



Research Article

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A Fair Trial Perspective on Albanian Law No. 19/2016 “On Additional Measures for Public Security”: Aligning with European Human Rights Standards

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Abstract

This study critically assesses Albania's Law No. 19/2016 "On Additional Measures for Public Security" against the European Convention on Human Rights (ECHR), focusing on privacy and the right to a fair trial. Through comparative legal analysis, it juxtaposes Law No. 19/2016 with ECHR provisions and the European Court of Human Rights (ECtHR) jurisprudence, examining the law's alignment with human rights norms, especially regarding surveillance. The analysis uncovers substantial discrepancies, particularly in the law's approach to public surveillance and the protection of individual rights, indicating a need for significant legal reform in Albania. The paper proposes amendments to better align national legislation with ECHR standards, advocating for clearer surveillance regulations, enhanced privacy protections, and adherence to fair legal processes. It champions a balanced public security strategy that respects human dignity and freedom, aligning with European human rights principles.

Keywords: Privacy; Surveillance; Security cameras; Fair trial; Law

1. Introduction

The installation of security cameras in public spaces across Albania has ignited a debate among legal scholars, reflecting a deep division over the balancing act between individual privacy rights and the public interest. This contention touches on a pivotal issue: finding the right equilibrium between the

safeguarding of personal freedoms and the pursuit of collective security. As Benjamin Franklin famously stated,

*"Those who would give up essential liberty, to purchase a temporary safety, deserve neither liberty nor safety",*¹

A sentiment that resonates profoundly in the context of contemporary surveillance practices.

In 2016, Albania sought to address this challenge through the enactment of the "On additional measures for public security" law². This legislation aims to fortify public safety by enhancing surveillance measures and promoting increased collaboration between the police, businesses, and citizens. Such developments echo George Orwell's³ vision of a surveilled society as depicted in 1949, underscoring the tension between surveillance and the right to privacy.

This paper endeavors to dissect the intricacies of Albania's surveillance legislation⁴, scrutinizing its impact on privacy and public security. Our objective is to ascertain whether the legislation effectively balances these competing interests. By employing a comparative legal analysis that juxtaposes Albania's law with international human rights standards, particularly those established by the European Convention on Human Rights and the European Court of Human Rights' jