, occupational health and the working environment.”* Pursuant to Article 14 of the Convention, States Parties shall take measures, in accordance with national conditions and practice, to promote the inclusion of occupational safety and health issues within the working environment. Employers, in accordance with the provisions of the Convention, are required, where necessary, to ensure the adoption of measures for dealing with emergencies and accidents, including the provision of prompt and appropriate assistance, through arrangements at the enterprise level.

1.3.2. Convention No. C187 “On the promotional framework for occupational safety and health” (adopted in 2006, ratified by Albania by Law No. 4, dated 30.01.2014)

The objective of this Convention is the continuous improvement of occupational safety and health, with the aim of preventing work-related injuries, occupational diseases, and deaths at work, through the development of a national policy, a national system, and a national programme. The development of the national policy entails the obligation of each Member State to provide a safe and healthy working environment, based on principles such as: (i) the assessment of occupational risks and

hazards; (ii) combating occupational risks and hazards at their source; and (iii) the development of a national preventive culture for safety and health, which includes information, consultation, and training. This Convention emphasizes that, in order to develop an effective national policy, Member States should establish a national occupational safety and health system, which provides the principal framework for the implementation of the national policy. Pursuant to Article 4 of the Convention, Member States are obliged to adopt legislative and sub-legal acts relating to occupational safety and health, as well as to establish the relevant bodies responsible for monitoring their implementation.

1.3.3. Convention No. 174 “On the prevention of major industrial accidents” (adopted on 22.06.1993, ratified by Albania by Law No. 8921, dated 11.07.2002)

The purpose of this Convention is to prevent major accidents involving hazardous substances and to minimize the consequences of such accidents. To this end, each State is under the obligation to formulate, implement, and periodically review a national policy aimed at protecting workers from major industrial accidents. With regard to more specific provisions concerning occupational accidents, Article 13 of the Convention provides that workers have the obligation to notify the competent authorities and other bodies designated for these purposes immediately upon the occurrence of an accident. Pursuant to Articles 14, 15, 16, and 21 of this Convention, workers not only have the right to be informed about the risks arising from the activities they perform, as well as about the orders and recommendations of the competent authorities, but they also have the duty to take appropriate measures, including the suspension of activities, whenever they have reasonable grounds to believe that there is an imminent risk of a major accident.

1.3.4. Convention No. 176 “Safety and health in mines” (adopted in 1995, ratified by Law No. 8938, dated 12.09.2002)

Unlike Convention No. 155 of the International Labour Organization, this Convention provides specific regulations concerning occupational safety and health in the mining sector. Pursuant to Article 6 of this Convention, the employer is required to take all necessary measures to

eliminate or reduce to a minimum the risks to safety and health posed by mines under its authority. The employer is further obliged to ensure that the mine is commissioned, operated, maintained, and decommissioned in such a manner that workers are able to carry out their assigned tasks without risk to their safety and health, or to that of other persons. In order to identify the various risks to which workers may be exposed and to assess the degree of such exposure, the employer must carry out regular monitoring, assessment, and inspection of the working environment. On the other hand, in addition to the measures and obligations imposed on the employer, the Convention also sets out obligations for workers. Workers are required to take care of their own safety and health, as well as that of other persons who may be affected by their acts or omissions at work, including the proper use of tools, protective clothing, and equipment made available to them for this purpose, and to use them with due care. Furthermore, workers must immediately report any situation which, in their opinion, may pose a risk to their own safety or health, or to the safety and health of other persons, and which they are not able to address adequately themselves.

1.4. International instruments within the framework of the Council of Europe

1.4.2. Revised European Social Charter (adopted on 03.05.1996)

The European Social Charter ensures the effective protection of rights in the economic and social fields. In its first part, it sets out 31 categories of rights and principles in the field of labour law and social rights, including the right to safe and healthy working conditions. Unlike the aforementioned instruments, the European Social Charter provides for and establishes a specific regulation concerning working conditions. In the first part of the Charter, it is enshrined that: *“All workers have the right to safe and healthy working conditions.”* Article 3 of the Charter provides that: *“With a view to ensuring the effective exercise of the right to safe and healthy working conditions, the Parties undertake, in consultation with employers’ and workers’ organizations: (1) to formulate, implement, and periodically review a coherent national policy on occupational safety, occupational health, and the working environment. The primary aim of this policy shall be to improve occupational safety and health and to prevent accidents and*

injury to health arising out of, linked with, or occurring in the course of work, in particular by minimizing the causes of risks inherent in the working environment; (2) to issue safety and health regulations; (3) to provide for the enforcement of such regulations by measures of supervision; (4) to promote the progressive development of occupational health services for all workers, with essentially preventive and advisory functions."

1.5. European Union Directives in the field of the protection and safety of life and health at work

The European Union has adopted a number of directives aimed at the protection and guarantee of occupational health and safety. Some of these directives, containing both general and specific regulations, include the following:

1.5.1. Directive 89/391/EEC ("Framework Directive")

In 1989, certain provisions of the Framework Directive introduced significant innovations, namely: (i) the definition of the term "working environment," which was aligned with Convention No. 155 of the International Labour Organization and reflects a modern approach by taking into account technical safety as well as the general prevention of health risks; (ii) the Directive aims to establish an equal level of protection in terms of safety and health for the benefit of all workers; (iii) the Directive obliges employers to undertake appropriate preventive measures in order to make work safer and healthier. The Directive identifies the principle of risk assessment as a key element.

1.5.2. Directive 89/654/EEC "On minimum safety and health requirements for the workplace"

This Directive lays down the minimum requirements for safety and health at the workplace. Workplaces must comply with these minimum safety and health requirements, thereby placing the employer under the obligation to: (i) designate routes to emergency exits and ensure that the exits themselves are kept clear at all times; (ii) carry out technical maintenance of the workplace and equipment as frequently as possible; (iii) ensure that the workplace, equipment, and installations are cleaned regularly to an adequate level of hygiene; (iv) ensure that safety equipment

and devices intended to prevent or eliminate risks are properly maintained and regularly inspected.

1.5.3. Directive 92/58/EEC “On minimum requirements for the provision of safety and/or health signs at work”

Council Directive 92/58/EEC, adopted on 24 June 1992, lays down the minimum requirements for the provision of safety and/or health signs at work. Employers are required to take measures to ensure the provision of safety and health signs in workplaces where risks cannot be avoided or sufficiently reduced by other means. The annexes to this Directive provide detailed information regarding the minimum requirements for all safety and health signs. Workers and their representatives must be informed of all measures taken concerning safety and health signs at work and must be given appropriate instructions regarding these signs. This includes understanding the meaning of the signs as well as the general and specific behavior required in relation to them.

2. Domestic legislation in the field of the protection and safety of life and health at work

The fundamental provisions concerning the protection of occupational safety and health under domestic legislation are laid down in the Constitution, the Labour Code, the Criminal Code, as well as in a number of other legislative and sub-legislative acts adopted for their implementation. These legal instruments establish the principle of employers' responsibility for ensuring safety and protecting health in the workplace, as well as the obligation to adopt measures, which are categorized into general and specific measures. An analysis of these general provisions indicates that their primary purpose is prevention, which, inter alia, includes measures aimed at preventing occupational accidents. Social protection of work constitutes a right guaranteed by the Constitution of the Republic of Albania, which in Article 49 provides as follows: *1. Everyone has the right to earn the means of livelihood through lawful work that he or she has freely chosen or accepted. Everyone is free to choose his or her profession, place of work, as well as the system of professional qualification. 2. Employed persons have the right to social protection at work.* Although this provision constitutes, in itself, a general principle, the Constitution

guarantees all citizens the right to social protection at work. By enshrining this right in the Constitution, the importance it holds within the rule of law is clearly emphasized.

2.1. Labour Code of the Republic of Albania

The Labour Code is the legal act that provides for and regulates the relationship between the employer and the employee, establishing reciprocal rights and obligations for both parties. Like any other contractual relationship, the employment relationship is based on the free and full will of the parties; however, it is subject to specific regulation with regard to mandatory legal rules that the parties must comply with, irrespective of their will. One of these obligations concerns compliance with the rules on occupational protection and safety.

Within the framework of protecting employees at work, the employer is obliged to adopt comprehensive and effective occupational protection measures, with a view to preventing all potential events that may affect the life or health of employees.

Article 39 of the Labour Code provides that: *“1. In order to prevent occupational accidents and occupational diseases, the employer shall clearly determine the rules of technical safety. 2. The employer shall pay the difference between the damage suffered and the compensation received by the employee from social insurance, where the accident or occupational disease is the result of the employer’s gross fault. 3. Where the employer has not registered the employee with the social insurance scheme, the employer shall bear all expenses incurred by the employee as a result of the accident or occupational disease, as well as all damages resulting from such failure to register.”*

The content of this provision highlights the employer’s obligation to prevent occupational accidents and occupational diseases by establishing concrete technical safety rules that are necessary, technically feasible, and appropriate to the performance of the work. Some of the preventive measures that must form part of these rules are specified in Article 40 of the Labour Code, which, inter alia, provides that the employer must install clear and distinct signs in every workplace that presents a risk to the life and health of employees. Where work involves particular risks, the employer must organize medical examinations upon hiring and

periodically thereafter, at his or her own expense.

Article 41 of the Labour Code provides that the employer must obtain authorization from the Labour Inspectorate prior to putting an enterprise or part thereof into operation, opening a workplace, as well as for any significant change in the manner of work, the products used, machinery, and equipment, except for permits required under other laws. Furthermore, the employer is obliged to keep at the enterprise and submit to the Labour Inspectorate, *inter alia*, copies of declarations of occupational accidents that have occurred over at least the previous three years, as well as the risk assessment document for each workplace.

The Labour Code places particular emphasis on the qualification and training of employees, as well as on the adoption of protective measures by employers. The primary obligation of employees remains the strict observance of technical safety and occupational hygiene measures, with the aim of protecting their life and health. In order to ensure effective compliance with this obligation, it is essential that employees be previously informed of the provisions of labour legislation concerning occupational protection. Accordingly, Article 43 of the Labour Code provides that the employer must inform employees about work-related risks and must train them to comply with health, safety, and hygiene requirements. Training and information are provided upon hiring and repeated as necessary. The employer must explain to employees exposed to risks the necessity of complying with technical safety and hygiene measures. Articles 45 and 46 of the Labour Code provide that only qualified persons may operate machinery and transport equipment, whether mechanical or electrical.

The Labour Code also lays down specific rules concerning fire protection. Within the framework of obligations arising from occupational protection, Article 66 of the Labour Code provides that the employer must inform employees about the risks posed by fire and various explosions, as well as about the protective means for preventing such risks. The employer must instruct employees on the use of fire extinguishers and other fire protection equipment, indicate evacuation routes in the event of fire, and organize fire drills and evacuation exercises at least once a year.

2.2. Law No. 10237, dated 18.02.2010, “On occupational safety and health”, as amended

In order to implement the provisions of the Labour Code, which are primarily of a general nature, a number of legislative and sub-legislative acts have been adopted, setting out detailed rules for the implementation of requirements for the protection of occupational safety and health, including specific legal provisions concerning occupational accidents. Law No. 10237, dated 18.02.2010, “On Occupational Safety and Health”, as amended, reflects contemporary principles for the management of occupational safety and health.

Article 5 of this Law provides that an *“occupational accident or an accident arising out of work”* is any sudden event that causes immediate bodily injury and occurs during the performance of work or a service related thereto, as well as any other damage to health that does not derive from a general disease, but results in temporary or permanent incapacity for work or death.

For a sudden event to be classified as an occupational accident under this provision, the following conditions must be cumulatively fulfilled: (i) it must have occurred during the employment relationship or as a result thereof; (ii) it must have caused immediate bodily injury as well as any other damage to the employee’s health, at least to the extent of temporary incapacity for work; (iii) the health damage must not have a causal link with general diseases.

Judicial practice evidences cases in which courts have relied precisely on this provision in order to assess the case under examination as an occupational accident (Decision No. 4917, dated 04.10.2023, of the Court of First Instance of the General Jurisdiction of Tirana).

Article 28 of the Law provides in detail the cases in which an event is considered an occupational accident. An accident is deemed to have occurred at work or as a result of work when the employee is injured during: (a) *the performance of work, in accordance with its description;* (b) *the performance of another task, without the employer’s order, but for reasons of necessity, in the interest of work;* (c) *the performance of another task upon the employer’s request;* (ç) *rest time in a place designated by the employer, or while adjusting machinery, work tools, or work clothing, before or after the end of working hours;* (d) *travel along the direct route from the residence to the workplace and vice versa, in cases where*

transport is organized by the employer or individually by the employee; (dh) participation in vocational training courses; (e) the provision of first aid, for reasons related to the performance of duty, in cases of natural disasters.

Chapter V of the Law regulates the procedures for notification, investigation, registration, and reporting of occupational accidents. Upon becoming aware of the occurrence of an accident, the employer or the responsible person designated by the employer is obliged to register the accident in the register of occupational accidents and occupational diseases kept at the enterprise. The rules concerning the manner in which this register is maintained and the mandatory elements to be recorded with regard to occupational accidents are laid down in detail in Council of Ministers' Decision No. 461, dated 22.07.1998, "On the Register Kept by the Employer for Occupational Accidents and Occupational Diseases".

It is noted that, in addition to registering accidents that have resulted in death or loss of the employee's capacity for work, the employer is also obliged to record incidents/events that should be considered as having a high probability of leading to an accident. Furthermore, in cases of occupational accidents, the employer must draw up an official report, which must be signed by the employer or the responsible person, as well as by the labour inspector, within three (3) days from the occurrence of the accident. The occupational accident must be reported within three (3) days to the regional directorate/local office of labour inspection, as well as to the regional directorate of social insurance, within whose jurisdiction the employer carries out its activity.

2.3. Law No. 9634, dated 20.10.2006, "On labour inspection and the state labour inspectorate", as amended

One of the primary duties of this institution is to ensure the implementation of legal provisions governing working conditions and the protection of employees in the exercise of their profession. The organization and functioning of the Labour Inspectorate are regulated in a specific manner by Council of Ministers' Decision No. 1139, dated 16.07.2008, "On the Organization and Functioning of the State Labour Inspectorate".

Pursuant to the provisions of this Law, employers are under an obligation to notify the Labour Inspectorate of all occupational accidents, whether resulting in death or not, as well as of occupational diseases. During the

inspection process carried out at the workplace for the purpose of enforcing labour legislation, the labour inspector draws up an expert inspection report, which, in judicial practice concerning civil cases with the object of compensation for damages claimed by employees, has been accorded full evidentiary value for establishing the occurrence of an occupational accident.

2.4. Law No. 135, dated 22.12.2016, “On occupational safety and health, emergencies and rescue in mining activities and underground works in hydropower facilities”

The purpose of this Law is to define the general principles governing occupational safety and health, emergencies, and rescue in mining activities and in underground works of hydropower facilities. This Law also places emphasis on the proper implementation of occupational safety requirements, the monitoring of which is ensured through the establishment of the National Authority for Safety and Emergencies in Mines (AKSEM).

This authority is competent for carrying out safety inspections, risk assessment, the determination of preventive measures, the imposition of sanctions, and intervention in cases of emergencies and rescue operations in mining activities and underground works of hydropower facilities, including situations involving risk to or loss of life, as well as serious emergency cases that require the intervention of emergency and rescue teams and the examination of the accident site by this institution.

3. Sub-legal acts in the field of occupational protection and safety

For the implementation of the above-mentioned legal acts, a number of decisions have been adopted by the Council of Ministers. Among these, the following acts are relevant for the purposes of this training:

3.1. Council of Ministers’ Decision No. 788, dated 14.12.2005, “On the definition of an occupational accident”

Point 1 of this Decision provides the definition of an occupational accident, formulated as follows:

“An occupational accident or an accident arising out of work is an immediate bodily injury occurring during the performance of work or during a process related to work, as well as any other damage to health

that does not derive from a general disease, but results in temporary or permanent incapacity for work or death.”

Closely related to the above definition, point 2 of this sub-legal act exhaustively lists the cases in which an accident shall be considered to have occurred at work or as a result of work, as follows:

“An accident is deemed to have occurred at work or as a result of work when the employed person is injured: (a) during the performance of regular work; (b) during the performance of another task, without the employer’s order, but for reasons of necessity, in the interest of work; (c) during the performance of another task upon the employer’s request; (ç) during rest time, in the designated place, or while adjusting machinery, work tools, or work clothing, before or after the end of working hours (d) during travel along the direct route from the residence to the workplace and vice versa, both in cases where transport is organized by the employer and where it is individual.”

This Decision also establishes the employer’s obligation that, in every case of an occupational accident or an accident arising out of work, the employer or the responsible person designated by him or her must notify, within three (3) days, the State Labour Inspectorate and the Social Insurance Institute.

It should be noted that this sub-legal act was adopted prior to Law No. 10237, dated 18.02.2010, and in specific cases of judicial practice, courts have directly applied its provisions when assessing whether an alleged event constitutes an occupational accident. Thus, in a case from judicial practice that was concluded in chambers by the Supreme Court, with a decision declaring the appeal inadmissible (decision dated 07.03.2024 of the Civil Chamber), the courts of fact assessed the sudden event causing injury to an employee as an occupational accident, notwithstanding the employer’s objection that at the moment the employee fell to the ground he was not performing work.

In interpreting and correctly applying point 1 and point 2, letter “c”, of this Decision, the courts concluded that the issue of whether the employee was actually performing work at the relevant moment is of no legal significance, insofar as an occupational accident may also occur during rest time. In this regard, for an event to be classified as such, it is sufficient that it occurred during working time and within the workplace premises, and that the health damage was not the result of a general disease (**Decision No.**

408, dated 08.02.2016 of the Vlora District Court, upheld by Decision No. 2239, dated 03.10.2016 of the Vlora Court of Appeal).

3.2. Council of Ministers' Decision No. 107, dated 09.02.2011, "On the composition, rules of organization and functioning of the Occupational Safety and Health Council and the employees' representative"

This Decision provides that, with the aim of guaranteeing employees' rights related to occupational safety and health, every entity must establish an Occupational Safety and Health Council composed of representatives of employees and employers. Where the activity and work processes involve a high level of risk to occupational safety and health, an employees' representative must be appointed regardless of the number of employees.

The mission of the Occupational Safety and Health Council is to contribute to the protection of employees' physical and mental health and safety, as well as to the improvement of working conditions.

3.3. Council of Ministers' Decision No. 692, dated 13.12.2001, "On special measures for occupational safety and health protection"

This sub-legal act provides for special measures that employers must adopt in order to protect and ensure the life and health of employees at work. Among the most important measures, as evidenced by judicial practice, is the obligation to provide employees with appropriate instructions for the protection of health at work and for the knowledge and application of technical safety rules.

Under this Decision, the employer is also obliged to ensure the establishment and operation of a medical service, through the enterprise physician, in all entities carrying out productive activities, whether private or public, domestic or foreign, legal entities or natural persons.

3.4. Council of Ministers' Decision No. 562, dated 03.07.2013, "On the approval of the regulation 'On minimum safety and health requirements for the use of work equipment at the workplace'"

This Regulation lays down the minimum safety and health requirements for the use of work equipment by employees at their workplace. These minimum requirements must first be fulfilled by the employer, who is

responsible for guaranteeing them, and subsequently by the employee, who is obliged to comply with and implement these minimum requirements in order to ensure that work activities are carried out as safely as possible.

The employer shall take the necessary measures to ensure that the work equipment made available to employees at the workplace is suitable for the work to be performed or is properly adapted for that purpose, and that it can be used by employees without endangering their safety and health. For work equipment that presents a particular risk, the employer must ensure that it is used only by employees who are qualified or specifically assigned to carry out such work. To this end, the employer must also provide training to employees regarding any potential risks, especially to those employees whose duties include repairing, modifying, maintaining, and carrying out maintenance services on work equipment.

3.5. Council of Ministers' Decision No. 564, dated 03.07.2013, "On the approval of the regulation 'On minimum safety and health requirements at the workplace'"

This Regulation establishes the minimum safety and health requirements at the workplace, excluding: (a) means of transport used outside the undertaking and workplaces inside means of transport; (b) temporary or mobile construction sites; (c) extractive industries; (ç) fishing vessels; (d) fields, forests, and other areas that are part of agricultural and forestry undertakings and are located outside buildings and the territory of the undertaking.

In order to ensure the safety and health of employees and other persons at the workplace, the employer shall ensure: (a) that access routes to emergency exits and the exits themselves are kept open at all times; (b) the technical maintenance of the workplace and of tools and equipment, as well as the prompt correction, as soon as possible, of any identified defect that compromises safety and health at the workplace; (c) the continuous inspection and maintenance of safety equipment and protective devices for the prevention of risks and the elimination of hazards; (ç) the continuous cleaning of the workplace, work equipment and tools, as well as other areas connected to the workplace, in order to ensure an appropriate level of hygiene.

The employer must provide employees with appropriate information regarding all measures taken to prevent risks at the workplace, with the

aim of ensuring a safe and healthy working environment.

3.6. Council of Ministers' Decision No. 312, dated 05.05.2010, "On the approval of the regulation 'On safety at construction sites'"

This Regulation lays down the minimum safety and health requirements for temporary or mobile construction sites, as well as the general supervisory measures that must be taken by the employer. Annex V of the Regulation provides for the employer's obligation to assess all risks to the safety and health of employees, including those groups of employees who are exposed to particular risks, when selecting work equipment and chemical substances or preparations used, and in the layout and organization of workplaces.

II. Employer's liability for compensation of damage caused by occupational accidents, with reference to the provisions of the Labour Code and the Civil Code. The distinction between contractual and non-contractual liability

The employment relationship, like any other obligation-based legal relationship, is created on the basis of the mutual will of the contracting parties. The establishment and termination of the employment relationship, as with any other obligation-based relationship, founded on the reciprocal will of the contracting parties, is not only an expression of the principle of contractual autonomy of will, but is also consistent with the legal definition of the employment contract. The application of the general principles of the law of obligations to the employment contract, notwithstanding the specific characteristics it presents in order to ensure the protection of employees' rights as the weaker party, has also been emphasized in Unifying Decision No. 19, dated 15.11.2007, of the Joint Chambers of the Supreme Court.

Article 12 of the Labour Code provides that: "*An employment contract is an agreement between the employer and the employee that regulates the employment relationship and governs the rights and obligations of the parties. Under the employment contract, the employee undertakes to provide his or her work or service for a definite or indefinite period of time, within the framework of the organization and orders of the other person, referred to as the employer, who undertakes to pay remuneration.*"

In this sense, the only parties to this contract to whom contractual rights

and obligations apply are the employee and the employer. Consequently, any damage caused by the breach of these obligations gives rise to the contractual liability of the parties for its compensation. Conversely, where the damage is not caused by the breach of contractual obligations and the injured persons are not parties to the contract, the nature of the liability arising in such cases is non-contractual.

Legal doctrine recognizes that an employee injured in an occupational accident has at his or her disposal two specific protective remedies to seek compensation from the employer for the damage suffered as a result of the accident at work: both an action for compensation of contractual damage and an action for compensation of non-contractual (tort) damage.

The dual nature of these protective remedies is обуслов by the concurrent operation of two legal principles: (i) the general principle that “no one should suffer harm,” according to the theory of protection of psycho-physical integrity, which safeguards the employee independently of the employment relationship; and (ii) the contractual obligation of the employer, provided for by law, to take all necessary measures to protect the physical integrity of his or her employee.

Italian jurisprudence has long acknowledged both contractual and non-contractual liability in the field of occupational accidents, as well as the possibility of bringing the respective claims alternatively, insofar as the breach of the contractual obligation to take the necessary measures to ensure the protection of the employee’s physical integrity may also give rise to an infringement of rights that may occur independently of the employment relationship (**Decision No. 4078, dated 08.04.1995, of the Italian Court of Cassation**).

In cases of occupational accidents resulting in death, the heirs or relatives of the deceased may seek compensation for the damage caused by such an event only within the framework of non-contractual liability, since they are not parties to the individual employment contract.

The same conclusion was reached by the Civil Chamber in Decision No. 00-2023-5022 (Decision No. 677), dated 22.11.2023, which, inter alia, with regard to the type of liability for compensation of damage claimed by the family members of an electrician who lost his life in an occupational accident, reasoned as follows: “*The Chamber initially deems it necessary to analyze whether, in the present case, as argued and analyzed by the courts of fact, we are faced with non-contractual damage, pursuant to the*

provisions of Article 608 et seq. of the Civil Code, and not, as claimed by the appellant, the defendant, and the State Attorney's Office, that there existed a legal employment relationship between the deceased and the defendant, pursuant to the provisions of the Labour Code, the Individual and Collective Employment Contracts, and the law on Social Insurance. According to Article 608 of the Civil Code, a person who, unlawfully and with fault, causes damage to another person or to his or her property is obliged to compensate the damage caused. In the present case, the Chamber considers that the fact that, on 19.02.2014, citizen PD lost his life as a result of electrocution constitutes non-contractual damage for the following reasons: First, the claimant party was not a party to the employment contract concluded with the defendant. Thus, the claim filed by the plaintiffs was brought against the defendant in order to seek compensation for the unlawful act that occurred, namely the death of the deceased PD, as a consequence of the unlawful actions/omissions of the defendant. According to civil law theory and practice, non-contractual or tort liability concerns the obligation to repair damage caused to a third party. In this sense, the Chamber considers that the damage claimed by the plaintiffs is non-contractual damage, as it concerns non-pecuniary damage that the plaintiffs allege to have suffered and with respect to which they were not contractual parties. Pursuant to Article 690 of the Civil Code, a duly concluded contract has the force of law for the parties, but not for third persons who are not parties to the contract. Any damage caused to a third party gives rise to non-contractual liability. Second, the Chamber considers that the unlawful fact that occurred, namely the loss of life, cannot be determined as a contractual condition in the individual employment contract concluded between the deceased PD, in his capacity as employee, and the defendant, in his capacity as employer. Third, in the case under examination, the plaintiffs allege the omission of the defendant, OSHEE sh.a., in failing to take measures to comply with the technical conditions of the substation, whereas the employment contract was concluded to regulate the relationship between the deceased in his capacity as employee and the defendant in his capacity as employer, and not to regulate the unlawful act."

In the judicial practice of our country, it is observed that there has not always been a clear understanding of the distinguishing features related to the identification or differentiation of the concrete nature of this liability.

In general, there is a tendency to accept it as liability for compensation of non-contractual damage, in accordance with the conditions of fault-based liability provided for in Articles 608 and 609 of the Civil Code. For civil liability for compensation of non-contractual damage to arise, by reference to these provisions, four conditions must be cumulatively fulfilled: (i) the existence of damage; (ii) the existence of an unlawful act or omission; (iii) the existence of fault; (iv) the existence of a causal link between the unlawful act or omission and the damage incurred.

Such an approach is also encountered in cases where the injured party in an occupational accident is the employee, as one of the parties to the employment contract, who has suffered health damage caused by the breach of contractual obligations — elements which clearly characterize the respective liability as contractual in nature.

The avoidance of applying Article 39 of the Labour Code, which specifically regulates the employer's contractual liability in such cases, is a position that is not infrequently encountered.

Thus, in a case examined by the Tirana District Court, which subsequently proceeded through the two higher levels of jurisdiction, a tendency to avoid the application of this provision became apparent, despite the fact that it concerned an employee who had suffered health damage during the performance of duties arising from the employment contract.

Circumstances of the case: *“The claimant R.H. was and remains an employee of the defendant, the company ‘OSHEE’ JSC, in the position of ‘field electrician’. In the performance of his duties, on 28.05.2013, the claimant R.H. and another electrician, X.H.P., went to Farkë e Madhe, Tirana, where they were to install an electricity meter for a customer on a utility pole. While working at height on the pole, the claimant slipped and fell to the ground, suffering a fracture of the left leg and other injuries. The injured claimant was taken to the University Hospital of Trauma in Tirana, where he received specialized medical treatment, including surgical intervention on his leg. Upon discharge from the hospital, the claimant was granted medical leave for a period of two months and subsequently underwent assessment before the Medical Commission for Determining Work Capacity (KMCAP). According to a certificate issued by KMCAP, the commission found the claimant to be ‘partially disabled’ and recommended that he perform only six hours of work per day.”*

By Decision No. 4671, dated 01.06.2016, the **Tirana District Court** ruled: *“Acceptance of the statement of claim. Ordering the defendant, the Electricity Distribution Operator, to compensate the claimant for pecuniary and non-pecuniary damage.”* With regard to the type of liability, the court reasoned as follows: *“Since the correct determination of the legal relationship from which the dispute between the parties has arisen, by reference to the relevant substantive provisions, is of great importance both for the proper structuring of the proceedings and for the fair resolution of the case, we consider it necessary to emphasize that the principal object of the claims, upon which all the claimant’s allegations rest, is entirely a civil-law relationship of non-contractual damage. Consequently, the dispute under examination shall be governed by the provisions of the Civil Code, namely Articles 608–647 thereof. Article 39 of the Labour Code, as the sole provision providing that the employer must compensate the employee when the accident is caused by the employer’s fault, is a provision of a general/principled nature, which does not provide a sufficiently complete solution to the issue of damage compensation, particularly regarding forms of non-pecuniary damage (biological, moral, and existential damage). Furthermore, the employment contract concluded between the parties does not provide solutions to the issues forming the subject of the dispute.*

Referring to the inspection report of the State Labour Inspectorate, the legal violations that caused the accident consist of breaches of Article 43, paragraphs 1, 2, and 3, of Law No. 7961, dated 12.07.1995, ‘Labour Code’, and failures to implement technical safety measures in accordance with Articles 39 and 40 of the Labour Code, thereby fulfilling the legal conditions for the existence of non-contractual damage.”

By Decision No. 140, dated 31.01.2018, the **Tirana Court of Appeal** ruled: *“Annulment of Decision No. 4671, dated 01.06.2016, of the Tirana District Court, and remittal of the case for retrial before the same court with a different panel.”* Regarding the nature of liability, the Court of Appeal reasoned: *“The contractual nature of the legal relationship under examination cannot be altered merely by the claimant’s assertion that ‘we are dealing with non-contractual damage’. It is, in fact, the duty of the court to correctly qualify the facts, regardless of the qualification given by the parties in the proceedings. On the other hand, the first-instance court, in concluding that the defendant bears liability for the damage caused, relied on an inspection report of the State Labour Inspectorate. This Court*

considers it erroneous to accept that, in an employment relationship, the employer has breached contractual obligations provided for in the Labour Code, yet must respond for non-contractual damage. As stated above, the Court of Appeal considers that there is no legal obstacle, even where we are faced with a contractual relationship and damage caused during that relationship, to conclude that, in the absence of specific provisions regulating the method of damage assessment, and where the parties have not regulated this issue in their contract, the court may calculate the damage by applying analogous norms or by referring to unifying decisions of the Joint Chambers of the Supreme Court, such as Decision No. 12, dated 14.09.2007, adopted precisely in the context of a lack of specific regulation in a given field. More specifically, where the Labour Code provides that, in cases of accidents due to the employer's fault, the employer pays the difference between the damage and the compensation received, the court faces no obstacle in calculating pecuniary damage by referring to Articles 640 et seq. of the Civil Code and Unifying Decision No. 12 of the Joint Chambers of the Supreme Court, while determining the amount of compensation according to the aforementioned difference — an approach that does not contradict either the Civil Code itself or the unifying decision.”

Finally, **the Civil Chamber of the Supreme Court**, by Decision dated 04.10.2023, ruled: “Annulment of Decision No. 140, dated 31.01.2018, of the Tirana Court of Appeal, and remittal of the case for re-examination before the Court of Appeal of the General Jurisdiction, with a different panel.” The Chamber reasoned: “From the obligation arising under Articles 5 and 16 of the Civil Procedure Code to identify the object of the dispute and resolve it based on the correct qualification of the facts and actions related to it, without being bound by the qualification given by the parties, there can be no exemption for the appellate court, insofar as it is a court of both fact and law. Civil procedural law contains no special provision limiting the applicability of Articles 5 and 16 CPC solely to the first-instance court, or granting their obligations an exclusive nature that would preclude correction of defects arising from their improper application by the appellate court. In this sense, there was no legal obstacle preventing the appellate court, even under a different qualification, from concluding that a different nature of damage existed and resolving the dispute in accordance with such a conclusion.”

With reference to the reasoning of the courts of fact, the following issues arise for discussion:

- Based on the circumstances of the case, are we dealing with contractual liability or non-contractual (tort) liability for compensation of the damage suffered by the employee in the concrete case?
- Does the correct classification of the employer’s liability in cases of occupational accidents—as contractual liability pursuant to Article 39 of the Labour Code, or as non-contractual liability pursuant to Articles 608, 609, and 640 of the Civil Code—have any practical significance in determining the type and extent of compensable damage, beyond the merely theoretical distinction between these two forms of liability?
- How does the Civil Code ensure the avoidance of double recovery by an employee injured in an occupational accident in cases where the employer’s liability is treated as non-contractual, given that Article 39 of the Labour Code expressly provides for the deduction of social insurance benefits in the framework of contractual liability?

A similar approach is reflected in **Decision No. 4917, dated 04.10.2023, of the Court of First Instance of the General Jurisdiction of Tirana**, in a case of comparable nature. In that case, although in determining the amount of compensation awarded to the claimant the court took into account the benefits received from social insurance and deducted them from the total compensation amount—pursuant to the principle of fair compensation, which includes the avoidance of double compensation—it nevertheless refrained from expressly referring to Article 39 of the Labour Code. In reality, since the deduction of social insurance benefits was effectively applied, reliance on Article 39 of the Labour Code would have entailed classifying the employer’s liability as contractual rather than non-contractual, contrary to the qualification adopted in the reasoning of the decision.

A further question arising from the reasoning of this judgment is whether Article 39 of the Labour Code, concerning the deduction of social insurance benefits from the total amount of damage, is applicable in cases where compensation is claimed by the heirs or relatives of an employee who lost his life as a result of an occupational accident.

In another case from judicial practice, although the full content of Article 39(2) of the Labour Code is not reproduced, this provision is nevertheless cited in the context of treating the employer's liability for damage caused to its employee as non-contractual liability governed by the Civil Code, even attributing to it an opposite meaning. Thus, **the Berat District Court, by Decision No. 104, dated 04.02.2014**, inter alia, reasoned: *"During the court hearing, the defendant argued that, since the claimant A.S. receives an invalidity pension and is covered by the social health insurance scheme, she has no right to seek compensation from the employer. The Court finds that the defendant's argument is unfounded in law, as it contradicts the general provisions of the Civil Code on the treatment of damages, as analyzed above, as well as Article 39(2) of the Labour Code."*

In judicial practice, it is also observed that the absence of a contractual relationship between the person injured in an occupational accident and the legal entity carrying out a dangerous activity, from which the accident resulted, has been considered decisive in assessing the lack of passive standing (*locus standi*) of the legal entity summoned as a defendant in such proceedings.

This judicial case followed all three levels of jurisdiction and concluded with **Decision No. 00-2023-4828, dated 22.11.2023**, delivered by the Civil Chamber of the Supreme Court. **Circumstances of the case:** *"The claimant worked as a private electrician in his neighborhood. On 20.05.2008, he was contacted by telephone by P.L., one of the owners of the private pole-mounted substation FA, who offered him private work. The claimant alleged that the work for which he was hired concerned the private pole-mounted substation FA and involved dismantling the TU panel, the 100 kW power transformer, the medium-voltage fuse group, and the block of passing insulators where the bridges were connected. This substation was used to supply electricity to surrounding houses, but according to P.L., the electrical substation was out of operation, as confirmed by specialized personnel of KESH. P.L. also stated that an attempt had previously been made to dismantle the substation, at which time it was verified that no electric current passed through it and that the surrounding houses were no longer supplied by this substation, since a new 20 kW line had been installed in the area. Furthermore, the bridges had been removed and the switches opened. The claimant further alleged that, in such cases,*

KESH has the obligation to disconnect the substation from the electricity distribution network. Given that he had previously been an employee of KESH, and considering the overall circumstances, the electrical substation should have been disconnected from the distribution network and should not have been energized. On this basis, he proceeded with the work. Under these circumstances, after being injured by electric current during the performance of this work, and alleging that the defendant party was responsible for the accident, the claimant brought the present action before the court.”

At the conclusion of the proceedings, **the Tirana District Court, by Decision No. 7623, dated 03.07.2014, ruled:** “*Dismissal of the statement of claim.*” In summary, the District Court reasoned that: “*There existed no relationship or interaction between the claimant and the defendant party that could have caused the serious consequence, since the claimant was not in an employment contractual relationship with the defendant. The claimant K.K. and his employer P.L. were working privately and without the knowledge of the defendant party. The technical safety regulations clearly provide that any intervention in medium- or high-voltage systems in any type of installation may only be carried out with a work authorization approved by the regional directorate of Tirana, which the claimant and the third person did not possess. In the case under examination, the unlawful conduct would consist in employing the claimant in violation of the legal requirements provided by the Labour Code.*”

Upon the claimant’s appeal, **the Tirana Court of Appeal, by Decision No. 1845, dated 23.07.2015, ruled:** “*Upholding Decision No. 7623, dated 03.07.2014, of the Tirana District Court.*” In summary, the Court of Appeal reasoned that: “*The claim fails both in terms of proof and in legal terms. The defendant party committed no unlawful and fault-based act that caused damage to the claimant, since there was no contact and no contractual employment relationship between the claimant and the defendant. Moreover, even assuming that the substation was private, the owner of the substation was required to carry out a series of procedures, and the claimant—who alleges that he had previously served as an electrician—should have been fully aware of the technical safety rules, specifically the regulation on technical safety and the operation of electrical installations. In the present case, no causal link is established between any unlawful conduct of the defendant party and the damage suffered by the claimant.*

The damage resulted from the independent actions of the claimant.”

The Civil Chamber of the Supreme Court declared inadmissible the appeal filed by the claimant, holding that no legal grounds provided under Article 472 of the Civil Procedure Code were identified to justify admissibility of the appeal.

In this case, it is evident that the courts of fact limited their assessment to the absence of an employment relationship between the claimant and the defendant, correctly concluding that the defendant could not bear contractual liability. However, for the purposes of fully verifying passive standing, it remains unclear why the courts did not examine the possible non-contractual liability of the defendant, given that the damage was connected to the dangerous activity carried out by that party, within the framework of objective liability regulated by Article 622 of the Civil Code. Furthermore, according to the technical report of IQT, it emerged that the damage was also caused by the defendant’s omission in failing to disconnect the electric power supply to the substation, despite the fact that the substation had previously been disconnected from the electricity network.

Judicial practice has also revealed cases reflecting the opposite situation to that discussed above, namely instances in which liability for compensation of damage was not analyzed within the framework of the employment relationship during which the occupational accident occurred.

In one such case, decided by **Judgment No. 20-2017-915/489, dated 22.11.2017, of the Gjirrokastër Court of Appeal**, the claimants sought compensation for the damage resulting from the death of their family member in an occupational accident, not against the deceased’s employer, but against “OSHEE” JSC, which had concluded a subcontracting agreement with the deceased’s employer for the performance of works related to the reconstruction of electrical substations. More specifically, it was established that, during the work process on a high-voltage pole, the deceased came into contact with the electric current of the 6 kV network and, as a consequence, lost his life. In relation to this event, the Prosecutor’s Office of the Gjirrokastër Judicial District registered criminal proceedings No. 20/2016 for the criminal offence of “Violation of occupational safety rules,” provided for under Article 289 of the Criminal Code. In the electrical expert report conducted during the first-instance proceedings, the following conclusions were reached, inter alia: *“The passage of*

*electric current through the body of the deceased D.B., at the workplace, resulted from the failure to take organizational and technical measures, and from non-compliance with the Technical Conditions for Design and Implementation of the ABC line by 'OSHEE' Gjirokastër—factors which constitute a serious and constant threat to life. **The obligation to implement 'technical measures' lies with the operational personnel of the Gjirokastër Electrical Unit. Responsibility for enforcing technical safety rules in public and private entities lies with the employer and the electrical specialist specifically appointed by the employer.***

The Gjirokastër District Court ruled for partial acceptance of the claim, ordering the defendant "OSHEE" JSC to pay each of the claimants both pecuniary damage and non-pecuniary damage in the maximum amount, calculated according to the variant based on the average gross salary, as determined by the valuation expert. With regard to the fulfillment of the conditions for civil liability for compensation of the damage claimed by the plaintiffs, the Gjirokastër District Court, on page 7 of its decision, reasoned as follows: *"In the present case, it was proven, as cited above, that citizen D.B. died while performing his duties at work, due to the failure to apply the Technical Safety Regulation by the employer. The electrical expert report concluded that the death of the deceased was caused by the culpable omission of the defendant party (pursuant to Article 618 of the Civil Code, the employer is liable for damage caused to third parties due to the fault of employees in its service), which entails the emergence of the non-contractual civil liability of 'OSHEE' JSC for the event that occurred..."*

The Gjirokastër Court of Appeal decided to annul the decision and remit the case for retrial, reasoning as follows: *"In the electrical expert report, the experts, in the explanatory part of their conclusions and in their responses to the questions posed by the defendant party, clarified that the obligation to take organizational measures lies with the technical manager of the works, engineer P.K., employed in that capacity by the company 'Kronos Konstruktion' LLC, and that responsibility for enforcing technical safety rules in public and private entities lies with the employer — who, in the present case, is not the defendant 'OSHEE' JSC, but rather the company 'Kronos Konstruktion' LLC. The lack of clarity or misunderstanding by the first-instance court regarding the role of 'Kronos Konstruktion' LLC in the contractual relationship it had either with the deceased D.B.*

or with the defendant 'OSHEE' JSC at the time of the accident in which D.B. lost his life, from the beginning until the conclusion of the judicial examination, is also reflected in the final decision under appeal. In that decision, in a contradictory manner, both the liability of the defendant 'OSHEE' JSC for the damage suffered by the claimants and the liability of the employer company 'Kronos Konstruksion' LLC are acknowledged, even though the latter was not a participating party in these proceedings. Upon retrial of the case, in accordance with the procedural provisions governing the participation of third parties in civil proceedings, the first-instance court, even ex officio pursuant to Article 193 of the Civil Procedure Code, must summon the company 'Kronos Konstruksion' LLC as a third party in these proceedings. Depending on the explanations it provides in relation to the parties' claims or objections and the assessment of the evidence gathered in the proceedings, its further procedural position should be clarified, including the possibility of being joined as a defendant — always respecting, in particular, the will of the claimants as expressed under Article 161(c) of the Civil Procedure Code.”

III. Fault-based liability, strict liability, and mixed liability. Issues encountered in judicial practice

In legal doctrine, it is accepted that the question of the legal nature of the employer's liability in relation to damage caused to the employee must be analyzed from a dual perspective. On the one hand, it must first be assessed whether this liability is contractual or non-contractual in nature; on the other hand, taking into account the subjective element required for its emergence, the issue arises as to whether, in such cases, we are dealing with fault-based liability or liability without fault (strict liability).

Clarifying this dual nature of the employer's liability is important not only from a theoretical standpoint, but also because it directly affects the determination of mandatory passive standing in litigation, limitation periods for bringing claims, and the allocation of the burden of proof in a concrete case. The employer's fault-based liability applies both in cases of damage of a contractual nature and in those of a non-contractual nature.

With regard to contractual liability, the fault of the employer as a condition for the emergence of such liability is specifically provided for in Article 39 of the Labour Code, and more generally in Article 476 of

the Civil Code. Article 39 of the Labour Code provides: “1. *In order to prevent occupational accidents and occupational diseases, the employer must clearly define technical safety rules.* 2. *The employer must pay the difference between the damage and the compensation received by the employee from social insurance when the accident or occupational disease is the result of the employer’s gross fault.* 3. *Where the employer has not registered the employee in the social insurance scheme, the employer must bear all expenses incurred by the employee as a result of the accident or occupational disease, as well as all damage resulting from non-registration.*”

This provision, insofar as it concerns the employer’s obligation to define and implement clear and secure measures for preventing occupational accidents, must be read in close connection with Article 4 of Law No. 10237, dated 18.02.2010, “On Occupational Safety and Health”, as amended, which provides: “1. *The employer is obliged to ensure the protection of employees in all aspects relating to occupational safety and health.* 2. *The employer is not relieved of responsibility even in cases where it contracts external persons or uses specialized services outside the enterprise/institution, in implementation of paragraph 3 of Article 7 of this Law.*”

From a literal and systematic interpretation of these provisions, it follows that the employer’s liability is differentiated depending on whether or not the employee is registered in the social insurance scheme. Where the employee is registered, the employer’s liability is limited to the extent that the damage exceeds the compensation provided by social insurance, and a necessary condition for the emergence of such liability is proof of the employer’s gross fault. Where the employee is not registered, the employer is considered at fault *ipso lege*, due to this legal violation, and is obliged to compensate not only the employee’s health damage but also the damage resulting from non-registration. The requirement of gross fault of the employer, imposed by paragraph 2 of Article 39 of the Labour Code, not only contradicts the general principle of fault-based liability equally applicable to both contractual and non-contractual liability under Articles 476 and 608 of the Civil Code, but also places a disproportionate and unfair burden of proof on the employee, as the weaker party. Moreover, the provision does not clarify the notion of “gross fault”, does not establish any assessment criteria, and thus leaves

room for subjective and inconsistent interpretations.

It is noteworthy in this regard that, under Article 27 of the Labour Code, in cases of employee liability for damage caused to the employer, the employee is required to compensate the employer even where the damage results from negligent breaches of contractual obligations. According to Italian doctrine, in cases of the employer's contractual liability for damage resulting from occupational accidents, the same rule concerning the burden of proof applies as the general principle of the law of obligations set out in Article 1218 of the Italian Civil Code, which provides: "*The debtor who fails to correctly perform the obligation arising from the contract is obliged to compensate the damage, unless he proves that the improper performance or delay resulted from an impossibility due to causes beyond his will.*"

In the context of the employer's contractual liability, this means that the employer is presumed to be at fault unless he proves the contrary. The same general rule in Albanian legislation is provided for in Article 476 of the Civil Code, which states: "*Any deficiency in the performance of obligations obliges the debtor to compensate the damage suffered by the creditor, unless he proves that the non-performance did not occur due to his fault.*"

According to this general rule, the presumption of fault on the part of the debtor must apply equally in cases of contractual liability for damage caused by occupational accidents. In this sense, the employer, as the debtor due to failure to fulfill the obligation to ensure safety in the workplace, is presumed at fault for the damage caused to the employee and may be released from such liability only if he proves that the impossibility of fulfilling this obligation occurred due to causes beyond his will.

Regarding the allocation of the burden of proof between the parties, the basic doctrinal principle is that the employee claiming pecuniary and non-pecuniary damage must prove the existence of the contractual relationship, the breach of the employer's contractual duty of care and safety at work, the existence of damage, and the causal link between the breach of the employer's contractual obligation and the damage suffered.

Recent Italian jurisprudence emphasizes that the burden of proof differs for the employer and the employee, depending on whether the safety measures imposed as obligations are expressly defined or not. Express safety measures are those specifically provided by law and based on

the assessment of the foreseeability of specific risks. Unspecified safety measures are general measures whose content must be interpreted in the context of a particular case.

- **Employer's Liability Without Fault**

This form of liability manifests in two types: (i) **objective liability** (liability arising from the exercise of a dangerous activity), governed by Article 622 of the Civil Code; and (ii) **derived liability** (liability for the fault of the employee), governed by Article 618 of the Civil Code.

- ❖ **Objective Liability**

The employer's liability may also arise as objective liability. In view of the content of the employer's contractual obligations, such liability should in principle be fault-based. Indeed, by establishing the employer's duty to undertake the necessary measures according to experience and technical knowledge, the law has acknowledged that the employer's liability cannot extend to every hypothetical instance of damage that might be caused to the employee. Otherwise, liability would arise automatically for every harmful event, including those that are unimaginable, unforeseeable, and above all unavoidable.

Conversely, the constitutive element of the employer's liability, which remains fault, implies both the lack of diligence in foreseeing appropriate measures to prevent damage according to the nature of the work, and the breach of behavioral duties specifically imposed by substantive legal norms or suggested by technical developments — duties that must, however, always be individualized.

In this regard, Decision No. 1234/2016 of the Italian Court of Cassation emphasized: *"The inadequacy of protective measures adopted cannot be presumed solely from the occurrence of the damage; it is necessary that the protected harm be causally linked to the breach of legal obligations suggested by scientific and technical knowledge in relation to the concrete work performed."* For this reason, fault-based liability must not be confused with objective liability, under which the employer is not required to take every conceivable preventive measure, but only those closely connected with the characteristics of the activity carried out, and with the external and internal conditions of the workplace, which are suitable to prevent

potential damage.

Objective liability in Albanian legislation is regulated by Article 622 of the Civil Code, which provides: “*A person who carries out a dangerous activity by its nature or by the nature of the objects used, and causes damage to others, is obliged to compensate the damage, unless he proves that he has applied all appropriate and necessary measures to prevent the damage.*”

From the wording of Article 622 of the Civil Code, it follows that objective liability in cases involving dangerous activities is based on a rebuttable legal presumption, since the legislator allows the presentation of counter-evidence to overturn such presumption. The distinguishing feature of this liability, deriving from this rebuttable presumption, is reflected in the manner of allocating the burden of proof to the person presumed to have caused the damage due to the activity carried out.

Where, in the course of exercising a dangerous activity related to the realization of the object of the employment relationship, an accident occurs resulting in injury or loss of life to others, the burden of proof shifts to the employer to demonstrate that all appropriate and necessary safety measures were taken to protect life and health at work and to prevent the damage. In essence, this relates to the unforeseeability and inevitability of the damaging event — that is, cases where the harm results from the unlawful and intentional conduct of the injured person himself, from force majeure, or where all technical and scientific measures known or knowable at the time of the damage were applied, regardless of whether such measures were expressly provided for in regulations governing the relevant field.

It must be emphasized that, in contrast to the general principle, the injured party — being a subject distinct from the one carrying out the dangerous activity — does not bear the burden of proving that the conduct of the person causing the damage was unlawful or at fault; it suffices to prove the existence of a causal link between the damage suffered and the dangerous activity exercised by the employer. Consequently, causation constitutes the determining criterion for the existence of objective liability, in the sense that objective liability cannot arise where there is no causal link between the employer’s conduct and the concrete consequence resulting from that conduct.

In the judicial practice of Albanian courts, although most cases concern

occupational accidents occurring during economic activities involving increased risk, it is observed that there is not always a correct understanding of objective liability arising from the exercise of such activity by the employer. This is because objective liability is often conflated with the elements of fault-based liability, and the distinction that the absence of fault is precisely the defining feature of objective liability is not consistently recognized.

Thus, in a case concerning damage caused by a navigation activity, defined as dangerous by the Maritime Code (Article 7), which passed through all three levels of jurisdiction and concluded with Decision No. 00-2023-102, dated 17.01.2023, of the Civil Chamber of the Supreme Court, this type of problem is clearly evidenced.

Facts of the Case *“The deceased P.J. was in an employment relationship with the defendant, the company ‘Anijet e Shërbimit Detar’ JSC, holding the position of seaman and forming part of the crew of the tugboat ‘Iliria’. On 29.12.2014, a malfunction occurred on the passenger ferry ‘Norman Atlantic’, causing a fire. In these circumstances, assistance was requested by the captain of that vessel. Initially, the tugboat ‘Adriatik’ and subsequently the tugboat ‘Iliria’—of which the deceased P.J. was a crew member—went to assist the ferry. During the assistance operations provided to the ferry ‘Norman Atlantic’, the deceased P.J. lost his life. The Prosecutor’s Office at the Vlora District Court conducted investigations regarding the criminal offence of ‘Violation of occupational safety rules’, provided for in Article 289 of the Criminal Code. Upon conclusion of the investigation, the criminal proceedings were discontinued on the ground that the act was not classified by law as a criminal offence.”*

At the conclusion of the proceedings, **the Vlora District Court, by Decision No. 138 dated 31.01.2018**, ruled: *“Acceptance of the claim.”* The court reasoned: *“The Maritime Code provides in Article 7 that: ‘Activity with vessels ... constitutes an activity with increased risk within the meaning of the Civil Code.’ Meanwhile, the secondary legislation in force at the time concerning licensing procedures and criteria imposed on the defendant the obligation to insure this dangerous activity, including liability for damage caused to third parties and passengers in their person or property. The Court considers that assistance activities using vessels at sea constitute a dangerous activity within the meaning of Article 622 of*

the Civil Code. During the judicial examination, it was established that the deceased P.J. died as a result of being struck by a cable while assisting the tugboat 'Adriatik'. The Court holds that it is irrelevant whether the acts or omissions of the defendant were unlawful or committed with fault. It is irrelevant, for the purposes of applying the law, that criminal proceedings were not initiated against the defendant in relation to the event. It is irrelevant whether the weather conditions were adverse, whether the engine failure was sudden, or other surrounding circumstances. These are not circumstances which, under the law, exempt the person exercising a dangerous activity from liability for the damage caused. The Court finds that the defendant, the company 'Anijet e Shërbimit Detar' JSC, must prove that, by way of exception to the legal presumption of liability for the damage caused to the claimant, it exhausted all measures known or that could have been known to prevent the damage, from the perspective of scientific knowledge at the time the event occurred. From the judicial investigation, it resulted that the defendant did not correctly understand the burden of proof arising under Article 622 of the Civil Code, as it continuously requested that the claimant prove that the defendant's actions were at fault."

Upon appeal by the defendant, **the Vloa Court of Appeal, by Decision No. 729 dated 25.07.2018**, ruled: "*Upholding Decision No. 138 dated 31.01.2018 of the Vloa Court of First Instance.*" The Court of Appeal reasoned: "*In the activity of the defendant, the four elements provided for in Article 608 of the Civil Code are clearly present, which impose liability on the defendant for the damage caused, namely: the unlawful act linked to the failure to respect technical safety rules concerning the activity of its employees and the protective measures that should have been taken in cases of breakdown or during functional operations; the existence of damage (the death of P.J.); the fault of the defendant in the form of negligence in failing to take the necessary measures to avoid such events; and finally, the causal link between such conduct and the consequence, the death of P.J. Contrary to the claims raised in the proceedings, the determining cause of this outcome is not related to the actions of the deceased, who was working aboard the tugboat 'Iliria' in difficult weather conditions, but rather to the defendant's failure to respect technical safety rules in its activity and the protective measures that should have been taken in cases of breakdown...*"

The Civil Chamber of the Supreme Court declared inadmissible

the appeal filed by the defendant, holding that no legal grounds provided under Article 472 of the Civil Procedure Code were identified to justify admissibility of the appeal.

As can be observed, the court of first instance had a correct understanding of the nature of objective liability resting on the employer in the concrete case, reasoning—through a proper interpretation of Article 622 of the Civil Code—that, for the emergence of such liability, it is sufficient to establish, unless rebutted by proof to the contrary regarding the adoption of appropriate measures to prevent the damage, the causal link between the dangerous activity exercised by the employer and the harmful consequence that occurred.

By contrast, the Court of Appeal reasoned on the basis of the four conditions of fault-based liability, as provided for in Articles 608 and 609 of the Civil Code. This contradiction—namely, the divergent reasoning of the courts of fact regarding the recognition of two different types of liability in the same case—was not identified by the Supreme Court, since no such claim had been raised in the appeal under examination.

Another issue that arises for discussion, in reference to the content of Article 622 of the Civil Code, is whether an employee injured in an accident occurring during work performed within the framework of a dangerous activity may claim compensation for damage by relying on this provision, given that the employee is one of the parties to the employment contract and not a third person to that relationship. From the wording of Article 622 of the Civil Code, it appears that the persons considered injured by a dangerous activity are “other persons” outside the circle of individuals directly connected with that activity. This leaves room for interpretation as to whether the status of an employee may, for the purposes of the emergence of this liability, be equated with that of “other persons.”

In earlier judicial practice, this issue was not raised, as courts applied Article 622 of the Civil Code equally both in cases where the injured party was a third person and where the injured party was the employee himself, harmed in the course of his work.

In the case analyzed above, the claimants were the heirs of the employee who lost his life in an occupational accident and therefore had the status of “other injured persons,” outside the circle of individuals forming part of the employment relationship within the exercise of a dangerous activity. Consequently, the courts correctly did not question the employer’s objective

liability under Article 622 of the Civil Code.

In a more recent case examined by the Supreme Court (see **Decision No. 1309/147, dated 20.04.2022 of the Civil Chamber**), although the Court did not accept the employer's objective liability under Article 622 of the Civil Code, it analyzed the conduct of the injured claimant—acting as the employee responsible for performing a specific work process within a dangerous activity—from the perspective of mixed liability, which will be addressed in the relevant section dedicated to this form of liability.

❖ **Employer's Liability for the Fault of the Employee**

In cases of damage caused during the employment relationship, we face a *sui generis* situation, since the employer may incur civil liability even where the damage was not caused by his personal fault, but by the fault of an employee under his authority. Thus, unlike the general principle whereby a person is obliged to compensate damage only when he has caused it through his own fault, in employment relationships the legislator has placed the employer under an obligation to compensate damage caused by the fault of the employee — a form of liability otherwise known as vicarious (derivative) liability.

This type of liability is governed by Article 618 of the Civil Code, formulated as follows: *“The employer is liable for damage caused to third parties by the fault of employees who are in his service, during the performance of the duties entrusted to them. A legal person is liable for damage caused by its organs in the exercise of their functions.”*

For the emergence of the employer's liability under this provision, the following conditions must be fulfilled: i) The existence of damage suffered by a third person who is not a party to the employment contract; ii) The existence of fault on the part of the employee in causing the damage; iii) The actions of the employee that caused the damage must have been carried out in the performance of duties entrusted by the employer within the framework of the employment relationship.

A special manifestation of this liability, due to the equivalence of its position as an active subject with that of the employer, is the liability of a legal person for damage caused by its governing organs, whose status and functions are specifically provided for in the law on commercial companies.

Regarding the condition that the injured person must be a “third party”, judicial practice shows that courts have also accepted the employer's vicarious

liability for damage caused to other employees, distinct from the employee at fault, when they belong to the same work group entrusted with the performance of the task during which the accident occurred.

This issue was examined through all three levels of jurisdiction and concluded with **Decision No. 00-2023-901, dated 23.03.2023, of the Civil Chamber of the Supreme Court.**

Facts of the Case *“The claimants are relatives and the employee AS, who was injured in a workplace accident. On 10.08.2009, at approximately 12:20, in Electrical Substation No. 2 near the Elbasan Metallurgical Plant, a serious accident occurred, as a result of which AS and RB were severely injured and VS lightly injured. By Decision No. 321, dated 07.07.2010, of the Elbasan District Court, employee VS was declared guilty of committing the criminal offense of ‘Violation of workplace safety rules’, provided for in Article 289/2 of the Criminal Code. Claimant AS, as an employee of the same employer, was severely injured in this accident and, according to the forensic medical expert report, benefits from a partial disability pension.*

The Berat District Court, by Decision No. 104, dated 04.02.2014, ruled: *“Partial acceptance of the claim. Ordering the defendant CEZ Shpërndarje to compensate claimant AS for pecuniary and non-pecuniary damage arising from the unlawful event of 10.08.2009, and to compensate her spouse and children for non-pecuniary damage.”* Regarding the type of liability, the court reasoned: *“The accidental event under examination occurred on 10.08.2009. The legal relationship arising after the severe injury of AS as a result of the unlawful event is non-contractual. Therefore, the dispute must be resolved under the general provisions on tort liability of the Civil Code and Unifying Decision No. 12, dated 14.09.2007 of the Supreme Court. Specifically, Articles 608, 609, 618 et seq., 625, and 641 of the Civil Code apply. VS was declared guilty of the criminal offense of violation of workplace protection rules under Article 289/2 of the Criminal Code, in relation to the electric accident in which AS and RB were seriously injured. The offense was committed through actions and omissions by the accused, who had the duty to take appropriate measures in implementation of the technical safety regulation. The unlawfulness of VS’s actions and omissions lies in the fact that, due to his duty and profession, he should have acted in compliance with workplace technical safety rules for the maintenance group of which AS was also a member. Article 618 of the Civil Code does not require actions or omissions with fault by the employer, but*

merely the establishment of actions or omissions with fault by the employee in the service of the employer, for the employer's liability for the damage caused to arise. Therefore, the defendant's objection that it bore no fault for the accident because it had taken measures to prevent workplace accidents through employee testing on safety knowledge contradicts Article 618 of the Civil Code. The defendant's claim that AS, as a beneficiary of a disability pension and covered by the health social insurance scheme, has no right to claim compensation from the employer is unfounded, as it contradicts the general Civil Code provisions on damage compensation and Article 39/2 of the Labour Code."

Upon appeal by the parties, **the Vloera Court of Appeal, by Decision No. 1103, dated 18.06.2014**, upheld the first-instance decision, modifying only the amount of compensation awarded to each claimant. In its reasoning, the Court of Appeal accepted the existence of the defendant's non-contractual liability, since the damage, within the meaning of Article 618 of the Civil Code, was caused by the fault-based actions of an employee in an employment relationship with the defendant.

The Civil Chamber of the Supreme Court refused admission of the recourse, finding that no legal grounds existed under Article 472 of the Code of Civil Procedure.

Issue for Discussion

From the reasoning of the courts of fact, it emerges that they accepted the employer's liability for damage caused to the claimant due to the fault of another employee, even though the claimant herself had the status of an employee of the same employer.

This raises the following question for discussion: **Is Article 618 of the Civil Code applicable when the person injured in a workplace accident is another employee, distinct from the employee at fault? In such a case, is the employer's liability contractual or non-contractual, and how does this liability relate to Article 39/2 of the Labour Code regarding the deduction of disability pension benefits from the total amount of damage compensation?**

- **Mixed Liability**

In legal doctrine, it is accepted that mixed liability may exist both in cases of damage arising from non-performance of contractual obligations

and in cases of non-contractual (tort) damage.

Mixed liability in contractual relationships arises whenever the debtor's fault in causing the damage concurs with the fault of the creditor. **Article 493 of the Civil Code** provides in this regard: *"When the damage arising from non-performance of an obligation has been caused or increased by actions or omissions attributable to the creditor's fault, or when the creditor has failed to exercise due care to mitigate the damage, the court may, as appropriate, reduce the amount of compensation or fully release the debtor from the obligation to compensate."* For mixed liability to be recognized under this provision, the damage must have been caused not only by the debtor's fault, but also by the creditor's fault, in the form of intent or negligence.

In the field of tort liability, the current Civil Code, unlike previous legislation, does not establish a general rule defining mixed liability. The only explicit provision appears in Article 629 of the Civil Code, which is highly specific, as it applies to product liability.

By contrast, Article 485 of Law No. 2359, dated 15.11.1956 "On Legal Acts and Obligations" provided the following definition of mixed liability in tort: *"Where the damage or the increase of its extent has also been caused by the injured person's intent or gross negligence, and where the injured person has not exercised due care to mitigate the damage, the court may, as appropriate, reduce the compensation or entirely release the tortfeasor from the obligation to compensate."* From this provision, it is clear that under the previous legal framework, mixed liability in tort was recognized only when the damage resulted also from the injured party's fault in the form of intent or gross negligence, excluding slight negligence as a contributing cause. The exclusion of slight negligence of the injured party as a basis for mixed liability was justified in doctrine by the state of shock or confusion suffered by the injured person following a sudden harmful event, which tolerates slight negligence until the person regains control of the situation.

Since such an exclusionary rule is absent in the current Civil Code, room is left for interpretation as to whether mixed liability in non-contractual damage applies to all forms of fault of the injured party, including slight negligence.

Under this legislative gap, the issue of mixed liability of the employee in non-contractual damage must be addressed in accordance with the

fundamental principles of the Labour Code, which guarantee maximum protection of the employee as the weaker party. It would contradict these principles not to exclude slight negligence of the employee as a form of fault in cases of mixed liability, since such an approach would reduce compensation and significantly worsen the employee's legal position.

Judicial practice has recognized the existence of mixed liability where, alongside the employer's responsibility, it is established that the damage also resulted from the actions of the injured employee himself.

A court case addressing this issue is Supreme Court Decision No. 1309/147, dated 20.04.2022, where the matter under discussion was mixed liability between employer and employee in circumstances where damage caused during the supply of electricity — classified as a dangerous activity under Article 622 of the Civil Code — resulted also from the injured employee's failure to exercise due care to avoid the harm. More specifically, the Civil Chamber of the Supreme Court reasoned as follows: *“The courts of fact have treated the case as one of liability without fault. The Chamber considers that, even if the case were to be classified as a form of no-fault liability under Article 622 of the Civil Code, mixed (contributory) liability cannot be excluded, insofar as the injured person is an employee of the entity alleged to have caused the damage. During the adjudication of the civil case, the court of first instance appointed an electrical engineering expert, who concluded that both the claimant and the defendant bore fault in causing the damage. However, the determining cause of the serious injury sustained by Mr. YGj was the acts and omissions of the defendant, particularly the failure to open a work authorization sheet, etc. Based on the expert report ordered by the court, it results that there exists shared responsibility between the claimant YGj and his employer. It was also the claimant's duty, as an experienced electrician, to verify that there was no electrical current in the facility where the work was being carried out. In the present case, the harmful consequence occurred because the claimant touched live wires transmitting electricity. The adoption of organizational work measures and compliance with technical safety rules is a shared responsibility of the work team assigned to repair the defect. The claimant was part of this team; therefore, his responsibility in the occurrence of the damage cannot be excluded. As an employee of OSHEE, he possessed specialized knowledge for performing his duties and was familiar with the technical safety rules required in the company's operations. For this*

reason, Article 622 of the Civil Code, which provides for no-fault liability arising from dangerous activities, cannot apply in the present case. A proper interpretation of this provision makes clear that it refers to the liability of the damage-causing entity toward other persons who are not part of the staff carrying out the dangerous activity.

In the present case, the claimant YGj, as part of the work team of the legal entity performing the dangerous activity, cannot be equated with the ‘other persons’ envisaged by Article 622 of the Civil Code. Those persons are individuals who do not participate in the dangerous activity. By contrast, here the claimant is an employee of the entity carrying out the dangerous activity and, under the technical safety regulations, was himself obliged to comply with a series of safety measures before performing the repair work. In this context, the claimant’s responsibility as an employee cannot be viewed separately from that of the employer with whom he performed the work. Under Article 493 of the Civil Code, in cases of mixed liability, the court may reduce the amount of compensation or fully release the debtor from the obligation to compensate. In the present case, it is proven that the claimant himself did not exercise due care to prevent the damage; therefore, the court could not award compensation at the maximum level, as was done in the present case.”

Through a correct interpretation of Article 622 of the Civil Code, the Supreme Court concluded that this provision was not applicable, because the injured worker did not have the status of a “third person,” but was part of the work team assigned to repair the electrical defect.

Accordingly, his contributory fault had to be examined under the framework of mixed liability, rather than no-fault liability for dangerous activities.

The same interpretation concerning mixed liability was also adopted in Decision No. 00-2023-5025 (Decision No. 703) of the Civil Chamber.

Facts of the case: *“The claimant IB is the son of the deceased BB, who lost his life in a workplace accident. On 22 July 2011, BB, employed as an electrician at the Patos Oil Enterprise, was instructed by the sector supervisor to repair an electrical defect in the electrical cabin of Group 96 in Visokë, which had been identified by the night shift team. While repairing the defect, he came into contact with live electrical current and, as a result, died.*

Based on the materials forwarded by the Mallakastër Police Commissariat, the Prosecutor's Office of the Fier Judicial District registered criminal proceedings No. 484, dated 28 July 2011, for the criminal offence of 'Violation of workplace safety rules', provided for in Article 289 of the Criminal Code. At the conclusion of the investigation, the prosecuting authority found that violations of technical safety and operational safety rules at work had occurred; however, direct responsibility for these violations lay with the victim himself, BB. Consequently, by decision dated 2 November 2011, the criminal proceedings were closed."

The Fier Judicial District Court, by Decision No. 4046/1305, dated 12 November 2014, ruled: *"Acceptance of the claim. Ordering the defendant, the company 'Albpetrol' JSC, to compensate the claimant IB for pecuniary and non-pecuniary damage."*

The Court reasoned: *"Claims for compensation of non-contractual damage are actions of an absolute nature (as opposed to actions of a relative nature, such as contractual claims). Through such actions, rights of an absolute nature are protected, such as life, health, property, honour, dignity, etc. In these actions, any subject of law may appear as a defendant, since any subject of law may potentially infringe absolute rights. This constitutes the distinguishing element between absolute actions and relative actions, in which only the holder of a specific obligation may appear as defendant. In conclusion, the Court finds that the defendant party has passive standing in this judicial process, not only for the reasons stated above, but also because the company 'Albpetrol' JSC was the employer of the deceased BB and, as such, bears primary responsibility for ensuring the safety of its employees against workplace accidents."*

The Vlora Court of Appeal, by Decision No. 431, dated 7 April 2015, ruled: *"Upholding Decision No. 1305, dated 12 November 2014, of the Fier Court of First Instance."*

In summary, the Court of Appeal reasoned that the arguments raised by the defendant on appeal could not undermine the first-instance judgment. It further held that: *"The decision of the Prosecutor's Office of the Fier Judicial District to discontinue the criminal proceedings for the offence of 'Violation of workplace safety rules', on the ground that death resulted from the victim's own actions, does not render the civil court's decision unfounded. Since the defendant party, which carries out an activity involving increased risk, failed to prove absence of fault in the occurrence*

of the accident, it is liable for the damage caused to the claimant pursuant to Article 622 of the Civil Code.

The Civil Chamber of the Supreme Court ruled: *“Quashing Decision No. 431, dated 7 April 2015, of the Vlora Court of Appeal and remitting the case for retrial before the Court of Appeal of the General Jurisdiction, with a different judicial panel.”*

The Civil Chamber reasoned: *“In the present case, the dispute concerns mixed liability, since the courts of fact were required to investigate exhaustively whether the rules and conditions corresponding to the professional profile of the employee were respected, and, on the other hand, whether the employer had taken all logistical and organizational measures to provide a suitable working environment in compliance with the applicable legal and sub-legal acts for the performance of the employee’s duties, and whether failure to fulfil such conditions by the employer contributed to the concrete consequence, namely the loss of the employee’s life, BB. Thus, the lower courts failed to reason on the employer’s specific liability.”*

From this line of reasoning, it follows that the Civil Chamber accepted, in this case, the existence of mixed (contributory) liability even in the field of non-contractual damage caused by a workplace accident, where the claim for compensation is brought by a relative of the employee who lost his life in the accident.

The issue arising for discussion is therefore:

How is mixed liability applied with respect to the competing fault of the employee in cases of non-contractual damage caused by a workplace accident, in the absence of a general regulation in the Civil Code or a specific provision in the Labour Code? Does the employer’s fault concur with the employee’s slight negligence in such cases?

THE IMPORTANCE OF PERSONAL DATA PROTECTION AND PRIVACY IN THE DIGITAL AGE. CHALLENGES AND PERSPECTIVES FOR THE FUTURE

Dr. Blerina Masha (Shkurti)¹
Keti Gerbi²

Abstract

Privacy is the basis of freedom; the protection of personal data is the protection of the dignity of the individual. Protection of personal data is an important issue in the digital era, where information about individuals is exposed to numerous risks. This study examines legal challenges to privacy in the context of international legislation (provisions made in the ECHR and specific regulations of the Council of Europe) and Albanian legislation.

However, the correct implementation and application of these legal acts in Albania faces several challenges, including the lack of resources, knowledge, and infrastructure necessary to guarantee respect for individuals' rights.

Personal data protection encompasses a range of measures and practices aimed at securing and safeguarding sensitive information relating to individuals. It is an ongoing process that requires commitment and dedication from organizations and individuals to ensure that personal information is treated with respect and responsibility. The legal challenges of privacy are numerous and often complex, reflecting changes in technology, culture and legislation. These challenges require an integrated and collaborative approach between governments, organizations and

1. Law Faculty, "Luarasi" University, blerina.shkurti@luarasi-univ.edu.al

2. Student, LF "Luarasi" University, keti.gerbi@luarasi-univ.edu.al

individuals to ensure adequate protection of privacy and personal data.

This study also examines the role of Albanian institutions in protecting personal data and the need to strengthen their capacities to face these challenges.

In conclusion, it suggests recommendations for improving data protection legislation and practices in Albania, based on international standards and the specific needs of the Albanian context.

Keywords: *personal data, privacy, protection, legislation, individual, dignity*

5.1 The meaning and importance of personal data protection

Privacy is the basis of freedom, the protection of personal data is the protection of the dignity of the individual. Protection of personal data is an important issue in the digital age, where information about individuals is exposed to numerous risks. In modern times, where digital technology has become an inseparable part of our daily lives, we are surrounded by the collection and processing of personal data at every step. Social networks, mobile devices, digital applications and online services create an extraordinary volume of information related to individuals every day.

These data are used for various purposes, ranging from economic and administrative services to those related to public health and security. On the one hand, these developments have brought great benefits such as increased efficiency in service delivery and facilitating communication between the state and citizens. But, on the other hand, they have opened the way for serious concerns regarding the violation of privacy and personal integrity.¹

In this new reality, individuals face numerous risks, the most common of which are constant monitoring, the creation of digital profiles, and the processing of data without clear consent.² Powerful algorithms that analyze and predict people's behavior have transformed personal information into a huge economic asset, which, in many cases, is used for purposes that are not always consistent with respect for human rights.³

1. European Commission. (2018). General Data Protection Regulation (GDPR) Explanation, EUR-Lex CELEX No. 32016R0679.

2. Law No. 9887/2008, "On the Protection of Personal Data", article 5 and article 6.

3. Zuboff, S. (2019). The Age of Surveillance Capitalism. PublicAffairs.

These circumstances make it necessary to establish clear and strong legal rules for the way personal data is collected, stored and used. Any interference with this data must be justified by a legitimate aim, be limited and not infringe the fundamental right to privacy.¹

Against this background, the protection of personal data is seen as an essential element of the rule of law and a necessary condition for the functioning of a democratic society.² The rights to privacy and control over personal information are no longer a technical issue, but a vital aspect of guaranteeing human freedom and dignity.

Data protection should be seen as a shared responsibility, both by public institutions and the private sectors. It is only through building a strong and sustainable data protection system that respect for individual rights can be guaranteed and citizens' trust in technology and the institutions that use this data can be strengthened.³

5.2 The meaning and legal nature of personal data

In everyday life, personal data accompanies us in every action. Any information that relates to an identified or identifiable natural person is considered personal data. This includes not only classic data such as name or surname, but also any other information that, in combination with other elements, can lead to the identification of an individual.⁴

In Albania, the definition of personal data is sanctioned in Article 3 of Law No. 9887/2008 “On the Protection of Personal Data”,⁵ which is harmonized with European standards. A similar definition is found in the General Data Protection Regulation (GDPR), which in Article 4 emphasizes the essential role of any element that helps to build a clear identity of the individual.⁶

Personal data is not all the same in nature and importance. In practice and in law, it is divided into ordinary data and sensitive data. Ordinary

1. Regulation (EU) 2016/679, Article 5 – Principles of data processing.

2. Constitution of the Republic of Albania, article 35.

3. Commissioner for the Right to Information and Protection of Personal Data. (2024). Annual Report.

4. Warren, SD, & Brandeis, LD (1890). The Right to Privacy, Harvard Law Review, 4(5), 193–220.

5. Law No. 9887, dated 10.03.2008, “On the Protection of Personal Data”, article 3.

6. Regulation (EU) 2016/679, Article 4, point 1, CELEX No. 32016R0679.

data includes simple information such as name, address or date of birth, while sensitive data touches on more intimate areas of an individual's life such as health, racial or ethnic origin, political or religious beliefs and sexual orientation.¹

The processing of sensitive data requires special care. The relevant law and regulations set strict criteria, allowing the processing of such data only in clearly defined cases, such as for health reasons, the protection of vital interests or for important public purposes.²

Sensitive data, due to their delicate nature, is more rigorously protected by legislation. Albanian law, in line with European standards, requires that the processing of such data be done only with the express consent of the individual or in accordance with clear and strong legal bases.³

In the European Union, GDPR has set high standards for the protection of sensitive data, always requiring additional security measures and full transparency towards individuals.⁴

In essence, personal data is not just information. It represents an inseparable aspect of human identity and is protected as a fundamental right.⁵ Any processing of personal data must respect principles such as necessity, proportionality and respect for privacy.⁶

In this perspective, data protection is not just an administrative or technical issue, but an essential dimension of the protection of human rights in a democratic society.

5.3 Personal data protection in the Albanian legal system

The foundation of personal data protection in Albania is the 1998 Constitution, which for the first time clearly recognized this right as an inseparable part of private life. Article 35 guarantees that every individual has the opportunity to be informed about the data held about him or her and

1. Ibid, Article 9 of the GDPR and Article 6 of Law No. 9887/2008.

2. Commissioner for the Right to Information and Personal Data Protection. (2024). Practical guide on the handling of sensitive data.

3. Law No. 9887/2008, article 7 and article 10.

4. European Data Protection Board (EDPB). (2020). Guidelines on sensitive data and explicit consent.

5. EU Charter of Fundamental Rights, Article 8: "Right to the protection of personal data".

6. Regulation (EU) 2016/679, Article 5 – Basic principles of processing.

to request their deletion or correction if they have been collected unlawfully.¹

This provision constitutes a strong constitutional basis for the protection of privacy and personal dignity, placing Albania in line with international human rights standards.² Furthermore, the introduction of this principle at the highest level of the legal order underlines the importance given to respect for private life in a democratic society.

By concretizing constitutional principles, Albania has adopted Law No. 9887/2008 “On the Protection of Personal Data”, which has undergone frequent amendments to reflect technological developments and to align with European standards.³ This law defines personal data, regulates the manner of their collection, processing and storage, and determines the respective rights and obligations of entities and operators that process data.

The law is based on several basic principles, which are essential for its functioning. The principle of lawfulness requires that any processing be based on a clear legal basis and be necessary for legitimate purposes.⁴ The principle of proportionality prohibits unnecessary and excessive processing of personal data, by requiring a fair relationship between the purpose and the amount of data collected.⁵ The principle of data retention for a reasonable period stipulates that personal information may not be kept for longer than is necessary to fulfil the purpose for which it was collected. At the same time, the principle of transparency ensures that individuals are informed clearly and fully about how their data is processed.⁶

To oversee compliance with these principles, the law created a special institution: the Commissioner for the Right to Information and Personal Data Protection. This body is independent and has full power to investigate violations, impose punitive measures and make recommendations on data processing practices.⁷

1. Constitution of the Republic of Albania, Article 35, adopted in 1998, with subsequent amendments.

2. European Charter of Fundamental Rights, Article 8: “Right to the protection of personal data.”

3. Law No. 9887, dated 10.03.2008 “On the protection of personal data”, amended by Laws No. 48/2012 and No. 120/2014.

4. Ibid, article 4, point 1.

5. Regulation (EU) 2016/679, Article 5, principle of proportionality.

6. Ibid, Article 12 – Information to the data subject.

7. Commissioner for the Right to Information and Protection of Personal Data. (2024). Annual Report, www.idp.al.

The Commissioner has a dual role: not only to punish lawbreakers, but also to promote a culture of respect for privacy through education and public awareness. This institutional mechanism is an important link in building a data protection system that works in practice and not just on paper.¹

Although Albania has taken important steps in building a strong legal and institutional framework for the protection of personal data, the practical implementation of these norms remains a challenge. Many individuals are still not aware of their rights, while public institutions and private entities often fail to respect the highest standards of data protection.

On the other hand, the lack of investment in security technology, delays in handling complaints and the lack of proper training for employees dealing with data processing are some of the problems that continue to hinder effective implementation of the law. Rapid changes in technology also pose ongoing challenges, requiring a rapid adaptation of laws and supervisory practices.

In this context, efforts to further strengthen enforcement mechanisms, increase citizen awareness, and integrate data protection at every level of public administration and the private sector are essential for achieving a sustainable and effective personal data protection system in Albania.

5.4 Harmonization with European Union legislation

The process of Albania's integration into the European Union has brought about the need to approximate its entire legal framework with the *acquis communautaire*, where the protection of personal data constitutes one of the essential components of the fundamental rights chapter.² In accordance with the obligations of the Stabilization and Association Agreement, Albania has been obliged to approximate its laws to the *acquis communautaire*, where the protection of privacy is one of the fundamental pillars of human rights.³

This approximation has not only become a formal obligation within the framework of the Stabilization and Association Agreement but has also been a necessary step towards building a legal system that guarantees effective

1. Ibid, pages 7–10; repeated cases of lack of safety measures and employee training are highlighted.

2. European Commission. (2023). Screening Report – Chapter 23: Judiciary and fundamental rights.

3. EU-Albania Stabilization and Association Agreement, entered into force on 1 April 2009, Article 70.

protection of citizens' privacy.

The adaptation of the Albanian legal framework to European principles requires an embrace of privacy protection values not only on paper, but also in practice, thus influencing the transformation of the legal and administrative culture in the country.¹

One of the most important initiatives in the field of data protection at the European level is the General Data Protection Regulation (GDPR), adopted on April 27, 2016 and applicable from May 25, 2018.² GDPR has brought about a revolution in the way personal data is handled, placing the individual and their rights at the center of the processing process.³

The impact of the GDPR is substantial in many ways: it strengthens individuals' rights (including the right to be forgotten, the right to data portability and the right to object to processing), significantly increases the liability of data controllers and processors, imposes strict requirements for consent and transparency, and provides for very high fines for violators.⁴

In Albania, the impact of the GDPR has been felt directly through the changes made to the law on personal data protection, which reflected principles such as informed consent, proportionality, and the obligation to maintain information security.⁵

Although the Albanian legal framework has been significantly improved to align with the GDPR, its implementation in practice still faces difficulties. Albanian law contains many of the core principles of the GDPR, including definitions of personal data, legal bases for processing, and the rights of individuals.⁶ However, the main difficulties remain in the area of strengthening oversight mechanisms and ensuring a general culture of respect for privacy.

In order for Albania to ensure real compliance with European standards, not only formal approximation of legislation is required, but also effective and conscious implementation in practice. In this way, Albania will not only meet the requirements of the integration process but will build a real

1. European Commission Progress Report for Albania 2022–2024.

2. Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016, CELEX: 32016R0679.

3. Ibid, articles 12–23 (individual rights).

4. Ibid, article 7 (consent), article 5 (principles), article 83 (sanctions).

5. Law No. 9887/2008, as amended, especially with the 2020 amendments to reflect the requirements of the GDPR.

6. Commissioner for the Right to Information and Protection of Personal Data. (2024). Annual Report, www.idp.al.

personal data protection system that responds to the needs of an increasingly digitalized and interconnected society.¹

5.5 Privacy in numbers: 2024 statistics

In recent years, the awareness of Albanian citizens about their right to the protection of personal data has been growing. The explosion of the use of new technologies, social networks and online services has exposed citizens to new challenges, highlighting the importance of preserving privacy.²

However, this increased awareness is not sufficient to eliminate the challenges that exist in practice. Often, public institutions and private entities do not fully implement legal obligations related to the protection of personal data.³

The lack of clear data handling protocols, the lack of appropriate security measures, and the use of data for purposes other than those for which it was collected continue to pose significant concerns.⁴

The annual report of the Commissioner for the Right to Information and Personal Data Protection for 2024 provides a clear overview of the factual situation regarding privacy in Albania.

During 2024, a total of 455 complaints related to personal data breaches were handled.⁵ These complaints have focused mainly on public institutions, economic operators and the online services sector. The number of complaints represents a significant increase compared to previous years, which indicates a greater awareness of citizens about their rights.

In the same period, during 2024, 77 administrative investigations were conducted, and 48 punitive measures were taken against entities that violated data protection principles.⁶ In some sectors, such as education and health, recommendations have also been given to improve personal data handling procedures.

The most common violations found include the lack of appropriate

1. European Data Protection Board. (2023). Monitoring Mechanisms and Best Practices in EU Candidate States.

2. Commissioner for the Right to Information and Protection of Personal Data. (2024). Annual Report, pp. 3–5.

3. Ibid, p. 7.

4. EDPB. (2023). Best practices for national data protection implementation.

5. Commissioner (2024), p. 9.

6. Ibid, pp. 10–11.

security measures for data protection, failure to inform individuals about the purposes of processing, and the lack of effective control over access to personal data.

The 2024 data show a positive trend towards increased awareness and awareness of personal data rights. However, serious challenges remain. The lack of sufficient human and technical resources in responsible institutions, delays in handling complaints, and the lack of a deep culture of privacy protection constitute significant obstacles.¹

In the future, improving data protection requires:

- Strengthening the role and capacities of the Commissioner,
- Investments in training for public administration and the private sector,
- Promoting broad awareness campaigns,
- Closer inter-institutional cooperation to guarantee a high level of data protection.²

Only through these measures can a system be built that truly guarantees respect for privacy in an increasingly digitalized society.

5.6 The E.Q. case and practical challenges in Albania

In 2023, the case of journalist Elton Qyno brought to the public's attention several serious issues related to the protection of personal data in Albania. In this case, personal data of individuals involved in a criminal trial, including names, addresses and identification numbers, were published in the media without their consent and outside the legal framework.³

This case raised serious concerns regarding the balance between the right to information and the right to protection of private life, particularly in situations where the information published is related to judicial or investigative proceedings.⁴

The Qyno case served as a concrete indicator of the fact that in Albania, despite the existence of a legal framework harmonized with the EU, the

1. Ibid, pp. 17–18.

2. European Commission. (2023). Progress Report Albania, chapter 23.

3. Res Publica Center. (2023). The Elton Qyno Case: Violation of Privacy in Media Publications.

4. EU Charter of Fundamental Rights, Article 8; and Article 10 of the ECHR – the right to respect for private life.

practical implementation of personal data protection remains deficient.¹This case highlighted several major problems:

First, the lack of awareness and respect for privacy standards in the Albanian media, which often prioritizes the public interest in information over the need to protect individuals' personal data.²

Secondly, another problem is the lack of clear protocols for how sensitive information is handled by institutions dealing with criminal proceedings, such as the police, prosecution and the judiciary. It often happens that information leaks occur from within state institutions, which indicates weaknesses in internal data security policies.³

Finally, this case also demonstrated the challenges faced by oversight institutions, such as the Commissioner for the Right to Information and Personal Data Protection, in effectively handling cases of privacy violations, especially when they have large dimensions and public impact.⁴

From the Qyno case, several important lessons can be drawn about how to improve the personal data protection system in Albania. First, it is essential to establish clear protocols for the handling and protection of sensitive data within public institutions and during investigative procedures. The handling of data cannot be left to chance or incorrect practices.⁵Also, the media should be aware of its role in respecting privacy and following ethical reporting standards.⁶

A fair balance between transparency and privacy protection is essential for maintaining a democratic society. Furthermore, strengthening the Commissioner's capacities and raising public awareness remain urgent priorities to ensure that personal data protection does not remain merely on paper, but is implemented in practice.

If these challenges are not addressed, there is a risk that personal data protection standards will remain only at a formal level, without finding

1. Commissioner for Personal Data Protection. (2023). Reaction to the case of data publications in the media.

2. Council on Media Ethics. (2022). Guidelines on reporting ethics and personal data protection.

3. Transparency International Albania. (2023). Report on data leakage from public institutions.

4. Commissioner (2024). Annual Report, pages 15–17

5. European Data Protection Supervisor (EDPS). (2023). Guidance for journalists and personal data protection.

6. European Commission. (2022). Progress Report on Albania – Chapter 23.

real implementation in everyday practice.¹

5.7 International cases: The European Union's handling of events

One of the cases that has had a major impact on the development of the right to personal data protection in the European Union is the case *Google Spain vs Agencia Española de Protección de Datos (AEPD) and Mario Costeja González*, examined by the Court of Justice of the European Union in 2014.²

In this case, Mario Costeja asked Google to remove from search results links that led to outdated information about his financial problems that appeared in a newspaper years ago. The court ruled in favor of the individual, explicitly recognizing for the first time the right to be forgotten, which implies the right of individuals to request the deletion of personal data that is no longer necessary, accurate or up to date.³

The decision also established the responsibility of search engines like Google to guarantee the protection of personal data and to weigh the balance between the public interest in information and the individual's right to privacy.⁴

This legal precedent brought a new standard in data protection, imposing new responsibilities on search engines like Google and balancing the public interest in information with the individual right to privacy.

Another series of landmark cases that has had a profound impact on global privacy policies are the *Schrems I* and *Schrems II* cases, brought by Austrian digital rights activist Max Schrems.⁵

In the *Schrems I* case, the Court of Justice of the European Union annulled the so-called “Safe Harbor” agreement between the EU and the US in 2015, concluding that the US did not provide an adequate level of personal data protection for European citizens, especially in light of revelations about mass surveillance by US intelligence agencies.⁶

1. EDPB. (2023). Data protection in practice: enforcement, media, and transparency.

2. Court of Justice of the EU (2014), C-131/12 – *Google Spain SL and Google Inc. v AEPD and Mario Costeja González*, ECLI:EU:C:2014:317.

3. *Ibid*, paragraphs 93–94.

4. *Ibid*, paragraphs 81–99.

5. European Data Protection Board (2020). *Schrems I & II Overview – Impact and Analysis*.

6. Court of Justice of the EU (2015), C-362/14 – *Maximillian Schrems v Data Protection*

In the Schrems II case, in 2020, the ECJ also annulled the successor to Safe Harbor, the Privacy Shield agreement, on similar grounds. The Court stressed that the protection of personal data is a fundamental right and cannot be compromised by international agreements that do not provide effective guarantees of judicial protection for individuals.¹

Following these decisions, companies that transfer personal data from the EU to third countries, such as the US, must comply with very strict requirements, such as the use of standard contractual clauses and the assessment of potential risks to individuals' rights.²

5.7.1 Lessons for Albania from the practice of the European Union

The Google Spain and Schrems cases show that personal data protection is a dynamic field, where legal standards and institutional practices must constantly adapt to technological developments and societal changes.³ For Albania, these cases offer some important lessons.

First, they show the need to guarantee the rights of individuals not only at a formal level, but also in practice, by creating effective mechanisms for their implementation, such as the right to erase data or the right to object.

Second, the cases highlight the importance of strong institutional oversight and real independence of data protection authorities.

Finally, the active involvement of civil society, the media, the private sector, and citizens in the debate on privacy and digitalization is essential for building a culture of respect for fundamental rights.⁴

If Albania wants to be a worthy member of the European Union, it must show that it not only adopts good laws, but also implements them rigorously and effectively, ensuring that privacy rights are protected at all levels.

Commissioner, ECLI:EU:C:2015:650.

1. Court of Justice of the EU (2020), C-311/18 – Data Protection Commissioner v Facebook Ireland and Schrems, ECLI:EU:C:2020:559.

2. European Commission. (2021). Standard Contractual Clauses for international transfers.

3. EDPB. (2023). Trends in digital privacy enforcement and EU jurisprudence.

4. European Commission. (2023). Progress Report for Albania – Chapter 23: Fundamental Rights.

SIGNIFICANCE OF CYBERSECURITY IN THE MODERN DIGITAL ERA

Folitjona Puravelli¹
Anni Dasho Sharko²

Abstract

As a result of the exponential rise of internet-connected technologies, cloud computing, and digital transactions, cybersecurity has evolved into an essential requirement in the modern digital era. Protecting sensitive information and safeguarding the integrity of digital infrastructure is of the utmost importance in light of the growing number of cyber threats, which include ransomware, phishing, data breaches, and assaults sponsored by states.

The protection of individuals, corporations, and governments from financial losses, damage to their reputations, and disruptions to their operations is provided by cybersecurity initiatives. In the end, cybersecurity is not only a technical concern; rather, it is an essential component of national security, economic stability, and personal privacy in a world that is becoming increasingly interconnected.

In order to effectively resist the ever-evolving cyber threats, it is essential to make investments in cybersecurity awareness, better defense systems, and increased international collaboration. Cybersecurity, the digital era, cyber threats, data protection, privacy, cyber defense, and internet of things security are some of the keywords available.

Keywords: Cybersecurity, Digital Age, Cyber Threats, Data Protection, Privacy, Cyber Defense, IoT Security.

1. Faculty of Information Technology & innovation; Luarasi University; Tirana, Albania
folitjona.puravelli@luarasi-univ.edu.al; <https://orcid.org/0009-0001-3532-7666>

2. Faculty of Information Technology & innovation; Luarasi University; Tirana, Albania
anni.dasho@luarasi-univ.edu.al; <http://orcid.org/0009-0000-6520-7449>

1. Introduction

The incorporation of digital technologies into practically all facets of contemporary society has significantly altered daily existence, commercial practices, and even the frameworks of governments globally. The rise of internet-connected gadgets, cloud computing, and digital transactions has changed the way we talk to each other, do business, get health care, learn, and run our governments (ENISA, 2023; NIST, 2018). But as these things get better, so do the risks and problems with cybersecurity. Cyberattacks happen more often, are more complicated, and can have bigger effects than ever before. This makes cybersecurity a very important issue that goes beyond the usual limits of IT departments (Symantec, 2019).

As a result of this digital change, global systems are more connected than ever, which makes them both more efficient and more vulnerable. Networks and digital platforms are increasingly very important to modern infrastructure. This means that one security breach might have ramifications that spread across several sectors and even over national borders. For example, the digitization of medical information, the use of online banking, and the migration of government services to cloud-based platforms have all made it easier for bad actors to take advantage of (ENISA, 2023). This interconnection makes it harder to protect digital assets and increases the possible effects of a breach.

Cyber dangers not only put the privacy, integrity, and availability of information at risk, but they also put public safety, individual privacy, economic stability, and national security at risk (CISA, 2022). Cyberattacks nowadays can stop important services including electricity, transportation, and emergency response, as shown by attacks on important infrastructure. Cybercrime also has a big effect on the economy, with losses around the world expected to reach trillions of dollars a year in the next several years (IBM, 2022). Also, big data breaches can make people lose faith in institutions and digital platforms, which makes it harder for new technologies to be adopted and slows down innovation (ENISA, 2022).

As digital transformation speeds up in many areas, the effects of poor cybersecurity become increasingly serious and pervasive. They could affect important services, leak private information, and make people less trusting of digital systems (ENISA, 2022). The threat landscape is always changing, and enemies are using more advanced strategies, techniques, and

processes to get beyond standard security measures. This ever-changing world means that people and businesses need to be on the lookout and ready to change, which makes it even more important to stay aware of security issues and make upgrades to defensive technology (Symantec, 2019).

It is becoming more and more clear that cybersecurity is not just a technological problem; it is a problem that affects many areas of life, including ethics, law, the economy, and society. Cyber risks have effects on things like following the law, moving data across borders, and protecting basic rights and freedoms. In this situation, governments, businesses, schools, and people all have a role to play in keeping the internet safe. A comprehensive and proactive strategy is essential, focussing on resilience, readiness, policy formulation, and intersectoral cooperation (NIST, 2018; ENISA, 2023). Society can only effectively reduce dangers and develop a trustworthy digital future via concerted and ongoing actions.

2. The Evolving Threat Landscape

Cyber risks have changed a lot in the last twenty years. In the beginning, hackers who wanted to be famous or cause trouble mostly developed viruses and worms, often without much financial or strategic reason (Symantec, 2019). Even though these early dangers were harmful, they were mostly simple and based on chance. As the internet grew up and more people connected to it digitally, the reasons for cybercrime rose, bringing in more organised and skilled criminals.

Cyber attacks are much more complex, persistent, and often planned by well-funded criminal organisations, hacktivist groups, or even countries with specific political or strategic goals (Rid & Buchanan, 2015). The reasons for these attacks have changed over time and today include making money, spying on businesses, political action, and even cyber warfare. Attackers may now automate attacks over worldwide networks thanks to advances in technology. They use tools found on the dark web and take advantage of weaknesses in digital infrastructures that are becoming more complicated (ENISA, 2023).

One thing that sets today's cyber threat scenario apart is how quickly new threats appear and spread. Attackers today use advanced malware, custom-built exploits, and social engineering to get beyond standard

security measures. Also, the usage of cryptocurrencies and technology that hide people's identities has made it tougher to find cybercriminals, which has made criminals more daring and made it harder for police to catch them (IBM, 2022). Also, disputes between countries regularly spill over into cyberspace, when state-sponsored groups attack important infrastructure, voting systems, and private businesses to achieve national goals.

Because devices, systems, and services are becoming more connected, a successful cyberattack can have a big effect on more than just the target. It can also harm its partners, consumers, and the general public. The SolarWinds supply chain assault and the ransomware attacks on healthcare systems during the COVID-19 pandemic are two well-known examples that show how important it is for everyone to have strong, flexible cybersecurity plans (CISA, 2022; ENISA, 2022).

2.1 Types of Cyber Threats

Advanced Persistent Threats (APTs) are long-term, targeted attacks that try to infiltrate into systems, steal information, or screw up operations without being noticed. APT groups are usually connected to groups that are funded by the government and are aiming to reach strategic or geopolitical goals. They can stay hidden for months or even years. The first step in these assaults is usually reconnaissance, followed by the first compromise, lateral movement, and data exfiltration (Lee, Assante, & Conway, 2016). The Stuxnet worm, which attacked Iranian nuclear plants, and the attacks on government and industrial targets around the world that are still going on are two well-known examples.

Ransomware: Over the past few years, ransomware has become one of the most widespread and harmful threats to enterprises. Attackers encrypt the victims' data and then demand payment, generally in cryptocurrency, in exchange for the key to decrypt it. Ransomware attacks have gotten bigger and more damaging, affecting not just people but also critical areas like healthcare, energy, and local governments. The Colonial Pipeline attack in 2021, which created petroleum shortages across the U.S., is an example of how ransomware can cause difficulties. The WannaCry and NotPetya outbreaks in 2017 revealed how bad these kinds of assaults may be (CISA, 2022; Symantec, 2019).

Phishing and social engineering are types of assaults that deceive people into giving up their private information or letting other people into

their systems. According to Proofpoint (2022), phishing is still the most common means to propagate malware, and it impacts more than 80% of enterprises throughout the world. Attackers are adopting increasingly and more complicated methods, like spear-phishing (targeted phishing at select persons or firms) and business email compromise (BEC), to pretend to be trusted contacts or high-level executives. Social engineering uses how people think against them, thus even the strongest technology can be damaged if users aren't trained and careful.

Zero-Day Exploits: Attackers employ security weaknesses that developers don't know about yet. These assaults are exceedingly dangerous and hard to block. People commonly use zero-day vulnerabilities in high-profile, targeted attacks on sensitive targets, and they can be sold for a lot of money on the black market. Companies need to deploy layered security, threat intelligence, and the ability to respond rapidly to decrease the risk of zero-day vulnerabilities (IBM, 2022).

Denial-of-Service (DoS) and Distributed Denial-of-Service (DDoS) Attacks: These attacks make it impossible for genuine customers to use services by sending too much traffic to systems. People often utilise DDoS attacks to blackmail companies, keep defenders busy for more targeted attacks, or voice their political objections. Governments, banks, and companies that provide important infrastructure are often the targets of attacks. The rise of DDoS-for-hire enterprises on the dark web has made it simpler for attackers to get in (ENISA, 2023).

2.2 Expanding Attack Surface

The Internet of Things (IoT) has made the attack surface a lot wider. There are billions of devices that are connected to the internet throughout the world right now. These are things like smart home appliances, medical equipment, industrial sensors, and public infrastructure. Many of these devices don't have much security built in, don't have reliable ways to get updates, and are often set up with default credentials, which makes it easier for hackers to get into people's and enterprises' systems (ENISA, 2023).

The 2016 Mirai botnet attack, which leveraged weak IoT devices like cameras and routers, caused major service outages by launching one of the greatest DDoS attacks ever. This event showed how vulnerable the growing digital ecosystem is and how important it is for all connected devices to

follow security-by-design guidelines (Atzei, Bartoletti, & Cimoli, 2017).

Hackers can also attack more easily because of the rise of mobile devices and cloud computing. Data and workloads are now kept in hybrid environments, which means that perimeter-based security models don't work anymore. In some cases, attackers get into sensitive systems and data by using poor authentication, settings that aren't set up correctly, and vulnerabilities that haven't been addressed.

The attack surface will keep getting wider as digital transformation goes on. This means that companies will have to utilise broad, adaptable, and future-oriented strategies to discover, deal with, and lessen dangers. To keep the digital world safe and deal with the shifting danger landscape, it's necessary to always be on the lookout, share information about threats, and work collaboratively across industries.

3. Cybersecurity in Business and the Economy

Cybersecurity is now a very significant component of running a business and something that boards of directors care about most. Cybersecurity breaches are more likely than ever since organisations are doing more of their work online, storing more sensitive customer data, and relying on supply chains that are all linked. Cybersecurity is now necessary for organisations to stay open, preserve their intellectual property, and keep customers' trust in digital services (ENISA, 2022).

3.1 Financial and Reputational Impact

Cyber events have a big impact on money, with both direct and indirect costs growing substantially every year. IBM's (2022) annual report says that the average cost of a data breach in 2022 was \$4.35 million. But the real cost is usually considerably more than the first costs of responding to an incident, doing forensic investigations, and restoring a system. Legal penalties, regulatory fines, paying consumers who were affected, and the costs of going to court can all add millions to the total cost. Companies often lose intellectual property, have to stop doing business, and have to pay for expensive security upgrades after an event.

The damage to reputation over time could be far worse. Trust is very crucial in the digital economy. A single big breach can destroy years of labour to build a brand. The Equifax hack in 2017, which leaked the personal

information of almost 147 million people, cost the company \$700 million to settle. The corporation did, however, lose a lot of trust from customers, investors, and the market (GAO, 2018). The 2018 British Airways hack, which leaked payment information for hundreds of thousands of users, also got the attention of authorities and affected the company's reputation with customers. Negative news can stay in the news for a long time, making it hard for businesses to get back to where they were before, especially in markets where there is a lot of competition (Ponemon Institute, 2022).

Also, if a business has a lot of security breaches, it may lose partners and have a tougher time getting cyber insurance. This is because insurers are more careful about the risks they are ready to cover. Cyberattacks on a broad scale can hurt the whole economy by messing up supply chains, financial markets, and important infrastructure. These consequences can go far beyond the organisations that were first targeted (ENISA, 2022).

3.2 Regulatory and Compliance Requirements

As dangers grow and authorities try to protect people's rights, the rules about cybersecurity and data privacy are changing quickly. The General Data Protection Regulation (GDPR) in Europe, for example, has made it much harder for businesses to handle data, notify people of breaches, and get consent from customers. This affects companies all over the world that handle data from EU residents (European Commission, 2021). The California Consumer Privacy Act (CCPA) and other state laws in the US have also set new criteria for openness, responsibility, and consumer control over personal information.

If you don't follow these rules, you could face huge fines and legal problems that are sometimes more than the immediate expenses of a cyberattack. For instance, the GDPR says that companies can be fined up to 4% of their global annual revenue for egregious violations. Because of these rules, companies have to spend money on strong cybersecurity systems, regular audits, and full risk management plans (Ponemon Institute, 2022).

It is important to remember that compliance is not something that can be done once. Organisations need to keep up with changes in the law and change their rules and technologies as needed. This includes hiring data protection officers, training workers on a regular basis, doing data

protection impact assessments, and making sure that third-party partners follow the same rules (ENISA, 2022).

3.3 Impact on SMEs

Small and medium-sized businesses (SMEs) are more likely to be attacked by hackers because they don't have the resources, staff with the right skills, or security maturity. Large companies may have their own IT security teams and big resources, but small and medium-sized businesses (SMEs) typically only use basic security measures and may not realise how vulnerable they are to cyber threats (ENISA, 2022). Cybercriminals often go after small and medium-sized businesses (SMEs) because they see them as easy ways to break into bigger networks or as places to find important data that isn't as well protected.

For small firms, the effects of a cyberattack can be terrible. ENISA (2022) says that about 60% of small and medium-sized businesses who are attacked by hackers go out of business within six months. Small and medium-sized businesses (SMEs) may have to deal with more than just immediate cash losses. They may also have to deal with legal obligations, losing important contracts, harm to their reputation, and being unable to do business. The ripple effect can also have an influence on jobs and local economies.

Governments and industry groups are increasingly offering small and medium-sized businesses (SMEs) customised advice, tools, and money to help them improve their cybersecurity posture. This includes subsidised access to security solutions, awareness campaigns, and training programs targeted at building basic cyber hygiene. Frameworks like the NIST Cybersecurity Framework are being changed to work for smaller businesses so they can figure out what dangers they face, what steps to take first, and how to make themselves more resilient without using up all of their resources (NIST, 2018).

4. National Security and Critical Infrastructure.

As important infrastructure sectors start using digital technology and associated networks, the line between national security and cybersecurity has become clearer. It's not only an IT issue when it comes to the safety of important systems like electricity, water, transportation, healthcare,

communications, and banking. It's also a problem of national stability and public safety. As digitalisation grows, so does the number of places where cybercriminals might attack. This makes the strength of vital infrastructure a top priority for governments around the world (ENISA, 2022).

4.1 Critical Infrastructure Vulnerabilities

Industrial control systems (ICS) and supervisory control and data acquisition (SCADA) systems are increasingly very important for running essential services including electricity, water supply, transportation networks, and healthcare facilities. Although these digital management systems make things run more smoothly and quickly, they are generally old technology that weren't built with security in mind. This makes it easier for bad people to take advantage of weaknesses in order to disrupt important services (Lee et al., 2016).

One of the most famous examples of how cyberattacks may affect important infrastructure in the real world is the 2015 attack on Ukraine's power grid. In this case, hackers utilised advanced malware and social engineering to get into control systems, which caused a coordinated power outage that left more than 200,000 people without energy for many hours in the dead of winter (Lee et al., 2016). The hack showed that ICS had technological weaknesses and that phishing and remote access may be used to target human operators.

Similar things have happened all throughout the world. Ransomware has been used against healthcare systems, including in the 2017 WannaCry attack that brought down the UK's National Health Service, delaying surgeries and putting patient care at risk. Cyberattacks on operational technology have caused problems for transport networks like airports, trains, and maritime ports, leading to logistical problems and lost money (ENISA, 2022).

It's getting harder to keep critical infrastructure safe since information technology (IT) and operational technology (OT) are coming together more and more. Attackers have new ways to get into and change important OT systems as they grow more connected to traditional IT networks and the internet. A single mistake in security can have a domino effect, putting public health, the economy, and even national defence at risk.

4.2 Governmental Response and Policy

Governments all across the world have taken major steps to make vital infrastructure more resistant to cyberattacks because they know how dangerous they can be to national security. This includes setting up special cybersecurity organisations, making national cybersecurity plans, and putting rules in place for certain industries. The Cybersecurity and Infrastructure Security Agency (CISA) was formed up in the United States to bring together the government and private sector, share information about threats, and set standards for protecting important services (CISA, 2022).

The European Union has passed broad laws including the Network and Information Security (NIS) Directive, which defines baseline criteria for the security of information and network systems in all member states (ENISA, 2022). The regulation says that operators of vital services and digital service providers must take the right security steps and tell national authorities about major events (European Commission, 2021). This kind of regulation is also used in other nations, where risk assessments, vulnerability disclosures, and mandatory incident reporting are required.

Also, many countries have programs to protect critical infrastructure, hold frequent cyber exercises, and give advice on how to keep ICS/OT environments safe. Public-private partnerships are very important since private companies control or run a lot of the world's most important infrastructure. Information sharing programs, such Information Sharing and Analysis Centres (ISACs), make it easier for different industries to quickly share threat intelligence and best practices (ENISA, 2022).

While vital, the growing number of cybersecurity rules and standards makes it harder for global companies to follow all of them. So, harmonising norms and working together across borders are becoming more and more crucial for protecting critical infrastructure around the world.

4.3 Cyber Warfare and International Relations

Cyber operations have become a very important part of modern statecraft. Cyber warfare is increasingly seen as a fifth area of battle, along with land, sea, air, and space. State-sponsored cyberattacks can affect important areas, mess up elections, spy on people, or steal trade secrets to acquire an edge over competitors (Rid & Buchanan, 2015). The indistinct

boundaries of espionage, sabotage, and information warfare complicate conventional concepts of conflict and deterrence.

The Stuxnet worm that damaged Iran's nuclear centrifuges and the series of cyberattacks on election systems and government institutions in the US and Europe are two examples of high-profile instances that show the geopolitical side of cybersecurity. These kinds of operations frequently try to damage people's trust, make societies less stable, or force rivals to do what they want without using open military force.

Because cyber dangers can happen across borders, countries must work together. NATO and other groups have set up cyber defence centres and hold coordinated exercises to make member states more resilient as a group. The United Nations Group of Governmental Experts and the Organisation for Security and Co-operation in Europe are two examples of multilateral forums that aim to create worldwide standards and laws for how to act responsibly online (ENISA, 2022).

More and more countries are making bilateral and multilateral agreements about how to respond to cyber incidents, share information, and create capacity. However, differences in legal systems and national interests might slow things down. The continual development of cyber warfare capabilities continues to have an effect on international relations. This has led to new doctrines, alliances, and ways for countries to work together to stop, find, and deal with cyber threats at home and around the world.

5. Cybersecurity Education

A talented, varied, and well-trained workforce is very important for the resilience of global digital infrastructure and the success of cybersecurity policies. As cyber threats have become more complicated and common, the need for cybersecurity experts who can create, put into place, and administer defences for a growing number of technologies and key systems has also expanded (ENISA, 2022). It is important for both the security of an organisation and the protection of national interests and the growth of the digital economy to build and keep a strong cybersecurity workforce.

5.1 Education and Training Initiatives

To close the cybersecurity skills gap, education systems, businesses, and governments all need to work together over a long period of time. Incorporating cybersecurity topics into K–12 curricula fosters early fundamental understanding, motivating students to engage in subsequent studies in the field (NIST, 2018). A lot of countries are testing programs in elementary and secondary schools that educate kids how to be safe online, how to code, and the basics of security.

At the collegiate level, universities and technical institutions are adding more programs, such as specific cybersecurity degrees, multidisciplinary programs, and research possibilities. These education paths are necessary for learning the advanced technical and analytical abilities needed for modern cybersecurity jobs. Also, connections between schools and businesses, such as internships, co-op placements, and collaborative research projects, give students real-world problems to solve and encourage ongoing innovation (ENISA, 2022).

In the business, professional certifications like Certified Information Systems Security Professional (CISSP), Certified Ethical Hacker (CEH), and CompTIA Security+ are widely accepted and show that you have specialised knowledge. More and more companies are asking or demanding their employees to get these certifications to show that they are skilled and committed to continuing their education (NIST, 2018).

Awareness and training programs go beyond the classroom. Cybersecurity Awareness Month and other national and worldwide programs try to make people more aware of prevalent risks and the best ways to protect themselves and their organisations. To help current workers move into cybersecurity roles, governments and private companies are putting money into retraining programs and online learning platforms. This will increase the number of people who can work in cybersecurity and encourage people to keep learning throughout their lives.

Cybersecurity competitions like Capture the Flag (CTF) challenges and college cyber defence contests also give people real-world experience and encourage a culture of excellence and creativity among those who want to work in the field.

6. Ethical, Legal, and Societal Considerations

Cybersecurity is always changing and getting more complicated, which raises a lot of ethical, legal, and social challenges that go beyond just technical fixes. As digital technologies grow more common, the problem is not only to protect systems and data from bad actors, but also to make sure that cybersecurity policies support democratic values, respect individual rights, and encourage collaboration across countries. To develop trust and legitimacy in digital societies and make sure that security measures don't unintentionally take away the rights and freedoms they are meant to defend, these issues must be addressed (ENISA, 2022).

6.1 Balancing Security and Privacy

One of the most persistent and contentious disputes in cybersecurity centres on finding the correct balance between securing digital assets and preserving essential civil freedoms, such as privacy and freedom of expression. Strong cybersecurity measures are necessary to stop unauthorised access, data theft, and cyberattacks. However, if they are not carefully planned and put into place, these same safeguards can occasionally violate people's rights (Solove, 2021).

The "backdoor" problem is a good example of this. It is the continuous dispute over whether or not the government should be able to access encrypted communications. Law enforcement agencies say they need special access to encrypted data to look into major crimes like terrorism and criminality. On the other hand, privacy advocates say that any purposeful weakening of encryption makes all users less safe and gives criminals and hostile regimes more ways to get in (Solove, 2021). The 2016 Apple-FBI encryption disagreement, in which Apple declined to develop a backdoor to access a suspect's iPhone, vividly demonstrated the conflict between national security imperatives and the safeguarding of digital privacy.

Additionally, mass surveillance initiatives and indiscriminate data acquisition by governments or corporations can undermine public confidence and adversely impact free expression and democratic engagement. The advent of artificial intelligence and big data analytics, which allow for unparalleled monitoring and profiling of people, makes these worries even worse (Solove, 2021). To deal with these problems, it is important to put in place legal protections, ways to keep an eye on things, and openness in how cybersecurity measures are put into place.

6.2 Responsible Disclosure and Ethical Hacking

Finding and fixing security holes is important for keeping information systems safe. But sharing information regarding security holes must be done in a responsible way to avoid causing harm by accident. Responsible vulnerability disclosure policies set explicit rules for researchers and practitioners to follow when they identify security problems to vendors or other impacted parties. This gives vendors time to fix the problems or find other ways to deal with them before they are made public (ENISA, 2022).

Ethical hacking, often known as penetration testing or white-hat hacking, is very important for finding system flaws before bad people can use them. Many companies now have bug bounty programs that let ethical hackers test their systems in exchange for compensation. These kinds of programs help create a culture of security cooperation, but they also need clear rules and legal guarantees for researchers who are engaged in good faith (ENISA, 2022).

When there aren't clear legal rules, ethical hackers can be prosecuted or punished, even if they just want to make things safer. This shows how important it is to have consistent laws and policies that make a clear distinction between cybercrime that is meant to damage and security research that is meant to help. In addition, organisations need to set up internal procedures to quickly and positively respond to reports of vulnerabilities. This will make sure that researchers are recognised for their work and that consumers are safe from being taken advantage of.

6.3 International Collaboration and Governance

Cyber dangers don't care about borders, therefore countries need to work together to keep their networks safe. Cyberattacks can come from anywhere in the world and hit many countries at once, therefore quick, coordinated responses are needed (ENISA, 2022). To make it easier for police to work together across borders, share evidence, and punish cybercriminals who often take advantage of gaps in jurisdiction, legal frameworks need to be harmonised.

The United Nations Group of Governmental Experts (GGE) and the Budapest Convention on Cybercrime are two examples of forums where people can talk and come up with international standards, principles, and guidelines for how states should act in cyberspace (Rid & Buchanan,

2015). These projects are meant to lower the chance of getting things wrong, getting worse, and fighting online.

Bilateral and multilateral agreements, joint cyber exercises, and information-sharing partnerships, including the Five Eyes intelligence cooperation and several Computer Emergency Response Teams (CERTs), let countries learn from each other's mistakes and become stronger as a group. However, it is hard to get everyone in the world to agree because of differences in national interests, legal systems, cultural values, and levels of technical advancement (Rid & Buchanan, 2015). Building capacity in underdeveloped nations, advocating best practices, and helping countries create their own cybersecurity policies are all part of strengthening international governance. In the end, keeping cyberspace safe and stable needs ongoing diplomatic work, creating confidence, and seeing cybersecurity as a global public benefit.

7. The Future of Cybersecurity

The future of cybersecurity will be dictated by how quickly technology is changing and how complicated the digital world is becoming. As more and more people and businesses embrace digital transformation, new technologies will bring both big benefits and hazards that have never been seen before. In this fast-changing world, the capacity to see problems coming and take action to avoid them will be vital to protecting digital assets, systems, and society as a whole (ENISA, 2023).

New technologies are going to change the way we think about cybersecurity. More and more, artificial intelligence (AI) and machine learning (ML) are being used to find threats, make predictions, and respond to incidents automatically. These tools help defenders find trends and strange things in real time, which makes it faster and more accurate to find cyber threats. But bad guys are also using AI to carry out more advanced assaults, such making deepfakes that look real, automating phishing operations, and getting beyond standard security measures (Brundage et al., 2018).

Quantum computing could change the way we think about things. It could lead to major improvements in processing power, but it could also undermine the encryption techniques that keep data, communications, and money safe. Once quantum computers are possible to use, building

encryption that is resistant to quantum computers will become a top goal for long-term data security (Chen et al., 2016).

The Internet of Things (IoT) will keep growing, with billions of new gadgets joining worldwide networks. Many IoT devices don't have strong security safeguards and are hard to upgrade, which makes them good targets for hackers. People can use hacked IoT devices to construct big botnets, steal data, and target important infrastructure (ENISA, 2023).

The move to hybrid work environments and cloud computing have made network borders even less clear, which has made it easier for hackers to get into systems and harder to protect digital assets. To lower new threats, businesses need to make cloud security, identity management, and zero-trust architectures their top priorities (IBM, 2022).

7.1 Policy, Regulation, and Global Collaboration

The rules and regulations will keep changing, with a greater focus on privacy, data protection, and risk management. Policymakers will have to keep up with new technologies and make sure that rules are flexible enough to deal with new problems without slowing down progress. As cyber dangers cross borders more and more, working together throughout the world will become increasingly more important. Global cybersecurity governance will be based on international cooperation, unified legal frameworks, sharing of information, and coordinated response operations (Rid & Buchanan, 2015).

The cybersecurity skills gap will continue to exist unless we engage in education, training, and programs that promote diversity. The sector will need to hire people from many different fields and experiences. They will need to know not only how to do their jobs well, but also how to follow the law, make good decisions, and follow the rules. As the field changes, lifelong learning and getting new skills will be quite important.

In the end, the future of cybersecurity will depend on how well people can trust digital technologies. Everyone involved—governments, businesses, schools, and individuals—will need to be open, responsible, and lead by example. As digital systems become more important in everyday life, the cost of failure will go up. This means that being strong, flexible, and taking responsibility with others is more important than ever (ENISA, 2023).

8. Conclusion

Cybersecurity is become a normal aspect of life, influencing all parts of our personal, business, and civic lives. People are using digital technology more and more for things like communication, business, health care, government, and school. This means that the risks of protecting digital assets and infrastructure have never been higher. Even though technology is moving quickly and opening up tremendous opportunities for growth and interaction, it also introduces new threats and a dangerous landscape that changes frequently.

The analysis in this paper demonstrates that cyber threats have evolved to be more sophisticated, prevalent, and likely to exert significant impact. The risks are both immediate and long-term. They include disruptive ransomware assaults, sophisticated persistent threats that target essential infrastructure, extensive phishing operations, and large-scale data breaches that affect millions of individuals. The economic implications alone, like losing money, damaging your reputation, paying fines, and having to stop operations, are serious enough to put enterprises and countries in danger.

Cybersecurity isn't simply something that IT departments worry about anymore. It's now a part of national security, public safety, and the protection of basic rights and freedoms. One weakness can set off a chain reaction spanning businesses and countries in today's world, when everything is interrelated. This makes it even more critical to have a full, multi-layered plan for protecting yourself online. The GDPR, the NIS Directive, and other national and international laws illustrate how crucial it is to obey the rules, manage risk, and be responsible in the digital age.

Everyone who is engaged needs to work together and keep working on these challenges until they are solved. In addition to good staff training and education programs, there needs to be continual investment in new defence technologies, regular risk assessments, and security measures that can be changed. We need to bridge the global skills gap and promote diversity in the cybersecurity profession to make groups and communities stronger and better able to deal with new threats. Cybersecurity is also very important from a moral, legal, and societal point of view. To maintain democratic values and keep faith in digital systems, it's necessary to find the right balance between security and privacy, promote responsible disclosure practices, and promote international

cooperation. Countries need to work together, be open, and make global laws to protect things from growing worse and keep things stable as cyber operations become more prominent in politics and international affairs. In the end, the future of cybersecurity will depend on how well we can all see new threats, learn new things all the time, and push for good government.

We can make the digital world safer, keep key infrastructure in good shape, and make sure that technology has a positive effect on future generations if governments, businesses, schools, and individuals all work together. Cybersecurity is not just a problem with technology or the law; it is a shared responsibility that is at the heart of modern living.

References

- Atzei, N., Bartoletti, M., & Cimoli, T. (2017). A survey of attacks on Ethereum smart contracts (SoK). In *International Conference on Principles of Security and Trust* (pp. 164–186). Springer. https://doi.org/10.1007/978-3-662-54455-6_8
- Brundage, M., Avin, S., Clark, J., Toner, H., Eckersley, P., Garfinkel, B., ... & Amodei, D. (2018). The malicious use of artificial intelligence: Forecasting, prevention, and mitigation. *arXiv preprint arXiv:1802.07228*. <https://arxiv.org/abs/1802.07228>
- Chen, L. K., Chen, L., Jordan, S., Liu, Y. K., Moody, D., Peralta, R., Perlner, R., ... & Dang, Q. (2016). Report on post-quantum cryptography (NISTIR 8105). National Institute of Standards and Technology. <https://nvlpubs.nist.gov/nistpubs/ir/2016/NIST.IR.8105.pdf>
- CISA. (2022). Cyber incident response. Cybersecurity and Infrastructure Security Agency. <https://www.cisa.gov/>
- ENISA. (2022). ENISA threat landscape 2022. European Union Agency for Cybersecurity. <https://www.enisa.europa.eu/publications/enisa-threat-landscape-2022>
- ENISA. (2023). ENISA threat landscape 2023. European Union Agency for Cybersecurity. <https://www.enisa.europa.eu/publications/enisa-threat-landscape-2023>

- European Commission. (2021). EU Cybersecurity Act. <https://ec.europa.eu/digital-single-market/en/eu-cybersecurity-act>
- GAO. (2018). Data protection: Actions taken by Equifax and federal agencies in response to the 2017 breach (GAO-18-559R). U.S. Government Accountability Office. <https://www.gao.gov/products/gao-18-559r>
- IBM. (2022). Cost of a data breach report 2022. IBM Security. <https://www.ibm.com/reports/data-breach>
- ISC2. (2022). Cybersecurity workforce study 2022. International Information System Security Certification Consortium. <https://www.isc2.org/Research/Workforce-Study>
- Lee, R. M., Assante, M. J., & Conway, T. (2016). Analysis of the cyber attack on the Ukrainian power grid. Electricity Information Sharing and Analysis Center (E-ISAC). <https://www.nerc.com/pa/CI/ESISAC/Documents/E-ISACSANSUkraineDUC181213.pdf>
- NIST. (2018). Framework for improving critical infrastructure cybersecurity (Version 1.1). National Institute of Standards and Technology. <https://nvlpubs.nist.gov/nistpubs/CSWP/NIST.CSWP.04162018.pdf>
- Ponemon Institute. (2022). 2022 cost of a data breach report. <https://www.ibm.com/downloads/cas/3R8N1DZJ>
- Proofpoint. (2022). 2022 state of the phish report. <https://www.proofpoint.com/us/resources/threat-reports/state-of-phish>
- Rid, T., & Buchanan, B. (2015). Attributing cyber attacks. *Journal of Strategic Studies*, 38(1–2), 4–37. <https://doi.org/10.1080/01402390.2014.977382>
- Solove, D. J. (2021). *Understanding privacy* (2nd ed.). Harvard University Press.
- Symantec. (2019). Internet security threat report. <https://www.broadcom.com/company/newsroom/press-releases?filtr=Internet-Security-Threat-Report>

HARMONIZATION OF INTELLECTUAL PROPERTY LAW IN NORTH MACEDONIA AND KOSOVO WITH THE EU ACQUIS: CHALLENGES AND PROGRESS

Prof.Dr. Adnan Jashari¹

Prof.Asoc.Dr. Egzone Osmanaj²

Abstract

North Macedonia and Kosovo, as two Western Balkan countries aspiring to join the European Union (EU), face important obligations in the process of aligning their national legislation with the acquis communautaire, including in the area of intellectual property rights. North Macedonia, as a candidate country with accession negotiations already opened, holds a more advanced position compared to Kosovo, which remains the only country in the region that has not yet obtained candidate status. This difference in EU integration status raises the question of whether and to what extent it has influenced, among other things, the commitment and pace of harmonizing intellectual property policies in each country.

The purpose of this paper is to analyze the level of harmonization of intellectual property legislation in Kosovo and North Macedonia with the EU acquis, using as a reference point the obligations arising from the Stabilization and Association Agreements (SAA), as well as the European Commission's Progress Reports for the period 2020-2024, particularly Chapter 7 of the acquis, which covers intellectual property rights. The paper examines the progress achieved, the challenges encountered, and the impact of the differing integration statuses of the two countries on their advancement in this field.

1. South East European University, North Macedonia, Email: a.jashari@seeu.edu.mk

2. College UBT, Pristina, Kosovo, Email: egzona.osmanaj@ubt-uni.net

This study contributes to understanding the factors influencing the progress of legislative harmonization in the area of intellectual property rights in both countries. It also offers practical recommendations for improving legislative and institutional capacities in Kosovo and North Macedonia, with the aim of advancing further on the path toward EU integration.

Keywords: *North Macedonia, Kosovo, intellectual property, law, harmonization, acquis communautaire.*

1. Introduction

The harmonization of national legislation with the European Union *acquis* represents a key obligation for Western Balkan countries aspiring to EU membership. A crucial aspect of this process is the field of intellectual property rights, which not only ensures the protection of creative and innovative works but also contributes to the development of a market economy and the attraction of foreign investment. In this context, the Republic of North Macedonia and Kosovo present different cases in terms of progress toward EU-aligned intellectual property legislation, largely due to their differing integration statuses: North Macedonia as a candidate country with opened accession negotiations, and Kosovo, which has not yet obtained candidate status.

This paper aims to analyze the level of harmonization of intellectual property legislation in both countries, using the Stabilization and Association Agreements and the European Commission's Progress Reports for 2020–2024 as reference points. The analysis addresses achieved progress, identified challenges, and the impact of EU integration status on the pace and commitment to legislative alignment. The findings contribute to understanding the factors influencing the progress of intellectual property harmonization and provide practical recommendations for strengthening legislative and institutional capacities to advance toward full EU integration.

2. The Legal Framework in the Field of Intellectual Property in Kosovo

Intellectual property rights constitute a fundamental segment of the legal order in any country aiming to develop a sustainable market economy. In Kosovo, the legal framework regulating this field has undergone substantial reforms in recent years, particularly with the aim of aligning with the *acquis communautaire* of the European Union. This legal reform has been characterized by the adoption of a series of new laws intended to strengthen the protection of copyright and industrial property rights, as well as to improve legal certainty for economic operators and creators.

In 2022 and 2023, the Assembly of the Republic of Kosovo adopted a comprehensive legislative package consisting of new laws that include advanced provisions harmonized with EU directives and regulations. These include: Law No. 08/L-205 on Copyright and Related Rights (2023), which replaced the previous law and provides modern standards for the protection of intellectual creations in the fields of art and literature (Assembly of the Republic of Kosovo, 2023); Law No. 08/L-075 on Trademarks (2022), which improves the system of registration and protection of trademarks in accordance with European practices (Assembly of the Republic of Kosovo, 2022a); and Law No. 08/L-076 on the Protection of Trade Secrets (2022), which consolidates legal mechanisms against the unauthorized use of confidential information of commercial importance (Assembly of the Republic of Kosovo, 2022b).

In addition, specialized laws have been adopted for the protection of specific elements of industrial property: Law No. 08/L-055 on Industrial Designs, Law No. 08/L-059 on Patents, and Law No. 08/L-053 on the Topographies of Semiconductor Products (all from 2022), which enhance the registration procedures and reinforce the exclusive rights of right holders (Assembly of the Republic of Kosovo, 2022c, 2022d, 2022e). In this context, although Law No. 05/L-051 on Geographical Indications and Designations of Origin dates back to 2016, it continues to be a key component of the current legal framework for the protection of traditional products and those with a specific geographical origin (Assembly of the Republic of Kosovo, 2016).

Overall, the updating of this legal framework reflects a deliberate effort by Kosovo's institutions to fulfill the criteria of the Stabilisation and

Association Agreement and to create a more favorable environment for innovation and investment. However, as will be analyzed in the following section, challenges in the effective implementation of these laws remain a crucial issue, which is also reflected in the European Commission's annual assessments.

2.1. Developments and Challenges in the Field of Intellectual Property Law in Kosovo: An Analysis of the EU Progress Reports (2020–2024)

The European Commission's Progress Reports on Kosovo for the period 2020–2024 provide a comprehensive overview of the key developments in the field of intellectual property law, highlighting progress made, persistent challenges, and ongoing needs for improvement in this sector. These reports reflect the efforts of Kosovo's institutions to align their legislation and practices with the requirements of the European Union.

In 2020, the situation regarding intellectual property rights was still in an early stage of development. The report emphasized major difficulties related to the practical enforcement of the law, as well as the lack of necessary institutional capacities to effectively protect intellectual property rights. This period called for profound legal reforms and the strengthening of administrative and technical capacities to address these challenges. (European Commission, 2020).

During 2021, some legal-level progress was noted, with the adoption of new measures aimed at improving the legal framework. However, the implementation remained weak in practice, primarily due to a lack of adequate training for responsible personnel and insufficient financial resources to carry out the necessary processes. As a result, practical challenges persisted, even though improvements in legislation had begun. (European Commission, 2021).

In 2022, efforts to enhance institutional mechanisms for the protection of intellectual property rights were accelerated. The report noted a greater commitment to monitoring and enforcing the law but also underlined the lack of effective coordination between various institutions, which in some cases hindered the proper functioning of the system. This period revealed that institutional challenges remained a barrier to achieving more substantial results. (European Commission, 2022).

In 2023, a notable improvement in the harmonization of legislation with EU standards was observed. The report highlighted that institutions had focused their efforts on improving inter-institutional cooperation and increasing public awareness regarding the importance of intellectual property rights. Nevertheless, challenges related to the lack of technical and financial capacities remained significant obstacles to further advancement. (European Commission, 2023).

By 2024, the sector entered a more advanced phase of development. The report identified concrete steps taken to improve the enforcement of the law, including the use of technology and the establishment of digital platforms for the registration and monitoring of intellectual property rights. Additionally, regional and international cooperation improved, which is a key factor for the successful functioning of the system. However, the Commission stressed the need for a clear and sustainable mid-term strategy, as well as broader involvement of the private sector in enforcement processes. (European Commission, 2024).

Table 1: Comparative Overview of Developments by Year

Year	Key Progress	Main Challenges	Notable Remarks
2020	Focus on identifying problems and needs	Lack of institutional capacities and weak practical enforcement	Beginning of legal reforms
2021	Legal improvements, adoption of new measures	Poor implementation, lack of training and financial resources	Legislation improved, but enforcement remained ineffective
2022	Efforts to strengthen institutional mechanisms	Lack of inter-institutional coordination	Increased monitoring efforts

2023	Better legislative harmonization and enhanced cooperation	Insufficient technical and financial capacities	Increased public awareness
2024	Concrete steps in technology and international cooperation	Need for a mid-term strategy and private sector involvement	Introduction of digital platforms

Source: Compiled by the authors based on the European Commission Progress Reports for Kosovo and North Macedonia, 2020–2024

In conclusion, for the period 2020-2024, it can be observed that developments in the field of intellectual property rights in Kosovo have followed a progressive path, albeit with ongoing difficulties regarding practical implementation and institutional capacities. The year 2024 marks a key moment where technological advancements and international cooperation provide new opportunities for improvement, building upon the experiences and challenges of previous years.

3. Legal and normative treatment of copyright and related rights in North Macedonia

With the independence of the Republic of Macedonia and the adoption of the Constitution of the Republic of Macedonia, the process of building a new socio-political and economic system began, in accordance with the new position of the Republic of Macedonia. With the Constitutional Law on the Implementation of the Constitution of the Republic of Macedonia, the existing federal laws acquired a republican character, including those from the field of copyright and related rights (the first law is from 1946) as well as from the field of the court and judicial rules. According to the Constitutional Law, the regime of realization and protection of copyright and related rights passed into the competence of the Republic of Macedonia. The Ministry of Culture, by analogy and on a voluntary basis, carried out work in this area, while later, this competence was formally and legally established with the adoption of the first Macedonian

Law on Copyright and Related Rights (1996). By assuming competence in the field of DADP and international legal obligations on the basis of succession, by decision of the Government of the Republic of Macedonia, on 23.07.1993, the Republic of Macedonia became a member of the Convention Establishing the World Intellectual Property Organization at the UN and, in accordance with it, it entered into a series of conventions in the field of intellectual property, including the Berne Convention for the Protection of Literary and Artistic Works - Paris Act of 1971. On the basis of succession, in 1996/1997, membership in UNESCO was undertaken and the following conventions were entered into: the UNESCO Universal Copyright Convention, and the Convention on the Dissemination of Signals for the Transmission of Programmes by Satellite (Satellite Convention). The Law on Copyright and Related Rights, in addition to the rights of authors and artists-publishers, also regulates the rights of phonogram, film and stage producers in radio and television organizations (RTV), the rights of publishers and compilers of databases on their performances, respectively the subject of related rights. While copyright, within the framework of the SFRY, was regulated by the Law on Copyright, which regulated the rights of authors for their works and of artists-publishers for their performances. The Law on Copyright and Related Rights (LCNR) is based on the Constitution of the Republic of Macedonia, as well as all acts of international law from the field of CNR. In 2005, the LCNR was fully harmonized with all binding directives of the European Union, which was one of the conditions for obtaining the status of a candidate country for EU membership. The amendments to the LDADP in 2007 represent a fulfillment of obligations in the spirit of the Stabilization and Association Agreement, which in Article 71 provides that the Republic of Macedonia, as a member of the SAA, must ensure adequate and effective protection and enforcement of intellectual property rights (copyright and related rights), industrial and commercial rights and expressly ensures that the Republic of Macedonia will take all necessary measures in order to guarantee, no later than five years after the entry into force of the Agreement, a level of protection of rights similar to that existing in the EU, including effective means for the enforcement of these rights. The existing legal regulation on DADP itself incorporates, in addition to the directives, other international documents, including: the Agreement on Trade-Related Aspects of Intellectual Property of the World Trade Organization - WTO

(TRIPS Agreement), the SOIS Agreement on Copyright and Performances and Phonograms, as well as a number of recommendations of competent international organizations and associations. LDADP, although the basic rule for the regime of realization and protection of DADP, is not a closed or exclusive legal system. Precisely, these rights are directly realized and protected through an impressive number of rules from all spheres - labor, inheritance, family, property, economic, obligatory relations, education, science, penal law, judicial procedure, taxes, customs and many others. This confirms the complex nature of this matter and its connection with segments of general social life and the legal system.

3.1. Legal and normative treatment of industrial property rights

The Republic of North Macedonia regulates industrial property rights and trademarks with the Law on Industrial Property, which law was published in the Official Gazette of North Macedonia on February 17, 2009. The central institution dealing with industrial property rights is the State Industrial Property Office of the Republic of North Macedonia, which was established in December 1993 and was called the “Office for the Protection of Industrial Property”, while this institution changed its name through legal amendments and is called the State Industrial Property Office: “With the amendments to the law, in March 2004, the status and name of the institution were changed to the State Industrial Property Office, which becomes an administrative organization with the status of an independent body of state administration.” According to this law, this institution has a number of powers for the regulation and protection of trademark rights, such as: accepting applications for the protection of industrial property rights, implementing the administrative procedure for obtaining industrial property rights, maintaining registers of acquired rights and other registers determined by this law, publishing an official gazette containing data on the rights filed and received by industrial property, The first law that is considered to have regulated the field of industrial property is the Industrial Property Law of 15.07.1993, while in March 1994, the sub-legal acts of this law also entered into force, which represent the first legal framework with which the Republic of North Macedonia has operated, while also in July 1993 the Republic of Macedonia became a member of the World Intellectual Property Organization. In terms of structure, this 2009 law is quite voluminous, since it has 326 articles and

is divided into 13 parts, which regulates the field of industrial property: part one: general provisions, part two: patent, part three: industrial design, part four: trademark, part five: geographical name, part six: continuation of the procedure and return to the previous state, part seven: variability of rights from industrial property, part eight: announcement of the annulled decision for the recognition of rights from industrial property, part nine: representation, part ten: judicial protection - violation of rights, part eleven: supervision, part twelve: provisions for misdemeanors and part thirteen: transitional and final provisions.

3.2. Developments and Challenges in the Field of Intellectual Property Law in North Macedonia: An Analysis of the EU Progress Reports (2020–2024)

The European Commission's Progress Reports on North Macedonia for the period 2020–2024 offer a structured assessment of developments in the field of intellectual property rights (IPR), identifying progress, ongoing shortcomings, and priority areas that require strengthening. Across the five-year period, North Macedonia remains consistently assessed as moderately prepared in this field, with persistent challenges in legislative alignment, institutional capacity, and effective enforcement.

In 2020, North Macedonia maintained a moderate level of preparedness and demonstrated some progress, particularly in raising public awareness and increasing the number of seized counterfeit goods. However, significant shortcomings remained. The legal framework experienced further delays, especially regarding amendments to copyright and neighbouring rights. A major structural weakness involved the lack of an information platform for institutional data exchange on IPR infringements, and the absence of a functioning coordination body for IPR protection. Moreover, the industrial property legislation was not aligned with key EU directives, including the Trade Secrets Directive and the Enforcement Directive. (European Commission, 2020)

In 2021, some progress was achieved in aligning copyright legislation with the EU acquis, including amendments adopted in late 2020. Nevertheless, core recommendations remained unimplemented. The institutional framework continued to face challenges, particularly due to the understaffing of the IPR unit within the Ministry of Culture. Although the

establishment of an information platform for data exchange began, it had not yet become operational. Industrial property legislation also remained insufficiently aligned with EU requirements, especially regarding design protection, enforcement, and trade secrets. The coordination body for IPR protection had still not been established, while enforcement against counterfeiting continued to improve. (European Commission, 2021).

The 2022 report clearly stated that no significant progress had been made. Last year's recommendations remained valid, reflecting stagnation in legislative reforms and weak implementation of strategic documents. Key priorities, such as alignment with the Collective Rights Management Directive, the Enforcement Directive, and the Trade Secrets Directive, remained unaddressed. The relevant IPR unit continued to lack adequate staffing, while the online information platform, though created, still needed to become operational. Enforcement remained largely dependent on the Customs Administration, which continued seizing counterfeit goods—largely imported from Türkiye. (European Commission, 2022)

In 2023, legislative alignment again faced delays, particularly concerning amendments to the Law on Copyright, which remained pending. North Macedonia had still not aligned with the SatCab II Directive or the Digital Single Market (DSM) Directive. The IPR unit in the Ministry of Culture remained understaffed, undermining institutional functioning. Some administrative improvements were noted: the State Office for Industrial Property began using the EUIPO harmonised database for trademark registration and continued close cooperation with EU institutions. Enforcement challenges persisted, with the IPR information platform still not operational and the coordination body insufficiently active. Several new cases of infringement were recorded, indicating a continued need for stronger enforcement mechanisms. (European Commission, 2023)

The 2024 report reiterated continued delays in adopting copyright amendments, including those required for alignment with EU acquis on collective rights management, orphan works, and the Marrakesh Treaty. North Macedonia remained unaligned with key directives such as the SatCab II Directive and the DSM Directive. In industrial property, cooperation with EUIPO and other bodies persisted, yet alignment gaps remained concerning patents, trade secrets, and enforcement. Institutional capacity continued to be a significant barrier, particularly due to the limited staffing of the IPR unit and the SOIP's lack of hardware infrastructure

to enable full IPR monitoring. The national IPR strategy (2021–2026) remained unadopted, signalling a strategic vacuum. Overall, enforcement progress remained limited, with only a small number of confirmed cases of violations. (European Commission, 2024).

Table 2: Comparative Overview of Developments in North Macedonia (2020–2024)

Year	Key Progress	Main Challenges	Notable Remarks
2020	Increased seizures of counterfeit goods; awareness-raising	Delayed copyright amendments; no IPR data platform; weak legislative alignment	Recommendations from 2019 remained unimplemented
2021	Amendments to copyright law; establishment of IPR data platform (not operational)	Understaffed institutions; incomplete alignment in industrial property; no coordination body	Enforcement improved, especially related to counterfeit goods
2022	Continuation of cooperation with EU bodies	No progress overall; repeated recommendations; information platform not operational	Customs seizures remained stable; legislative stagnation
2023	Use of EUIPO harmonised database; continued EU cooperation	Delayed amendments; poor inter-institutional coordination; understaffed IPR unit	Increased number of suspected infringement cases
2024	Continued international cooperation; incremental enforcement cases	Major legislative delays; lack of strategy adoption; insufficient infrastructure and staffing	Persistent gaps in alignment with major directives

Source: Compiled by the authors based on the European Commission Progress Reports for Kosovo and North Macedonia, 2020–2024

Across the period 2020–2024, North Macedonia’s progress in the field of intellectual property rights demonstrates a pattern of limited advancement, recurring delays, and persistent institutional weaknesses. While cooperation with EU institutions remains strong particularly through SOIP’s engagement with EUIPO substantive reforms lag significantly behind EU expectations. The prolonged inability to operationalise the IPR information platform, the chronically understaffed Ministry of Culture unit, and the delayed adoption of essential legislative amendments represent continuous obstacles.

By 2024, North Macedonia faces a critical need to accelerate legislative alignment, adopt and implement the long-awaited IPR strategy (2021–2026), and reinforce institutional capacities. Without addressing these systemic shortcomings, progress will remain incremental and insufficient for deeper harmonisation with the EU *acquis*.

4. Conclusions

The analysis of legal developments and the European Commission’s Progress Reports from 2020 to 2024 indicates that, although both countries have made notable efforts toward harmonization, the level and pace of progress differ. Kosovo has achieved substantial advancements in updating its legal framework, adopting modern laws for copyright, industrial property, and trade secret protection. Nonetheless, practical implementation, institutional capacity, and private sector involvement remain key challenges.

North Macedonia, despite its candidate status and earlier legal harmonization efforts, continues to face repeated delays in adopting crucial legislative amendments and structural weaknesses in institutional capacity, limiting the effective enforcement of intellectual property rights.

Ultimately, successful harmonization with the EU *acquis* requires not only legislative alignment but also strengthened institutions, improved inter-institutional coordination, and active collaboration with private stakeholders. This process is essential for creating a sustainable environment for innovation, competition, and economic development, bringing both Kosovo and North Macedonia closer to EU standards and their respective membership perspectives.

5. References

- Law no. 08/l-075 on trademarks, official gazette of the Republic of Kosovo / no. 18 / 13 july 2022, Pristina
- Law no. 08/l-059 on patents, official gazette of the Republic of Kosovo / no. 4 / 20 january 2022, Pristina
- Law no. 08/l-076 on the protection of trade secrets, official gazette of the Republic of Kosovo / no. 13 / 30 may 2022, Pristina
- Law no. 08/l-055 on industrial design, official gazette of the Republic of Kosovo / no. 5 / 21 january 2022, Pristina
- Law no. 05/l -051 on geographical indications and designations of origin, official gazette of the Republic of Kosova / no. 3 / 12 january 2016, Pristina
- European Commission (2020) Report. Brussels. Available at: https://enlargement.ec.europa.eu/system/files/2020-10/kosovo_report_2020.pdf
- European Commission (2021) Report. Brussels. Available at: https://enlargement.ec.europa.eu/document/download/ec34a067-8477-4adc-a123-054b7d62abc4_en?filename=Kosovo%202021%20report.PDF
- European Commission (2022) Kosovo 2022 Report. Brussels. Available at: <https://enlargement.ec.europa.eu/system/files/2022-10/Kosovo%20Report%202022.pdf>
- European Commission (2023) Kosovo 2023 Report. Brussels. Available at: https://enlargement.ec.europa.eu/document/download/760aacca-4e88-4667-8792-3ed08cdd65c3_en?filename=SWD_2023_692%20Kosovo%20report_0.pdf
- European Commission (2024) Kosovo 2024 Report. Brussels. Available at: https://enlargement.ec.europa.eu/document/download/c790738e-4cf6-4a43-a8a9-43c1b6f01e10_en?filename=Kosovo%20Report%202024.pdf
- European Commission (2021) North Macedonia 2021 Report. Brussels. Available at: <https://enlargement.ec.europa.eu/document/download/724722a9->

240b-4001-abce-648e0c96f88b_en?filename=North-Macedonia-Report-2021.pdf

- European Commission (2022) North Macedonia 2022 Report. Brussels. Available at:
https://enlargement.ec.europa.eu/document/download/48ba61f0-41ae-4cff-9517-29fac190f4bd_en?filename=North%20Macedonia%20Report%202022.pdf
- European Commission (2023) North Macedonia 2023 Report. Brussels. Available at:
https://enlargement.ec.europa.eu/system/files/2023-11/SWD_2023_693%20North%20Macedonia%20report.pdf
- European Commission (2024) North Macedonia 2024 Report. Brussels. Available at:
https://enlargement.ec.europa.eu/document/download/5f0c9185-ce46-46fc-bf44-82318ab47e88_en?filename=North%20Macedonia%20Report%202024.pdf

INHERITANCE AS A MODE OF ACQUIRING OWNERSHIP

PhD. Artur Gaxha¹

Abstract

Inheritance is a method of acquiring ownership that occurs after the death of the decedent and is regulated by law. It is a transfer of assets and property rights to other individuals, who may be either natural or legal persons. Inheritance can occur in two ways: legal inheritance and testamentary inheritance. Legal inheritance happens when the deceased has left no will or has made an invalid will. In this case, the property passes to their relatives according to the rules set by the Civil Code. On the other hand, testamentary inheritance is the transfer of property that happens according to the wishes of the decedent, who has outlined this in a will.

The function of inheritance serves various purposes: an economic function that gives individuals the freedom to dispose of their property after death, and a social function that supports and protects the family, one of the most important elements of society. Inheritance is an important institution because it guarantees the transfer of property from one person to another after death. Its significance is evident in the constitutional and legislative regulations of many countries, including Albania, where inheritance is considered one of the classic methods of acquiring ownership.

Because inheritance is the transfer by law or by will of the decedent's property to his heirs, it is treated as a *derivative* mode of acquiring ownership: title to assets passes from the deceased (**de cuius**), a natural person, to other subjects called *heirs*, who, under the law, may be natural

1. tgaxha@hotmail.com

or legal persons.

Unlike other civil law relationships, inheritance arises *mortis causa*: the death of the decedent¹ is a complex juridical fact that simultaneously extinguishes certain legal relations and creates new ones by transferring his estate to the heirs². On death, some of the decedent's rights and obligations are extinguished, whereas the remainder every patrimonial right or real right in rem passes to his successors.

Excluded are only those real rights whose duration cannot exceed the life of their original holder. Together with the assets, the associated passive situations transfer as well: when property encumbered by a real right or burden changes hands, the holder of that right may now assert it against the heirs. Hence heirs receive not only claims (credits) but also liabilities (debts)³.

Inheritance is one of the most important civil law institutions precisely because its object is the transfer of rights and duties⁴ occasioned solely by the death of their holder. Article 316 of the Albanian Civil Code expressly lists inheritance among the legal means of acquiring ownership; testamentary succession is therefore a recognized way of becoming an owner⁵. The entire bundle of legal relations ownership of tangible things, real rights over another's property, real security interests, claims and obligations that passes to the heirs on the death of its holder is called the *hereditary estate*, while the person who transfers those rights is the *decedent*⁶ or *testator*.

1. Decision No. 63 of 11 February 2015 of the Civil Chamber of the Supreme Court

2. Civil Law of the People's Republic of Albania, A. Nathanaili, University of Tirana 1974

3. Succession, Dr J. Fuga, Tirana 2002

4. As a consequence of death, nonpecuniary rights and obligations, together with personality rights, are extinguished; this means that when the holder of such rights dies, they are neither transferred nor inherited by the heirs. Examples include family rights and duties closely bound to the deceased's special position within the family, or, in the sphere of personality rights, copyright and similar interests. Conversely, under the general principle, the deceased's absolute patrimonial rights—ownership and other real rights of enjoyment, as well as real security interests—pass to the heirs, except where, by their very nature, those rights cannot extend beyond the life of the person who held them (for instance, usufruct or a right of use). Accordingly, and on the basis of the foregoing, it may be said that both the rights and the obligations the decedent enjoyed are transferred to the heirs; transfer is precluded only when the rights or duties are inseparably linked to the personality of their former holder.

5. Decision No. 2802 of the Tirana Court of Appeal, dated 23 November 2012

6. F. Galgano, *Private Law*, 3rd edition, 2006, p. 971

From this definition two essential features emerge: inheritance brings about both extinction and the creation of rights and duties.

As a civil law institution inheritance is a special mode of acquiring property, being the only one that is *exclusively mortis causa*. Two cumulative conditions must therefore be proved:

- a) the death natural or legally declared of a person; and
- b) the existence in that person's estate of patrimonial rights and obligations¹.

The primary function of succession law is to identify (i) the people who succeed the *de cuius* and (ii) the estate that devolves upon them. From the testator's perspective (if a will exists) succession law guarantees, within statutory limits, that the estate reaches the destination he chose; from the heirs' perspective it guarantees that they receive the estate lawfully and regularly.

Because it ensures continuity and facilitates the smooth transfer of assets after death, succession law has two functions:

- a) *Economic function. Rooted in the principle of freedom of testation, it lets a person, within legal limits, dispose freely of his estate for the time after his death.*
- b) *Social function. It supports and protects the family as a social unit the nucleus of society hence succession law is influenced by social developments affecting the family.*

The importance of inheritance derives above all from the importance of ownership in modern society. As one of the principals and most distinctive modes of acquiring title, it is crucial in a market economy that rests on the free movement of goods and capital. Constitutions, including Albania's, reflect this: Article 41(2) states expressly, "*Property is acquired by gift, inheritance, purchase and every other classical mode provided in the Civil Code.*" Thus, the Constitution ranks inheritance among the classic means of acquiring ownership, and the Civil Code both recognizes and regulates it in detail.

Under Article 316, the estate may pass **only** (i) by law (intestate succession) or (ii) by will (testamentary succession). Contractual devices

1. *Civil Law II*, V. Kondili

for transferring the decedent's property are not permitted (Art. 319). Doctrine also speaks of the call to the succession—the title conferred on an heir **by law or by will** when the decedent dies.

Two methods therefore exist for transmitting a decedent's estate:

1. **Intestate succession**, and
2. **Testamentary succession**.

a) **Intestate succession**

Intestate rules apply when

1. the decedent left no will;
2. he disposed by will of only part of his estate; or
3. the will is wholly or partly invalid¹.

Because intestate succession is treated as the decedent's presumed will, the law must determine the circle of people entitled to inherit it². It does so based on blood relationship or adoption (relationships created by marriage) and, in certain cases, dependence on the decedent (e.g., people incapable of work and supported by him³).

Heirs are arranged in degrees (orders)⁴. A degree is the group of blood relatives who share a common ancestor; degrees with many heirs subdivide into stems and then into branches. The system fixes the order in which heirs are called and links closely to the rules on representation and substitution: when heirs of a prior order are missing, heirs of subsequent orders step into their place, rank and rights. Thus, where an heir of a prior order has died before the decedent, is unworthy, disclaims or is excluded and has no representatives, his share accrues to the other coheirs of that order (the right of accretion).

Thus, when we look at the order in which heirs are called under intestate

1. Article 317 of the Civil Code: "Intestate succession applies when the deceased has left no will, has made a will for only part of his estate, or when the will is wholly or partly invalid."

2. Article 360 of the Civil Code: "The statutory heirs are the children, the children's descendants, the spouse, the parents, the brothers and sisters and the children of predeceased brothers and sisters, the grandfather and grandmother and other ascendants, persons incapable of work who were supported by the deceased, other relatives up to the sixth degree, and the State. They are called to the succession in the order laid down in this Code."

3. *J. Fuga*, Succession, Tirana 2002

4. Articles 361 – 366 of the Civil Code

succession, we see that under the substitution system the successive classes of legal heirs compete with one another. In this framework, if there are no heirs in the earlier class, the heirs in the next class¹ are called to inherit. From a doctrinal standpoint, Article 326 also safeguards the will of the *de cuius*: where substitution applies, the death of a descendant before the ancestor allows the latter should he dispose of part of his estate to prefer the person most closely related to his predeceased¹³ descendant.

When one of the co heirs who is called to the succession has died before the decedent, is unworthy, has renounced the inheritance, or has been excluded, and there is no one entitled to take by substitution, the share that would have gone to that person is added to the portions of the other co heirs of the same class². This is known as the right of accretion.

- b) Testamentary inheritance is tied to the will of the testator. The testator's will, expressed in the form and manner prescribed by law, is binding after his death.

This will is set out in a document called a will. According to the provisions of the Civil Code, a will is a unilateral juridical act performed by the testator himself, through which—of his own free will—the testator determines the destination that the property he owned during his lifetime will have after his death³. A will is a revocable juridical act whereby a person (the testator) disposes of his property (all of it or a part of it) for the time when he will cease to live. Depending on the circumstances, testamentary inheritance competes with legal (intestate) inheritance. If, after the testator's death, the testamentary succession is opened, then legal succession has no place. Conversely, if the testator has disposed of only part of his property, the rules on legal inheritance apply to the remaining part of the estate. In this case, legal and testamentary succession compete with each other.

In testamentary succession the testator may not disregard certain statutory obligations toward the legal heirs, owing to some special qualities they possess (Article 379, reserved portion).

According to Article 372, a will is a unilateral juridical act *mortis causa* by which the author of the act (the testator) disposes of the patrimonial

1. Decision No. 56 of 5 February 2015 of the Civil Chamber of the Supreme Court

2. The Meaning of Inheritance; Lawyer Artan Hajdari

3. Article 370 of the Civil Code

relations of his property for the time after death.

Legal doctrine treating inheritance as a mode of acquiring ownership on a person's death has described it as a typical example of the universality of law. Using another criterion **the object of the hereditary estate** the relationship of inheritance may be: universal inheritance; inheritance under a universal title; inheritance under a *particular title*.

Unlike legal inheritance, which can be only universal or under a universal title because the call concerns the whole estate or an arithmetic fraction of it, in testamentary inheritance the source of the call *vocazione* is the testator's own will, so the scope of hereditary rights relates exclusively to relations defined by the testator. Consequently, the call in testamentary succession may extend not only to the entire hereditary estate or part of it (*universal title*) but also to one or more specific items (*particular title*).

For a will to be universal or under a universal title, it is absolutely necessary to show that when the testator disposed of the property, he had his entire patrimony in mind the totality of his rights at the moment of death and not a concrete benefit from the inheritance. In ***universal inheritance*** and ***inheritance under a universal title***, the scope of the right of succession refers to a generic, undetermined patrimonial situation of the beneficiary, placing him in continuity (succession) in all relations that transfer at the opening of the succession, except those closely linked to the testator (such as a right to maintenance) or otherwise provided in the will. The difference between universal inheritance and inheritance under a universal title is only quantitative.

In ***universal inheritance*** the call to succeed, fixed by law or will, concerns all the property of the *de cuius*. This occurs where there is only one legal heir or where the testator stipulates in his will that all his property passes to a single person.

In ***inheritance under a universal title***, the call does not concern all the property left but a part of it, expressed as an arithmetic fraction or share (1/2; 1/4).

In inheritance under a particular title, the call relates to one or several items or rights specified by the testator, who also designates the person to receive the benefit.

The testamentary heir is subject to all changes the testator's property has undergone from the drafting of the will until the opening of the succession, because a will is a juridical act *mortis causa* that produces effects only

from the testator's death, unlike *inter vivos* acts, which take effect between living persons.

To assess title to a specific item disposed of by will, the relevant date is the death of the *de cuius*, the opening of the succession not the date the will was made. Likewise, the existence of items disposed of and their value are measured at the opening of succession, not at the drafting of the will. The call to testamentary succession will operate only if the items designated by the testator are found in his estate at that moment. Their material non-existence (wear or destruction) or juridical non-existence (alienation) makes the dispositions concerning these objects or rights¹ void.

The question then arises who is to be considered heir and which type of succession opens when the testator has left all his property by will to a named heir but part of the property was not in the testator's possession either when the will was made or when it was opened, because it had been expropriated without compensation by the State. This problem has appeared in practice where the testator's ownership right has been recognised by a decision of the Agency for the Return and Compensation of Property (AKKP) and the property has been returned by the competent authority to the testator's heirs. The dilemma is whether the property should go to the legal heirs or the testamentary heirs. To resolve the dilemma we look to *the Supreme Court's unifying decisions*.

*According to the Court: "Law No. 7698 of 15 April 1993, 'On the Return and Compensation of Property to Former Owners', is **not a new mode of acquiring ownership** but a correction of an injustice, and for that purpose ipso lege annuls all earlier legal acts by which property was unjustly taken from owners. It does not create a new situation (has no constitutive effect), but restores legality and justice." Likewise, the notion of "return of property", meaning the return of the thing that is the object of ownership, as provided in Article 296 Civil Code (actio rivendicatio), is treated just as where a nonpossessing owner has never lost title to ownership, only possession of the thing².*

The Supreme Court has explicitly confirmed that only universal heirs or heirs under a universal title have legal capacity to receive patrimonial elements that the *de cuius* did not expressly foresee in the will. Only they acquire rights (things) gained after the will was drawn up and still present

1. Unifying Decision No. 1/2005 of the United Chambers of the Supreme Court

2. Unifying Decision No. 24/2002 of the United Chambers of the Supreme Court

in the estate when the succession opens; and they are required, *intra vires hereditatis*—within the limits of the hereditary estate to discharge the obligations encumbering it.

From the foregoing we reach the logical conclusion that only in universal inheritance or inheritance under a universal title are included juridical relations whose existence was unknown to the testator himself. Conversely, an heir under a particular title (legatee) has a limited right tied to the items or rights expressly designated in the will (*ut singuli*), so changes in the estate observed at the opening of succession are not reflected in his title¹.

Accordingly, considering the testator as holder of ownership who had unjustly lost only possession of the thing, in cases of testamentary succession under a universal title concerning expropriated property, the disposition made by the testator relates to property for which he held title of ownership but of which he was deprived of possession, and the property must be returned to the testamentary heirs. FormularbeginnFormularende

Bibliography

- Civil Law of the People's Republic of Albania, A. Nathanaili, University of Tirana, 1974
- Succession, Dr J. Fuga, Tirana, 2002
- Private Law, F. Galgano, 3rd edition, Tirana, 2006
- Civil Law II, Valentina Kondili, Tirana
- The Meaning of Inheritance; Lawyer Artan Hajdari
- Unifying Decision No. 1/2005 of the United Chambers of the Supreme Court
- Unifying Decision No. 24/2002 of the United Chambers of the Supreme Court
- Decision No. 56 of 05 February 2015 of the Civil Chamber of the Supreme Court
- Decision No. 2802 of 23 November 2012 of the Tirana Court of Appeal

1. Unifying Decision No. 1/2005 of the United Chambers of the Supreme Court

TRANSPORTATION CONTRACT AND ITS CHARACTERISTICS

Dr. Neritan Cena ¹

Abstract

The contract of transportation is defined by Articles 877-912 of the Civil Code, which clearly distinguish between the rights and obligations of the parties in the transportation of goods and passengers.

The key distinction lies in the fact that the carrier of passengers is exempt from liability if it proves that it has taken all appropriate measures to avoid the damage (only for avoidable events), while the carrier of goods must prove that the damages are consequences of force majeure, actions of the shipper, consignee, or any pre-contractual defects in the goods.

From these provisions, we can single out several distinctive characteristics, such as: transportation being a consensual contract; when transportation is carried out by multiple carriers, they are mutually responsible; notwithstanding the bilateral nature of the contract, the consignee enters as a special party at the moment of delivery; the carrier is not entitled to the journey price, although it is exempt from liability for damages. For other types of transportation, parties must refer to lex specialis, as the Civil Code governs only road transportation.

The carrier holds several obligations, including the burden of proof; ensuring the safety of the goods/passengers from the point of receipt; and adhering to the orders/guidelines of the shipper. The shipper's main duty is to provide all relevant information to the carrier in the delivery note, while the recipient shall bear the loading costs. The Civil Code emphasizes the importance of liability for delays and damages by integrating the obligations of all contractual parties.

1. PhD, Attorney Dr. Cena Law Firm and Pedagogue at Law Faculty, Luarasi University, neritancena@yahoo.it

Keywords: *carrier's responsibility, carrier's obligations, shipper's and recipient's obligations, consensual contract, transportation of passengers and goods, mutual obligations*

The meaning of transportation contract and its characteristics

Transportation contracts are agreements that enable the mobility of passengers or goods from one place to another. In this contract, the carrier's duty is to achieve a certain result. More specifically, he is obliged to move people and goods unharmed or undamaged to the appointed destination in return for payment from the passenger or the shipper.

The definition of transportation contract of passengers and goods can be found in two different provisions in the Civil Code, more specifically in article 877 which states that: *"By passengers' transportation contract, the carrier takes as a duty to carry people from one place to another"*¹. Article 880 of the Civil Code states that: *"By goods' transportation contract, the carrier takes as a duty to ship goods from one place to another."* The purpose behind this division is because the rights, obligations, and the liability of the carrier and its exempt criteria are different for passengers and goods transportation. The parties in passenger transportation are the carrier and the passenger, while in goods transportation the parties are the carrier and the shipper. The proofs that exempt the carrier from liability are different in each contract.

For instance, the main principle in the passengers' contract that ensures exemptions from liability applies only if the carrier proves that *"...they have taken all the appropriate measures to avoid the damage in accordance with the circumstances"* (art. 878, para 1 of Civil Code). In this case, the proof that ensures the exemptions are not subject to the facts from which the damage was caused, but on the facts of taking the appropriate preventive measures for the damage not to happen. This means that the fact from which the damage happened was in fact evitable, which leads us to the reasoning that the carrier of passengers is responsible for the latter's health in case of unforeseen events, whence the carrier of goods is exempt. The passenger simply must prove the existence of a contract and the damage during the journey, and then it is the carrier who has the burden of proof to

1. Civi Code of the Republic of Albania, Law N0.7850, 29.7.1994 (updated), art 877 and on

prove that the damage was inevitable, breaking so, the causal link between the carrier's activity and the damage caused. Exemption clauses that limit the responsibility of the carrier of the passengers are void. (para.2 art. 878 of Civil Code)

On the other hand, the carrier of passengers is responsible for the loss and the damaged goods delivered from him, for the period starting from the point of receipt to the moment of delivery where he has to give the goods to the recipient, if he fails to prove that the loss or damage came as a result of unforeseen events, of shipper or recipient actions or from the owner of the goods, or from expected losses or from the goods defects. (para.1 art. 899 of Civil Code)

The focus of liability for damages exemptions in the case of goods transportation is the purpose of the transportation itself, which is the safe delivery of the goods. The carrier must provide sufficient evidence that the loss or damage was caused by unrelated motives to him

Thus, in the transportation of goods, the exemption from liability is not only limited to the evidences related to the appropriate preventive measures taken by the carrier, but the latter also has to prove that the motives of the loss of damaged goods are not linked to them, or else if the motives remain unknown the carrier will be held liable.

Characteristics of Transportation Contract

1. In the transportation contract the moment of signing is the moment when the shipper provides the other party with a delivery note and has finalized the agreed payment. From this point, each party gains rights and duties. This concludes that the transportation contract is a consensual agreement and not a real one. The shipper, by the rules, must report the correct name of the recipient and the destination location, the nature, the quantity of the shipped goods and any other necessary information for the carrier to know, and if for the execution of the transportation special documents are required, then the shipper must give those to the carrier on the moment of receipt. This information must be stated in the delivery note more specifically: name of the shipper's goods, workplace or habitual residence; name of recipient and place of destination; nature, weight and the quantity of the shipped goods, as other necessary documents as well as the place and date of the delivery note.

2. Another distinctive trait of transportation is the shippers' risk of termination of the contract in case of losses of the goods as a result of unpredicted events, where they lose the right to the proportionate payment for the completed journey. As stated above, the shipper is obliged to take all the measures to protect the goods and he is liable for their losses and damages when these are caused by unforeseen events. In this case, the shipper is exempted from liability to pay for the damage, however, they do not have the right to be paid for the transportation that was carried on, thus taking the risk of the journey's costs.
3. Another distinctive trait of transportation is that the contract is in written form. Notwithstanding the fact that the Civil Code provisions that regulate transportation do not mention the written form of the contract, the form of the contract from the interpretation of the articles, should be in written form for evidence effect.
4. A transportation contract is characterized by the existence of solidarity for the execution of transportation duties by several carriers. The transportation contract duties can result in goods being transported by several carriers. In this case, all the carriers are mutually responsible for the execution of the contract from the primary location to the destination point. In case of lost or damaged product, the shipper can sue each of the carriers for compensation and the latter is obligated to pay the shipper all the required amount, however he also has the right get back the paid amount with a regress claim against the other carriers, either one by one or together. If it is later confirmed that the action that lead to the loss or damage of the goods has happened in one of the carriers' journey, the latter is obligated to compensate the claimant, otherwise all the carriers are liable for the damages in accordance with their journey, in exemption for the carriers who manage to prove that the damage cannot be attributed to them.
5. Transportation is a bilateral contract between the goods shipper and the carrier, however, at the moment of the delivery, another party is involved, which is the recipient, for the reason that the rights arising under the contract succeed from the carrier to the recipient when the goods have reached their destination or the deadline when they were supposed to be delivered has expired. (art. 887 Civil Code) At this moment the recipient is not passive anymore but steps in as a party

to take on their obligations. He has the right to request the carrier to acknowledge receipt of the goods. Also, the recipient can exercise their contractual rights only after they have paid the carrier the receivables that derive from the transportation contract and the invoices that accompany the goods in those cases. When there is a dispute on the amount due, the recipient shall deposit the questioned difference to a third party.

6. The provisions that defy the transportation contract generally refer only to road transportation and not other types of transportation. Such a feature can be understood from article 900 of the Civil Code which explains that: *“For maritime, arial, railroad and postal transportation, if there is not special legislation, these provisions will be applicable.”* Thus, only in case there is a absence of *lex specialis* that regulated maritime, arial, railroad and postal transportation, this also for the special traits that their types of transportation have, parties shall apply the provisions on transportation contract that are in the Civil Code. In fact, for the cited types of transportation, there is no specific policy and therefore even for these types of transportation until more specific rules are adopted, the Civil Code will be applicable.

The contracting parties obligation in transportation contract

Transportation contract is a bilateral agreement which creates rights and duties not only for the shipper and the carrier but also for the recipient despite the latter not being a participant in the contract. We can single out the obligations such as:

1. ***The carrier must move passengers and goods to the appointed term and destination as agreed in the contract.***

The primary responsibility of the carrier under this contract is to transport passengers and goods from one location to another within the agreed-upon timeframe. Failing to do so consequently brings responsibilities for the carrier and more concretely if the carrier does not deliver/ carry the goods or passengers in the appointed destination and term defined in the contract, he then is liable to compensate for the damages caused by the delay. (art. 878 and 897 Civil Code) However in some situations, the delay may be caused by reasons that cannot be attributed to the carrier.

In such cases, thus if the transportation is interrupted or excessively delayed for reasons that cannot be attributed to the carrier, they must immediately ask for instructions from the shipper while taking any measures to keep the goods safe (para. 1 art 885 Civil Code). Only if the carrier fulfills such responsibility, thus notifying the shipper to give him any instructions or orders to avoid the causes that interrupt or delay the transportation, he shall be exempt from liability for compensation of the damage caused by the delay. Unless the circumstances make it impossible to receive orders from the shipper or those are inapplicable, the carrier must deposit the goods or if they risk damage or become a considerable risk to the security of the storage unit, the carrier must take all the measures to sell the goods with the best price notifying the shipper for this transaction. The same rules will apply also in cases such as when the recipient is not found or refuses or prolongs to request receiving the goods, moreover even in cases when there is a dispute between some recipients. In cases cited above, the carrier reserves the right to get paid for the expenses that he has made to avoid or decrease the circumstances that caused the delay and also, he has the right to the payments of the prize in proportion to the journey made, except the cases when such interruption of transportation has caused total loss of the goods because of unforeseen events.

2. *Another obligation that falls on the carrier is that he must take all the measures to keep the goods and the passengers safe during transportation.*

The carrier, in addition to the obligation to transport passengers and goods to the designated destination and within the timeframe specified in the contract, is also obligated to take measures to protect passengers from accidents that may occur during the journey, as well as to protect the goods from loss or damage during transportation. The carrier is responsible for any harm that can happen to passengers and the loss or damage of the transported goods from the moment that he takes the goods from the shipper to the moment of delivery to the recipient, or when the passengers arrive at their destination, failing which he will be liable to compensate for the damages of the respective party. (art. 878 and 889 of Civil Code)

Thus, Article 878 of the Civil Code stipulates that: “*Except the*

responsibility for the delay and failure of execution of the transportation, the carrier must be held accountable for major forces that harm the passenger during the journey ... unless he proves that he has taken all the appropriate measures to avoid the damages according to the given circumstances. In such a scenario, the carrier must compensate for the damage by covering all the expenses necessary for the medical treatment and rehabilitation of the passengers who were hurt or were unable to work because of the injury and the payment of all the other expenses related to the damage caused. In the event of the death of passengers, the damages that the carrier must pay will consist of the expenses for the survival expenses of the deceased's minor children, spouse, and parents who are unable to work and who were under the deceased guardianship, as well as for individuals living in the deceased's household who had the right to sustenance from him, along with the necessary funeral expenses to the extent that they correspond to the personal and family circumstances of the deceased. In such cases, disputes between the carrier and the passenger or his successors, it will be the Court the one to decide on the amount of compensation, taking into account all the circumstances it can also decide whether such compensation will be received in-kind, at once or in installments." What is worth mentioning is that the conditional clauses that limit the carrier's responsibility for such risks are void. In fact, as mentioned above, the exempt criteria for transportation responsibility to compensate for the damage related to unforeseen events that might happen to the passengers are different from those related to responsibility for the compensation for the losses or damages of the goods transported. Regarding the passenger transportation, the carrier shall be relieved from liability only in cases where he proves that he has taken all the appropriate measures to avoid the damage according to the given circumstances for example the carrier must have insured the vehicle or the journey etc.

In article 889 of Civil Code, it is stipulated that: *"The carrier is responsible for the loss and damage of the goods from the moment that he picks them up until the moment that he delivers them to the recipient..."* Provided that the carrier has accepted the goods with no reserves, it is presumed that the goods have no visible flaws in their packaging. The price that the carrier is obliged to compensate for the loss of the transported goods shall be calculated according to the price

that they had at the place of taking over the goods from the carrier. Meanwhile, in cases of damaged goods, the carrier must compensate the amount of the difference between the point of taking over the goods and the price at the moment of the delivery. This is the way of calculation that the Civil Code provides, however, the contractual parties may agree to other methods of calculation and also conditionals that limit the carrier's liability, which as stated above would be void for the transportation of the passengers. Acceptance of goods without reserves by paying the carrier the set price, disables the opportunities to exercise the rights of action against the carrier unless there are cases of fraudulent misrepresentation or gross negligence (*culpa lata*); but also, the rights to claim compensation for partial losses or other damages that are not visible at the moment of the delivery are not affected, with the condition that the carrier should be immediately notified when the damage is revealed, but in any case not later than 20 days after the day of the delivery.

If the carrier observes that the product might get damaged during transportation, then he must take all the measures to sell them at the best price, as well as immediately notify the shipper for the sale. The carrier must notify the shipper without delay and before the delivery for any damage that the goods might have. Thus, as a general rule, the carrier is liable for the loss and damages of the goods during transportation, but he can escape liability if he proves that the loss or damages were caused by unforeseen events, shipper's, recipient's or goods owner's actions, or from expected losses or the goods defects. The burden of proof that the loss or damage was caused by any of the abovementioned reasons falls on the carrier. In case the execution of transportation duties is carried out by several carriers, they are mutually responsible for the lost or damaged goods.

3. *The carrier must follow shippers' instructions and orders.*

The shipper can suspend the transportation and request the return of the goods or order their delivery to another recipient different from the one agreed upon, or he can decide differently from what the parties have agreed on in the contract related to the amount of the goods that shall be delivered, etc. In such situations, the carrier must follow the shipper's instructions and orders, however, when the carrier has issued

a duplicate of the delivery note to the shipper, this may not dispose of the goods transported unless they present the carrier with a duplicate or invoice to show the new details. The carrier need not follow the shipper's orders if the goods have been delivered to the recipient. In addition, the carrier must comply with the shipper's instructions without deviation in scenarios when the transportation is interrupted or excessively delayed for reasons that cannot be attributed to the carrier, failing such the latter will be liable for the damaged goods. In such circumstances, the carrier has the right to request the shipper the expenses as well as compensation for the damage that might have happened from following the shipper's orders and instructions.

Passengers and shipper's obligations

1. ***A transportation contract is a remunerated agreement, where the carrier's duty to move people or goods to a designated destination corresponds to the passengers or goods shipper's obligation to pay the agreed price.***

Usually, the price that the parties have agreed upon is clearly written in the contract. In situations where the parties have not stipulated the price of the transportation or its calculation, then the price will be determined according to the fees that the carrier usually sets for the same service. In case this is also impossible to determine then the Court would set the price if there is no legal regulation about it. The price should be paid at the moment of signing the contract by the shipper or the passengers. This can be understood by article 884 which argues: *"The transportation contract is considered binding from the moment when the shipper provides the other party the delivery note and have finalized the agreed payment."* The parties can agree on the price to be paid after the passengers, or the goods have arrived to the destination. What is worth mentioning is that if the carrier does not receive the payment, he has a right to retention over the goods until the transport price is due by the shipper, or else he can sell them according to the provisions of the pledged items sale. (art. 898 of Civil Code)

In cases when the transportation is carried out by several carriers, the last carrier represents other carriers to collect their contractual claims, and also he can exercise the privilege to keep the goods until the transport price is due by the shipper. (art. 899 of Civil Code)

2. ***The shipper is obligated to prepare the shipment for transportation by providing the name of the recipient and the destination place.***

Such obligation is expressly stipulated in article 882 of the Civil Code:

“The shipper, by the rules, must report the correct name of the recipient and the destination location, the nature, quantity of the shipped goods and any other necessary information for the carrier to know...”

If for the execution of the transportation contract, further detailed information is needed, the shipper must provide them to the carrier at the moment of pick up. Failing to do so, then the shipper himself will be held responsible for any damage caused by the absence or incorrect information or failure of delivery, or irregularity of the documents. Also, the shipper must issue on-request a delivery note with his signature containing information like the name of the shipper, workplace, or habitual residence also other necessary documents as well as the place and date of the delivery note.

Recipient obligations

1. ***The recipient must be sure of the identity and the quality of the transported goods at his own costs before accepting the delivery.***

This obligation can be explained by the fact that acceptance of goods without reserves disables the opportunities to exercise the rights of action unless there are cases of fraudulent misrepresentation or gross negligence (*culpa lata*) from the carrier. However, the right to claim compensation for partial losses or other damages that are not visible at the moment of the delivery are not affected, on the condition that the carrier should be immediately notified when the damage is revealed, but in any case, not later than 20 days after the day of the delivery.

2. ***The recipient is obliged to unload the goods to his warehouse at his own expense and with his workers.***

As mentioned above, the carrier's main obligation is to move goods from the designated destination, and after its fulfillment, it belongs to the recipient to take all the measurements that ensure control of the goods physical conditions and to unload them at his own expense.

ADOPTION AND PROTECTION OF CHILDREN'S RIGHTS: AN ANALYSIS OF EUROPEAN STANDARDS

Zhaklinë Meçani¹

Abstract

This paper aims to analyze the protection of children's rights and the institute of adoption within the framework of European standards. Its focus will be on the principle of protecting the best interests of the child, the principle of subsidiarity, the right to a family life, as well as the role of the Commissioner for Human Rights in monitoring and providing recommendations regarding the implementation of international norms on children's rights. In the first part of the paper, cases of national and international adoption will be addressed, also examining the challenges posed by the adoption of children from non-member states of the Hague Convention, in particular the risks of exploitation and violation of children's rights. This analysis will be based on the provisions of the European Convention on Human Rights and the Convention on the Rights of the Child, emphasizing the importance of harmonizing practices and protecting children's rights at the international level.

The analysis also includes the adoption of children with special needs and adoption by same-sex couples, examining the legal obstacles and discriminatory practices that these groups may face. In this context, the jurisprudence of the European Court of Human Rights will be analyzed, which has contributed to the interpretation of standards on adoption and the right to a family life, in accordance with Article 8 of the ECHR. Furthermore, this paper will analyze the proposal for the creation

1. PhD (c.); Specialist, Sector of Monitoring Other Liberal Professions, Directorate of Monitoring Liberal Professions, Ministry of Justice, zhaklinmecani@gmail.com.

of a European adoption certificate, the establishment of a register of adoptions and the recognition of the documents necessary for adoption at European level, as measures to increase the efficiency and transparency of international adoption processes.

Keywords: *adoption, children, rights, European standards*

I. Introduction

In the field of human rights, the rights of child constitute one of the fundamental pillars upon which any democratic society is founded. Rooted in universal legal principles, they are intrinsically linked to fundamental human rights and freedoms. The protection of the best interests of the child, the right to a family life, the right to care, development, education as well as the protection from all forms of violence or exploitation, are among the key elements that underscore the special importance that should be given to children in any legal and public policy framework. Ensuring and upholding these rights is both a moral and legal duty of states, reflecting a high level of social development and commitment to equality, justice and solidarity. These rights represent a core priority for the European Union, as affirmed in Article 3 of the Treaty on European Union and in the Charter of Fundamental Rights of the EU.¹

Within this context, adoption represents one of the most complex and debated institutes in the field of child welfare and protection, due to its consequences. Adoption entails fundamental, lifelong changes in a child circumstances, including the alteration of legal guardianship, name, citizenship (in certain cases) and any other change related to the environment in which the child will grow and develop. It raises sensitive questions that face major discussions in the international arena such as: identity, family support, protection from exploitation and abuse, access to basic services, the consideration of the child's own views, and adherence to the principle of non-discrimination, etc..²

1. Vass E., *Children's rights: what does the EU do to protect children?* 2023.

URL=<https://childhub.org/en/child-protection-news/childrens-rights-what-does-eu-do-protect-children>. Accessed on 20.04.2025.

2. Commissioner for Human Rights, *Adoption and Children: A Human Rights Perspective*, 2011, p.9.

Although it may appear to fall primarily within the domain of domestic law, adoption affects a number of aspects, which require the institutional commitment of states in the international space, as well as the implementation of standards and the development of cooperation mechanisms to guarantee the protection of children. The crossing of national borders, as in cases of intercountry adoption, and concerns regarding child safety and the risk of exploitation, have led to the development of a legal framework that extends beyond national borders. The European Convention on Human Rights, as the foundational instrument safeguarding human rights within the European space, together with the United Nations Convention on the Rights of the Child and the European Convention on the Adoption of Children, provide specific safeguards aimed at protecting the rights and well-being of children.

II. International legal framework for the protection of children's rights during the adoption process

The protection of children's rights in the context of adoption is safeguarded by a broad set of international legal instruments. At a general level, the United Nations Universal Declaration of Human Rights affirms that children are entitled to special care and assistance.¹ Building upon this principle, the Convention on the Rights of the Child, as an act of the United Nations, establishes a comprehensive framework guaranteeing the rights of the child². The Convention recognizes the family as the fundamental unit of society and the natural environment for the growth and well-being of all its members, especially children. It further emphasises that children must grow up in an atmosphere of love and understanding, to be prepared for independent life and to be protected in a special way because of their vulnerability and that the protection of the rights of the child requires global cooperation, respecting cultural traditions and focusing particularly on children living in difficult conditions.³

Article 7 of the Convention provides that: "*The child shall be registered*

1. Article 25, The Universal Declaration of Human Rights.

2. UNICEF, *The Convention on the Rights of the Child: The children's version*. URL=<https://www.unicef.org/child-rights-convention/convention-text-childrens-version#:~:text=The%20United%20Nations%20Convention%20on,and%20the%20responsibilities%20of%20governments>. Accessed on 22.04.2025.

3. Preamble, Convention on the Rights of the Child.

immediately after birth and shall have the right from birth to a name, the right to acquire a nationality and, as far as possible, the right to know and be cared for by his or her parents". The Commissioner for Human Rights of the Council of Europe, which is an independent and impartial non-judicial institution established in 1999 by the Council of Europe to promote awareness of and respect for human rights in the member states of the Council of Europe¹, has elaborated on this provision, noting that it should be interpreted in the light of the "right" to have a family. According to the Commissioner, although the Convention provides in its preamble that: "*the child shall grow up in a family environment, in an atmosphere of happiness, love and understanding*", this does not mean that the child automatically has a "legal right" to be adopted or that adoption is always the right solution. Treating it as a "right" could lead to rushed decisions, without proper consideration of alternative care options, resulting in abuses or unnecessary separation of the child from family and cultural background.²

The Convention on the Rights of the Child enshrines in its article 3 the principle of protection of the best interests of the child, stipulating that: "*In all decisions concerning children, whether taken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration*". As defined in the Convention, the best-interests principle guides decisions in family matters, including parental contact, guardianship and adoption. This principle serves an interpretative function when the Convention does not address a specific situation and it provides guidance when the articles appear to be contradictory.³

Another fundamental instrument is the 1993 Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption, which establishes essential guarantees for the protection of the interests of children, biological parents and adoptive parents in intercountry adoptions.⁴ At the European level, further guarantees have been developed

1. Council of Europe, *Commissioner for Human Rights*. URL=<https://www.coe.int/en/web/commissioner/the-commissioner/mandate>. Accessed on 20.04.2025.

2. Commissioner for Human Rights, *Adoption and Children: A human rights perspective*, 2011, p.13.

3. Thomas H., Commission for Human Rights, Council of Europe, *The Principle of The Best Interests of The Child – What it Means and What it Demands from Adults*, 2008.

4. USCIS, *Hague Process*, 2024. URL=<https://www.uscis.gov/adoption/immigration->

through the Convention on the Adoption of Children (revised). During the discussions regarding the scope and guarantees that this Convention would provide, there were two alternatives: the first was towards the adoption of a convention that would provide for standard rules and the second towards a convention that would contain a minimum of essential principles, which the Contracting Parties would undertake to implement. The second alternative was decided upon and now the convention is built on the basis of fundamental principles regarding the practice of adoption, which the Contracting Parties would make part of their domestic law.¹ Bottom of Form

III. Domestic and intercountry adoption: challenges and practices

The obligation to respect family life, as recognised under Article 7 of the EU Charter of Fundamental Rights and Article 8 of the European Convention on Human Rights (ECHR), encompasses multiple dimensions that underscore the essential role of family relationships in the child's development. Striking an appropriate balance between reserving the child's ties to their family, consistent with the protection of family life, and ensuring the child's safety and well-being is a delicate and often complex task.² The obligations under the above-mentioned international instruments are particularly relevant in the context of both domestic and intercountry adoption. In both forms of adoption, the preservation of the child's family relationships and original belonging poses a complex challenge.

As regards intercountry (international) adoptions, they cover cases in which the adoptive parents and the adopted child reside in two different countries. If both countries are parties to the 1993 Hague Convention, then the adoption procedure, including the rules applicable to the recognition of the adoption, is subject to the provisions of the 1993 Hague Convention.³

through-adoption/hague-process#:~:text=The%20Hague%20Convention%20on%20Protection,adoptive%20parents%20in%20intercountry%20adoptions. Accessed on 21.04.2025.

1. Council of Europe, *European Convention on the Adoption of Children - Explanatory Report* - [1967] COETSER 1 (24 April 1967).

2. Council of Europe, *Handbook on European law relating to the rights of the child*, p.51.

3. European Parliament, *Cross-border recognition of adoptions*, European Added Value Assessment accompanying the European Parliament's legislative own-initiative report (rapporteur: Tadeusz Zwiefka), p.11.

Intercountry adoption can present significant challenges, as it does not always fully serve the best interests of the child.¹ As noted above, international legislation on the protection of children's rights during the adoption process, particularly the Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption seeks to ensure that any intercountry adoption is conducted in the best interests of the child and in full compliance with fundamental rights, by establishing safeguards and respecting the standards of international law. It establishes a system of cooperation between States to prevent the abduction, sale or trafficking of children and ensures that adoptions carried out in accordance with the Convention are recognised in all States Parties.² However, issues arise in cases of adoptions that take place outside this framework, in countries that have not ratified the Convention. These countries often have easier and less controlled procedures, which makes them attractive to receiving countries that want to meet the requirements for adoption. In Europe, Norway, Sweden and Spain have the highest level of international adoptions among receiving countries, while Belarus, Bulgaria, Romania and Ukraine have been among the countries that have sent the most children for adoption abroad.³

Domestic adoption, by contrast, generally presents fewer challenges than adoption in the wider international context, but it is not without risks. Even when regulated by national legislation, domestic adoption can raise concerns regarding the protection of children's rights. For example, in Italy, in 1984, a child trafficking network was uncovered where around thirty cases of children "sold for adoption" had occurred within a few weeks in Palermo alone.⁴

Within the European Union, EU legislation does not standardize the requirements and procedures for domestic or international adoption in an EU country, even though the adoption of a child is possible in all EU

1. Parliamentary Assembly, *International adoption: respecting children's rights*. URL= <https://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=16775&lang=en>. Accessed on 20.04.2025.

2. Article 1, 1993 Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption.

3. Peter S., *The impact of intercountry adoption on the well-being of children in Europe*, 2007, p.1.

4. Commissioner for Human Rights, *Adoption and Children: A Human Rights Perspective*, 2011, p.8.

countries, according to their respective national laws, so it is a matter of domestic legislation. Nonetheless, all Member States are obliged to respect the principles set out in international acts on adoption, such as: protection of the best interests of the child, authorization of the adoption by a court or an administrative authority, equality of rights of adopted children with biological children, including the right to take the surname of the adoptive parents, inheritance rights, etc..¹

Further challenges in national and international adoptions arise regarding children with special needs, considering that relatively few people want to adopt and are willing and assessed as suitable to care for a child with special needs. This group includes children with disabilities or serious illnesses, those who are part of sibling groups, and older children. The number of applications for adoption for them, both nationally and internationally, is much lower.²

IV. Sensitive issues in the adoption process, the role of the ECtHR

In the adoption process, the European Court of Human Rights plays a crucial role in safeguarding the rights of children, families of origin and adoptive families, given the complexity and sensitivity of the factors involved.

The Court's analysis begins with determining whether in the specific case there is family life within the meaning of the ECHR. This encompasses not only biological ties, descent, or legal relationships, but also *de facto* emotional bonds between the individuals concerned. Once the existence of family life is established, the Court examines whether or not there has been interference by the State. Any interference may be deemed legitimate only if it is lawful, necessary in a democratic society and aimed at protecting health, morals or the rights and freedoms of others.³

1. Your Europe, *Adopting a child from another EU country - requirements and procedures* - Your Europe, 2021. URL=https://europa.eu/youreurope/citizens/family/children/adoption/index_en.htm#:~:text=Adoption,-On%20this%20page&text=EU%20law%20does%20not%20govern,under%20their%20respective%20national%20laws. Accessed on 20.04.2025.

2. Commissioner for Human Rights, *Adoption and Children: A Human Rights Perspective*, 2011, p.15.

3. European Parliament, Directorate-General for Internal Policies, Policy Department, Citizen's Rights and Constitutional Affairs, *International Adoption in the European Union*, p. 68.

The problems that exist within the adoption process are numerous, however, this paper focuses on a selection of key concerns. Family ties are among the most fundamental elements of life, not only emotionally and socially, but also legally. Legal interventions that affect these relationships require special care, as they can have profound and irreversible consequences in the lives of individuals.

In *Bogonosovy v. Russia*¹, the ECtHR addressed the issue regarding the preservation of Mr. Bogonosov with his granddaughter after adoption from another family, holding that it was the domestic courts' obligation to examine this right of the applicant, the refusal of which led to a violation of his right to respect for family life guaranteed by Article 8 of the Convention.² In this context, the right to respect for family life does not only concern parents and children, but may also extend to other close family ties. This means that even after adoption, the authorities must examine whether existing family ties, such as those between a grandfather and a granddaughter, constitute a relationship deserving protection under Article 8 of the European Convention on Human Rights and cannot be impaired by reason of the adoption. The case highlighted the delicate balance between integrating the child into a new environment and preserving pre-existing familial ties after adoption, emphasising that decisions affecting family relationships must be taken through a careful and individualised assessment, considering the best interests of the child.

The adoption of children by same-sex couples has also been addressed by the ECtHR, particularly in the context of potential discrimination on the grounds of sexual orientation in the sphere of private and family life. In the case of *X and Others v. Austria*³, the Court did not examine whether the applicants' application for adoption should have been accepted in the circumstances of the case but whether there had been a violation of Article 14 taken in conjunction with Article 8 in the present case.

Similarly, in the case of *Fretté v. France*, the applicant alleged that the decision rejecting his application for authorisation to adopt constituted an arbitrary interference with his private and family life. The European Court of Human Rights held that there had been no violation of Article 14 taken in conjunction with Article 8, reasoning that the national authorities had

1. ECtHR, *Bogonosovy k. Rusisë*, Application no. 38201/16, 2019.

2. Press Unit, European Court of Human Rights, *Children's rights*, 2023, p.2.

3. ECtHR, *X dhe të Tjerë k. Austrisë*, Application no. 19010/07, 2023.

been legitimately and reasonably entitled to consider that the right to be able to adopt, on which the applicant had relied, was limited by the interests of the children suitable for adoption, despite the applicant's legitimate aspirations and without calling into question his personal choices. Among other things, the Court has stated that "*the right to respect for family life presupposes the existence of a family and does not simply protect the desire to found a family*".¹

V. Initiatives for harmonization of procedures at European level and Interstate Cooperation

Within the European Union, the recognition of domestic adoptions involving foreign elements has revealed a series of practical difficulties, largely stemming from the lack of harmonization of the legal framework among Member States. Some of the most significant challenges include: the need for additional procedures for the recognition of custody and parental responsibility, which is essential for the administration of the child's property; authorization of medical treatments; difficulties in acquiring citizenship by the adopted child; restrictions on inheritance rights.²

The persistence of these difficulties has underscored the need for initiatives aimed at greater harmonization of procedures at European level and for the strengthening of interstate cooperation. Discussions on the creation of a European adoption certificate, the establishment of a European adoption register and the automatic recognition of the documents required for adoption throughout the EU constitute an essential step towards consolidating a more efficient, transparent and human rights-compliant system.

In 2017, MEPs called on the European Commission to come up with a legislative proposal that would allow families with adopted children to move freely within the EU, without the need for recognition of the adoption, and the idea of a European Adoption Certificate was put forward in order to speed up the administrative procedure for automatic recognition.³ They

1. ECtHR, *Fretté k. Francès*, Application no. 36515/97, 2002.

2. European Parliament, *Cross-border recognition of adoptions*, European Added Value Assessment accompanying the European Parliament's legislative own-initiative report (rapporteur: Tadeusz Zwiefka), p.13.

3. EPP Group in the European Parliament, *Recognising cross-border adoption: child welfare comes first*. (n.d.). URL=<https://www.eppgroup.eu/newsroom/recognising-cross->

also called for the creation of common minimum standards for adoption, not in legislative form but as guidelines for “best practices”.¹ Such a request came about by taking into account the problems faced by families with adopted children who move to another EU country, as legal regulations in different countries may harm children’s rights, including their right to family life, non-discrimination or inheritance rights.²

The obligations under the 1993 Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption concern the recognition of adoptions in its ratifying countries, in cases where the parents and the adopted children are residents of different countries. However, as regards the recognition of domestic (national) adoptions carried out in an EU Member State, EU legislation does not have specific legal provisions. For this reason, the proposal for the creation of a European Adoption Certificate aims to speed up the automatic recognition process.³

VI. Conclusions

One of the fundamental pillars of the proper functioning of a democratic state governed by the rule of law is the effective guarantee of children’s rights, as an integral part of fundamental human rights, indisputable and protected by a broad range of international legal acts. The protection of children’s rights is grounded in a set of universally accepted principles, such as the protection of the best interests of the child, the right to a family life, the right to care, development, education and protection from any form of violence or exploitation, and constitutes a legal obligation for

border-adoption-child-welfare-comes-first. Accessed on 24.04.2025.

1. European Parliament, *Q&A: New rules on automatic cross-border recognition of adoptions?* (n.d.). URL=<https://www.europarl.europa.eu/news/en/press-room/20170127BKG60059/q-a-new-rules-on-automatic-cross-border-recognition-of-adoptions?quizBaseUrl=https%3A%2F%2Fquizweb.europarl.europa.eu>. Accessed on 24.04.2025.

2. European Parliament, *What obstacles do families with adopted children face?* (n.d.). URL=<https://www.europarl.europa.eu/news/en/press-room/20170127BKG60059/q-a-new-rules-on-automatic-cross-border-recognition-of-adoptions/1/what-obstacles-do-families-with-adopted-children-face>. Accessed on 24.04.2025.

3. European Parliament, *What does the resolution entail?* (n.d.). URL=<https://www.europarl.europa.eu/news/en/press-room/20170127BKG60059/q-a-new-rules-on-automatic-cross-border-recognition-of-adoptions/0/what-does-the-resolution-entail>. Accessed on 24.04.2025.

states in the European space, reflecting a high level of social emancipation and commitment to equality, justice and solidarity.

Adoption, as a legal institute, is closely connected to the protection of children's rights. It fundamentally transforms the life of a child, as it leads to a new social and legal reality. The changes that affect the child upon completion of the adoption process are permanent and significantly affect the life of a child, starting from the change of legal guardian, name, citizenship (in certain cases) and any other change regarding the place and circumstances where the child will now live and grow up. Discussions in the international arena continue to be broadly related to protection from exploitation and abuse, access to basic services, the right to take the child's views into account, respect for the principle of non-discrimination, etc.

International legal instruments, including the Universal Declaration of Human Rights, the Convention on the Rights of the Child, the Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption and the Convention on the Adoption of Children (revised), serve as crucial legal guarantees for the respect of children's rights during and after the adoption process, in accordance with high standards of human rights protection and the principle of the "best interests of the child".

The role of the Commissioner for Human Rights of the Council of Europe also remains significant. The analysis on adoption highlights several challenges, including the proper interpretation regarding the "right" to a family and the obligation to examine all possible alternatives for child care before adoption is considered.

The role of the European Court of Human Rights remains to be assessed, as it has a direct impact on the development of international best practices related to the protection of children, especially when it comes to intercountry adoption procedures and ensuring a safe environment for children's development.

Regarding the proposal for the creation of a European Adoption Certificate, intended to increase efficiency and transparency in intercountry adoption processes, the Member States appear receptive to this initiative. Such an instrument would have a positive impact on accelerating the automatic recognition process of adoption in other Member States.

In conclusion, adoption is a complex and multidimensional process that demands a careful and balanced approach by States, supporting

international efforts to guarantee the protection of children's interests and to ensure that any decision regarding adoption is made in accordance with the fundamental rights of the child.

Bibliography

Normative Acts

1. Universal Declaration of Human Rights.
2. Convention on the Rights of the Child.
3. Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption.
4. Convention on the Adoption of Children (revised).

ECtHR Case Law

1. ECtHR, *Bogonosovy v. Russia*, Application no. 38201/16, 2019.
2. ECtHR, *Fretté v. France*, Application no. 36515/97, 2002.
3. ECtHR, *X and Others v. Austria*, Application no. 19010/07, 2023.

Scientific Articles and Publications

1. Commissioner for Human Rights, *Adoption and Children: A Human Rights Perspective*, 2011.
2. Council of Europe, *Commissioner for Human Rights*. URL=<https://www.coe.int/en/web/commissioner/the-commissioner/mandate>. Accessed on 20.04.2025.
3. Council of Europe, *European Convention on the Adoption of Children - Explanatory Report* - [1967] COETSER 1 (24 April 1967).
4. Council of Europe, *Handbook on European law relating to the rights of the child*.
5. EPP Group in the European Parliament, *Recognising cross-border adoption: child welfare comes first*. (n.d.). URL=<https://www.eppgroup.eu/newsroom/recognising-cross-border-adoption-child-welfare-comes-first>. Accessed on 24.04.2025.
6. European Parliament, *Cross-border recognition of adoptions*, European Added Value Assessment accompanying the European Parliament's legislative own-initiative report (rapporteur: Tadeusz Zwiefka).

7. European Parliament, Directorate-General for Internal Policies, Policy Department, Citizen's Rights and Constitutional Affairs, *International Adoption in the European Union*.
8. European Parliament, *Q&A: New rules on automatic cross-border recognition of adoptions?* (n.d.). URL=<https://www.europarl.europa.eu/news/en/press-room/20170127BKG60059/q-a-new-rules-on-automatic-cross-border-recognition-of-adoptions?quizBaseUrl=https%3A%2F%2Fquizweb.europarl.europa.eu>. Accessed on 24.04.2025.
9. European Parliament, *What does the resolution entail?* (n.d.). URL=<https://www.europarl.europa.eu/news/en/press-room/20170127BKG60059/q-a-new-rules-on-automatic-cross-border-recognition-of-adoptions/0/what-does-the-resolution-entail>. Accessed on 24.04.2025.
10. European Parliament, *What obstacles do families with adopted children face?* (n.d.). URL=<https://www.europarl.europa.eu/news/en/press-room/20170127BKG60059/q-a-new-rules-on-automatic-cross-border-recognition-of-adoptions/1/what-obstacles-do-families-with-adopted-children-face>. Accessed on 24.04.2025.
11. Parliamentary Assamby, *International adoption: respecting children's rights*. URL= <https://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=16775&lang=en>. Accessed on 20.04.2025.
12. Peter S., *The impact of intercountry adoption on the well-being of children in Europe*, 2007.
13. Press Unit, European Court of Human Rights, *Children's rights*, 2023.
14. Thomas H., Commission for Human Rights, Council of Europe, *The Principle of The Best Interests of The Child – What it Means and What it Demands from Adults*, 2008.
15. UNICEF, *The Convention on the Rights of the Child: The children's version*. URL=<https://www.unicef.org/child-rights-convention/convention-text-childrens-version#:~:text=The%20United%20Nations%20Convention%20on,and%20the%20responsibilities%20of%20governments>. Accessed on 22.04.2025.
16. USCIS, *Hague Process*, 2024. URL=<https://www.uscis.gov/adoption/immigration-through-adoption/hague-process#:~:text=The%20Hague%20Convention%20on%20Protection,adoptive%20parents%20in%20intercountry%20adoptions>. Accessed on

21.04.2025.

17. Vass E., *Children's rights: what does the EU do to protect children?* 2023.
18. Your Europe, *Adopting a child from another EU country - requirements and procedures*, 2021. URL=https://europa.eu/youreurope/citizens/family/children/adoption/index_en.htm#:~:text=Adoption,-On%20this%20page&text=EU%20law%20does%20not%20govern,under%20their%20respective%20national%20laws. Accessed on 20.04.2025.

APPROACHMENT OF ALBANIAN TRADE LEGISLATION TO EU STANDARDS AND THE IMPACT OF EUROPEAN FUNDING ON THE DEVELOPMENT OF ALBANIAN ENTERPRISES

PhD candidate. Klaudia Reka¹
Msc. Ornela Nikolli²

Abstract

*The approximation of Albanian trade legislation with European Union standards constitutes a key step on the path of the country's integration and the increase of competitiveness of Albanian enterprises. This process includes the adoption of common market rules, competition protection, corporate law and financial supervision standards. However, challenges remain numerous, including the effective implementation of legislation and the adaptation of businesses to new legal and regulatory requirements. The new fiscal reforms and the new tax law envisage bringing a new era in the habitat of Albanian enterprises where everything is related to technology on the one side and adaptation to new laws on the other. A key aspect of this integration is also the opportunity for Albanian enterprises to benefit from EU funding, which provides support for growth, innovation and sustainable economic development. Programs such as IPA, Horizon Europe and COSME provide important financial resources, but the level of their use by Albanian businesses remains limited due to administrative challenges and lack of information. This paper analyzes the process of approximation of Albanian trade legislation with the *acquis Communautaire*, its impact on domestic enterprises and the challenges of accessing EU funding. It also discusses recommendations for public policies that can help increase*

1. Professor, Faculty of Law, University of Tirana, Email: klaudia.reka@fdut.edu.al

2. Faculty of Law, University of Tirana, Email: ornelanikolli11@gmail.com

Albanian businesses' access to European funds and improve the business climate in the context of EU integration.

Keywords: *Trade legislation, EU standards, EU funding, Albanian enterprises*

Introduction

The approximation of Albanian commercial legislation with the standards of the European Union (EU) constitutes one of the main pillars of Albania's European integration process. This process is not merely a formal requirement for accession but a necessity for establishing a stable and predictable climate for business development. A concrete example is the alignment of the "Law on Electronic Commerce" with EU directives on digital services and data protection (European Commission, 2022).¹ Likewise, the competition protection law has been harmonized with EU rules prohibiting monopolistic practices and the abuse of dominant market positions.

Nevertheless, the approximation process is not an easy one. One of the main challenges lies in the institutional capacity to effectively implement new legislation. Although laws may be aligned with EU standards on paper, their practical enforcement often encounters obstacles due to the lack of trained human resources, limited technical capacities, and insufficient transparency within the relevant institutions (Muço & Gëdeshi, 2020).² Another important aspect is the perception of Albanian entrepreneurs. Many small and medium-sized enterprises still regard legislative approximation as a bureaucratic and complex process, particularly when it involves new fiscal obligations or technical standards that require substantial investment. This can generate uncertainty, especially in the absence of clear information and sufficient state support to cope with the transition (Zenelaj, 2021).³ In conclusion, the approximation of Albanian trade legislation with that

1. European Commission. (2022). Digital Services Act package. <https://digital-strategy.ec.europa.eu>

2. Muço Marenglen, & Gëdeshi Ilir, Harmonizimi i legjislacionit shqiptar me atë të BE-së: Sfidat dhe përfitimet për biznesin. Tirana Economic Forum, viti 2020.

3. Zenelaj Eranda, Perceptimi i sipërmarrjes shqiptare ndaj përafrimit ligjor me BE-në, Revista Ekonomike Shqiptare, 18(2), viti 2021, fq 45-59.

of the EU represents a necessary step for European integration and the creation of a stable business environment. However, for this process to function effectively in practice, it must be accompanied by strengthened institutional capacities, improved communication with entrepreneurs, and the establishment of support mechanisms to ensure the real implementation of new laws.

1. Key Areas of Harmonization of Albanian Trade Legislation with the EU

Legal harmonization has been established as a priority in a series of national strategic documents, including the Stabilization and Association Agreement (SAA) between Albania and the EU (2006), as well as the National Plan for European Integration (NPEI). The key institutions coordinating this process are the Ministry of Economy, the Ministry of Justice, and the structures responsible for European affairs.

EU trade legislation comprises a wide range of directives and regulations aimed at ensuring fair competition, consumer protection, and high standards of transparency and accountability in commercial relations. In this regard, Albania has taken important steps toward harmonizing its legal framework. In the field of commercial law, harmonization has encompassed the “Law on Commercial Companies (Law no. 9901/2008),” the “Law on Bankruptcy (Law no. 110/2016),” legislation on competition protection (Law no. 9121/2003), as well as consumer protection and industrial property legislation.

The Albanian Law on Commercial Companies has been largely aligned with Directive 2009/101/EC and other relevant EU acts. Principles regarding incorporation, organizational structure, disclosure of information, and creditor protection have been approximated. Through harmonization with Articles 101 and 102 of the Treaty on the Functioning of the European Union (TFEU), Albania has adopted a regime to control anti-competitive agreements and abuse of dominant positions. The Competition Authority has assumed an increasingly active role in this regard. Albanian consumer protection legislation has been aligned with Directive 2011/83/EU on consumer rights, aiming to enhance transparency in commercial transactions and strengthen buyer protection standards. The bankruptcy law has been harmonized with modern European trends,

including simplified procedures for small enterprises and measures to safeguard creditors' rights, in accordance with Directive (EU) 2019/1023 on restructuring and insolvency.

1.1 Transposition of the Digital Markets Act

The transposition of the Digital Markets Act (DMA) in Albania refers to the process of aligning Albanian legislation with the *acquis communautaire* of the European Union in the framework of European integration, particularly in the field of the internal market and digital competition. The DMA is an EU regulation (Regulation (EU) 2022/1925) designed to ensure fair competition in the digital market by limiting the power of “gatekeepers”—very large technology companies that control access to essential digital platforms. Companies affected include Google, Apple, Meta, Amazon, Microsoft, among others.

The main goal of the DMA is to prevent abusive practices by major platforms, guarantee fair access for small and medium-sized enterprises to the digital market, and improve consumer choice and privacy. To this end, the DMA has introduced several measures, such as the prohibition of self-preferencing (e.g., Google cannot favor its own services in search results), obligations for interoperability between communication services (e.g., WhatsApp must be interoperable with other applications), facilitation of uninstalling pre-installed applications, and the prohibition of combining data from different services without explicit consent.

Currently, Albania is in the process of approximating its digital regulatory framework with that of the EU, in line with Chapter 10 of the *acquis* on information society and media, and Chapter 8 on competition policy. Within this framework, the Electronic and Postal Communications Authority (AKEP) and the Competition Authority have initiated preliminary assessments. The Ministry of State for Entrepreneurship and Business Climate, in cooperation with the EU Delegation in Tirana, has also addressed issues related to digital markets.

The challenges so far in the transposition process relate to the lack of technical and legal capacities for implementing the sophisticated measures of the DMA, the need for amendments to competition, electronic commerce, and consumer protection laws, and the absence of a clear authority responsible for the specific implementation of the DMA. Furthermore, inconsistencies and gaps have been identified with

EU legislation, including the absence of a framework for identifying “gatekeepers,” the limited powers of authorities to monitor the digital market, and the lack of provisions for inter-institutional cooperation and enforcement mechanisms.

Proposals regarding this process emphasize the revision of the Competition Law to incorporate provisions addressing the behavior of large platforms, amendments to the Law on Electronic Commerce regulating self-preferencing and protecting small enterprises, the establishment or strengthening of a specialized unit within the Competition Authority for digital markets, and the conclusion of cooperation agreements between AKEP, the Competition Authority, and AKCESK for data-sharing and monitoring of digital practices. Equally essential remains the drafting of a special law on digital markets if integration into existing legislation is not feasible, the training of authority staff for the implementation of EU standards, as well as the creation of a consultation platform with market actors and civil society to ensure a sustainable transposition process.

1.2 The Economic Importance of Harmonizing Trade Legislation

The harmonization of trade legislation with that of the EU is not merely a political requirement but a key factor in creating a favorable environment for economic development. This process influences several fundamental areas, such as strengthening credibility and attracting foreign investment, fostering domestic competition, and facilitating trade with EU countries. Alignment with European legal standards enhances the confidence of foreign investors in the Albanian legal and commercial system. A stable and predictable legal framework reduces legal risks and creates a safer environment for international capital. Harmonized legislation also strengthens domestic competition by ensuring a level playing field for all enterprises and minimizing monopolistic practices. Compliance with EU norms forms the basis for Albania’s integration into the EU single market. This enables Albanian enterprises to export more easily, achieve faster certification, and adapt products and services according to EU requirements. The harmonization of Albanian trade legislation with that of the EU is a lengthy and complex process, requiring not only the formal adaptation of legal norms but also a profound institutional and cultural transformation. To advance effectively, it is recommended to strengthen institutional capacities for drafting and implementing harmonized acts,

ensure continuous training for legal professionals and public administration, and encourage dialogue between the private sector and institutions to guarantee effective and sustainable harmonization.

2. The Role of European Funding in Supporting Albanian Enterprises

European funding has played a crucial role in supporting the development of enterprises in Albania, particularly within the framework of aspirations for integration into the European Union. These funds are not merely financial assistance but instruments aimed at improving economic structures, fostering innovation, and enhancing the competitiveness of Albanian businesses by aligning them with European standards. One of the most significant sources of funding is the Instrument for Pre-Accession Assistance (IPA), through which the EU supports candidate and potential candidate countries for accession. In Albania, IPA programs have financed projects in various fields, including rural development, infrastructure improvement, technological innovation, and support for small and medium-sized enterprises (SMEs) (European Commission, 2023).¹ These investments have been particularly important for disadvantaged areas and sectors that otherwise would have had no access to capital. SMEs represent over 98% of businesses in Albania and are the main beneficiaries of EU funds. Programs such as COSME and Horizon Europe have provided support for training, digitalization, modernization of equipment, and the development of new products. This has helped many enterprises improve managerial capacities and integrate into international value chains (Gashi & Dervishi, 2021).² However, benefiting from these funds has not always been easy. One of the main obstacles for Albanian enterprises is the lack of knowledge regarding application and project management procedures for EU-funded programs. Many small businesses lack the internal capacity to design detailed projects and meet the technical and financial criteria required by the EU. This has created a pressing need for technical assistance and practical training (Shkreli, 2020).³ Moreover, the distribution of funds

1. European Commission. (2023). IPA III Programming Framework for Albania. <https://neighbourhood-enlargement.ec.europa.eu>

2. Gashi Liridon & Dervishi Klotilda, *Roli i financimeve evropiane në zhvillimin e SME-ve në Shqipëri*. Journal of European Integration Studies, 9(1), viti 2021, fq 60–74.

3. Shkreli Ermelinda, *Kapacitetet e sipërmarrjeve shqiptare për të përthithur fonde të*

has not always been balanced across the country. According to several reports, a large proportion of funds has been concentrated in Tirana and urban areas, while rural and peripheral regions have had less access due to limited information or institutional capacities. This underscores the need for decentralizing information and establishing support structures at the local level (Bregu, 2022).¹ Despite these challenges, the impact of European funding on the development of Albanian enterprises is evident. It has facilitated the introduction of new technologies, improved productivity standards, and encouraged international cooperation. In some cases, EU funding has served as a springboard for Albanian businesses to enter foreign markets, increasing exports and strengthening the reputation of Albanian products abroad.

2.1 IPA Funds and EU Support for the Private Sector

The Instrument for Pre-Accession Assistance (IPA) is one of the most important sources of financing provided by the European Union for candidate and potential candidate countries, including Albania. The purpose of IPA funds is to support the preparation of these countries for EU membership, encompassing broad reforms in key areas such as the economy, the rule of law, and sustainable development. A significant share of this funding is dedicated to the private sector, helping Albanian enterprises take steps toward modernization and competitiveness. The IPA was established to assist EU candidate and potential candidate countries in their preparations for membership. It is divided into several programming periods: IPA I (2007–2013), IPA II (2014–2020), and IPA III (2021–2027), which is currently in force. The main objectives of IPA are to support political and economic reforms, improve infrastructure and standards to meet EU requirements, and foster private sector development, particularly for small and medium-sized enterprises (SMEs). IPA funds are structured to assist the private sector in various ways, including stimulating investment, fostering innovation, and strengthening technological and managerial capacities. IPA financing helps Albanian SMEs modernize their processes and comply with European standards, for example, through support for product certification and quality improvement in order to access

BE-së. Revista Ekonomia dhe Zhvillimi 15(3),viti 2021, fq 33–47.

1. Bregu Anila, *Përhapja territoriale e fondeve të BE-së në Shqipëri: Sfida dhe mundësi*. Instituti për Politika Ekonomike, viti 2022.

EU markets. A significant portion of IPA funding has been dedicated to the agricultural sector in Albania through the IPARD Programme (Instrument for Pre-Accession Assistance in Rural Development). This program supports Albanian farmers and agribusinesses in investing in modern technologies, building agricultural infrastructure, and improving production methods, such as financing modern greenhouses and irrigation systems to boost productivity and agricultural exports. IPA also supports projects promoting digitalization and the adoption of advanced technologies by Albanian businesses, as well as financing for start-ups and innovative projects addressing economic and environmental challenges. Additionally, IPA contributes to strengthening the capacities of Albanian enterprises to export their products and services to EU markets by providing training and technical assistance to meet EU export requirements. IPARD is one of the most important IPA components for Albania, focusing on agriculture and rural development. The program aims to help Albanian farmers and rural businesses improve their capacities and meet EU standards by enabling funding for agricultural machinery, infrastructure, and new technologies. It also enhances conditions on farms and in the processing of agricultural products for export. The program further provides support for rural development through projects improving rural infrastructure—such as roads, collection centers, and storage facilities—and fostering rural tourism to diversify income sources in agricultural areas. In 2021, several Albanian farmers benefited from funds to build high-tech greenhouses and invest in smart irrigation systems, as well as from financing for the construction of milk processing facilities to meet EU standards. IPA funds have supported the Albanian private sector in boosting competitiveness. Businesses have improved their standards and productivity, thereby gaining greater access to the European market. Product certification and the adoption of new technologies have enabled businesses to increase their exports. Investments in agriculture and rural sectors have raised farmers' incomes and created new jobs. For example, exports of Albanian agricultural products, such as fruits and vegetables, have grown thanks to projects financed through IPARD. Start-ups and innovative businesses have received funding to develop products and services that meet modern market requirements. Despite these benefits, the absorption of IPA funds by the Albanian private sector has faced several challenges, including bureaucracy and complex procedures. Businesses often struggle with preparing documentation and

applying for funds. Technical requirements and project reporting remain ongoing challenges. Many entrepreneurs are unaware of the opportunities offered by IPA and how to apply. SMEs frequently lack sufficient resources to meet IPA criteria. Based on this experience, it would be advisable to organize information campaigns to increase business awareness of IPA funding opportunities, simplify application and reporting procedures to make IPA funds more accessible to small businesses, and expand training opportunities for entrepreneurs applying for funding. Nonetheless, to fully benefit from these opportunities, it is necessary to address the challenges hindering absorption of the funds and to strengthen cooperation between Albanian institutions and entrepreneurs.

2.2 Concrete Examples of Supported Businesses

The Albanian Investment Development Agency (AIDA) has been one of the main institutions managing IPA funds to support small and medium-sized enterprises (SMEs). In its 2022 annual report, AIDA emphasized that it had promoted financing schemes for the digitalization of SMEs, helping businesses improve their technological capacities and increase their competitiveness in both domestic and international markets.¹ A concrete example of IPA funding is the cross-border cooperation between Albania and North Macedonia. In 2014, an action program was financed with a total budget of €1,400,000, of which €1,190,000 was contributed by the European Union. This program aimed to support projects promoting cross-border cooperation and economic development in the respective areas.² Currently, Albania is part of the IPA III program for the 2021–2027 period, which has a total budget of €14.2 billion for all beneficiary countries. This program focuses on five main windows and 17 thematic priorities, including support for the private sector, economic development, and institutional capacity building.³ Beyond IPA, the European Union (EU) has provided a broad range of financial instruments to support private sector development in Albania. These mechanisms include grants, soft loans,

1. Raport Vjetor 2022, Agjencia Shqiptare e Zhvillimit të Investimeve, AIDA, <https://aida.gov.al/>.

2. Komisioni Evropian, Komunikimin nga Komisioni për Parlamentin Evropian, Këshillin, Komitetin Ekonomik dhe Social Evropian dhe Komitetin e Rajoneve, Raporti për Shqipërinë 2020.

3. Plani kombëtar për integrimin evropian 2022–2024.

financial guarantees, and technical assistance, all aimed at improving competitiveness, digitalization, and sustainability of Albanian businesses. The EU's Western Balkans Growth Plan (2024–2027) foresees that Albania could benefit up to €922.1 million, designed to stimulate economic growth and accelerate integration into the EU single market.¹ From 2008 to 2025, Albania has received €476.8 million in grants and technical assistance, supporting investments in infrastructure, energy, environment, and the private sector.² Through the COSME Programme, in cooperation with Alpha Bank Albania in 2019, a €25 million agreement was signed to finance around 200 Albanian SMEs, easing access to finance through EU guarantees.³ The “Go Digital” program, launched by the EBRD and the EU in April 2025, introduced a €377 million initiative to support digitalization and green technologies in Western Balkan SMEs, including those in Albania. The EU contributed €27.6 million in grants and technical assistance to this program.⁴ Through the Business Innovation and Technology Transfer Center (BRIC), funds and support services have been provided to start-ups and incubators, including €2.87 million from the EU and €5 million from international financial institutions.⁵ In conclusion, the European Union's support for Albanian businesses constitutes a vital pillar of economic development and Albania's alignment with EU standards. Through IPA funds, WBIF, programs such as COSME and Horizon Europe, and partnerships with financial institutions such as the EBRD and Alpha Bank, Albanian businesses have gained access to financing, technology, digitalization, and technical assistance. This support has contributed to improving competitiveness, creating jobs, and strengthening the internal capacities of the private sector. However, to benefit effectively from these opportunities, greater awareness, stronger managerial capacities within businesses, and improved cooperation between the public sector, private sector, and EU organizations are necessary.

1. Delegation of the European Union to Albania, *Growth Plan for the Western Balkans*, https://european-union.europa.eu/index_en.

2. <https://webalkans.eu/en/>.

3. European Investment Fund, *EUR 25 million for Albanian SMEs with a guarantee from the EU, 9 July 2019*. <https://www.eif.org/InvestEU/index.htm>.

4. Reuters, *EBRD launches \$417 million programme to help Western Balkans 'go digital*, April 10, 2025, <https://www.reuters.com/>.

5. European Cluster Collaboration Platform, *Country Factsheet Albania*, <https://www.clustercollaboration.eu/in-focus/policy-acceleration/country-factsheets-on-cluster-policies-and-programmes>.

3. The Impact of Two Intertwined Processes on Sustainable Business Development

The approximation of trade legislation with that of the European Union and the benefits from European funding are not two isolated processes but closely interrelated elements that significantly influence the sustainable development of Albanian enterprises. When these two components are harmonized, they can create a favorable environment for long-term growth, innovation, and the integration of Albanian businesses into the European economy. First, EU-aligned legislation creates a clear and predictable framework for business operations, helping companies adapt more easily to the requirements of the European market. This is essential for attracting foreign direct investment, as legal certainty and compliance with EU standards are among the primary factors valued by investors (OECD, 2021).¹ In this context, European funding functions as a practical catalyst that brings legislative reforms to life. It provides the necessary tools for businesses not only to comply with new legal obligations but also to acquire the capacities to meet them. For instance, in cases where businesses must comply with EU standards on food safety or environmental protection, EU funds can be used for investments in equipment, staff training, or necessary certifications for export (Krasniqi & Dobi, 2022).² Moreover, the interplay between legislative approximation and funding facilitates the access of enterprises to international cooperation networks. Businesses that operate in compliance with EU rules and have benefited from EU financial instruments are more capable of joining cross-border projects, forming partnerships with companies from member states, and participating in research and development consortia (RCC, 2023).³ On the other hand, sustainable development requires that these processes not be limited to short-term benefits. Sustainability demands a profound transformation of how enterprises operate—from the management of human resources and technology to approaches toward the environment and social responsibility. Here, the role of state institutions becomes decisive in ensuring that legislative reforms and foreign funding are accompanied by supportive national policies and by fostering a new culture

1. OECD. (2021). *Enhancing the Business Environment in the Western Balkans*. <https://www.oecd.org/south-east-europe>.

2. Krasniqi, Bujar & Dobi Lorenc, *Standardet e BE-së dhe transformimi i sipërmarrjeve shqiptare*. Revista Ekonomia Europiane, viti 2022, fq 77–92.

3. RCC (Regional Cooperation Council). (2023). *Western Balkans Competitiveness Report*. <https://www.rcc.int>.

of entrepreneurship. One of the most tangible benefits of this interaction has been the improvement of transparency and trust in the market. With the application of European standards in accounting, auditing, and financial reporting, Albanian enterprises are better positioned to attract investment and build sustainable relationships with international partners. This also improves the reputation of the Albanian private sector, which has often been hindered by perceptions of informality and lack of reliability (UNDP Albania, 2021).¹ In conclusion, the interplay between legislative approximation and the benefits of European funding constitutes a powerful mechanism for the development of Albanian enterprises. This dual interaction strengthens the internal structure of the economy, enhances competitiveness, and brings the country closer to full integration into the EU single market. The long-term success of this process depends on institutional commitment, private sector engagement, and the continued support of international partners.

3.1 Comparative examples from Western Balkan countries

The European Union has played a key role in supporting the private sector in the Western Balkan countries through a series of financial instruments and development programs. This support has helped increase competitiveness, foster digitalization, and facilitate the integration of businesses into the European single market. North Macedonia has made significant progress in aligning its trade legislation, particularly in the fields of competition and company law. It has established an electronic business register with advanced functionalities, in line with the requirements of EU Directive 2019/1151. In 2023, the EU introduced a €6 billion investment plan for the Western Balkans, including North Macedonia. This plan aims to double the country's economy within a decade, conditional upon the implementation of the necessary reforms. Serbia has developed a national strategy for legal harmonization, with clear deadlines for each field of the *acquis communautaire*. Serbian bankruptcy law, for example, is already partially aligned with EU Directives on debt restructuring and creditor protection. In terms of financing, through the EU's SME Guarantee Programme, in 2024 the EU provided guarantees to facilitate access to finance for around 13,000 SMEs in the Western Balkans, including Serbia. This initiative aims to support the creation of approximately 180,000

1. UNDP Albania. (2021). Private Sector Development and Transparency in Albania. <https://www.al.undp.org>

jobs.¹ EU support has been fundamental for the development of the private sector in the Western Balkan countries. Through various programs, the EU has assisted in improving access to finance, digitalizing businesses, and advancing integration into the European market. However, to fully benefit from these opportunities, the countries of the region must accelerate the implementation of structural reforms and strengthen institutional capacities. In the field of consumer protection and commercial contracts, Montenegro has adopted detailed provisions in line with EU Directive 2013/11/EU on alternative dispute resolution for consumer disputes. This has significantly improved the quality of business-to-consumer relations in the country. In April 2025, the EU launched a call for expressions of interest to mobilize private investment in the Western Balkans, including Montenegro. This initiative aims to stimulate economic growth and integration into the EU single market.² From the experience of countries in the region, it is evident that success in harmonizing legislation does not depend only on the formal adoption of laws but also on strategic clarity, institutional consistency, and the active involvement of economic actors. Albania is at an important stage, where alignment with European standards must be accompanied by effective implementation, administrative reform, and a clear orientation toward sustainable economic development.

3.2 Albania's financial benefits from the EU Economic Growth Plan

The European Union's Economic Growth Plan offers a significant opportunity for Albania to strengthen economic development, increase regional integration, and accelerate the process of moving closer to European standards. This plan, which involves large-scale investments in infrastructure, renewable energy, digitalization, and human capital development, aims to support the Western Balkan countries, including Albania, in boosting economic competitiveness and creating new jobs. Albania is expected to benefit from €922 million under the European Union's Economic Growth Plan by 2027. This funding is part of a €6 billion package dedicated to the Western Balkans, designed to accelerate the region's economic and institutional integration into the EU. The annual distribution of funds for Albania over the 2024–2027 period is as follows: in 2024, €76.7 million; in 2025, €279 million; in 2026,

1. European Investment Fund, *EU guarantees to unlock €750 million for small businesses in the Western Balkans*, 15 April 2024, <https://www.eif.org/index.htm>.

2. European Commission, *Enlargement and Eastern Neighbourhood*, 9 April 2025, https://commission.europa.eu/aid-development-cooperation-fundamental-rights_en.

€314 million; and in 2027, €251 million. In March 2025, Albania received €64.5 million as preliminary financing, including €30 million in soft loans for the state budget and €34.5 million for infrastructure investments through the Western Balkans Investment Framework (WBIF). These funds include grants and concessional loans, which will be used to support economic development, stimulate investment, create jobs, and improve living standards. The Economic Growth Plan focuses on improving the business climate, developing human capital, advancing the green and digital transition, and strengthening the rule of law. To benefit from these funds, Albania must implement the National Reform Agenda, which includes measures in these areas. According to experts, EU grant funding for Albania has increased by around €80 million annually, reaching an average of €180 million per year, compared to the previous average of €100 million. The EU's Economic Growth Plan represents an important opportunity for Albania to accelerate reforms and advance toward EU membership. Successful implementation of the Reform Agenda will be key to fully benefiting from these funds and improving the country's economic and social standards.¹

Summary

The harmonization of laws on competition, consumer protection, and international trade has brought visible benefits, but effective implementation remains a continuous challenge due to limited institutional capacities and bureaucracy. EU funding, through programs such as IPA, COSME, and Horizon Europe, has helped modernize enterprises and increase their competitiveness. However, Albanian businesses continue to face numerous challenges, including lack of information, complex procedures, and EU requirements that are often difficult to meet. The harmonization of legislation and EU funding are two elements that complement each other. While legal approximation creates the legal basis and the right rules for a competitive economy, EU funding provides practical empowerment for enterprises, making them more capable of meeting European market standards. Albania has made significant progress in both areas, but full integration and maximum benefit require further improvements in reform management and the effective use of European funds. Both

1. <https://apnews.com/article/eu-albania-commissioner-membership-negotiations-reforms-57dcd8b9d82d85e1f3136b7091f63404>.

processes are essential to building a more open, sustainable, and innovation-oriented economy. They not only help improve business and living conditions but also prepare Albania to compete on the international stage. To maximize the benefits of legislative harmonization and European funding, Albania must take several important steps, including strengthening institutional capacities, supporting small and medium-sized enterprises, conducting regular training for administrative staff and businesses on EU procedures and requirements, improving efficiency and transparency in the implementation of reforms and management of European funds, establishing national programs to help Albanian businesses prepare for EU funding applications and adapt to EU standards, guaranteeing credit and reducing the financial burden for businesses seeking modernization, organizing awareness campaigns and creating digital platforms to inform businesses about financing opportunities and the benefits of legal harmonization, and creating stronger mechanisms to monitor the implementation of EU-funded projects and to ensure that funds are used effectively and sustainably. In conclusion, the approximation of trade legislation and support from European funding are two indispensable pillars for Albania's economic development and EU integration. Although challenges remain, commitment to reforms and full use of the opportunities offered by the EU can lead to a more competitive, sustainable, and better-prepared economy to face the challenges of the global market. To achieve this, Albanian institutions, enterprises, and European partners must work together more effectively and in a more coordinated manner.

References

1. Bregu Anila, *Përhapja territoriale e fondeve të BE-së në Shqipëri: Sfidat dhe mundësi*. Instituti për Politika Ekonomike, (2022).
2. Gashi, L, & Dervishi, K. (2021). *Roli i financimeve evropiane në zhvillimin e SME-ve në Shqipëri*. Journal of European Integration Studies, 9(1), fq 60–74.
3. Krasniqi Bujar, & Dobi Lorenc, *Standardet e BE-së dhe transformimi i sipërmarrjeve shqiptare*. Revista Ekonomia Europiane, 11(2), (2022), fq 77–92.
4. Muço, Marenglen & Gëdeshi Ilir, *Harmonizimi i legjislacionit shqiptar me atë të BE-së: Sfidat dhe përfitimet për biznesin*, Tirana Economic Forum, (2020).

5. Zenelaj Eranda, *Perceptimi i sipërmarrjes shqiptare ndaj përafrimit ligjor me BE-në*. Revista Ekonomike Shqiptare, 18(2), (2021), fq 45–59.
6. Gashi Liridon, & Dervishi Klotilda *Impact of EU funds on the development of SMEs in Albania*. Economic Development Journal, 12(4), (2020), fq 89-110.
7. Ministry of Finance and Economy of Albania. (2022). *Implementation of EU standards in Albanian trade legislation*. Retrieved from <https://financa.gov.al/>.
8. OECD (2020), *SME Policy Index: Western Balkans and Turkey 2020*, OECD Publishing.
9. European Commission. (2021). Instrument for Pre-Accession Assistance (IPA III) 2021–2027: Strategic priorities. Retrieved from <https://ec.europa.eu/>.
10. European Commission. (2023). “*Albania 2023 Progress Report*”. <https://neighbourhood-enlargement.ec.europa.eu>.
11. Autoriteti i Konkurrencës. “*Raport vjetor mbi gjendjen e konkurrencës në Shqipëri*”. <https://caa.gov.al> (2023).
12. Ligji nr. 9902/2008 “Për Mbrojtjen e Konsumatorëve”, i ndryshuar.
13. Ligji nr. 10 128/2009 “Për Tregtinë Elektronike”, i ndryshuar.
14. Ligji nr. 9918/2008 “Për Komunikimet Elektronike në Republikën e Shqipërisë”, i ndryshuar.
15. Ligji Nr. 9901, datë 14.04.2008, *Për shoqëritë tregtare i Republikës së Shqipërisë*.
16. Ligji Nr. 110/2016, *Për falimentimin i Republikës së Shqipërisë*.
17. Autoriteti i Konkurrencës. “*Raport vjetor mbi gjendjen e konkurrencës në Shqipëri*”. <https://caa.gov.al> (2023).

CONSUMER PROTECTION IN CONTRACTS AT A DISTANCE IN THE INSURANCE MARKET

Saimir Muçmataj¹
Borana Kalemi²

Abstrakt

This paper aims to argue the changes brought by digitalization and technological innovations in the insurance market, enabling the conclusion of contracts remotely. This transformation has improved consumer access to insurance services by offering faster, more transparent, and more efficient processes. However, there is a natural need for the legal and regulatory infrastructure to be updated at the same pace as technology, ensuring that the use of remote contracts guarantees legal security, transparency, and consumer protection.

Since the insurance industry is a crucial component of the financial system, the objective of analyzing technological developments will focus on explaining their impact, key benefits, and innovations in remote contracts, the facilitation of the insurance product purchasing process, the reduction of bureaucracy, the increase in interaction between companies and clients, transparency, as well as the essential elements and mandatory conditions of remote contracts.

Nevertheless, challenges related to consumer protection and the safeguarding of their rights and obligations remain a fundamental issue. For this reason, the paper will also discuss the problems arising from

1. Student in the Doctorate program, Faculty of Law, University of Tirana, with the position of Director of Consumer Protection, at the Albanian Financial Supervisory Authority, e-mail: saimir111@hotmail.com

2. Këshilltare e Ministrit të Ekonomisë, Kulturës dhe Inovacionit, e-mail: Borana.Kalemi@meki.gov.al

remote contract agreements concerning consumer protection, such as lack of information, concealment, the risk of fraud from fictitious policy sales, electronic identification and digital signatures, cybersecurity, personal data protection, and the resolution of disputes at a distance.

Additionally, to ensure a legally secure environment for remote contracts, recommendations will be included regarding strengthening the regulatory framework, consumer protection, the development of mechanisms for handling complaints and remote compensation, as well as increasing transparency. In this way, the insurance market can continue to develop while maintaining a balance between innovation and effective consumer protection.

Keywords: *consumer protection, technology, remote contract agreements, transparency, insurance market*

I. Introduction

This paper aims to analyze the changes brought by digitalization and technological innovation in the insurance market, enabling the conclusion of contracts at a distance. This transformation has improved consumers' access to insurance services by offering faster, more transparent and efficient processes. However, it naturally creates the need for the legal and regulatory infrastructure to be updated at the same pace as technology, so that the use of distance contracts can guarantee legal certainty, transparency and consumer protection.

Since the insurance industry is a very important link in the financial system, the objective of analyzing technological development will serve to explain its impact, the main benefits and innovations of distance contracts, simplification of the process of purchasing insurance products, reduction of bureaucracy, increased interaction between companies and clients, transparency, as well as the mandatory elements and conditions of a distance contract.

Nevertheless, the challenges of consumer protection and guaranteeing their rights and obligations remain a fundamental issue. For this reason, the paper also discusses the problems arising from the conclusion of distance contracts in terms of consumer protection, such as insufficient information, concealment, the possibility of fraud through fictitious

policy sales, electronic identification and digital signatures, cybersecurity, protection of personal data, and distance dispute resolution.

Furthermore, in order to guarantee a safe legal environment for distance contracts, the paper includes recommendations on strengthening the regulatory framework, consumer protection, developing mechanisms for handling complaints and compensation at a distance, as well as increasing transparency. In this way, the insurance market can continue to develop while maintaining a balance between innovation and the effective protection of consumers.

II. The Development of Distance Contract Sales in Albania

Scholars have classified contracts as standard and special “ad hoc” contracts. For the purposes of this study, standard policies are sub-classified as policies approved by a regulatory entity, which are mainly applied for compulsory insurance contracts, and those approved by insurance companies in the context of selling the various products they offer.

In standard policies, the consumer does not negotiate in any case but chooses between the offers and products that a company provides and can even compare them with other companies in order to make the most suitable choice for his or her needs.

In this sense, standard policies are very easy to sell, paving the way for distance selling or for being easily sold through intermediaries.

From observing websites, it is noted that insurance companies in Albania tend to sell insurance products such as life or property insurance, leaving it optional for the consumer to select at a distance what they wish to be covered.

For example, almost all companies, for voluntary “Kasko” insurance, require the consumer to complete online what is to be covered. So, if coverage for fire is desired, one must tick the relevant box (other options include theft, flooding, etc.).

Below is also an illustration taken from the website of one company (randomly selected).

Check the Coverages

KASKO

FULL KASKO

Insured Risks

☒ Accidental damages & Parking damages

☒ Fire, Lightning, Explosion

☒ Breaking of the windows

☒ Natural disaster

☐ Complete theft

☐ Insurance outside Albania

☐ Tow Truck Service

Policy Price:

The same logic applies to other products such as health or property insurance.

In Albania, in recent years there has been a tendency to sell standard policies, but mostly mandatory motor insurance policies, primarily third party liability of the owner/user of a motor vehicle for damages caused to third parties from the use of that vehicle, through couriers.

Almost on every website of insurance companies, it is possible to purchase a TPL policy at a distance. To do this, it is enough to enter the data of the vehicle registration certificate, identity card, and credit card.

The consumer is then required to tick a box (place a check) indicating whether they accept the general conditions of the contract and another box authorising the company to process their personal data.

A concrete example of how this works is illustrated below (taken from the website of an insurance company).

1 Information on Insurance

2 User

3 Payment

License Plate *

Vehicle identification number (VIN) *

Start Date *

dd/mm/yyyy

End Date

dd/mm/yyyy

The insurance contract comes into force at 24:00 on the day of the beginning of the insurance period and ends at 24:00 on the last day of the insurance period. You can purchase TPL Insurance up to 2 weeks before your existing policy expires.

Premium

☐ Accept

[Terms and Conditions](#)

After receiving this information, the insurance company starts the process, first determining the premium (which is generated automatically by the website based on a computer algorithm that uses the information from the registration certificate), and then confirming completion of online payment by Visa or Mastercard.

Once payment is made, the company proceeds to print the policy, signs it through an authorised employee and sends it by courier (mainly private postal service) to the ordering consumer at the address he or she has declared. At the meeting between the courier and the consumer, the policy is also signed by the latter, as the last step in concluding the distance contract.

III. The Concept of Distance Contracts

Although there is no clear regulatory framework, it is understood that in Albania the conclusion of distance contracts in the insurance market has already begun. To better understand this phenomenon, the natural question arises: what are distance policies and contracts?

“Insurance contract” and “insurance policy” are two terms with the same meaning. The word “policy” is of Latin origin and its root “poleticum” means register or written part.

Currently, since the insurance policy is not a notarized act, it must be registered in a special register and signed, in order to have the value of material evidence.

From a theoretical point of view:

INSURANCE POLICY is the document that must be registered and signed which expresses and regulates the interests and relations of the insured with the insurer; which makes an insurance arrangement functional, so that it has the value of material evidence.

From a theoretical perspective, it is understood that a distance contract is a contract concluded between two parties without physical contact between them, without being physically present in the same place and at the same time, by using distance communication means such as the internet (websites or applications) or digital platforms.

From a legal point of view, a definition is found in the latest amendments to the Consumer Protection Law adopted in 2018, where in the article on definitions, point 22, it is stated:

“Distance contract” means any contract concluded between a trader and a consumer under an organised distance sales or service-provision scheme, without the simultaneous physical presence of the trader and the consumer, with the exclusive use of one or more means of distance communication up to and including the time at which the contract is concluded.”

A definition is also given in the Law on Electronic Commerce where, in the article on definitions, letter “a” state that:

“At a distance’ means that the service is provided without it being necessary for both parties to be present at the same time.”

In short, a distance contract is a contract concluded between the parties without meeting physically, which has the same legal force as contracts concluded in written form (Classic) in the presence of both parties.

IV. Legal Basis in Albania for Concluding Distance Contracts and Consumer Protection

In the Republic of Albania, the conclusion of contracts in the insurance market is regulated by a mix of legislation which, at the same time, requires compliance with certain rules in order to be considered contracts with legal validity; otherwise, they are void.

- Law no. 7850, dated 29.7.1994, “Civil Code of the Republic of Albania”, as amended, for the first time dedicated a special chapter to the insurance market. In Article 1114 of the Code, it is stipulated that the insurance contract must be made in writing, by means of the insurance certificate (insurance policy), which the insurance policy issue to the insured, otherwise it is void.

Further, the legal act in written form is regulated in Article 81 of the same Code, which stipulates that the legal act in writing must be signed by the person who performs it. From the above, it is clear that the Civil Code sets two main rules for insurance:

- a. It must be in writing; and
 - b. It must be signed by the parties.
- Law no. 52/2014, “On insurance and reinsurance activity”, as amended, in Article 4, under the definitions section, point 30, defines “Insurance product” as the specific contract (policy) prepared and

issued by the insurance company to cover a specific risk or a number of specific risks, under predetermined conditions. This definition clearly regulates that the insurance product is a contract and, as such, must be subject to the rules of the Civil Code, i.e. it must be in written form and signed.

Meanwhile, in Article 64 of this Law, distance contracts are mentioned for the first time. This article states that the Authority may approve rules regarding additional information that must be notified before signing and during the period of validity of the contract, including the distance contract. This article clearly delegates to the Authority (AFSA) the task of drafting the rules on the information necessary for the consumer to be informed before concluding the contract, whereas Law no. 52 does not itself provide concrete rules for concluding a distance contract nor does it delegate them further to the Authority.

- Law no. 32/2021, “On compulsory insurance in the transport sector”, in Article 15, point 6, stipulates that the compulsory insurance contract is made in writing in the form of an insurance policy and is valid even when it is in the form of an electronic document, in accordance with the provisions of the law on electronic signature and electronic document. It is clear that this law is in harmony with the Civil Code, and even recognizes contracts signed and sealed in electronic form.
- Law no. 32/2021, “On compulsory insurance in the transport sector”, in Article 15, point 6, stipulates that the compulsory insurance contract is made in writing in the form of an insurance policy and is valid even when it is in the form of an electronic document, in accordance with the provisions of the law on electronic signature and electronic document. It is clear that this law is in harmony with the Civil Code, and even recognizes contracts signed and sealed in electronic form.

Electronic contracts in Albania are regulated by Law no. 43/2023 “On electronic governance”, and Law no. 9880, dated 25.02.2008, “On electronic signature”. These two laws together provide all the necessary infrastructure for the insured and the insurer to sign (and for the insurer or the insured, in the case of a legal person, to seal) a document electronically,

without the need for physical presence or any limitation in the distance between the parties; in principle, from any corner of the world they can conclude a civil contract at a distance.

These two laws also cover the conclusion of all contracts in the field of insurance (not only compulsory ones), removing the need for the above-mentioned provision in Law no. 32 to be repeated in Law no. 52, which is the horizontal law in the field of insurance.

- Law no. 9902, dated 17.4.2008, “On consumer protection”, as amended by Law no. 71/2018, added a whole chapter dedicated to distance contracts. Specifically, Chapter II was added, which regulates distance contracts, including many important provisions such as:
 - o The obligation to provide information before the conclusion of the contract (Article 36)
 - o The consequences of failure to provide information (Article 36/3)
 - o Formal requirements of distance contracts (Article 37)
 - o Exercising the right of withdrawal at a distance (Article 37/3), etc.

In fact, this law is the only piece of legislation that recognizes and best regulates distance contracts, but this regulation is practically inapplicable in the case of insurance contracts. The above rules describe all types of markets and can easily be applied to the markets for the sale of various goods and different services, but when it comes to financial insurance services, these rules are only partially applicable.

Financial services have very different characteristics from ordinary services such as cleaning or maintenance and even differ from services considered of public interest like power and water supply.

Insurance contracts carry a whole set of characteristics embodied in a single product. They are at the same time:

- Indemnity contracts
- Conditional contracts
- Contracts with unequal exchanges
- Unilateral contracts
- Personal contracts, non-transferable and non-assignable
- Contracts of utmost good faith, accepted without negotiation by the other party

Consequently, we conclude that there is a gap in the regulation of distance insurance contracts and that the above rule is inapplicable.

- Regulation no. 159, dated 29.09.2021, “On the online electronic register of sales”, has as its object the determination of procedures for the functioning, identification and reporting of data on sales of compulsory insurance policies in the Online Electronic Sales Register, hereinafter referred to as the Register, installed at the Compulsory Insurance Information Centre under the Financial Supervisory Authority. This regulation fully fulfils the requirement to register the contract in a public register but is limited only to compulsory insurance contracts. Other (non-compulsory) contracts are recorded, as regards the moment when the insured event occurs, in the register created under Regulation no. 105, dated 30.06.2021, “Electronic register of claims of the Albanian Insurance Bureau”.
- Meanwhile, Law no. 10 128, dated 11.5.2009, “On electronic commerce”, which is the only technical legal framework and regulates the minimum technical infrastructure to be applied for the sale of goods or services at a distance, in Article 12, entitled “Contracts excluded from the scope of this law”, excludes from its scope contracts for financial services or insurance services for which distance marketing is applied. Following this reasoning, it appears that, in general, distance insurance contracts concluded through electronic means may be subject to the Law on Electronic Commerce, but with important limitations arising from the specific nature of financial services and the sector-specific regulation that covers them separately.

The law regulates, in general terms, the provision of services and the conclusion of contracts through electronic means. However, Article 2 of this law excludes financial services, including insurance, from its full scope if they are specifically regulated by separate laws. The law applies only in a supplementary and subsidiary manner to distance insurance contracts, while the main legal basis that regulates these contracts are the sectoral laws on insurance and consumer protection.

V. Consumer Protection Through the Intervention of the Authority

The latest developments in improving consumer protection in the insurance market in Albania are reflected in the 2018 amendments to the Consumer Protection Law, which have brought important innovations in the institutional and procedural aspects. One of these developments is the provision for the establishment of a mechanism for the settlement of disputes outside the court system in cases where the consumer is in conflict with a provider of services, including financial and insurance services, which the Authority had already created since 2015.

This approach also reflects efforts to align Albanian legislation with the fundamental principles of consumer law at European level. The Authority, on the basis of the Consumer Protection Law and the Law on Insurance Activity, appears as an intermediary. It has the right to bring the parties together, propose to them an acceptable solution for both, or return the case to the company for reconsideration if it finds irregularities.

In this sense, it is clear that the Authority does not have the competence to resolve definitively the dispute between the consumer and the insurance company. The insurance contract is a civil legal relationship, and as such the final resolution of the dispute is made by the courts if the parties have not managed to agree on an acceptable solution between them.

In the framework of strengthening consumer protection in the financial market, the Financial Supervisory Authority has achieved concrete results, particularly in handling complaints from citizens regarding insurance products and services. One of the most important institutional initiatives is the creation of a dedicated complaint-management system, which is a functional platform allowing citizens to submit their concerns directly, clearly and in a documented manner, including in electronic form. This system is integrated into the Authority's internal processes and represents a positive practice in terms of transparency, monitoring of market behavior and identification of problematic trends in relation to consumers.

However, in order to fully meet the standards required by the EU acquis and the most advanced remote-supervision practices, AFSA must undertake further updates of the existing system. These improvements include enhancing functionalities for statistical analysis and profiling of repeated practices by market operators, real-time interaction with insurance providers and integration with other state databases for higher verification

and transparency.

Moreover, if the process of full approximation with European legislation is completed, it will be necessary for the system to be able to communicate with standardized platforms for consumer protection and dispute resolution. Thus, beyond having a functional structure at present, a deeper digitalization is required, ensuring full, accessible and fair protection for the Albanian consumer in the insurance market.

VI. Challenges, Problems and the Importance of Distance Contracts

In the era of digitalization, the insurance sector has undergone a significant transformation through the use of technology in concluding distance contracts, as explained in Chapter II of this paper.

This innovation has brought many benefits for consumers, such as easing the purchase process, reducing bureaucracy and increasing access to insurance products. It has also solved many practical problems for consumers, especially during the Covid pandemic when movement and physical presence were limited. Indeed, it can be said that precisely during this time, distance relationships also flourished in the insurance market.

Among other benefits, we can mention concluding a motor insurance contract at a distance when a consumer with a car with Albanian plates has an expired insurance and is abroad. In practice, physical contact is impossible because he or she is not allowed to enter Albania by customs authorities without having a valid insurance policy in Albania.

Nevertheless, this new form of contract conclusion brings significant challenges concerning consumer protection, which require clear regulatory measures and effective supervisory mechanisms.

In practice, several important challenges are encountered that undermine the implementation of distance contracts and the effective protection of the consumer in distance insurance contracts.

First, the lack of adequate information is a major problem. Many consumers are not fully aware of their legal right of withdrawal or of the obligations that insurance traders have. For example, online and telephone advertising of insurance often contains complex terms and conditions are not explained in a simple way, making it difficult to compare offers.

The law requires insurers and intermediaries to provide the consumer, in a clear and understandable manner, with essential information about

the product, including coverage, exclusions, price, the right of withdrawal and procedures for complaints. However, in practice, consumers often face general information that is technically complex or presented in a non-transparent way through digital channels. This situation highlights two important issues: first, the lack of detailed regulatory standards on the content and format of digital information, and second, a low level of financial education among the public, which is not always able to understand the implications of the insurance contract. These gaps risk devaluing the very mechanism of consumer protection and demonstrate the need for more proactive intervention by the supervisory authority to standardize information practices and raise consumer awareness in the digital age.

Second, consumer identification is one of the critical elements for legal security and protection of the parties in distance contracts in the insurance market, but in Albania this area remains still not fully addressed in the regulatory framework. Law no. 52/2014 does not provide detailed standards for how the consumer should be identified when the contract is concluded through electronic means. In practice, some companies use basic methods of self-declaration of personal data or uploading scanned identification documents, but there is no authentic verification through reliable electronic systems (such as advanced electronic signature or identification via e-Albania). This creates a gap between legal requirements for the validity of the contract and transaction security and exposes the consumer to the risks of fraud, false representation and difficulties in dispute resolution. This problem underlines the need to build a clear technical and legal framework for digital identification in the insurance field, aligned with European standards and developments in the Albanian digital market.

Third, the electronic signature, although legally equivalent to the traditional signature in Albania, faces the challenge of high costs and limited access, hindering its widespread adoption in the insurance market. Law no. 9880/2008 “On electronic signature” creates the legal basis for the use of advanced electronic signatures, but in practice, the provision of this service remains concentrated among a few licensed providers, with costs that are not affordable for a significant portion of consumers and market participants. For an individual client, the procedure of obtaining a digital certificate involves considerable financial expenses and technical bureaucracy, which discourages its use for simple or low-value insurance contracts.

On the other hand, insurance companies do not have a regulatory or fiscal incentive to invest in infrastructure that supports identification and electronic signing of clients at a distance. As a result, hybrid forms of confirmation are often used (e.g. SMS, email, clicking), which do not fully meet the standards of security and legal validity. This situation evidences the need for coordinated intervention between the state, AFSA and the industry to subsidize and promote digital signature, especially for ordinary consumers and low-risk products, in order to guarantee equality and reliability of contracts concluded online.

Fourth, cybersecurity: the increase in the use of digital channels for concluding contracts in the insurance market has exposed both companies and consumers to a wide spectrum of cyber risks that seriously challenge the security of personal data and the integrity of contractual relationships. In Albania, where digital transformation in the financial sector is still developing, the lack of a well-established cybersecurity culture and non-standardized protective infrastructure increases the likelihood of external interference such as cyberattacks, intrusions into customer databases or misuse of digital identity. Insurance companies often do not apply measures recommended by international information security standards, while consumers, due to low levels of digital literacy, more easily fall victim to online fraud.

Meanwhile, the Albanian financial regulator still does not have a clear framework for minimum cybersecurity requirements for operators in the insurance market, in contrast to the trends of the European Union, which is integrating cyber protection into every link of the insurance distribution chain.

Fifth, gaps in legislation create uncertainty. Albanian legislation in the field of insurance presents visible gaps in regulating distance insurance contracts, leaving the consumer unprotected in an increasingly digitalized market. Law no. 52/2014 “On insurance and reinsurance activity” does not contain specific provisions on distance contracts, even though business practices have advanced towards the use of online platforms, applications and other electronic means for distributing insurance. Moreover, the provisions of Law no. 9902/2008 “On consumer protection”, although generally applicable to distance contracts, do not address the specificities of the insurance market, such as product risk profiles, the right to full

technical information or valid methods of acceptance/rejection of offers.

These gaps create a divide between the protection offered by law and the reality of business practice, where lack of legal clarity may lead to uncertainty about contract validity, limitation of complaint rights or even abuse of personal data. In the absence of a framework harmonized with EU directives, such as Directive 2016/97 on insurance distribution and Directive 2011/83 on consumer rights, the Albanian market remains exposed to legal uncertainty and the absence of unified standards for effective consumer protection in digital insurance contracts.

VII. Conclusions and Recommendations

Analysis of current developments in the Albanian insurance market shows that consumer protection in distance contracts is still at an early and unstable stage, where efforts to approximate with the EU *acquis* are fragmented and often limited only to formal aspects. The lack of a specific legal framework for distance contracts, gaps in pre-contractual information, problems with electronic identification, the costs of digital signature and high cyber risks reveal a deep need for systemic intervention. At the same time, the lack of financial education and transparency makes the consumer particularly exposed to abuse or misinformation, while the absence of functional out-of-court mechanisms for dispute resolution highlights the structural weaknesses of the system.

In the face of these challenges, the demand for technological innovations and for accessible, reliable and secure mechanisms is higher than ever. In this regard, a comprehensive legal, institutional and technological reform is a prerequisite for building a modern insurance market that respects consumer rights, increases trust in the system and truly approaches the standards of the European Union.

To strengthen consumer protection in distance insurance contracts, the following measures can be undertaken:

Approximation of Albanian legislation with EU Directive in the field of distance contracts in insurance remains a fragmented and unstable process that suffers from the lack of an integrated normative and institutional approach. For this reason, harmonisation with Directive (EU) 2016/97 (Insurance Distribution Directive – IDD) and Directive (EU) 2023/2673 (on distance financial services) is needed. The lack of clear

norms on how pre-contractual information is to be provided, standards for electronic signature and procedures for exercising the right of withdrawal within legal deadlines shows that approximation is not only a matter of technical transposition but requires a transformation of the regulatory philosophy.

Financial education and transparency.

In the context of distance contracts in the insurance market, consumer education and information transparency appear as fundamental pillars for achieving effective protection, but in Albania these two components remain insufficiently and inconsistently developed. The low level of financial education makes consumers particularly sensitive to complex insurance products, while the information provided by companies is often technical, incomprehensible and presented in a non-standardised way. The lack of simplified informative materials and effective digital communication channels undermines the client's ability to make informed decisions, weakening the principle of contractual autonomy. This situation underlines the need for an integrated approach combining clear obligations for providing understandable information, increasing financial education through digital tools and strengthening the role of the Authority in controlling commercial communication practices at a distance.

The need for technological innovation.

The demand for technological innovation in the Albanian insurance market is a necessity that stems directly from the transformation of ways of concluding distance contracts (if the approximation process mentioned above is finalised), but faces a lack of sustainable investment. While European markets are embracing advanced solutions such as automated quoting, personalised digital platforms and the use of artificial intelligence for risk assessment, in Albania companies remain mainly at a basic stage of digitalisation, focused on providing information through static websites and using electronic forms. The lack of infrastructure for secure electronic identification, mass digital signature and platform interoperability among market actors creates real barriers to developing a modern distance insurance market.

Moreover, the legal framework does not contain obligations to integrate new technologies, while supervision is not oriented towards measuring

technological performance or the quality of user experience.

Creation of remote out-of-court mechanisms.

The creation of functional out-of-court mechanisms for dispute resolution in the field of insurance, particularly for distance contracts, is a necessity for strengthening consumer protection and increasing trust in the market, but in Albania this dimension remains underdeveloped and unimplemented in practice. Disputes arising from misunderstandings in electronic communication, lack of clear information or contestation of the validity of digital signatures cannot be effectively addressed through the traditional court system, which is slow, costly and often technically unsuitable for digital-nature issues.

Although the Consumer Protection Law provides for the possibility of alternative dispute resolution (ADR), in practice there are no specialised structures for the insurance sector that could enable the rapid online resolution of complaints. In this context, it is urgent that insurance companies create and formalise an independent and specialised mechanism for dispute resolution in the insurance market, taking examples from European models and including technology for access and transparency.

From the state side, it is also essential to adopt what is known as “Online Dispute Resolution (ODR)”, adopted by Regulation (EU) No. 524/2013 of the European Parliament, which is a process for resolving disputes electronically, without the need for physical intervention or the use of traditional court paths. It is based on the use of digital platforms and information technology to handle, manage and resolve complaints or conflicts arising from commercial agreements, often distance-concluded, including in the field of electronic commerce and financial services such as insurance.

The main features of ODR are that the process is entirely online – from the submission of the complaint, to communication between the parties, up to the resolution – helping to settle conflicts quickly, at low cost and impartially, and it includes electronic negotiation, digital mediation or electronic arbitration. ODR is widely used in the European Union for distance sales and service contracts, including insurance contracts concluded via the internet.

Final Conclusions

Distance contracts in the insurance market represent a necessary development towards modernizing contractual relationships, reflecting changes in consumer behavior and technological progress, especially after the global pandemic that accelerated digitalization in all sectors.

These contracts create opportunities to expand access to insurance products, increasing efficiency, reducing administrative costs and improving the client's experience. For market operators, distance contracts drive innovation in distribution models and create competitive advantages through personalized offers and real-time interaction with clients.

However, their importance goes beyond commercial benefits, as they test the capacity of the legal and regulatory system to maintain the balance between facilitated access and the protection of consumer rights in an environment where physical contact is absent. This gives distance contracts a strategic function in building an insurance market that is not only more widespread and flexible, but also more responsive to consumer needs in the digital age.

SYSTEMIC VIOLATIONS OF THE RIGHT TO PROPERTY IN ALBANIA: ANALYZING THE CASE LAW OF THE EUROPEAN COURT OF HUMAN RIGHTS AND PATHWAYS FOR REFORM

LL.M / PhD candidate Kejsi Ziu¹

Abstract

Albania has faced numerous violations of Article 1 of Protocol No. 1 of the European Convention on Human Rights (ECHR) due to national systemic issues in property rights protection, particularly concerning restitution, compensation, and enforcement of judicial decisions. The European Court of Human Rights (ECtHR) has repeatedly ruled against Albania in cases such as “Driza v. Albania” (2007), “Manushaqe Puto v. Albania” (2012), “Beshiri and Others v. Albania” (2020), and more, identifying persistent legal uncertainty, excessive delays, and ineffective remedies for citizens deprived of their right to property. These judgments underscore Albania’s failure to establish a clear, consistent, and enforceable legal framework for property restitution and compensation, despite ongoing reforms.

This article provides a focused analysis of these landmark cases, examining the structural deficiencies in Albania’s legal system that may lead to repeated breaches of Article 1 of Protocol No. 1. It highlights how the fragmented legal framework, bureaucratic inefficiencies, and lack of effective judicial enforcement contribute to continued violations. Furthermore, the article aims to propose targeted solutions, including proposals for a specialized enforcement mechanism for property claims, improved legislative clarity on property restitution rights, and enhanced

1. Senior Project Officer, Council of Europe
Email: kejsiziu93@gmail.com

oversight to prevent further delays. Addressing these issues is crucial for ensuring compliance with the ECHR, strengthening the rule of law in the country, and advancing Albania's European integration process.

Keywords: *right to property, Article 1 of Protocol 1, European Convention of Human Rights, European Court of Human Rights.*

I. Introduction

Property rights in Albania have been a persistent source of legal contention and human rights violations in the post-communist era. Despite Albania's obligations under Article 1 of Protocol No. 1 of the European Convention on Human Rights (ECHR), which guarantees the peaceful enjoyment of possessions, systemic problems in the domestic framework have led to repeated findings against Albania by the European Court of Human Rights (ECtHR)¹. The ECtHR has identified a pattern of structural issues, including the excessive length of proceedings, non-enforcement of final decisions, legal uncertainty in property titles, and ineffective remedies for individuals deprived of their property rights). These problems primarily arise from the country's tumultuous transition from a communist regime (which nationalized property) to a democratic system that must restore or compensate former owners, as well as from contemporary governance failures in handling expropriations and enforcement of property judgments.

This article aims to provide an academic analysis of Albania's systemic violations of the right to property as evidenced by ECtHR case law and discusses the national legal framework governing property restitution and expropriation. It also draws on recent European Commission reports (2022–2024) that highlight ongoing rule-of-law deficiencies in property rights protection, and it examines how these issues impact Albania's European integration process. Finally, the article proposes concrete reforms to align Albania's legal framework with ECHR standards and to enhance the effective protection of property rights, thereby addressing the root causes of repeated violations.

1. See the European Court of Human Rights Country Profile on Albania, pg. 4, accessible at https://www.echr.coe.int/documents/d/echr/cp_albania_eng#:~:text=The%20cases%20concerned%20the%20non,right%20to%20an%20effective

II. National legal framework on property restitution and expropriation

A. *Constitutional and international obligations:*

Albania's Constitution enshrines the right to property and requires that expropriations or limitations be in the public interest and accompanied by fair compensation. Moreover, as a state party to the ECHR since 1996, Albania is bound by Article 1 of Protocol No. 1 and the interpretations of that provision by the ECtHR. In principle, Albanian legislation is designed to mirror these standards – for example, the Civil Code and other laws formally recognize the right to ownership and provide for compensation in cases of expropriation. However, the challenge has been in the implementation and consistency of these laws over the past three decades.¹

B. *Law on restitution and compensation of property:*

Following the fall of communism in 1991, Albania faced the immense task of reversing or redressing the expropriation of private properties by the former regime. A series of laws were enacted starting in the 1990s to restore properties to former owners or compensate them when restoration was not possible. An important iteration was Law No. 9235 of 2004 “On Restitution and Compensation of Property,” which consolidated earlier efforts and established mechanisms for former owners to file claims. In practice, however, the process under the 2004 law became bogged down by administrative inefficiency, overlapping claims, and a shortage of funds, resulting in thousands of recognized claims remaining unpaid or unresolved for years. The ECtHR, in cases like *Driza v. Albania* and *Ramadhi and Others v. Albania* (2007), found that final decisions recognizing individuals' property rights or compensation were not enforced, reflecting a “widespread problem” affecting large numbers of people². These failures constituted violations of the right to property and the right to a fair trial, and highlighted the need for systemic changes.

1. See also G. Borgna, “Beshiri et al. v. Albania: a nail in the coffin for compensation claims for properties nationalized during the communist regime in Albania” (2020), accessible at <https://strasbourgobservers.com/2020/07/06/beshiri-et-al-v-albania-a-nail-in-the-coffin-for-compensation-claims-for-properties-nationalized-during-the-communist-regime-in-albania/#:~:text=Rivers%20of%20ink%20have%20flowed,tiresome%20complex%20situation%20and%20waved>

2. *Ibid.*

C. Law no. 133/2015 “On the treatment of property and conclusion of the compensation process”:

In response to mounting ECtHR judgments and a pilot judgment by the Court in 2012 (discussed below), Albania adopted a new law in 2015 to overhaul the compensation scheme. Law 133/2015 “On the treatment of property and finalisation of the process of property compensation process”, as amended¹, aimed to provide a comprehensive remedy for outstanding claims. It set criteria for valuing properties, established a finite list of eligible claims, and created the Agency for the Treatment of Property (ATP) to administer compensation. This law was a direct reply to the ECtHR’s pilot judgment in ‘*Manushaqe Puto and Others v. Albania*’ (2012), which had ordered Albania to “*take general measures... to effectively secure the right to compensation*” for expropriated properties within 18 months.² The 2015 law and subsequent regulations were intended to finally resolve the decades-old backlog by providing cash compensation (from a designated state fund) or land in lieu of compensation, within a clearer timeframe.

Notably, the ECtHR examined the 2015 compensation scheme in the ‘*Beshiri and Others v. Albania*’³ (2020) judgment. In that case, involving applicants who had long awaited enforcement of compensation decisions, the Court assessed whether the new legal remedy could address their claims. The Court concluded that the 2015 Property Act introduced an “*effective remedy*” for the non-enforcement of property decisions, which the applicants were required to exhaust before coming to Strasbourg. As a result, it declared the pending applications inadmissible due to non-exhaustion or loss of victim status, effectively handing back competence to the domestic authorities to provide redress.⁴ However, the ECtHR added

1. Law no. 133/2015, as amended is accessible at <https://www.qbz.gov.al/eli/ligj/2015/12/05/133/49224b73-abcd-4aae-add9-e874e373c1fa;q=ligjin%20nr.%20133%2F2015> and <https://www.qbz.gov.al/eli/ligj/2025/02/17/12/d12bc49e-3295-41b5-95dd-63e674deaea2;q=ligjin%20nr.%20133%2F2015>

2. See case of “*Manushaqe Puto and Others v. Albania*” (Applications nos. 604/07, 43628/07, 46684/07 and 34770/09), accessible at <https://hudoc.echr.coe.int/eng#%7B%22itemid%22:%5B%22001-112529%22%5D%7D>.

3. See case of “*Beshiri and Others v. Albania Application*” (Application no. 29026/06), accessible at <https://hudoc.echr.coe.int/fre#%7B%22itemid%22:%5B%22001-202475%22%5D%7D>

4. See also <https://www.rolplatform.org/restitution-of-property-in-albania-in-accordance-with-the-convention/#:~:text=Property%20Act%2C%20was%20a%20response,Act%20had%20come%20into%20force.>

an important proviso: it noted concerns that the compensation formula under the 2015 scheme might yield “*much lower*” amounts than earlier laws would have, potentially imposing an excessive burden on former owners. To guard against a disproportionate outcome, the Court insisted that compensation must be at least equal to 10% of the property’s current value (using current cadastral data). This requirement was meant to ensure a minimum level of fairness in the compensation payouts under the new system.

Expropriation Law (Law on Expropriation in the Public Interest): Separate from the communist-era restitution issue, Albania regulates contemporary expropriations (takings of property for public needs, such as infrastructure) through its expropriation law. The current law (originally Law No. 8561/1999, as amended, and superseded by later iterations) establishes procedures that generally require: a public purpose justification, due administrative process (notice to owners, the ability to object), and the payment of “*adequate and immediate*” compensation to owners. In theory, this law aligns with ECHR standards of legality, public interest, and proportionality. In practice, however, there have been instances of authorities bypassing or misapplying the expropriation procedures. A striking example was revealed in the “*Sharxhi and Others v. Albania*” judgment (2018)¹, where a building in Vlora owned by various individuals was seized and demolished by authorities in 2013 under the guise of an urgent expropriation. The ECtHR found that the process was carried out “*hastily and in complete disregard of a court order*” that had been issued to protect the owners’ rights. Domestic law provides that an expropriation decision and compensation amount can be challenged in court, and indeed the owners obtained an Albanian court ruling awarding them compensation. Yet, that domestic judgment (approximately 13 million EUR for the unlawful demolition) was stayed on appeal and went unenforced for years. This case exposed how, even with facially adequate laws on the books, failures by state actors to follow legal procedures or to honour court injunctions and judgments can lead to egregious violations of property rights. This judgment is not yet implemented by Albania.

1. See case of Sharxhi and Others v. Albania (Application no. 10613/16), accessible at [https://hudoc.echr.coe.int/eng#{%22itemid%22:\[%22001-179867%22\]}](https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-179867%22]}).

D. Legalisation of informal properties:

In addition to restitution and formal expropriation, Albania has grappled with legalising thousands of *de facto* informal constructions (built without clear title or permission, especially during the 1990s transition). Laws on the legalisation of informal zones (such as the 2014 and 2018 legislation on legalization, urban planning, and transitional ownership processes) intersect with property rights by attempting to grant ownership titles or compensation for occupants of formerly state or unclaimed land. The European Commission has urged that legalization processes “must strictly adhere to the legal framework... including the principle of transparency and due judicial process”, to avoid new violations. Selective or arbitrary enforcement in removing illegal constructions without due process has been flagged as a concern by civil society. Ensuring clarity and fairness in these processes is part of strengthening the rule of law in property matters.

In summary, Albania’s domestic framework has been fragmented and evolving: a patchwork of restitution and compensation laws over 30 years, a formal expropriation law, and special legalization regimes. While these laws nominally comply with property right protections, their implementation has lagged. The result has been a significant gap between the *de jure* protections and the *de facto* realities faced by property claimants.

E. Repeated ECtHR judgments on property rights in Albania:

Over the past two decades, the ECtHR has issued a series of judgments against Albania under Article 1 of Protocol No. 1 (and related provisions like Article 6 (1) and Article 13 of the Convention) that illuminate the systemic failings in Albania’s protection of property rights. The following are landmark cases and their significance:

- ***Driza v. Albania*¹ & *Ramadhi and Others v. Albania*² (2007):** In twin judgments delivered on 13 November 2007, the Court addressed the “*non-enforcement of judgments and administrative decisions in restitution of property cases*” in Albania, recognizing this as a widespread systemic problem. Both cases involved individuals or families who had obtained final decisions (administrative rulings recognizing property

1. See case of ‘*Driza v. Albania*’ (Application no. 33771/02), accessible at [https://hudoc.echr.coe.int/fre#%22itemid%22:\[%22001-83245%22\]](https://hudoc.echr.coe.int/fre#%22itemid%22:[%22001-83245%22])

2. See case of *Ramadhi and Others v. Albania* Application no. 38222/02), accessible at [https://hudoc.echr.coe.int/eng#%22itemid%22:\[%22001-83249%22\]](https://hudoc.echr.coe.int/eng#%22itemid%22:[%22001-83249%22])

restitution rights, or court judgments) confirming their entitlement to property or compensation, but who had been unable to enjoy those rights in practice. The Albanian authorities' prolonged failure to enforce these decisions violated the applicants' right to a fair trial (Article 6 §1) and the protection of property (Article 1 of Protocol No. 1), as well as the right to an effective remedy (Article 13). The *Driza* and *Ramadhi* judgments were among the first to put the Committee of Ministers of the Council of Europe on notice that Albania had a structural problem requiring general measures. The ECtHR did not yet issue specific deadlines in 2007, but it clearly signaled that mere legislative promises without actual enforcement would not satisfy Convention standards.

- ***Manushaqe Puto and Others v. Albania (pilot judgment)*¹**: Confronted with a growing stream of applications from Albania all raising similar issues, the ECtHR took the extraordinary step of issuing a pilot judgment on 31 July 2012. Twenty applicants in *Manushaqe Puto* had inherited property rights (their families' land confiscated during the communist era) and had obtained final administrative decisions awarding them compensation since restitution in kind was not possible. Yet for years those decisions were not executed – no compensation was actually paid. The Court found multiple violations – of the right to an effective remedy, the right to a fair trial, and the right to property (Articles 13, 6 (1), and 1 of Protocol No. 1). Crucially, the Court acknowledged that these complaints “*reflected a widespread problem in Albania affecting a large number of people*” and thus activated the pilot-judgment procedure. It ordered Albania to implement **general measures** to secure timely enforcement of restitution/compensation decisions, giving the state 18 months from the judgment's finality to set up an effective compensation mechanism. The pilot judgment effectively froze the admissibility of similar cases temporarily, to allow Albania to resolve the systemic issue domestically. This put considerable pressure on the Albanian authorities to legislate a solution – pressure which eventually led to the 2015 Property Compensation Law.
- ***Luli and Others v. Albania (2014)*²**: By April 2014, the deadline set in *Puto* was approaching and Albania had yet to fully implement a new

1. Ibid.

2. See LULI AND OTHERS v. Albania - HUDOC-EXEC

scheme. The ECtHR delivered the *Luli* judgment (1 April 2014) as a follow-up, dealing with a group of similar applications (it is described as a leading repetitive case) (). Again, the Court found violations of the Convention due to the non-enforcement of compensation awards and the absence of effective remedies. The significance of *Luli* was to maintain pressure on Albania and to illustrate that, absent the required reforms, the Court would continue to find violations. *Luli* essentially confirmed that the situation remained unresolved even after the pilot judgment – reinforcing the need for the comprehensive measures which had been promised but not yet delivered at that time.

- ***Caush Driza v. Albania (2011)*¹:** In a judgment dated 15 March 2011 (often referred to simply as *Driza (No. 2)*, to distinguish from the 2007 *Driza* case), the Court dealt with an applicant's inability to obtain either restitution of his land or equivalent in-kind compensation, due to the authorities' inaction. The ECtHR found once more a violation of Article 6, Article 13, and Article 1 Protocol 1, mirroring the findings in the other cases. What is notable in *Caush Driza* is that the Court explicitly emphasized the *lack of an effective domestic remedy* for these systemic failures. This laid the groundwork for the pilot judgment issued a year later in *Puto*, as it became undeniable that individual litigation alone was not prompting the necessary changes domestically.
- ***Sharxhi and Others v. Albania (2018)*²:** This case shifted the focus slightly from the post-communist restitution backlog to a more contemporary context of property rights violation. In *Sharxhi* (judgment of 11 January 2018), 19 applicants (18 Albanian nationals and one Italian) complained about the **summary expropriation and demolition** of a fully constructed residential building on the coast (Vlora) in 2013. Despite an interim court order barring the authorities from damaging the property, the building was cordoned off by police, the owners were blocked from entering, and within a month the building was demolished. The government issued an expropriation decision after-the-fact, ostensibly offering compensation, but the amount was contested and proceedings dragged on without result. The ECtHR

1. See [https://hudoc.echr.coe.int/fre#%7B%22itemid%22:\[%22001-83245%22\]%7D](https://hudoc.echr.coe.int/fre#%7B%22itemid%22:[%22001-83245%22]%7D), *ibid*.

2. *Ibid*.

found a litany of violations: **Article 6 §1** (right to fair trial) because the authorities ignored a judicial injunction, **Article 1 of Protocol No. 1** because the applicants were deprived of their property unlawfully, **Article 13** (no effective remedy to prevent or undo the violation), and **Article 8** (home) due to the invasive demolition of their residence. The Court's language was particularly sharp, noting that the authorities' actions "*were not compatible with the rule of law in a democratic society*". *Sharxhi* underscored that systemic property issues in Albania were not confined to historical claims – they extended to contemporary governance, where legal procedures (like expropriation laws and court protections) could be flagrantly disregarded. It also highlighted non-enforcement once again: by 2018, the owners still had not received the compensation that Albanian courts had awarded, because enforcement was stalled. This case raised concern that beyond bureaucratic delay, **executive arbitrariness** and disregard for judicial authority were also facets of Albania's property rights problem.

- ***Beshiri and Others v. Albania*¹ (Admissibility decision)**: As mentioned earlier, this case represented a turning point. The applicants were former owners or heirs in 12 cases who, despite having recognition of their right to compensation (for communist-era expropriations), had not been paid in decades. When their applications reached the ECtHR, the Court in May 2020 examined whether the new 2015 domestic compensation mechanism provided a viable path, now that a few years had passed since its creation. The Court declared the applications inadmissible, essentially accepting the Albanian Government's argument that the 2015 scheme and the work of the ATP could remedy the issue. It was a nuanced decision: the ECtHR did not *endorse* the effectiveness in absolute terms so much as give Albania the benefit of the doubt – with a cautionary note about ensuring at least a minimum percentage of the full value is paid to avoid an excessive burden on claimants. Some commentators viewed this as the Court "waving the white flag" in a long saga of repetitive cases, deferring to Albania's asserted reforms out of respect for subsidiarity and due to the Court's own overload. Importantly, the *Beshiri* decision did not state that Albania had fully solved the problem – rather, it shifted scrutiny back to the Committee

1. Ibid.

of Ministers to monitor the execution of the new compensation plan. By closing the door to new Strasbourg cases (unless and until the domestic remedy is tried and fails), *Beshiri* put the onus squarely on Albanian institutions to deliver results.

- ***Ramaj v. Albania* (2024)**¹: A very recent judgment (10 December 2024) in the *Ramaj* case illustrates that systemic issues are still surfacing and being adjudicated by the ECtHR. This case concerned a large plot of land on the coast (Uji i Ftohtë area) that had been confiscated by the communist regime, for which a domestic court in 2004 had ordered the restoration of title to the applicant. However, in the 20 years that followed, the applicant was unable to have his ownership officially registered, and parts of the land were occupied by illegal constructions. The ECtHR found **no violation** for the portions of land covered by illegal buildings – reasoning that those parts had effectively been expropriated under domestic law and the applicant could seek compensation for them (which he had not done)². **A violation was found** regarding the remaining land, due to the authorities’ consistent refusal to register the applicant as owner and the general disorder surrounding property registration. The Court noted “*interference by the executive with property titles, faulty land registry maps, a lack of clear procedures in cases of overlapping titles, and discrepancies in legal practice*” – all contributing to **26 years of uncertainty** for the applicant. The *Ramaj* judgment not only found a breach of the right to property but went further to *advise* the Albanian authorities to “**establish efficient and transparent procedures and a functional immovable property registration system**” to protect property owners’ rights. This kind of language in an ECtHR judgment is a clear indication that problems of legal uncertainty and administrative dysfunction remain systemic.

Together, these judgments depict a trajectory: from the early recognition of a systemic enforcement problem (2007 cases), through increasing pressure via a pilot judgment (2012) and follow-ups (2014), to a partial turning point with new legislation (2015) and the ECtHR’s pause on enforcement cases (2020), and yet to continued concerns about residual issues like legal uncertainty and arbitrary state actions (2018, 2024 cases). Many of these

1. See [https://hudoc.echr.coe.int/eng#{%22itemid%22:\[%22001-238315%22\]}](https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-238315%22]}).

2. See also Judgment concerning Albania - ECHR - ECHR / CEDH.

judgments (Driza, Ramadhi, Puto, Luli, etc.) remain under the enhanced supervision of the Council of Europe’s Committee of Ministers, meaning the reforms and measures taken by Albania are being closely monitored for compliance. In June 2023, for example, seven leading cases were still under enhanced supervision in Strasbourg – a reflection that the execution of judgments is ongoing and incomplete.

III. Systemic issues identified in Albania’s property rights regime:

Analysing the above case law and domestic context reveals several interlocking systemic issues that cause violations of the right to property in Albania:

1. *Excessive length of judicial administrative proceedings and delays:* One of the most pervasive problems has been the extraordinary delay in resolving property claims, whether through administrative processes or court proceedings. Restitution/compensation claims dating back to the 1990s have often dragged on for decades without conclusion. As of 2022, the Agency for the Treatment of Property had resolved only around 800 compensation cases, while approximately **26,000 claims were still pending**. This illustrates the sheer scale of the backlog. Judicial proceedings related to property (such as appeals or enforcement actions) are also excessively slow – in *Sharxhi*, an appeal in the Supreme Court effectively stalled the applicants’ compensation for over seven years. The ECtHR has repeatedly held that such **protracted delays** violate Article 6 §1’s “reasonable time” requirement. Moreover, when delay defeats the substance of a property right (as when a person dies or the land is occupied in the interim), it also violates Article 1 of Protocol No. 1. The European Commission’s 2023 report similarly notes that Albania needs to “*process all remaining [compensation] requests without further delay*”¹, emphasizing decisive progress on first property registration and compensation as a priority. The excessive length of proceedings is not just a historical legacy; it is a current issue that undermines confidence in the rule of law.
2. *Non-enforcement of final judicial decisions:* A cornerstone of the rule

1. See European Commission country report on Albania (2023), accessible at https://enlargement.ec.europa.eu/albania-report-2023_en.

of law is that final judgments or administrative decisions are effectively executed. In Albania, a systemic failure has been the **non-enforcement** of decisions that recognize property rights or awards compensation. This was at the heart of the *Driza*, *Ramadhi*, *Gjonbocari*, *Puto*, and *Luli* cases – individuals obtained favorable decisions, but the state did not carry them out. Causes include administrative inertia, bureaucratic obstacles, and lack of funds allocated for compensation. Even when courts stepped in to award damages or compensation (as in *Sharxhi*, where the Albanian Administrative Court of Appeal set a compensation amount), those court decisions themselves went unenforced. The ECtHR has treated non-enforcement as a serious breach of the Convention (violating the right to a fair trial and property rights), essentially equating it with a denial of justice. The systemic nature means it's not an isolated incident – it indicates a pattern where government agencies (like the Property Agency or local authorities) systematically fail to comply with legal obligations. The Committee of Ministers has been pressing Albania to ensure that all outstanding judgments and administrative decisions are honored. Despite the creation of enforcement mechanisms on paper, the **effectiveness** of those mechanisms remains in question when such a large backlog persists. Non-enforcement is often linked to funding – for years, Albania did not set aside sufficient state budget to pay compensation, causing indefinite postponement. It is also linked to the absence of accountability; historically no one was held responsible for ignoring court orders. The new 2015 framework was supposed to remedy enforcement by channeling claims through the ATP with a clear mandate. While it has made some payments, the pace has been slow, and claimants have little recourse if the agency delays. Non-enforcement, therefore, continues to be a live issue, undermining property rights and Albania's credibility in complying with court decisions.

3. *Legal uncertainty and conflicting claims:* Another systemic problem is **legal uncertainty** in property titles and the state's failure to guarantee clarity of ownership. Decades of convoluted laws and poor record-keeping have resulted in situations where multiple people hold documents for the same property, or where maps and registries are inaccurate. The *Ramaj* case is emblematic: even after a court recognized Mr. Ramaj's ownership, he could not register his land due

to contradictory claims and the authorities' resistance. The European Commission has highlighted that in Albania, even in areas where first registration of property has been completed, *"80% of data is believed to be inaccurate"* and property boundaries often overlap due to *"repeated and inconsistent interventions and faulty measurements"* over the years. Many cadastral zones remained unregistered or only partially registered well into the 2020s, and much of the country's property records were still on paper, leading to confusion and opportunities for corruption. This lack of reliability in the system creates uncertainty for owners: one cannot be sure if a title is secure or if the state might later refuse to honor it. For former owners awaiting restitution, legal uncertainty has meant that even when laws are passed, their implementation is unclear or gets revised repeatedly. Over the years, Albania adopted dozens of amendments and new laws on property, sometimes with retroactive effects or changing criteria, leaving citizens in limbo. The ECtHR in *Ramaj* explicitly pointed to *"discrepancies in domestic legal practice over compliance with court-ordered registration"* and *"executive interference"* with property rights as factors that kept the applicant in a state of uncertainty for 26 years. Such uncertainty erodes the very essence of the rule of law, as individuals cannot plan or enjoy their property peacefully. It also deters investment, since unclear titles make land and real estate transactions risky, a fact noted by the European Commission, which called the issue of property rights *"an impediment to attract foreign investors"* in Albania. In sum, legal uncertainty is both a cause and effect of systemic failure: it results from inconsistent laws and corruption, and it further perpetuates non-enforcement and delays as disputes multiply.

4. *Ineffective remedies at the national level:* A critical systemic flaw has been the absence of effective domestic remedies for property right violations. Article 13 of the ECHR requires that individuals have an effective remedy before a national authority to redress Convention breaches. For many years, Albanians had no practical way to compel the state to act on property decisions or to compensate for delays. There was no expedited procedure or special tribunal to handle the restitution backlog; nor was there a mechanism to claim compensation for long delays (until very recently). This is why the ECtHR consistently found

violations of Article 13 in the cases leading up to the pilot judgment. The pilot judgment *Manushaqe Puto* itself was predicated on the lack of any effective remedy: it essentially instructed Albania to create one. Law no. 133/2015¹ was the state's answer, aiming to fill the remedy gap. While that law *in abstracto* provides a path (through the ATP) and even judicial review of ATP decisions, its effectiveness depends on how well it is implemented. The *Beshiri* decision in 2020 was a cautious acknowledgement of a potential remedy, but not a clean bill of health – indeed, the Strasbourg Observers critique notes that the 2015 scheme “*failed to transpose the vast majority of [the ECtHR’s] directions*” from the pilot judgment. For example, one missing element was full compensation: the 2015 law introduced scaling and caps that departed from prior promises to pay full market value. Another issue is whether the ATP’s process itself is timely – taking years to process claims can undermine its effectiveness. Furthermore, remedies for new violations (like *Sharxhi*-type scenarios of unlawful demolition) are still weak. Victims can sue in Albanian courts, but as seen, even a successful suit might not be enforced. Administrative courts are available but their orders can be ignored (as the interim injunction was ignored in *Sharxhi*). As of the latest EU reports, Albania still had **no strong mechanism to address complaints of arbitrary expropriation or demolition in real time**, and the Commission specifically urged that “*the right to a fair trial and the right to effective remedy are respected in cases of expropriation and removal of properties*”. In other words, Albania must ensure that when someone’s property is taken or at risk, they can get a prompt and enforceable legal remedy internally – something that has been lacking. The creation of the People’s Advocate (Ombudsman) and improvements in the court system under the justice reform provide some avenues (the Ombudsman has spoken out on property issues, for instance), but these are not substitutes for concrete legal remedies like compensation or injunctions that are honored.

5. *Corruption and administrative dysfunction*: Although not always labeled as a separate legal issue in ECtHR judgments, corruption in land administration and political interference form part of the context that exacerbates all the above problems. The 2023 European Commission

1. Ibid.

report notes pointedly that **85% of corruption allegations received by the Anti-Corruption Directorate General relate to the cadastre (property registry) agency**. This staggering figure indicates that many citizens perceive or encounter bribery, fraud, or abuse of power when dealing with property registration or transactions. Corrupt practices can lead to intentional delays (to extract bribes), “lost” files, or even fraudulent registrations that create overlapping titles. Such an environment cripples the effective functioning of any new reforms unless addressed. When ECtHR judgments talk about lack of transparency and executive interference (as in *Ramaj*), it often implies that malfeasance or favoritism is present. Additionally, bureaucratic inefficiency – lack of digitization, low capacity – means even honest efforts are painfully slow. The Commission has advocated for the cadastre agency to “*adopt a sound integrity plan*” and to integrate transparency/accountability measures. While this issue strays into governance beyond pure legal doctrine, it is systemic in that no legal reform can succeed if the institutions tasked with implementation are undermined by corruption.

In conclusion, the systemic issues in Albania’s property rights regime are multifaceted and interrelated. Excessive delays and non-enforcement directly violate procedural and substantive rights. Legal uncertainty creates an unstable environment that breeds more conflict and violations. Ineffective remedies force citizens to seek justice in Strasbourg rather than at home. And the backdrop of corruption and inefficiency frustrates progress. These systemic problems have not only caused individual injustices but have also stalled Albania’s societal and economic development, as secure property rights are a foundation for investment and growth. Crucially, they also pose a significant obstacle on Albania’s path toward EU accession, as discussed next.

IV. Impact on rule of law and European integration

The European integration process has placed a spotlight on Albania’s handling of property rights, treating it as a barometer of the rule of law in the country. Chapter 23 of the EU acquis (Judiciary and Fundamental Rights) and the political criteria for EU membership (the “Copenhagen criteria”) both implicitly require that candidate countries ensure effective protection of property rights and compliance with human rights judgments.

Albania's systemic property issues have been consistently noted in the European Commission's annual reports:

- *The European Commission's 2022 and 2023 Reports on Albania* highlighted that, while some progress had been made (for instance, digitising property records and adopting new laws), “*significant challenges remain*” in the area of property rights. The 2023 report explicitly recommended that Albania “*safeguard the right to property*” by **making decisive progress in first registration and compensation**, improving the transparency and accuracy of the cadastre, and ensuring fair trial and effective remedy rights in expropriation cases. These recommendations align closely with the systemic issues identified by the ECtHR. The Commission's emphasis indicates that the EU considers unresolved property claims and inconsistent enforcement as impediments to Albania's reform credentials.
- *EU conditionality and monitoring*: The fact that Albania had a pilot judgment and a series of ECtHR cases on property has not escaped the attention of EU institutions. The Commission regularly checks whether Albania is executing ECtHR judgments as part of its fundamental rights obligations. As of mid-2023, there were hundreds of pending applications against Albania at the ECtHR (389 cases by one count) and a majority of recent Strasbourg judgments against Albania involved the right to property and fair trial. Several of those judgments (the “Driza” group, “Puto” pilot, etc.) are under enhanced supervision, meaning the Council of Europe's Committee of Ministers is closely scrutinizing Albania's compliance. Progress in closing these cases, through actual payment of compensation and legislative fixes – is a benchmark of Albania's readiness to uphold rule of law principles. Indeed, full **implementation of ECtHR judgments** is one of the requirements for advancing in EU accession talks (as it falls under the obligation to uphold international human rights standards).
- *Economic impact and investments*: Secure property rights are essential for economic development and attracting foreign investment, which in turn are key aspects of the EU's assessment of a functioning market economy. The European Commission and international

financial institutions like the EBRD have noted that unclear property rights and unresolved ownership issues discourage investors and hamper economic growth. Land is often the collateral for business loans; if title is unclear, credit is harder to obtain, which has direct relevance for EU integration, as a weak investment climate can slow convergence with the EU market. Furthermore, rural development and EU agricultural funds (IPARD) require clear land ownership to be effective – something noted in EU support programs that aim to improve land consolidation and registration in Albania.

- *Political criteria and public trust:* From a political standpoint, the way property rights are handled reflects the overall respect for the rule of law and justice. The EU has placed rule-of-law reforms at the center of Albania's accession process (as seen in the comprehensive justice reform undertaken in recent years). While much attention is on judicial corruption and organized crime, property rights issues are equally a rule-of-law matter affecting ordinary citizens. The ongoing reports of **selective enforcement** – for example, claims that demolitions of illegal constructions target some individuals but not others, or that powerful interests manage to secure titles where others cannot – contribute to public perceptions of injustice. The Ombudsperson in Albania has frequently addressed property issues, and the 2024 Transformation Index (BTI) for Albania noted the Ombudsman's proactive role on property rights and undue long proceedings.¹ Endemic problems like property rights can fuel public discontent and reduce trust in government, which in turn complicates Albania's political stability, another aspect watched by the EU.

In summary, Albania's systemic property rights problems have ramifications well beyond individual cases; they touch on Albania's compliance with European human rights standards, its readiness to effectively apply the EU legal order, and its socio-economic development. European integration has provided both a carrot and stick: EU funding has been directed to help resolve property registration and compensation (such as IPA projects for property reform), while at the same time the prospect of EU membership is leveraged to encourage Albania to finally settle the outstanding issues. The European Commission's key findings in 2023 were

1. See Albania Country Report 2024 - BTI Transformation Index.

that “*more efforts are needed*” to finalize transitional ownership processes and rightful compensation for expropriations from the communist era. It also warned that expropriation and demolition must adhere to due process to respect fundamental rights. These are strong signals that, for Albania to move closer to EU accession, it must demonstrate tangible improvements in the protection of property rights.

V. Pathways for reform and recommendations

To align Albania’s legal framework and practice with the standards of the European Convention on Human Rights and to ensure the effective protection of property rights, a comprehensive and integrated reform strategy is needed. Reforms must address legislative clarity, administrative efficiency, judicial effectiveness, and systemic governance. Based on the current challenges and international standards, the following general recommendations are proposed:

- *Strengthen the implementation of compensation mechanisms:* Albania should intensify efforts to ensure that the mechanisms for property compensation operate effectively and transparently. This requires sufficient financial and human resources, clear targets for resolving pending claims, and realistic timelines. Exceptional measures, including innovative financing solutions or external support, may be necessary to address longstanding backlogs and restore public confidence.
- *Guarantee fair and adequate compensation:* The principles of fairness and adequacy must guide any compensation process. Compensation should reflect a reasonable proportion of the property’s market value, ensuring that individuals do not suffer a disproportionate loss. Particular attention should be given to vulnerable groups, such as elderly claimants or those affected by prolonged delays, to ensure equitable outcomes.
- *Improve judicial enforcement and access to remedies:* Property rights must be effectively protected by the judiciary through timely and enforceable decisions. Albania should consider specialized procedures or units for property enforcement and ensure that excessive delays in proceedings are systematically addressed.

Strengthening judicial training on ECHR standards and providing accessible remedies for violations are critical steps.

- *Safeguard due process in expropriations and demolitions*: All property expropriations and demolitions must strictly comply with the principles of legality, transparency, and proportionality. Emergency measures must be subject to judicial review and affected individuals must have access to effective remedies. Publishing expropriation data and ensuring independent oversight would promote accountability and fairness.
- *Prioritize full execution of ECtHR judgments*: Albania must continue to prioritize the full execution of ECtHR judgments, implementing both individual and general measures without delay. Transparent reporting to the Council of Europe and continued cooperation with international bodies will be vital. Embedding a culture of respect for the Convention and Court judgments at all levels of government remains a fundamental objective.

VI. Conclusions

Albania's journey in dealing with property rights has been long and fraught with difficulties. The systemic violations of the right to property – manifest in decades-long waits, unimplemented decisions, and opaque processes – have been repeatedly censured by the European Court of Human Rights. These issues strike at the heart of the rule of law, undermining citizens' trust and impeding Albania's advancement toward European Union membership. However, the confluence of ECtHR guidance and EU integration incentives provides a clear roadmap for reform. By undertaking comprehensive measures to ensure timely compensation for past takings, enforcing property decisions without fail, eliminating legal ambiguities, and guaranteeing effective remedies, Albania can turn the page on this systemic issue. Indeed, addressing property rights is not only a legal imperative stemming from Strasbourg judgments; it is also crucial for Albania's democratic consolidation and economic prosperity. Encouragingly, recent steps, such as the implementation of the 2015 compensation scheme and the digitization of property records, show that progress is possible. The

task now is to accelerate and broaden these efforts. With sustained political commitment and the support of European partners, Albania can fulfill its obligations under Article 1 of Protocol No. 1 ECHR, respect the property rights of all individuals, and meet the expectations of a country that upholds the rule of law. Such outcomes would not only resolve the grievances of thousands of citizens but also remove a longstanding obstacle on Albania's path to European integration, reinforcing the notion that justice delayed need not be justice denied.

THE CONCEPT OF MAINTENANCE OBLIGATION AND ITS REGULATION ACCORDING TO ALBANIAN LEGISLATION

Lawyer **Evanthi Suli**¹
Lawyer **Irgena Dokollari**²

Abstract

The Family Code, as the fundamental regulator of family rights as a whole, undoubtedly also governs the fundamental rights of children in its provisions. In this context, this paper will specifically address, but not be limited to, the institution of the obligation to provide maintenance between parent and child, which is one of the primary duties of every parent towards their child and must be fulfilled even after the dissolution of the legal marriage. Precisely within this framework, the Family Code outlines the institution of the obligation to provide maintenance between parent and child, presenting the solidaristic model, the pronounced social character and the traditional family model. The obligation to provide maintenance is governed by Articles 192-214 of the Family Code and, under our legislation, is a duty arising by law between members of a family. Thus, the law imposes an obligation on one family member to support another by meeting certain basic living needs. But what do we mean by the term “obligation to provide maintenance”? What are the criteria for determining the amount of maintenance under Albanian legislation? How is the amount of maintenance calculated, and why has it not been fixed but

1. Bio: Evanthi Suli completed her studies at the Faculty of Law at the Bachelor and Master levels in the academic years 2017-2022, being awarded two gold medals. She currently works at the Court of Appeal of General Jurisdiction. E-mail: suli.eva@yahoo.com

2. Bio: Irgena Dokollari completed her studies at the Faculty of Law at the Bachelor and Master levels in the academic years 2017-2022, being evaluated as an excellent student. She currently works at the Court of Appeal of General Jurisdiction. E-mail: irgenadokollari7@gmail.com

left to the court's discretion? When does the enforcement of maintenance obligations commence and how is the protection of the child's best interests conceptualised in Albanian judicial practice? Which court is best placed to assess the child's best interests? What practices do the European Union countries follow in applying maintenance obligations, and to what extent has Albanian legislation been aligned with those of these European countries? Such questions, and others, will be answered throughout the paper.

Keywords: *Maintenance obligation, Family Code, the best interests of the child, divorce, parenting.*

1. The concept of “maintenance obligation” under Albanian legislation.

Maintenance obligation is a legal obligation that places a responsibility on one person to provide the necessary means of subsistence to another who is unable to meet their own basic needs. In Albanian law, this obligation arises primarily between close family members, such as spouses following the dissolution of marriage, parents towards their children, and adult children towards parents in need. In Albanian legislation, the obligation to provide maintenance is regulated in the Family Code, adopted by Law No. 9062 of 8 May 2003, as amended by Law No. 134/2015, dated 05.12.2015, more specifically in legal provisions 192 to 214 of this code. However, with regard to the concept of maintenance following the dissolution of marriage, it encompasses not only the relationship between the former spouses but also that between parents and children, a duty which arises upon the recognition of paternity or maternity. Before we specifically address this institution, it is worth mentioning that this legal obligation affects not only the aforementioned parties but also extends to other legal entities; in the event of an inability to fulfil it, the competent person appointed by the court will assume responsibility. According to Article 199 of the Family Code¹, upon the dissolution of marriage, one of the former

1. Article 199 of the Family Code provides that: *“The spouse who is unable to work and lacks sufficient means to live has the right to claim maintenance from the other spouse. The obligation to provide maintenance is sought at the same time as the petition for divorce. This request may also be filed within six months, from the date on which the decision on the dissolution of marriage became final, provided*

spouses may claim maintenance from the other when they prove that they are unable to provide for their living expenses from their own income or assets and can not work for objective reasons. This right to maintenance is not automatic but is determined by the court on the basis of a specific application and assessed by taking into account the duration of the marriage, the debtor's financial means and the needs of the maintenance claimant. This maintenance obligation does not last for more than six years from the moment the marriage ends. On the other hand, the Family Code¹ provides that parents have a continuing duty to provide financial support for their minor children, regardless of whether the marriage has been dissolved or not. This obligation also continues for adult children who, for reasons of health, disability or study, are unable to support themselves. The amount of maintenance is determined in such a way as to guarantee the fulfilment of the child's needs, always based on the principle of the child's best interests and on the financial means of the parent paying it. In this way, the maintenance obligation serves as a means to ensure the social protection of the most vulnerable members of the family after divorce, supporting the preservation of a minimum standard of living and promoting family solidarity as a fundamental value of Albanian family law. This obligation aims to guarantee a minimum standard of living and to preserve solidarity within the family, taking into account the financial means of the person providing the maintenance and the needs of the person receiving it.

2. Legal criteria for assessing the determination of the level of maintenance obligation under Albanian legislation.

The provision of Article 158 of the Family Code grants the parent to whom the child has not been entrusted for upbringing and education the right to supervise the child's maintenance and education and, consequently, to be informed and consulted on important decisions relating to the child's life. He contributes in proportion to his means and those of the other parent. The right of visitation and residence, under the conditions set by

that the incapacity and lack of sufficient means of subsistence existed during the marriage.”.

1. Article 197 of the Family Code provides that: “Parents have a duty to provide food for their children, when they do not have sufficient means to live. A minor child may request maintenance from his parents even if he has assets, provided that the income from those assets and from his work does not meet his needs. The obligation to provide maintenance continues for the time during which adult children attend secondary or higher education, up to the age of twenty-five.”.

the court, cannot be refused except for serious reasons that harm the child's interests. In this regard, to protect the child's best interests, Albanian legislation provides, alongside these rights, the parent's obligation to pay maintenance in order to ensure the child's healthy development, both physically and mentally. In this context, as highlighted in the preamble to this scientific article, the legal criteria used by the Albanian judicial system when determining the amount of maintenance will be addressed below. More specifically, from a logical and systematic interpretation of Articles 192-214 of the Family Code on the obligation to provide maintenance, we note that the obligation must be paid to children, as provided in Article 197 of the Family Code, which stipulates that: *"Parents have a duty to provide maintenance for their children when the latter lack sufficient means to live. ...The duty to provide maintenance continues even when the children, having reached majority, attend secondary or higher education, up to the age of twenty-five."* Albanian legislation clearly provides that, within the family, the child is in a weaker position than the other members, as they are unable to work and cannot secure sufficient means to live. Parents have this obligation even when they do not live together or are divorced.¹ In cases of divorce between spouses, the claim for child maintenance is not included among the subjective consequences of divorce that the court addresses unless a spouse requests it but, on the contrary, referring to Article 161 of the Family Code, we assess that the Court has a legal obligation to include in its divorce judgment the determination of the child maintenance contribution and, where applicable, that for the former spouse, in accordance with the provisions of this Code. Therefore, from the wording of Article 161 of the Family Code it is clear that the determination of the amount necessary for expenses related to the child will be considered by the court even if the parties do not request it during the proceedings². Material contribution is of primary importance to the child's welfare, so the legislature has considered that its determination cannot be left exclusively to the parents' assessment.³ In this context, the protection of the child's best interests necessitates the court's intervention, which, depending on the case before it, will either determine the extent of this obligation when the parents

1. See further the website: <https://www.avokatipopullit.gov.al/media/manager/website/reports/Raportimbipolitikatepensionitushqimor.pdf> accessed on 24 April 2024.

2. Family Law, Omari, S., Morava Publications, (2012), Tirana, page 260.

3. Ibid.

cannot agree, or will scrutinise their agreement, verifying its compatibility with the children's interests when the former spouses have submitted one. With regard to the legal criteria taken into consideration when assessing the determination of the amount of maintenance, the Family Code, in its Article 197, has provided that parents have a duty to maintain their children, when the latter lack sufficient means to live. The lack of sufficient means to live constitutes one of the basic requirements and, at the same time, a premise for determining the amount of contribution a child needs for a peaceful mental and physical development. In this context, to give special protection to the child's position, the legislature has provided that a minor child may claim maintenance from his parents even when he has assets, or when the income from his property and from his work does not meet his needs. The obligation to provide maintenance continues even when the children are adults and are attending secondary or higher education, up to the age of twenty-five. In this regard, we consider that the Court, by referring to the provisions of the Family Code and, more specifically to Articles 197 and 235 of it¹, must first analyse and assess whether the child has sufficient means to live, by determining whether the latter owns any goods or other rights that are administered by his parents. Only if the child derives civil fruits from this property or other income as a result of his work may the parent obliged to pay maintenance contend that the child is not in need.²

3. Legal analysis of the method for determining the amount of the material contribution.

In determining the amount of the contribution towards maintenance obligations, in accordance with Articles 158, 161, 192, 197 and 201/2 of the Family Code, the Court must take into account, the child's age, the child's needs and the financial means of each parent. Upon the cessation of the parents' cohabitation, the legal obligations of the parents towards their children do not cease. Even after the end of the cohabitation, the parent with whom the child does not live has the obligation to pay maintenance

1. Article 235 of the Family Code provides that: "*Parents may use the income from the child's property which they administer, for his upbringing, education and schooling. They may use these revenues to meet the family's essential needs when they do not have sufficient assets to cover them themselves. Any remaining revenues are returned to the child's estate.*".

2. Family Law, Omari, S., Morava Publications, (2012), Tirana, page 261.5

for the child's upkeep and education

to the other parent, as provided for by Article 158 of the Family Code. This article stipulates that the parent to whom the child was not entrusted for upbringing and education contributes in proportion to his resources and those of the other parent, whereas Article 201 of the Family Code provides: *"The obligation to provide maintenance may be sought only by the person who is in need and unable to meet his essential needs. The obligation to provide maintenance must be determined in relation to the needs of the person claiming it and the financial means of the person obliged. It must not exceed what is necessary for the life of the person entitled to maintenance, taking into account the circumstances of their life."* Therefore, the obligation to provide maintenance, in addition to the other parent's ability to pay, must also be determined in relation to the needs of the minor children. Although Article 161 of the Family Code provides for the court's obligation to determine the amount that constitutes the material contribution of the parent who will not be living with the child towards the expenses related to his upbringing, Neither this provision nor any other specifies the concrete value of this contribution. The legal provisions of the Family Code do not provide for the amount of the contribution, either in terms of setting a minimum or a maximum limit, as is provided for by some other European legislations. In these circumstances, in some cases the claimant requests a specific amount of maintenance and in others leaves it to the court to determine the amount of maintenance. This has led district courts to determine the amount of maintenance on a case-by-case basis, as it has emerged that the child is in need of maintenance¹.

In this context, judicial practice has consistently addressed the question of whether a parent is obliged to contribute only to meeting the child's essential needs, or whether that contribution must also cover other needs that go beyond the strictly necessary². In our judgment, the amount of the contribution for maintenance must meet the children's needs for a normal life and be in keeping with the living conditions of their family, and must be in a fair proportion to their needs and to the parent's means,

1. Report *"Report on the main findings from monitoring the decisions of the Tirana Court of First Instance, with a view to the dissolution of marriage and the regulation of its consequences."* January–December 2014 period, carried out by the Centre for Citizens' Legal Initiatives with the support of UNDP, page 20. Accessed on 29 April 2025 at www.qag-al.org.

2. Family Law, Omari, S., Morava Publications, (2012), Tirana, page 261.

always adhering to the fundamental principle of *“the highest moral and material interest of the minor”*. Based on these provisions, we assess that in determining the obligation to provide maintenance for minor children, the court must take into account their needs in accordance with their age, the specific requirements of a child of that age, the economic and financial situation of each parent, as well as their capacity to work. This position has also been taken by the Supreme Court of the Republic of Albania, which, because our family legislation has not yet established a concrete measure for the minimum and maximum thresholds on which the competent court should rely when setting the obligation to provide maintenance, has held that the courts of first instance, having regard to the legal criteria laid down in Articles 158 and 201 (2) of the Family Code, acted correctly in determining this contribution by taking into account the ratio between the income-generating resources of the claimant and those of the defendant. the financial means of the obliged party, and these financial means in relation to the needs of the child/children and the financial capacity of the obliged party. Thus, the courts have determined the amount of the maintenance obligation of the obliged party for the child/children based on the ratio between: (i) the needs of the child/children; (ii) the financial means of the defendant, upon whom this obligation falls, and those of the plaintiff, to whom the child/children have been entrusted for upbringing and education¹. In light of the above, and referring to doctrinal positions as well as case law over the years, we believe that the parent obliged to make the payment cannot be compelled by the court to contribute towards the so-called “luxury” expenses, meaning those expenses that substantially exceed the average level of requirements for a child of a given age.².

4. Enforcement of the maintenance obligation and procedural safeguards for its implementation.

The obligation to provide maintenance is the guarantee of securing for someone in a state of need a continuous or periodic supply of everything necessary for life, a service closely linked

1. Report *“Report on the main findings from the monitoring of first-instance court decisions in Tirana, concerning the dissolution of marriage and the regulation of its consequences.”*. January–December 2014 period, carried out by the Centre for Citizens’ Legal Initiatives with the support of UNDP. Accessed on 29 April 2025 at the website: www.qag-al.org.

2. Family Law, Omari, S., Morava Publications, (2012), Tirana, page 261.

to the economic circumstances of the person obliged to provide it. The international legal framework in the field of maintenance obligations recognised by the Albanian state comprises the Convention on the Law Applicable to Maintenance Obligations and the Convention on the Recognition and Enforcement of Decisions relating to Maintenance Obligations.¹ Within the national legal framework, the enforcement of court decisions on parental child maintenance is governed by the Family Code and the Civil Procedure Code, which in their provisions have established certain concrete legal safeguards.² In this context, Article 210 of the Family Code expressly provides that the obligation to provide maintenance takes effect from the date the claim is filed with the court. Meanwhile, the reduction or removal of the maintenance obligation, as determined by a final but not yet enforced decision, takes effect from the date on which the circumstances on which the decision was based have changed, whereas any increase takes effect from the date the claim was filed. In continuation of this legal analysis, we draw your attention to decision no. 00-2023-79 (17), dated 18 January 2023, of the Civil College of the Supreme Court, which reasoned as follows: “...*The provision in Article 210 of the Family Code that the obligation for maintenance commences from the date of filing the claim is usually applied in cases where the person entitled to maintenance brings a claim with the principal object of enforcing payment of maintenance from the liable person. His entitlement arises from the fact that the obliged person does not provide the maintenance under the conditions laid down in Article 209 of the Family Code. Therefore, the law provides that his right to benefit from this obligation arises from the day he sought the judicial restoration of that right, which is the date of filing the claim. Meanwhile, in the case of a petition for divorce, the obligation to provide maintenance does not stand as an independent claim, but is a consequence of the principal claim for divorce and for the custody of the*

1. Report “Report on the main findings from the monitoring of first-instance court decisions in Tirana, concerning the dissolution of marriage and the regulation of its consequences.”. January–December 2014 period, carried out by the Centre for Citizens’ Legal Initiatives with the support of UNDP, page 11. Accessed on 29 April 2025 at the website: www.qag-al.org.

2. Issues concerning the enforcement of court decisions on child maintenance. Institutional responsibilities and the jurisprudence of the Constitutional Court, Anastasi, A. (2016), p. 4. Accessed on 27 April 2025: https://www.researchgate.net/publication/364928929_ceshtje_te_ekzekutimit_te_vendimeve_gjyqesore_per_dyimin_ushqimor_ndaj_femijeve_pergjegjesite_institucionale_dhe_jurisprudenca_e_gjykates_kushtetuese.

children for their upbringing and education. In this type of proceedings, each party, namely the claimant and the defendant, has the right to seek the custody of the children for their upbringing and education. Depending on this request, the court will also rule on the obligation to provide maintenance, taking into account who has had the children in their care until its decision is issued, in accordance with Article 209 of the Family Code. In harmonious application of these provisions, in cases where a maintenance obligation is ordered as a result of the dissolution of marriage or of a request concerning the exercise of parental responsibility, the court will determine the period during which the maintenance obligation begins, taking into account the factual circumstances of childcare and the contributions made by the parties under Article 209 of the Family Code, in order to avoid double obligations for the same period... ”. Following this legal reasoning, we note that the Civil College of the Supreme Court holds the position that in cases of an order for maintenance as a result of the dissolution of marriage, the court must determine the period from which the maintenance obligation commences, pursuant to Article 209 of the Family Code, in order to avoid double obligations for the same period. The Court also concludes that in this case the payment of the maintenance obligation shall commence from the date of the appellate court’s judgment. In light of the above, we assess that the Civil College of the Supreme Court, through this legal reasoning, has presented the distinction that exists between the two legal situations provided for by Articles 209 and 210 of the Family Code. Meanwhile, the Code of Civil Procedure is another important legal act which, in its provisions- specifically in Article 317 has sanctioned the cases in which a court decision may be given with provisional enforcement¹, one of which is the case when it has been decided: a) the obligation to provide maintenance. This legal provision affords special protection to the institution of maintenance obligations and, consequently, to the child’s best interests, since through this legal mechanism the first-instance court’s decision constitutes an enforceable title even though it has not yet become final.

1. As an exception to the general rule, the enforcement process may commence even before the final decision has become *res judicata*. Thus, obtaining *res judicata* status is not a prerequisite for initiating this process. The cases in which a final decision that has not become *res judicata* constitutes an executory title are set out in Article 317 of the Code of Civil Procedure, which provides that: “*The court’s decision may be given with provisional enforcement when it has been determined: a) the obligation to provide maintenance... ”.*

5. The best interests of the child and the competent court are best placed to assess the best interests of the child.

The best interests of the child is a fundamental principle in both Albanian and international law, which requires that in any decision or action affecting a child, their needs, protection and welfare must be given paramount consideration. The principle of the best interests of the child represents one of the fundamental pillars of family law and the protection of children's rights, both in Albanian legislation and in international norms such as the Convention on the Rights of the Child. In Albanian legislation, this principle is applied in Article 5, emphasising the importance of treating the child correctly and with due care, thereby ensuring that the protected higher interest is that of the child. In addition to the basic regulatory framework, Albanian legislation has also adopted more detailed rules to protect and enforce this principle, which is both extremely important and sensitive. By Law no. 18/2017 "On the Rights and Protection of the Child" sets out the rights and protections to which every child is entitled, the mechanisms and authorities responsible for effectively guaranteeing the exercise, respect for and promotion of these rights, as well as the special protection of the child. In this Law, and specifically in its Article 6, the implementation of this guiding principle is regulated, there by defining that the best interests of the child entails the child's right to enjoy healthy physical, mental and social development, moral, spiritual and social development, as well as to enjoy a family and social life appropriate to the child. In legal terms, this principle requires that in any decision which directly or indirectly affects a child's life, priority must be given to the child's physical, emotional, educational and social interests. In any judicial proceedings involving children, the court is obliged to make decisions guided by their best interests. The court competent to assess this interest is usually the court of the child's habitual residence, as it is considered to be in the best position to analyse all the concrete circumstances of the child's life, such as the family environment, emotional attachments, individual needs and the social environment in which they live. This assessment is not made in an abstract manner but requires a careful analysis of every element that affects the child's overall well-being. However, based on the Constitution of the Republic of Albania, which gives binding legal force to conventions or ratified international agreements, Albania, by signing the

Convention on the Rights of the Child in 1991, has aimed to align domestic legislation with this Convention, as reflected above. The Convention on the Rights of the Child also provides in Article 3¹ for the concept of the best interests of the child, placing emphasis on the pre- eminent rights of children in any administrative or judicial decision-making. Therefore, every decision by parents, institutions or the court must prioritise what is best for the child's physical, mental, emotional and social development. The child's best interests is not an abstract concept, it is assessed concretely and includes: the child's emotional and psychological stability, relationships with parents, siblings or other significant figures, physical and financial security, opportunities for healthy development, such as education, nutrition, adequate housing, the child's wishes and views, depending on their age and maturity (the right to be heard is respected under Article 12 of the Convention). In any event, the child's interest is individual; therefore, no fixed rule can be laid down for all children, but the specific case must be considered. Further, in a more detailed examination of the competent court for ensuring the child's best interests, it can be said that the Family Code does not clearly define the court competent to ensure the implementation of the child's best interests. However, Article 42 of the Code of Civil Procedure provides that claims are brought in the court of the place where the defendant has his residence or domicile, and where these are unknown, in the court of the place where he has a temporary abode. Since the obligation to provide maintenance often arises from family disputes, case law has established which court is competent to vary the maintenance obligation, even though there is a legal gap in the legislation. The Supreme Court of Albania has ruled that any variation of the amount of child maintenance must be made by the court in the country where the children reside, in order to provide a better assessment of the conditions and circumstances in which they live. It is important that the

1. Article 3 of the Convention on the Rights of the Child provides that: "*1. In all decisions concerning a child, whether taken by public or private social welfare institutions, by courts, administrative authorities or legislative bodies, the best interests of the child shall be the paramount consideration. 2. States Parties undertake to ensure that the child is provided with the necessary protection and care for his welfare, taking into account the rights and duties of his parents, of his legal guardians or of other persons legally responsible for him and, for this purpose, they take all appropriate legislative and administrative measures. 3. States Parties take measures to ensure that institutions, services and centres responsible for the care and protection of children to operate in accordance with standards laid down by the competent authorities, particularly in respect of safety, health, the number and qualifications of their personnel, as well as proper supervision.*".

courts establish a supportive practice to reduce instances of non-enforcement of court decisions, which they have elaborated particularly in cases concerning the opposition to enforcement measures¹. This court is best placed to assess the child's best interests because it can commission psychological expert evidence or social reports. It can also hear from the child directly once they have reached the appropriate age (usually over ten years old). It can assess the actual living conditions offered by each parent. It has access to local information (schools, social services, community). In some cases, the court may also request the intervention of social services to evaluate the family situation and make a decision as close as possible to the child's real needs. "The best interests of the child" is a guiding principle which, in practice, requires an individual assessment, where the competent court is the primary decision-maker that must weigh all factors to ensure the child's welfare and the best possible future. What we will elaborate on in this paper is undoubtedly the proposal to create special and specialised sections within the judicial system to deal with issues of financial maintenance and the protection of children's interests following divorce, as it is an important step towards improving the administration of justice and enhancing the protection of children's rights. This proposal aims to address several key aspects of the judicial process related to this particular area. Firstly, issues relating to child maintenance and the protection of children's interests following a divorce are often complex and require a high level of specialised expertise. Judicial specialisation would enable them to have specialised knowledge and training in the laws, practices and policies relating to children's rights, parents' financial circumstances and the specific needs that may arise in each case. This would ensure that each case is examined more thoroughly and with greater care, focusing on protecting the child's interests as the top priority. Furthermore, the creation of specialised sections could increase the efficiency of the judicial process. By having specific judges trained and specially prepared for these types of cases, delays and errors that often occur when cases are handled by generalist judges who may lack the necessary expertise can be avoided. Parents and children will be able to benefit from a faster, more straightforward and clearer process, which can help reduce stress and potential consequences during and after the marriage breakdown process.

1. Special report "Pension food policies, obligation to provide food for children", compiled by the Ombudsman, page 26.

Furthermore, improving the specialisation of judges could increase citizens' confidence in the judicial system. When individuals see that such matters, which have a direct impact on the lives of children and families, are handled by qualified and trained professionals who deeply understand the needs and requirements of children, this trust can grow significantly. This can also ensure that decisions are fairer and more balanced, ensuring that every child has the opportunity to lead a better life after their parents' divorce, without being negatively affected by financial issues or unfair divisions. In this way, the specialisation of courts in matters of financial obligation and the protection of children's interests can serve as a necessary step towards a fairer and more effective administration of justice, which would contribute to improving living conditions for children and parents following a divorce.

6. The practices of European Union countries in applying maintenance obligations and the alignment of Albanian legislation with those European countries.

EU countries have developed advanced systems for managing child maintenance obligations. In Germany, for example, the use of the well-known *Düsseldorfer Tabelle*¹ helps to standardise the calculation of maintenance amounts based on income and the child's age. In France², the legal system provides for the automatic enforcement of maintenance decisions through a centralised collection agency (*Caisse d'allocations familiales*). Similarly, in Nordic countries such as Sweden, there is a state system of advance payment of child maintenance, whereby the state subsequently recovers the amount from the non-custodial parent. These countries also apply Regulation (EC) No 4/2009 of the Council of the EU on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters of maintenance obligations. This regulation has significantly facilitated cross-border cooperation and the enforcement of maintenance obligations in cases where parents live in different states. In terms of ECtHR practice, one of the most important decisions of the European Court of Human Rights concerning maintenance obligations is

1. See further: <https://www.finanztip.de/duesseldorfer-tabelle/>, accessed on 29 April 2025.

2. See further: <https://www.caf.fr/>, accessed on 28 April 2025.

the case of *Battista v. Italy* (App. no. 43978/09)¹. This case addresses the balancing of an individual's rights with his family and financial obligations, providing a valuable precedent for countries seeking to strengthen the enforcement mechanisms for these obligations. In this case, the applicant, Mr Battista, was prohibited from travelling outside Italy due to non-payment of maintenance obligations to his former wife and children. He claimed that this restriction amounted to a violation of Article 8 (the right to respect for private and family life) and Article 2 of Protocol No. 4 (freedom of movement) of the European Convention on Human Rights. The Court, although acknowledging that the travel ban constituted a restriction on fundamental freedoms, held that the interference was proportionate and legitimate, given the aim of protecting the children's right to financial support from their parent. This decision confirms that the obligation to provide maintenance constitutes a public interest capable of justifying even temporary restrictions on individual freedoms. This precedent is of particular significance for Albania, especially in the context of the need for more effective measures to compel defaulting parents. It underlines the legitimacy of robust state interventions where a parent evades the obligation to provide maintenance. In Albania, the lack of such effective sanctions is one of the reasons why the enforcement of maintenance obligations often fails in practice, but within the framework of the European integration process, Albania has taken some steps to harmonise its legislation with that of the EU. It has ratified the Hague Convention on Maintenance Obligations and incorporated its principles into the Family Code. However, there are still significant discrepancies in practical and institutional aspects. To improve alignment with EU countries, it is recommended:

- The design of a guidance system (a reference table for food amounts) as is done in Germany or Austria.
- Digitalisation of data on the financial status of taxpayers.
- Direct cooperation with the enforcement authorities of other countries in cases of emigration.
- Creation of a state fund to guarantee the payment of maintenance obligations when the debtor is unable to do so.

1. See further: *CASE OF BATTISTA v. ITALY* (Application no. 43978/09) accessed on 29 April 2025.

In conclusion, this academic article assesses that Albania has taken the first steps towards aligning with EU standards on maintenance obligations, but remains far from the best European practices in implementation. Improvements are needed in procedural, institutional and administrative aspects to ensure effective protection of the rights of the beneficiaries of this obligation, particularly minors.

Bibliography

Legislative acts and case law:

- Constitution of the Republic of Albania;
- Convention on Human Rights;
- The Hague Convention on the International Recovery of Food Debts (2007);
- United Nations Convention on the Rights of the Child;
- Convention on the Law Applicable to Maintenance Obligations;
- Convention on the Recognition and Enforcement of Decisions Relating to Maintenance Obligations;
- Family Code;
- Civil Procedure Code;
- Law No. 18/2017 “On the Rights and Protection of the Child”;
- Law No. 10031 of 11 December 2008 “On Private Enforcement Services”;
- Law No. 9355 of 10 March 2005, “On Social Assistance and Services”;
- Regulation (EC) No 4/2009 of the Council, of 18 December 2008, on maintenance obligations;
- European Commission. EU rules on maintenance obligations;
- Decision of the Supreme Court of the Republic of Albania, dated 12 May 2011, No. 00- 2011-942 of the Decision (245);
- Decision of the Constitutional Court of the Republic of Albania no. 24, 2014.

Scientific Publications:

- Omari, S., (2012). Family Law, Morava Publications, Tirana.
- Report: “*Report on the main findings from monitoring the decisions*”

of the Tirana Court of First Instance on divorce and the regulation of its consequences.” Period January– December 2014, carried out by the Centre for Citizens’ Legal Initiatives with the support of UNDP.

- Duni, L., (2013). Family Law. Tirana: University of Tirana, Faculty of Law.
- Ballanca, E., (2008). Family Law and Civil Procedure. Tirana: EMAL.
- Parliament of Albania. (2003). Family Code of the Republic of Albania (Law No. 9062, dated 8 May 2003).
- Magistrature School. (n.d.). Journal “Jeta Juridike”. Selected articles on family law.
- Centre for Legal Studies and Integration, Comparative Analysis of the Family Code and its Compliance with European Law.
- European Court of Human Rights. (2014). Battista v. Italy, Application no. 43978/09.
- Special report “Pensions for maintenance, obligation to provide maintenance for children”, compiled by the Ombudsman.
- Bundesministerium der Justiz (Germany). Düsseldorf Tabelle, latest version.
- Caisse d’allocations familiales (CAF), France. Official information on assistance with child maintenance obligations.

PROTECTION OF PERSONAL DATA AND THE LEGAL CHALLENGES OF PRIVACY

Bleona Tahiri, Andeta Qefa¹

Supervisor: Assoc. Prof. Dr. Marsida Haxhiu

Abstract

The protection of personal data is an important and complex issue that has received significant attention in recent years due to the increasing use of the internet and advanced technologies. Personal data refers to any information that may be used to identify an individual, such as name, address, telephone number, financial information, and many others. Due to the sensitive nature of this information, the safeguarding and protection of personal data is essential to ensure individual privacy.

The European legislation (GDPR) provides important safeguards and legal protection; however, through this paper we aim to understand the real effectiveness of this regulation. Although major progress has been made in the protection of personal data, many legal challenges still remain. These challenges arise from the need for strong legal regulations and sanctions for both natural and legal persons who violate personal data, resulting in serious social consequences affecting human dignity.

The main topics addressed in this paper include:

- The use of personal data without consent
- Lack of transparency
- Challenges of the international legal regime
- Threats from hackers and cyberattacks

1. Integrated Second Cycle Master of Science in Law Program, Department of Law, Faculty of Business and Law, University of Elbasan “Aleksandër Xhuvani”, E-mail: tahiribleona843@gmail.com /qefaandeta@gmail.com

- The increased use of artificial intelligence and big data

This study provides a detailed analysis of the Albanian legal framework in comparison with international standards, emphasizing the challenges of implementing privacy legislation in Albania and offering effective recommendations for improvement.

Personal data

Legislation on the protection of personal data first appeared in the Strasbourg Convention of 28 January 1981, “For the Protection of Individuals with regard to Automatic Processing of Personal Data”, which is the first binding international legal instrument in this field. Article 1 states the purpose of the Convention: to ensure respect for human rights and fundamental freedoms, particularly the right to privacy, for every individual regardless of nationality or residence.

In 1983, the German Federal Constitutional Court reviewed the constitutionality of the Census Act of 1982, which required detailed registration of personal data such as name, exact address, phone number, gender, date of birth, marital status, religious beliefs, employment, education level, etc. The Court declared that the law contained fundamental flaws in how it handled the public identification process. It undermined dignity and personal development and ultimately endangered democracy itself, which cannot function in the absence of privacy protection.

The Court stated that every individual has the right to know, to decide, and to determine when and under what conditions personal information may be processed. This right—known as informational self-determination—enables individuals to control the flow and processing of personal information in the public sphere.

1.2. The Use of the Concept of Personal Data in European Jurisprudence and Legislation The use of the concept of personal data in European jurisprudence and legislation refers to information relating to an individual, which may also be disseminated in the public sphere. The application of this concept is of particular importance, as it ensures the regulatory autonomy of the right to personal data protection—rights that are especially at risk due to technological advancements that have made possible the widespread dissemination, use, exchange, and correlation of collected and processed data. In the European area,

the meaning of personal data has been used particularly in Article 286 of the Treaty establishing the European Community (TEC), the Schengen Agreement, the Charter of Fundamental Rights of the European Union, Directive 95/46/EC, Recommendation No. R (99) 5 of the Committee of Ministers of the Member States on the protection of privacy on the internet, Directive 2002/58/EC,.

1.3. Personal data have also been considered to include evaluative judgments to the extent that a person-related or property-related assessment is reflected in an informational statement about the individual to whom the information pertains. An evaluative judgment—such as, for example, “Good Client”—even if it does not contain the data on which the assessment is based, still conveys something about the relationships or characteristics of the person being referred to. In 2003, the Court of Justice of the European Union (CJEU) issued its first ruling on Directive 95/46/EC, interpreting the concept of personal data. This was the *Lindqvist* case, which has become one of the most frequently cited cases in legal literature concerning Directive 95/46/EC. It was the first time the CJEU defined the scope of application of the Directive on the protection of personal data and the free movement of such data on the internet.

1.4. International Agreements on the Protection of Personal Data After the Second World War, the United Nations adopted the Universal Declaration of Human Rights (1948), which includes the right to privacy (Article 12). The International Covenant on Civil and Political Rights (1966) reinforced this right in Article 17, prohibiting arbitrary interference with private life and obligating states to ensure legal protection. In Europe, the Rome Convention (1950) and later the European Convention on Human Rights laid the foundations for data protection legislation. The development stages of European privacy law are also referenced: from early national laws (such as Law 78-17 in France) to EU directives including 95/46/EC, 2002/58/EC, 2006/24/EC, and 2009/136/EC. 1.5. The Organisation for Economic Co-operation and Development (O.E.C.D.) Significant importance is also given to the role of technology and the challenges to privacy in the age of digital surveillance and automated data proces...

2. The albanian legal framework for the protection of personal data and privacy

2.1. Constitutional Guarantees under the Albanian Constitution

After the ratification of the European Convention on Human Rights, Albania underwent significant positive changes in its constitutional order, paving the way for the strengthening of the rule of law. Initially through earlier constitutional provisions, and later through the Constitution of 1998, the fundamental rights and freedoms of the individual were sanctioned, accompanied by the establishment of mechanisms necessary to guarantee their effective exercise. The provisions of Articles 3(1) concerning human dignity, 35(1) on the protection of personal data, 35(2) on the collection, use, and disclosure of personal data about an individual—data which may be processed only with his or her consent, except in cases provided by law—and Article 36 on the protection of the privacy of correspondence and any other means of communication, constitute the core constitutional framework for the protection of personal data.

These provisions guarantee the right to privacy by ensuring, in particular, the right to informational self-determination, namely the right of each individual to decide independently on the security, management, and use of his or her personal information. The protection of personal data is expressly provided in the second part of the Constitution, dedicated to fundamental human rights and freedoms, specifically within the category of personal rights and freedoms in Chapter II. The extent of these rights directly influences the individual's right to information and participation in the information society. 2.2. Fundamental Rights and Freedoms — Article 15 (paragraphs 1 and 2)

Article 15, paragraph 1, refers to the fundamental human rights and freedoms, providing that they are indivisible, inalienable, and inviolable, and that they constitute the foundation of the entire legal order. Paragraph 2 concerns the protection of these fundamental rights and freedoms, stipulating that public authorities, in the performance of their duties, must respect and contribute to the realization of these rights and freedoms. In this manner, the constitutional legislator not only establishes the general principle of the State's responsibility to respect human dignity and to prevent any violation of it, but also sets forth the obligation to protect the individual against any

attempt to treat him or her as an object serving purposes contrary to the Constitution.

In contrast, Article 2, paragraph 1, of the 1976 Constitution—defining the state as a “dictatorship of the proletariat”—reflected the ideological intent of the authoritarian regime to institutionalize the general power of the State to disregard and suppress human dignity. This historical period was characterized and experienced as a traumatic and degrading era for fundamental human rights and freedoms in Albania, during which State institutions systematically violated personal freedoms and dignity.

Protection of Personal Data — Article 35

Article 35 guarantees the protection of personal data as a fundamental right. No one may be compelled to disclose personal data except in cases required by law. Furthermore, every individual has the right to protection against the collection, use, or disclosure of his or her personal data without consent. The Constitutional Court has characterized this protection as essential for safeguarding privacy and ensuring the functioning of the rule of law. Albanian legislation has been harmonized with European standards on personal data protection, including rights relating to the protection of identity and ethnic or national affiliation.

Freedom and Secrecy of Correspondence and Any Other Means of Communication — Article 36

Article 36 of the Constitution of Albania guarantees the freedom and confidentiality of correspondence and every other form of communication. This provision emphasizes the protection of privacy and the right to communicate freely and without interruption, through any means, including letters, telephone calls, or the internet. It prohibits surveillance or interference without a legal basis and recognizes everyone’s right to freely choose the manner of communication.

The primary law governing the protection of personal data is Law No. 9887, dated 10.03.2008, which replaced the 1999 law and has been updated through amendments in 2012 and 2014. This law was drafted in compliance with European Union directives, including Directive 2002/58/EC and Directive 95/46/EC, as well as the conventions of the Council of Europe on data protection.

The purpose of the law is to protect the fundamental rights and freedoms

of individuals with respect to the processing of personal data, particularly the right to privacy. It provides for the establishment of an independent supervisory authority, responsible for ensuring compliance with data protection rules in cooperation with both public and private entities. The law consists of 44 articles divided into 10 chapters and offers a clear framework for respecting constitutional and European standards in data processing, including in the electronic communications sector.

Analysis

This law represents an important step toward strengthening human rights and harmonizing Albania's legal framework with European standards. It ensures transparency, enhances control over data processing, and contributes to building trust between citizens and the institutions that collect and process personal data. The emphasis on establishing an independent supervisory authority is a key element for ensuring the effective implementation and enforcement of the law in practice.

2.3. Law No. 9887, dated 10.03.2008 “On the Protection of Personal Data” and its amendments

This law aims to protect the fundamental rights and freedoms of the individual, particularly the right to privacy, by defining the conditions for the processing of personal data. The law is drafted in accordance with European standards and EU directives. Personal data is defined as any information that identifies an individual, such as name, address, identity number, DNA, etc., while sensitive data includes racial or ethnic origin, religious beliefs, political opinions, health data, and sexual life.

The law does not apply in purely private situations or when data is processed solely for personal purposes, except when such processing is related to public or administrative functions. This law strengthens the legal protection of privacy in Albania and aligns national standards with those of EU member states, including the creation of a supervisory authority for the protection of personal data and the establishment of obligations for data controllers.

Rights of data subjects under Albanian legislation (Articles 12–17)

1. Right to information and access:

Individuals have the right to be informed when their data is being

processed. The data controller must clearly and understandably inform them about the content, purpose, and manner of data use. A response must be provided within 30 days of receiving a request, or an explanation must be given if this is not possible.

2. Right to rectification, deletion, and blocking:

Individuals have the right to request the correction, deletion, or blocking of data that is inaccurate, incomplete, or processed unlawfully. Requests may be submitted in writing and must be reviewed by the controller, who may approve or reject them with a reasoned explanation.

3. Right not to be subject to automated decision-making:

Individuals have the right not to be subjected to decisions made solely by automated means—without human intervention—especially when such decisions significantly affect their lives (e.g., credit applications).

4. Right to object:

Individuals may object to the processing of their personal data at any time, particularly when such processing causes harm or is unjustified. They may request the interruption of the processing or prohibit third-party processing.

5. Right to complaint and legal remedies:

In cases of violation of these rights, individuals may submit a complaint to the Commissioner for the Right to Information and the Protection of Personal Data. If no solution is found, they have the right to pursue judicial remedies under the Civil Procedure Code.

6. Right to compensation:

If unlawful processing of data causes harm, the individual has the right to seek compensation in court. This right is administered not by the Commissioner but by the courts through the Civil Code.

2.4. Obligations of the controller and processor, notification, and data security

1. Obligations of the data controller:

The controller—an institution, business, or other entity that processes personal data—has several legal obligations. It must notify recipients of data in cases of correction or deletion. If the data has

been transmitted to a third party before such actions, the controller must notify that party as well. When processing is carried out by an external processor (outsourcing), the parties must conclude a contract guaranteeing lawful processing.

2. Notification to the Commissioner:

The controller must notify the Commissioner once for a specific purpose of processing, except when the purpose changes.

Example: A bank notifies the Commissioner of data processing for banking services. If it later wants to use the data for security purposes, it must notify again.

The notification must be clear, complete, and understandable and must include the purpose, type of data, and method of processing.

3. Prior checking:

For sensitive cases—such as processing health data or transferring data abroad—prior authorization from the Commissioner is required. Until such authorization is granted, processing or transfer cannot begin.

4. Security and confidentiality:

Personal data must be stored securely and protected against misuse, loss, or unauthorized access.

This requires both technical measures (protective devices, secure IT systems, etc.) and organizational measures (staff training, clear division of responsibilities).

Confidentiality remains a permanent obligation even after the employment or role of the person handling the data ends.

Violation of confidentiality constitutes a criminal offense under the Criminal Code. The law outlines the legal rules and responsibilities for processing personal data under Law No. 9887, dated 10.03.2008. It focuses on the role of the data controller, who is obliged to inform about the receipt, correction, or deletion of personal data and to notify the Commissioner of any processing. All processing must comply with declared purposes and must guarantee the rights and freedoms of individuals, including confidentiality protection. The law also addresses the publication of personal data by courts on official websites, where the Commissioner has required anonymization or the use of initials in the absence of a clear public interest, especially concerning private or sexual life, to safeguard human dignity and human rights.

2.5. Instructions issued by the Commissioner for the Protection of Personal Data

In accordance with his legal competencies, the Commissioner has adopted several guidelines that provide detailed and practical rules for the protection of personal data by various subjects, including:

- Instruction No. 1 on “Authorizing Certain Categories of International Transfers of Personal Data to a State that Does Not Ensure an Adequate Level of Data Protection.”
- Instruction No. 2 on “Obligations of Controllers and Processors Prior to Processing Personal Data.”
- Instruction No. 3 on “Security Measures for the Protection of Personal Data in the Education Sector.”
- Instruction No. 4 on “Fundamental Rules on the Protection of Personal Data in the Health Care System.”
- Instruction No. 5 on “Proper Use of SMS for Promotional, Advertising, Information, or Direct Sales Purposes via Mobile Telephony.”
- Instruction No. 6 on “Processing of Personal Data in the Education Sector.”
- Instruction No. 7 on “Print and Audiovisual Media.”
- Instruction No. 8 on “Processing of Employees’ Personal Data in the Private Sector.”

3. Administrative sanctions in the protection of personal data

Within the framework of personal data protection, one of the main pillars of the Albanian legal system is the determination and implementation of administrative sanctions in cases of violation of the law. This regulatory mechanism aims to ensure the respect of individuals’ privacy rights through a system of penalties that maintains proportionality between the violation and the imposed measure.

Albanian legislation provides that the Commissioner for the Right to Information and the Protection of Personal Data is the competent authority responsible for examining cases of violations. This body has the authority to impose fines, conduct administrative investigations, and pursue cases that present a high risk to citizens’ fundamental rights.

The court holds a supervisory and verifying role in this process. It reviews appeals against the Commissioner’s decisions and may decide

on the validity, modification, or annulment of the imposed sanction. This ensures a balanced system, protecting individuals from potential administrative abuses.

Administrative sanctions serve not only a punitive function but also an educational one. They help raise awareness among data processors about their responsibilities and contribute to the development of a culture that respects the right to privacy.

In conclusion, the Albanian legal framework on administrative sanctions in the protection of personal data represents a significant effort to ensure a balance between freedom and accountability, seeking to preserve the integrity of individuals' data in an increasingly interconnected and digital society.

3.1. Protection of Privacy and Communicative Data in the Albanian Criminal Code

In the era of information and electronic communication, guaranteeing privacy and the security of personal data has become one of the greatest legal and ethical challenges. The Criminal Law of the Republic of Albania has established clear provisions to prohibit and punish any unauthorized interference in the private life of individuals and in communication systems.

Article 121 of the Criminal Code aims to protect private life from unlawful interference, such as eavesdropping, recording, or disseminating information without the individual's consent. Such acts, when committed without authorization, are punishable by imprisonment of up to seven years.

Article 122 of the Criminal Code prohibits the dissemination of private secrets learned due to one's duty or profession, without the consent of the affected person. This provision is essential for safeguarding professional integrity and preventing misuse of official positions.

Article 123 focuses on the secrecy of communications. It prohibits interference with private correspondence, including listening to telephone conversations or reading letters, without authorization. This article protects the freedom of communication as a fundamental human right.

3.2. Protection of Personal Data and Privacy in Albania

(A Perspective through the Criminal Code and the Law on Electronic Communications)

Albania, in its efforts to harmonize its legislation with European standards, has established a clear legal framework regulating these issues, starting from the Criminal Code to the specific laws on electronic communications.

The Criminal Code of the Republic of Albania contains provisions aimed at protecting private life and personal data. Article 121 prohibits unauthorized interference in an individual's private life, including eavesdropping and recording voice or images without consent. This action is punishable by fine or imprisonment of up to two years.

Article 122 prohibits the unauthorized disclosure of private secrets obtained through duty or profession, providing penalties of up to two years imprisonment. Meanwhile, Article 123 prohibits obstructing or violating the secrecy of communications and correspondence through monitoring, opening, or reading messages and letters, which also constitutes a criminal offense.

In addition to criminal provisions, Law No. 9918, dated 19.05.2008, On Electronic Communications in the Republic of Albania, establishes a broader framework to guarantee privacy and data protection in the field of electronic communications. This law aims to ensure the competitive functioning of communication infrastructures while including security and user protection from potential violations. It protects privacy in cases where the individual is an active participant in a communication process and has an expectation of confidentiality.

Ultimately, the legal protection of personal data and privacy in Albania is reinforced through a combination of criminal norms and administrative provisions designed to address the challenges of the digital era. Both the Criminal Code and the Law on Electronic Communications provide a solid basis for safeguarding fundamental individual rights, making their effective and continuous implementation essential.

3.3. Procedures for Lawful Access to Personal Data

- Procedures and conditions for accessing personal data must be clearly defined by law, ensuring proportionality and necessity of the intervention while preventing abuses.
- Review of the law for compliance with international standards: Amendments are recommended to include broader terminology and address uncovered aspects, ensuring more effective protection in line with international acts.
- Rights of data subjects: Emphasis is placed on the right of access, information, and control over one's data. A more detailed legal regulation is needed regarding the manner of informing and possible limitations.
- Obligations of controllers and processors: The law must determine how information is provided after data collection. Improvements are needed regarding the format and timing of notifications to avoid misinterpretation.
- Intervention by state authorities: The current law lacks detailed rules on state authority intervention. Clear conditions and procedures must be defined to protect citizens' rights and prevent misuse.
- Regulation of official email use in the private sector: The approval of a guideline for the use of electronic mail in the private sector is needed, following the same standards as the public sector under Guideline No. 40 (13.06.2014).

4. Findings and Recommendations (Regarding Law No. 9887, dated 10.03.2008, "On the Protection of Personal Data", as amended)

4.1. Determining the procedures and conditions required for lawful access to personal data. It is necessary to clearly define the procedures and conditions that must be fulfilled in order to ensure lawful access to personal data.

4.2. Revision of the law to achieve better protection of personal data in compliance with international standards

It is necessary to consider the possibility of revising the law in order to achieve an approach that better guarantees the individual's right to private life and the protection of personal data, in accordance with the standards established by international instruments and domestic laws that specifically

safeguard these rights.

It must be emphasized that in any future amendments to this law, it would be essential to broaden the definition of many terms related to the field of personal data protection, given that this is a relatively new area that has not previously been regulated in detail.

4.3. Rights of the data subject

The right of access is exercised in accordance with the constitutional principles of freedom of expression and information, freedom of the press, and professional secrecy. It may be restricted when it affects national security interests, foreign policy, the economic and financial interests of the state, or the prevention and prosecution of criminal offenses.

4.4. Obligations of the controller and processor, notification, and security of personal data

The law does not specify the form in which information should be provided, and therefore amendments are necessary to clearly define the modalities of data collection and the obligations of the data controller and processor. The law also lacks a defined format for notification, which must be addressed through legislative improvements.

4.5. Regulation of state authorities' intervention in personal data

There is an absence of specific provisions regarding:

- a) The seriousness of criminal offenses whose prevention or prosecution justifies access to personal data, or the degree of danger of activities that threaten public order and security, which may justify such intervention.
- b) The entities authorized to access personal data, once the legally required circumstances have been verified.

5. Findings and Recommendations regarding Law No. 9918, dated 19.05.2008, "On Electronic Communications in the Republic of Albania", as amended

5.1. Protection of Data and Privacy in relation to data processing in electronic communication services carried out within a private network

The non-inclusion of electronic communications of a non-public nature within the current regulatory framework of the law is a direct consequence of Directive 2002/58/EC: On the processing of personal data and the protection of privacy in the electronic communications sector.

Based on the above, it is necessary to consider the possibility of revising the law in order to achieve an approach that best guarantees the individual's right to private life and the protection of personal data, in accordance with the standards established in international instruments and domestic legislation that specifically safeguard these rights.

CROSS-JURISDICTIONAL EVIDENCE CHALLENGES IN INTERNATIONAL ARBITRATION: DUE PROCESS RISKS AND ENFORCEMENT UNDER THE NEW YORK CONVENTION

Nikolin Muçaj¹

Table of Contents

Abstract

Introduction

- I. The Arbitral Tribunal's Competence and Discretion in the Assessment of Evidence
 - 1. Admissibility of Evidence under the IBA Rules
- II. Admissibility of Privileged or Illegally Obtained Evidence
 - 1. Illegally Obtained Evidence
 - 1.1. Shifting the Burden of Proof
 - 2. Legal Advice Privilege
 - 3. Settlement Privilege and the "Without Prejudice" Principle
 - 4. State Secrets and Other Public Interest Immunities
- III. Evidentiary Challenges: Impact on Enforceability and Equality of Arms
 - 1. The Right to be Heard
- IV. Conclusion
- Bibliography

1. EU Business Law student at the Faculty of Law, University of Tirana. E-mail: nikomucaj9@gmail.com.

Abstract

Arbitration's principal appeal lies in its efficiency and flexibility, offering parties an alternative to the rigid procedural formalities of national courts. However, this procedural adaptability does not exempt arbitral tribunals from upholding fundamental fairness standards, as failure to do so risks non-recognition or annulment of awards under the New York Convention. While arbitration serves as a surrogate for judicial proceedings, it must balance its informality with safeguards to compensate for the loss of access to courts, particularly in cross-border disputes where divergent evidentiary rules and procedural norms collide. This article examines the procedural dilemmas arising from the administration of evidence in international arbitration, focusing on the tension between preserving efficiency and ensuring due process. Tribunals face emerging challenges in reconciling conflicting jurisdictional approaches to evidentiary standards, such as the admission of privileged materials, the legality of evidence, and the allocation of the burden of proof. A central conflict arises when parties from different legal traditions, common law's adversarial discovery versus civil law's document production limitations, clash over procedural fairness. Tribunals risk violating the equality of arms principle if they disproportionately favor one party's evidentiary practices or inadvertently curtail a party's right to present its case under Article V(1)(b) of the NYC, thereby undermining due process. These risks are magnified in disputes involving states, where public interest immunities or sovereign privileges may obstruct evidence disclosure, further straining compliance with international fair trial norms. Ultimately, this study seeks to provide a structured assessment of the legal and procedural tensions surrounding evidentiary standards in arbitration and their broader implications for the recognition and enforceability of arbitral awards.

Keywords: *New York Convention, due process, equality of arms, evidentiary privileges, award enforcement.*

Introduction

In international arbitration, the integrity of the evidentiary process is a cornerstone of fair and effective dispute resolution. Arbitral tribunals are vested with broad discretion to assess the admissibility, relevance, and weight of evidence, guided by institutional rules, the UNCITRAL Model Law on International Commercial Arbitration (“**UNCITRAL Model Law**”), and widely accepted standards such as the IBA Rules on the Taking of Evidence in International Arbitration (2020) (“**IBA Rules**”). This discretion, however, is not without boundaries. The admission of evidence, particularly materials tainted by illegality, privilege, or public interest immunities, raises complex legal and ethical questions that test the balance between procedural fairness, the pursuit of truth, and the enforceability of arbitral awards.

The interplay between institutional frameworks and the principles enshrined in the IBA Rules underscores a tension inherent in arbitration: tribunals must navigate divergent legal traditions, uphold fundamental rights such as legal advice and settlement privilege, and guard against procedural inequities while maintaining flexibility to admit critical evidence. For instance, the exclusion of illegally obtained evidence under Article 9(3) of the IBA Rules hinges on a tribunal’s discretionary calculus, weighing factors such as proportionality, materiality, and the severity of misconduct. Similarly, privileges protecting attorney-client communications or settlement negotiations reflect deeply rooted public policy imperatives, yet their application varies across jurisdictions, risking imbalances in the “equality of arms” between parties.

This paper examines the arbitral tribunal’s authority to admit or exclude evidence in light of these challenges. It explores how tribunals reconcile competing interests, such as protecting state secrets, addressing privilege disparities, and deterring illicit evidence-gathering, while ensuring compliance with international enforcement standards under the New York Convention (“**NYC**”). Through an analysis of case law from various jurisdiction and scholarly commentary, the study argues that tribunals must exercise their discretion judiciously, balancing procedural fairness with the need for finality. Ultimately, the paper contends that while flexibility in evidence assessment is a hallmark of arbitration, adherence to foundational principles of justice remains paramount to safeguarding the legitimacy of the arbitral process and its outcomes.

I. The Arbitral Tribunal's Competence and Discretion in the Assessment of Evidence

The arbitral tribunal enjoys broad discretion in evaluating evidence, including its admissibility and relevance, as provided under Article 19(2) of the UNCITRAL Model Law. Arbitral institutions have adopted varying approaches in this regard. One group of institutions expressly confers upon the tribunal the authority to determine the admissibility, relevance, materiality, and weight of evidence. Examples of this approach include Article 32.3 of the SIAC Rules (2025), Article 34 of the FAI Rules (2024), Article 31 of the SCC Rules (2023), and Article 22 of the HKIAC Rules (2024). Conversely, other institutions adopt a more general formulation, granting tribunals the power to determine the conduct of proceedings or the applicable rules on evidentiary matters, without explicitly addressing admissibility. Notable examples include Article 22.1(vi) of the LCIA Rules (2020) and Articles 28 and 29 of the VIAC Rules (2021). Nonetheless, regardless of the approach adopted, both the UNCITRAL Model Law and institutional rules share a common feature, the absence of mandatory provisions governing the admissibility and evaluation of evidence.

1. Admissibility of Evidence under the IBA Rules

Faced with this vacuum, arbitral tribunals often turn to the IBA Rules, widely regarded as a standard in the assessment of evidence,¹ to provide guidance on issues of admissibility and to assist in the exercise of their discretion where no specific rules have been designated.² The parties may agree to make the IBA

1. Schreuer, Christoph H., Stephan W. Schill, Loretta Malintoppi, August Reinisch, and Anthony Sinclair, eds. *Schreuer's Commentary on the ICSID Convention: A Commentary on the Convention on the Settlement of Investment Disputes between States and Nationals of Other States*. Vol. 1. 3rd ed. Cambridge: Cambridge University Press, 2022, p. 911, para. 13.

2. *Suffolk (Mauritius) Limited, Mansfield (Mauritius) Limited, and Silver Point Mauritius v. Portuguese Republic*, ICSID Case No. ARB/22/28, Procedural Order No. 1, 13 July 2023, p. 13, para. 15.1.; *Latam Hydro LLC and CH Mamacocha S.R.L. v. Republic of Peru*, ICSID Case No. ARB/19/28, Procedural Order No. 4 on the Production of Documents Referred to in the Parties' Privilege Logs, 3 May 2021, p. 4, para. 11, 12; *Gerald International Limited v. Republic of Sierra Leone*, ICSID Case No. ARB/19/31, Procedural Order No. 1, 29 May 2020, p. 14 & 15, para. 15.2 & 15.4.7; *Axos Capital GmbH v. Republic of Kosovo*, ICSID Case No. ARB/15/22, Procedural Order No. 2, 6 March 2017, p. 3, para. 3; *Glamis Gold Ltd. v. United States of America*. *Ad Hoc Arbitration*, Decision on Objections to Document Production, 20 July 2005, p. 4, para. 9; Cordero-Moss, G. (2024). *International Commercial Contracts: Contract Terms*,

Rules binding upon the tribunal or, alternatively, adopt them as non-binding guidelines to assist in shaping the tribunal's procedural decisions. In either scenario, the IBA Rules serve as a harmonizing framework, particularly valuable in cases involving parties from different legal traditions. The current IBA Rules originate from the 1983 IBA "Supplementary Rules of Evidence," which were developed to provide a neutral and balanced set of procedures that would be equally fair and familiar to both civil law and common law practitioners.¹

The admissibility of evidence is addressed in Article 9 of the IBA Rules, which sets out specific grounds on which arbitral tribunals must exclude certain documents. Pursuant to Article 9(2), the tribunal shall exclude evidence or requests for production in the following circumstances: (i) the evidence lacks sufficient relevance to the outcome of the case; (ii) it is subject to a legal impediment or privilege, such as legal advice or settlement privilege, as further detailed in Article 9(4); (iii) the production request imposes an unreasonable burden; (iv) the document has been lost or destroyed; (v) it contains commercially or technically confidential information; (vi) it involves matters of special political or institutional sensitivity; or (vii) its inclusion would violate principles of procedural economy, proportionality, fairness, or the equality of the parties.

Distinct from these mandatory exclusion grounds, Article 9(3) addresses the issue of evidence obtained illegally. Unlike Article 9(2), which requires exclusion under defined circumstances, Article 9(3) provides that the tribunal *may* exclude evidence obtained through illegal means. The use of the word "may" rather than "shall" grants the tribunal broader discretion in determining whether to admit or exclude such evidence. The following section will examine the most prominent evidentiary challenges in international arbitration and how they typically unfold in practice.

II. Admissibility of Privileged or Illegally Obtained Evidence

1. Illegally Obtained Evidence

One of the first courts that has developed the doctrine of illegally obtained evidence has been in the case of *Holman v. Johnson* in 1775, where it was held that courts will not support claims founded on immoral

Applicable Law and Arbitration. Cambridge University Press, p. 102-103.

1. Born, Gary, International Commercial Arbitration, 3rd ed. The Netherlands: Kluwer Law International, 2021, §15.07[E].

or illegal acts. In *Holman*, the court emphasized that “no Court will lend its aid to a man who finds his cause of action upon an immoral or an illegal act”.¹ The principle of public policy here is *ex dolo malo non oritur actio*: if a claim is tainted by illegality or the violation of a positive law, the court has no obligation to assist.² Following the rationale in *Holman v. Johnson*, which seeks to protect the integrity of the legal process by distancing itself from the fruits of misconduct, tribunals should look towards declining to permit parties from benefiting from evidence rooted in illegality.

However, as previously noted, Article 9(3) of the IBA Rules grants arbitral tribunals considerable discretion in determining the admissibility of illegally obtained evidence. The commentary on the 2020 IBA Rules highlights key considerations for tribunals under Article 9(3) when assessing the admissibility of illegally obtained evidence, including the extent of the party’s involvement in the illegality, the proportionality of admitting the evidence, whether the evidence is material and outcome-determinative, the extent to which the evidence is publicly available, and the gravity of the illegality involved.³

In international arbitration, the issue of illegally obtained evidence is often examined in light of the principle of “equality of arms”. This principle has been affirmed in landmark cases such as *Methanex v. United States of America*, where the tribunal rejected improperly obtained evidence, emphasizing good faith and procedural fairness.⁴ Subsequent jurisprudence, such as *EDF (Services) Ltd v. Romania*, reinforced that unlawfully obtained evidence undermines arbitration integrity. While international tribunals generally adopt a liberal approach to evidence admissibility, they recognize limits grounded in good faith and procedural fairness where tribunals should refuse to admit evidence which dependent on the circumstances there are good reasons to believe that those principles

1. *Holman v Johnson*, 2 March 1775, 1 Cowp, 1 Cowp 341, 98 ER 1120 (KB), p. 341, 343.

2. *Id.*

3. Commentary on the revised text of the 2020 IBA Rules on the Taking of Evidence in International Arbitration, January 2021, p. 30.

4. *Methanex Corp. v. United States of America*, NAFTA/UNCITRAL, Final Award, 3 August 2005, p. 26, para. 54; O’Malley, N. D. *Rules of Evidence in International Arbitration: An Annotated Guide*, 2nd ed., Informa Law from Routledge, 2019, p. 333, para. 9.117.

have not been respected.¹ The flexibility that international tribunals often demonstrate toward evidence obtained through illicit means may be attributed to the fact that they are not bound by the strict evidentiary rules that typically govern domestic courts. A notable example is the *Corfu Channel* case,² in which the International Court of Justice admitted evidence presented by the United Kingdom, despite the fact that it had been obtained through an operation that the Court itself later characterized as a violation of international law. Despite the broad discretion tribunals enjoy in assessing the admissibility of illegally obtained evidence, this issue must also be viewed through the lens of procedural fairness and due process, which will be further examined in Chapter III.

1.1. Shifting the Burden of Proof

As the burden of proof lies with the party making the allegation, establishing that evidence was obtained illegally often proves challenging, particularly due to limited access to the investigative tools necessary to substantiate such claims. This issue is commonly encountered in investment arbitration, where the parties typically include an investor on one side and a state on the other. A party alleging illegality must provide credible proof; mere claims are insufficient to exclude evidence.³ Tribunals consistently reject unsubstantiated objections.⁴ Nonetheless, a party may meet this burden by establishing *prima facie* evidence of illegality. *Prima facie* evidence refers to the minimal level of proof required to allow a tribunal to reasonably conclude that an allegation is more likely than not to be true.⁵ Once the claimant has presented a *prima facie* case and the respondent fails to offer any rebuttal, the respondent cannot demand that the claimant present overwhelming proof, such as evidence beyond a reasonable doubt, without at least raising a specific reason for doubting the claim.⁶ However, in many instances, *prima facie* evidence alone may not suffice

1. EDF (Services) Ltd v Romania, ICSID Case No. ARB/05/13, Procedural Order No. 3, 29 August 2008, para. 47.

2. *Corfu Channel* case, Judgment of April 9th, 1949: I.C. J. Reports 1949, p. 4.

3. O'Malley, p. 334, para. 9.119.

4. *Id.*

5. Nathan D. O'Malley, *Rules of Evidence in International Arbitration: An Annotated Guide*, Second Edition, (2019), p. 223, para. 7.36.

6. *William A. Parker v. United Mexican States*, decision of 31 March 1926, Mex.-US General Cl. Comm., 4 Rep. Int'l Arb. Awards 35 at 39.

to satisfy the burden of proof on the balance of probabilities, especially when countervailing arguments or doubts regarding the reliability of the evidence are presented.

The question then becomes: how much is required for the burden of proof to shift? For example, an English court has held that the uncorroborated testimony of one party may be sufficient to constitute *prima facie* evidence and thereby shift the burden to the opposing party.¹ In contrast, the Arbitral Commission on Property, Rights and Interests in Germany has taken a stricter approach, holding that mere allegations do not meet the threshold for *prima facie* evidence.²

Ultimately, the determination of whether the burden of proof has shifted, much like the assessment of the evidence itself, must be conducted on a case-by-case basis. In situations where the disputed documents consist of internal or confidential material, such as sensitive corporate records not ordinarily accessible to third parties, even a well-founded allegation of illegality in their acquisition may suffice to raise a serious issue and shift the burden of proof to the opposing party.

2. Legal Advice Privilege

Legal advice privilege is protected under Article 9.2(b) of the IBA Rules. The concept of attorney client privilege can be traced back to Roman law, where attorneys were exempt from testifying against their clients, laying the groundwork for the modern concept of privilege.³ Today, this privilege is widely recognized, including European countries, where confidentiality is deemed essential⁴ and *fundamental to a democratic society*.⁵ In the USA,

1. Arbitration Law Monthly, Vol. 3, No. 5, summarising *Bulfracht (Cyprus) Ltd v Boneset Shipping Co Ltd (The MV Pamphilos)* [2002] EWHC 2292 (Comm).

2. *Levis and Levis v. Federal Republic of Germany (Merits)*, Arbitral Commission on Property, Rights and Interests in Germany, Third Chamber (Lagergren, Arndt, Phenix), 9 June 1959, in 28 ILR at 523; Mojtaba Kazazi, *Burden of Proof and Related Issues: A Study of Evidence Before International Tribunals*, p. 221 (1996), p. 331.

3. Mosk, Richard M., and Tom Ginsburg. "Evidentiary Privileges in International Arbitration." *The International and Comparative Law Quarterly*, vol. 50, no. 2, Apr. 2001, p. 351.

4. *Akzo Nobel Chemicals Ltd and Akcros Chemicals Ltd v. Commission of the European Communities*, Joined Cases T-125/03 and T-253/03, Judgment of the Court of First Instance (First Chamber, Extended Composition), 17 September 2007, p. 44-45, para. 120.

5. *F SCS and Ordre des avocats du barreau de Luxembourg v. Administration des*

privilege applies so long as the primary purpose of the communication is to seek or provide legal advice.¹ Similarly, in England, privilege enables parties to communicate *with complete candour*.² Accordingly, arbitral tribunals are expected to accord *the highest level of protection*³ to documents protected by legal advice privilege.

Although, legal advice privilege is often called “absolute,” is not truly so.⁴ Courts emphasize its importance but limit its scope. The CJEU has ruled that in-house lawyers lack privilege due to insufficient independence from their employers.⁵ Independence is essential for administering justice and providing legal assistance under professional ethics.⁶ Legal privilege applies only to independent lawyers, excluding in-house counsel due to their employment ties, which compromise professional independence.⁷ Their economic dependence prevents them from matching external lawyers’ independence, even if they are bar-registered and subject to ethical rules.⁸ The German Federal Court of Justice concurs, emphasizing in-house counsel must be independent to claim privilege.⁹ This trend appears to be limited to civil law jurisdictions, as under common law, legal privilege applies as long as the dominant purpose of a communication is to obtain legal advice, and not simply because legal input is present.¹⁰

contributions directes, ECJ, Case C-432/23, Judgment of the Court (Second Chamber), 26 September 2024, p. 13, para. 50.

1. In re Grand Jury, 23 F.4th 1088 (9th Cir. 2021), cert. granted, 143 S. Ct. 186 (2022), p. 6.

2. R (on the application of Prudential plc and another) v Special Commissioner of Income Tax and another [2013] UKSC 1, appeal from [2010] EWCA Civ 1094, date 23 January 2013, p. 31, para. 112.

3. Caratube International Oil Company LLP and Mr. Devincci Salah Hourani v. Republic of Kazakhstan, ICSID Case No. ARB/13/13, Award, September 27, 2017, p. 384, para. 1259.

4. The Civil Aviation Authority v. The Queen on the Application of Jet2.com Limited [2020] EWCA Civ 35, para. 39.

5. René Jansen, Legal Privilege and Transnational Evidence Taking. A Comparative Study on Cross-Border Disclosure, Evidence-Shopping and Legal Privilege, 2022, p. 180.

6. AM & S Europe Limited v. Commission of the European Communities, Court of Justice of the European Union, Case 155/79, Judgment of 4 February 1981, para. 24.

7. Akzo Nobel Chemicals, paras. 43-44, 47.

8. Id., paras. 49, 56.

9. Jansen, p. 207.

10. CAA v. R, paras. 93, 96.

In the United States, it has been established since its 1962 that “[t]he protection of the privilege extends only to communications and not to facts. A fact is one thing, and a communication concerning that fact is an entirely different thing...”¹ Similarly, relying on privileged documents to withhold knowledge of meetings approaches an attempt to “refuse to disclose [a] relevant fact within [one’s] knowledge merely because [it was] incorporated into [a] communication to [its] attorney”.² Legal advice privilege does not prevent the disclosure of factual information during civil proceedings, even if those facts formed the basis of otherwise protected communications.³

Common law systems afford broad protection to legal advice privilege, consistently recognizing it as a fundamental element of public policy. Legal professional privilege is not merely a private right, but a principle grounded in the public interest, intended to promote and enhance the proper administration of justice.⁴ It arises from a careful balancing of competing public interests, and its application reflects a deep commitment to preserving the integrity of the legal system.⁵ As affirmed by the U.S. Supreme Court in *Upjohn Co. v. United States*,⁶ the attorney client privilege is “the oldest of the privileges for confidential communications known to the common law,” serving to encourage full and frank communication between lawyers and their clients. This, in turn, advances the broader public interest in ensuring adherence to the law and the fair administration of justice.⁷ Similarly, the work-product doctrine is underpinned by a strong public policy rationale, reinforcing the protection of legal strategy and thought processes to support effective legal representation.⁸ Taking this into consideration, an arbitral award may risk non-enforcement if it is found that legal advice privilege has been breached by admitting and relying on protected evidence. An

1. *Philadelphia v. Westinghouse Electric Corp.*, 205 F. Supp. 830, 831 (E.D. Pa. 1962).

2. *Doca Company v. Westinghouse Electric Company, LLC, and Advanced Measurement & Analysis Group, Inc.*, Civil No. 04-1951 (W.D. Pa.), Memorandum Opinion on Plaintiff’s Objections to Magistrate Judge Orders, ECF No. 210 and 224, p. 8.

3. Jansen, p. 186.

4. *Carter v Northmore Hale Davy & Leake* (1995) 183 CLR 121, 147.

5. Liam Brown, ‘The Justification of Legal Professional Privilege When the Client Is the State’ (2010).

6. *Upjohn Co. v. United States*, 449 U. S. 383, 389 (1981).

7. *Id.*

8. *Id.*

award rendered in breach of this privilege could potentially be invalidated under Article V(2)(b) of the NYC, provided the breach is sufficiently grave to offend the enforcing state's fundamental principles of justice. However, courts apply this exception sparingly, in line with the Convention's pro-enforcement ethos. As will be argued in the following chapters, the breach must be so fundamental that it justifies refusal of enforcement in accordance with Article V(2)(b) of the Convention.

3. Settlement Privilege and the “Without Prejudice” Principle

Without prejudice privilege generates from common law system, which typically applies to communications made in a “*genuine attempt to compromise a dispute*”.¹ However, merely labelling a communication as “without prejudice” does not automatically confer this privilege if the confidential nature of the subject matter cannot be ascertain.² Without prejudice privilege is protected under Article 9(2)(b) of the IBA Rules, which protects privileged documents, and Art. 9(4)(b) gives a generalized understanding of “without prejudice” or “settlement” privilege.³

The courts have consistently held that merely labelling a communication as “without prejudice” does not automatically confer privilege. For the “without prejudice” rule to apply, there must be a genuine dispute and a *bona fide* attempt to settle it. In *Avonwick Holdings Ltd v Webinvest Ltd*,⁴ the court found that, despite the correspondence being marked “without prejudice,” it was admissible because there was no existing dispute at the time, and the communications did not represent a genuine attempt to resolve any such dispute. Similarly, in *Poben Consultants Ltd v Clearwater Bay Golf & Country Club*,⁵ the Hong Kong Court of Appeal determined that a letter marked “without prejudice” was not privileged, as it lacked any indication of negotiation or compromise. These cases underscore that the applicability of the “without prejudice” privilege depends on the content and context of the communication, not merely on its label. Courts

1. Ashford, p. 158, para. 9-39.

2. *Latam Hydro LLC and CH Mamacocha S.R.L. v. Republic of Peru*, ICSID Case No. ARB/19/28, Procedural Order No. 4 on the Production of Documents Referred to in the Parties' Privilege Logs, 3 May 2021, p. 11, para. 55.

3. IBA Rules Commentary, p. 28.

4. *Avonwick Holdings Ltd v Webinvest Ltd & another* [2014] EWCA Civ 1436.

5. *Poben Consultants Ltd v Clearwater Bay Golf & Country Club* [2019] 1 HKLRD 1110.

and tribunals will assess whether, objectively, the parties were engaged in settlement negotiations concerning an existing dispute. Therefore, while the “without prejudice” label is a significant factor, it is not conclusive in determining privilege.¹

Whether or not a communication results in a settlement is irrelevant to the application of the “without prejudice” rule.² In *Rush & Tompkins Ltd v Greater London Council*,³ the court reaffirmed that such communications are inadmissible in evidence, as the privilege exists to promote frank and open negotiations between parties. The court emphasized that allowing these communications to be admitted would undermine the very purpose of the privilege by discouraging candid dialogue.

Common law jurisdictions also recognize a narrow exception to this rule, the “unambiguous impropriety” exception, which permits disclosure only in cases involving serious misconduct, such as blackmail or perjury, typically evidenced in writing or through recordings.⁴ As clarified in *Motorola*⁵ and upheld in *Ofulue*, this exception does not justify removing protection from an entire claim or selectively disclosing privileged material, as doing so would compromise the integrity of settlement discussions.⁶ Lord Walker cautioned against limiting the privilege unless “*justice clearly demands it*”,⁷ noting that such a restriction could deter parties from engaging in open and honest negotiation.

No differentiation should be made between party to-party negotiations and those conducted within mediation, as both fall under the protection of the without-prejudice rule.⁸ Furthermore, current legal authorities do not support the idea that “mediation privilege” is distinct from “without-

1. Secretary for Justice v Wong Lai Yin [2022] 1 HKLRD 258, paras. 41-42.

2. Azpetrol International Holdings B.V., Azpetrol Group B.V. and Azpetrol Oil Services Group B.V. v. Republic of Azerbaijan, ICSID Case No. ARB/06/15, Award, 8 September 2009, para. 20.

3. Rush & Tompkins Ltd v Greater London Council [1989] AC 1280.

4. Motorola Solutions Inc. and another company v. Hytera Communications Corp Ltd. and another company, [2021] EWCA Civ 11, [2021] QB 744, [2021] 4 All ER 960, [2021] 2 WLR 679, [2021] All ER (D) 94 (Jan), para. 57; The Pentagon Food Group Ltd and others v B Cadman Ltd [2024] EWHC 2513 (Comm), para. 62

5. Motorola v. Hytera.

6. Ofulue v Bossert [2009] 2 WLR 749 (HL), para. 89.

7. Ofulue v Bossert, para. 57.

8. Brown v. Rice, para. 15.

prejudice privilege”.¹ This consistency reinforces the importance of maintaining confidentiality throughout all phases of dispute resolution, from initial negotiations, through mediation or conciliation, and ultimately to arbitration.

4. State Secrets and Other Public Interest Immunities

Public interest immunity permits the government or other public authorities to withhold certain information from disclosure in legal proceedings where its release would be detrimental to the public interest. A related concept, deliberative or cabinet privilege, protects communications among high-level decision-makers involved in formulating and implementing government policy, including activities related to the drafting or enforcement of legislation. This form of protection is recognized under Article 9(2)(f) of the IBA Rules. As observed by the IBA Privilege Task Force, “*States consider public interest immunity to be such a crucial protection that it is mostly enacted through legislation or statute.*”²

In addressing this challenge, multiple tribunals have affirmed that the sole legitimate basis for a state’s refusal to produce documents is the protection of privileged or politically sensitive information, including state secrets, as recognized by the tribunal in *Pope and Talbot, Inc. v. Government of Canada*.³ Similarly, in *Philip Morris Asia Limited v. Commonwealth of Australia*, the Tribunal emphasized that while confidentiality remains central in commercial arbitration, investment arbitration often entails matters of public interest, which call for greater transparency.⁴ The tribunal underscored that this trend is mirrored in modern treaties, procedural rules, and tribunal decisions, with the order seeking to balance transparency with the need to protect due process rights, confidential information, and manageability in the arbitral process.⁵

1. The Pentagon Food Group, para. 60.

2. IBA Arbitration Committee Task Force on Privilege in International Arbitration, Report on Uniform Guidelines on Privilege in International Arbitration (2024), p. 11.

3. Biwater Gauff (Tanzania) Ltd. v. United Republic of Tanzania, ICSID Case No. ARB/05/22, Procedural Order No. 2, p. 9.

4. Philip Morris Asia Limited v. Commonwealth of Australia, PCA Case No. 2012-12, Procedural Order No. 5, p. 14, para. 51.

5. *Id.*

The protection of advice, recommendations, and opinions exchanged during pre-decision consultations is vital to preserving candid internal deliberations, free from the chilling effect of public scrutiny.¹ Accordingly, tribunals must strike a balance between ensuring transparency and safeguarding the public interest in maintaining the confidentiality of governmental decision-making processes.²

III. Evidentiary Challenges: Impact on Enforceability and Equality of Arms

As previously discussed, Article 9.4 of the IBA Rules identifies various forms of privilege that arbitral tribunals may consider, including legal advice privilege and without prejudice privilege. Given the inherently international character of arbitration, parties often come from jurisdictions with differing legal frameworks on confidentiality and privilege. These divergences can result in imbalances between parties with respect to evidentiary protections. Article 9.4(e) seeks to address this issue by emphasizing the need to ensure fairness and equality of treatment. Disparities may arise, for example, where one jurisdiction recognizes settlement privilege while another does not, or where attorney client privilege extends to in-house counsel in one legal system but is denied in another. In such instances, the unequal application of privilege rules could lead to unfairness, such as allowing one party to shield documents from disclosure while the other cannot.³

If a tribunal relies on illegally obtained evidence or evidence that breaches legal protections, such as attorney client privilege, the resulting award may be impaired and rendered unenforceable under Article V(1)(b) of the NYC. This provision allows for the non-recognition of an arbitral award where the arbitral procedure violated international standards of procedural fairness. Specifically, Article V(1)(b) provides for non-recognition where “[t]he party against whom the award is invoked was not given proper notice of the appointment of the arbitrator or of the arbitration proceedings or was otherwise unable to present his case.”. The provision reflects a uniform international standard of procedural fairness, which requires

1. Latam Hydro, para. 36.

2. *Id.*, para. 37.

3. IBA Rules Commentary 2020, p. 28.

equal treatment of the parties and a meaningful opportunity to be heard. It generally applies only in instances involving serious denials of basic procedural guarantees, such as failure to provide notice of the arbitration, denial of a reasonable opportunity to present evidence or arguments, or egregious misconduct by arbitrators. Article V(1)(b) does not extend to minor or technical procedural errors; it is reserved for material violations of fundamental rights.¹ Among other things, this standard can result in non-recognition of the parties' agreements on arbitral procedures, in rare cases where those agreements violate mandatory requirements of procedural fairness.² As such, a party seeking to challenge the validity of an award under Article V(1)(b) of the NYC on the grounds of the admissibility or inadmissibility of privileged or illegally obtained evidence faces a high threshold in establishing its claim.

Non-recognition of an arbitral award may also be sought under Article V(2)(b) of the New York Convention, which permits refusal of enforcement where doing so would be contrary to the public policy of the enforcing state. The public policy exception encompasses the fundamental principle of "equality of arms," which requires that no party be placed at a significant disadvantage or engage in conduct that unfairly hinders the opposing party's ability to prepare its case.³ Article 9 of the IBA Rules reinforces this principle by allowing each party to invoke the privilege standards of its home jurisdiction, provided that such invocation is made in good faith and that the same opportunity is afforded to the opposing party.⁴

In cases involving state parties, tribunals have stressed the prohibition of leveraging sovereign authority to unfairly influence arbitration. In *Libananco Holdings v. Turkey*, Turkey's misuse of police surveillance for arbitration purposes was condemned, with the tribunal emphasizing the

1. Born, Gary, §15.04[A][1].

2. *Id.*

3. *Dombo Beheer BV v The Netherlands*, European Court of Human Rights, Case No. 14448/88, Judgment of 27 October 1993, p. 15, para. 33; *Affaire Roccella v. Italy*, Case No. 4476/16, European Court of Human Rights, Judgment of 15 September 2023, para. 47; *Zenta Rutka v. Latvia*, Case No. 39045/02, European Court of Human Rights, Judgment of 29 January 2013, para. 32; *Pericv v. Croatia*, Case No. 34499/06, European Court of Human Rights, Judgment of 27 March 2008, paras. 17 & 19; *Laudon v. Germany*, Case No. 14635/03, European Court of Human Rights, Judgment of 26 April 2007, para. 56.

4. Ashford, Peter. *The IBA Rules on the Taking of Evidence in International Arbitration: A Guide*. Cambridge University Press, 2013., p. 164, para. 9-57.

“rule of separation,” which requires states to avoid conflating criminal investigative powers with evidence gathering for arbitration.¹ If a state exploits investigative powers to intercept privileged communications or gather evidence otherwise unavailable, tribunals, under Article 9.3 of the IBA Rules, may exclude such evidence to uphold procedural fairness and prevent undue advantage.²

If a claim is based on insufficient materiality, a court will not set aside or deem an award unenforceable unless it causes substantial injustice, as demonstrated by the principle that if the arbitration outcome would remain the same regardless of apparent bias or the exhibit’s relevance, no substantial injustice occurs, and courts have discretion not to set aside the award if satisfied that the outcome would remain unchanged.³ A careful balance must be struck between the principle of finality in arbitral awards and the imperative to protect parties from unfair conduct during the arbitration process. While the finality of awards is a cornerstone of arbitration, judicial intervention may be warranted in only the most exceptional cases. Such intervention is appropriate only where the tribunal’s conduct has deviated so fundamentally from the standards reasonably expected of an arbitral process that it amounts to a serious procedural irregularity.⁴ In these rare circumstances, where the arbitral process has gone so wrong that it undermines the integrity of the proceedings, justice demands that the error be corrected.⁵

1. The Right to be Heard

Challenges to arbitral awards may arise not only when tribunals admit evidence obtained unlawfully or under legal constraints, but also when they refuse to admit evidence that a party deems crucial to its case. A common ground for resisting enforcement under Article V(1)(b) of the

1. Libananco Holdings Co. Limited v. Republic of Turkey, ICSID Case No. ARB/06/8, Decision on Preliminary Issues, dated 23 June 2008, p. 38, para. 79 and p. 42.

2. O’Malley, p. 335, para. 9.122.

3. Firm H v. W, HCMP 298/2020, [2021] HKCFI 68 (H.K. CFI, Jan. 8, 2021), p. 3, para. 5; The Federal Republic of Nigeria v. Process & Industrial Developments Ltd. [2023] EWHC 2638 (Comm), pp. 110-111, paras. 507-508.

4. VRG Linhas Aéreas S.A. v. Varig Logística S.A., ICC Case No. 15372/JRF, Judgment of the Cayman Islands Court of Appeal, 11 August 2020, para. 174.

5. *Id.*

NYC is the alleged violation of the right to be heard. This issue may surface when a party claims that the tribunal's refusal to admit certain evidence effectively prevented it from presenting its case. In international arbitration, the proceedings typically begin with the claimant submitting a request for arbitration, followed by the respondent's counterarguments and supporting exhibits. However, if one of these documents is struck from the record on the grounds that it was obtained illegally, the affected party may be precluded from requesting its production by the opposing party. This is because Section 3.3 of the IBA Rules on the Taking of Evidence in International Arbitration prohibits requests for the production of evidence already in the possession of the requesting party. The exclusion of such evidence may hinder the tribunal's duty to seek the truth.¹ While procedural fairness and the legality of evidence must be respected, tribunals must also be cautious not to undermine a party's right to fully present its case, especially when the exclusion of key evidence could materially affect the outcome of the proceedings.

IV. Conclusion

When concluding an arbitration agreement, parties rarely establish explicit rules for the admission of evidence. Arbitration laws and institutional rules also provide minimal guidance, leaving tribunals to rely on soft law instruments such as the IBA Rules or the Prague Rules. This lack of binding standards complicates the tribunal's task of assessing privilege, admissibility, or procedural impediments, particularly in cases involving parties from diverse legal traditions. Tribunals often face the dilemma of admitting evidence with significant material value, even if procedurally or legally questionable, or risking a distorted factual record. As Professor Georges Abi-Saab cautioned in a dissenting opinion: *"Ignoring the existence and the relevance of such glaring evidence would be shutting itself off by an epistemic closure into a subjective make-believe world of its creation; a virtual reality in order to fend off probable objective reality; a legal comedy of errors on the theatre of the absurd, not to say travesty of justice."*²

In practice, arbitral awards are seldom invalidated or denied enforcement

1. ConocoPhillips Petrozuata B.V., ConocoPhillips Hamaca B.V. and ConocoPhillips Gulf of Paria B.V. v. Bolivarian Republic of Venezuela, ICSID Case No. ARB/07/30, Dissenting Opinion of Georges Abi-Saab (Decision on Respondent's Request for Reconsideration), 10 March 2014, paras. 66 and 67.

2. ConocoPhillips v. Venezuela, para. 67.

solely due to reliance on illegally obtained or privileged evidence. Under Article 34 of the UNCITRAL Model Law and Article V of the New York Convention, annulment or refusal requires a fundamental procedural violation,¹ such as a breach of the right to be heard [Article V(1)(b)] or a public policy infringement [Article V(2)(b)]. Courts rarely intervene unless the violation causes grave injustice, reflecting arbitration's strong pro-enforcement ethos. Tribunals must thus balance finality with fairness, ensuring equality of arms while navigating jurisdictional disparities in privilege and immunity. For instance, admitting evidence obtained through state surveillance (e.g., *Libananco v. Turkey*) may breach procedural fairness, whereas excluding critical evidence without justification could violate a party's right to present its case.

Ultimately, arbitration's legitimacy hinges on harmonizing flexibility with procedural integrity. Future developments should prioritize clearer guidelines on in-house counsel privileges, standardized approaches to public interest immunity, and safeguards against state overreach. Tribunals must remain vigilant in exercising evidentiary discretion, ensuring awards withstand scrutiny under the NYC while fostering trust in international dispute resolution.

Bibliography

All online sources cited in this article were last accessed on 30 April 2025. Readers are advised that the content of online sources may be subject to change or removal over time.

A. Articles and Books

1. Ashford, Peter. *The IBA Rules on the Taking of Evidence in International Arbitration: A Guide*. Cambridge University Press, 2013.
2. Born, Gary, *International Commercial Arbitration*, 3rd ed. The Netherlands: Kluwer Law International, 2021.
3. Brown, Liam. 'The Justification of Legal Professional Privilege When the Client Is the State' (2010).

1. *Enron Creditors Recovery Corporation (formerly Enron Corporation) and Ponderosa Assets, L.P. v. Argentine Republic*, ICSID Case No. ARB/01/3, Decision on the Application for Annulment of the Argentine Republic, 30 July 2010, para. 178.

4. Cordero-Moss, G. *International Commercial Contracts: Contract Terms, Applicable Law and Arbitration*. Cambridge University Press, 2024.
5. Jansen, René. *Legal Privilege and Transnational Evidence Taking. A Comparative Study on Cross-Border Disclosure, Evidence-Shopping and Legal Privilege*. 2022.
6. Kazazi, Mojtaba. *Burden of Proof and Related Issues: A Study of Evidence Before International Tribunals*. 1996.
7. Mosk, Richard M., and Tom Ginsburg. "Evidentiary Privileges in International Arbitration." *The International and Comparative Law Quarterly*, vol. 50, no. 2, Apr. 2001.
8. O'Malley, Nathan D. *Rules of Evidence in International Arbitration: An Annotated Guide*, Second Edition. 2019.
9. Schreuer, Christoph H., et al. (eds.) *Schreuer's Commentary on the ICSID Convention: A Commentary on the Convention on the Settlement of Investment Disputes between States and Nationals of Other States*. 3rd ed. Cambridge University Press, 2022.
10. *Commentary on the revised text of the 2020 IBA Rules on the Taking of Evidence in International Arbitration*. January 2021.
11. *Arbitration Law Monthly*, Vol. 3, No. 5 (summarizing *Bulfracht (Cyprus) Ltd v Boneset Shipping Co Ltd (The MV Pamphilos)* [2002] EWHC 2292 (Comm)).

B. Court Decisions or Arbitral Awards

1. *Affaire Roccella v. Italy*, Case No. 4476/16, European Court of Human Rights, Judgment of 15 September 2023. Available at: (<https://hudoc.echr.coe.int/eng#%7B%22languageisocode%22:%5B%22FRE%22%5D,%22appno%22:%5B%2244764/16%22%5D,%22documentcollectionid%22:%5B%22CHAMBER%22%5D,%22itemid%22:%5B%22001-225226%22%5D%7D>).
2. *Akzo Nobel Chemicals Ltd and Akros Chemicals Ltd v. Commission of the European Communities*, Joined Cases T-125/03 and T-253/03, Judgment of the Court of First Instance (17 September 2007).
3. *AM & S Europe Limited v. Commission of the European Communities*, Case 155/79, CJEU Judgment (4 February 1981).
4. *Avonwick Holdings Ltd v Webinvest Ltd & another* [2014] EWCA Civ 1436.
5. *Axos Capital GmbH v. Republic of Kosovo*, ICSID Case No.

- ARB/15/22, Procedural Order No. 2 (6 March 2017).
6. Azpetrol International Holdings B.V. et al. v. Republic of Azerbaijan, ICSID Case No. ARB/06/15, Award (8 September 2009).
 7. Biwater Gauff (Tanzania) Ltd. v. United Republic of Tanzania, ICSID Case No. ARB/05/22, Procedural Order No. 2.
 8. Brown v. Rice [2007] EWHC 625 (Ch).
 9. Caratube International Oil Company LLP et al. v. Republic of Kazakhstan, ICSID Case No. ARB/13/13, Award (27 September 2017).
 10. Carter v Northmore Hale Davy & Leake (1995) 183 CLR 121.
 11. Civil Aviation Authority v. Jet2.com Limited [2020] EWCA Civ 35.
 12. ConocoPhillips Petrozuata B.V. et al. v. Bolivarian Republic of Venezuela, ICSID Case No. ARB/07/30, Dissenting Opinion of Georges Abi-Saab (10 March 2014). Available at: (https://jsumundi.com/fr/document/opinion/en-conocophillips-petrozuata-b-v-conocophillips-hamaca-b-v-and-conocophillips-gulf-of-paria-b-v-v-bolivarian-republic-of-venezuela-dissenting-opinion-of-georges-abi-saab-decision-on-respondents-request-for-reconsideration-monday-10th-march-2014#opinion_59).
 13. Corfu Channel case (UK v. Albania), ICJ Judgment (9 April 1949).
 14. Doca Company v. Westinghouse Electric Company, LLC, Civil No. 04-1951 (W.D. Pa.), Memorandum Opinion (ECF No. 210 and 224).
 15. Dombo Beheer BV v The Netherlands, ECHR Case No. 14448/88, Judgment (27 October 1993). Available at: (<https://hudoc.echr.coe.int/eng#%7B%22itemid%22:%5B%22001-57850%22%5D%7D>})EDF (Services) Ltd v Romania, ICSID Case No. ARB/05/13, Procedural Order No. 3 (29 August 2008).
 16. Enron Creditors Recovery Corporation et al. v. Argentine Republic, ICSID Case No. ARB/01/3, Decision on Annulment (30 July 2010).
 17. F SCS and Ordre des avocats du barreau de Luxembourg v. Administration des contributions directes, ECJ Case C-432/23, Judgment (26 September 2024).
 18. Federal Republic of Nigeria v. Process & Industrial Developments Ltd. [2023] EWHC 2638 (Comm).
 19. Firm H v. W, HCMP 298/2020, [2021] HKCFI 68.
 20. Gerald International Limited v. Republic of Sierra Leone, ICSID Case No. ARB/19/31, Procedural Order No. 1 (29 May 2020).

21. Glamis Gold Ltd. v. United States of America, Ad Hoc Arbitration, Decision on Objections to Document Production (20 July 2005).
22. Holman v Johnson (1775) 1 Cowp 341.
23. In re Grand Jury, 23 F.4th 1088 (9th Cir. 2021).
24. Latam Hydro LLC et al. v. Republic of Peru, ICSID Case No. ARB/19/28, Procedural Order No. 4 (3 May 2021).
25. Laudon v. Germany, ECHR Case No. 14635/03, Judgment (26 April 2007). Available at: (<https://hudoc.echr.coe.int/eng#%7B%22languageisocode%22:%5B%22ENG%22%5D,%22appno%22:%5B%2214635/03%22%5D,%22documentcollectionid%22:%5B%22CHAMBER%22%5D,%22itemid%22:%5B%22001-80308%22%5D%7D>).
26. Levis and Levis v. Federal Republic of Germany, Arbitral Commission on Property, Rights and Interests in Germany (9 June 1959).
27. Libananco Holdings Co. Limited v. Republic of Turkey, ICSID Case No. ARB/06/8, Decision on Preliminary Issues (23 June 2008).
28. Methanex Corp. v. United States of America, NAFTA/UNCITRAL, Final Award (3 August 2005).
29. Motorola Solutions Inc. v Hytera Communications Corp Ltd. [2021] EWCA Civ 11.
30. Ofulue v Bossert [2009] 2 WLR 749 (HL).
31. Pericv v. Croatia, ECHR Case No. 34499/06, Judgment (27 March 2008). Available at: ([https://hudoc.echr.coe.int/app/conversion/docx/?library=ECHR&id=001-85583&filename=CASE%20OF%20PERIC%20v.%20CROATIA.docx&logEvent=False](https://hudoc.echr.coe.int/app/conversion/docx/?library=ECHR&id=001-85583&filename=CASE%20OF%20PERIC%20v.%20CROATIA.docx&logEvent=False;));).
32. Philadelphia v. Westinghouse Electric Corp., 205 F. Supp. 830 (E.D. Pa. 1962).
33. Philip Morris Asia Limited v. Commonwealth of Australia, PCA Case No. 2012-12, Procedural Order No. 5.
34. Poben Consultants Ltd v Clearwater Bay Golf & Country Club [2019] 1 HKLRD 1110.
35. R (Prudential plc) v Special Commissioner of Income Tax [2013] UKSC 1.
36. Rush & Tompkins Ltd v Greater London Council [1989] AC 1280.
37. Secretary for Justice v Wong Lai Yin [2022] 1 HKLRD 258. Available at: (https://legalref.judiciary.hk/lrs/common/ju/ju_frame.jsp?DIS=141197&currpage=T).

38. *Suffolk (Mauritius) Limited et al. v. Portuguese Republic*, ICSID Case No. ARB/22/28, Procedural Order No. 1 (13 July 2023).
39. *The Pentagon Food Group Ltd et al. v B Cadman Ltd* [2024] EWHC 2513 (Comm).
40. *Upjohn Co. v. United States*, 449 U.S. 383 (1981). Available at: (<https://tile.loc.gov/storage-services/service/l1/usrep/usrep449/usrep449383/usrep449383.pdf>).
41. *VRG Linhas Aéreas S.A. v. Varig Logística S.A.*, ICC Case No. 15372/JRF, Cayman Islands Court of Appeal Judgment (11 August 2020).
42. *William A. Parker v. United Mexican States*, Mex.-US General Cl. Comm. Decision (31 March 1926).
43. *Zenta Rutka v. Latvia*, ECHR Case No. 39045/02, Judgment (29 January 2013). Available at: ([https://hudoc.echr.coe.int/fre#{%22itemid%22:\[%22001-116794%22\]}](https://hudoc.echr.coe.int/fre#{%22itemid%22:[%22001-116794%22]})).

CIP Katalogimi në botim BK Tiranë

Universiteti Luarasi

Justice, security and human rights : (ICJSHR-LFUL 2025) :
Tirana & online : proceedings of the international scientific
conference / Luarasi University, Faculty of Law. - Tiranë :
Kumi, 2026.

... f. ; ... cm.

ISBN 9789928825483

1.E drejta dhe legjislacioni 2.Konferenca
34 (062)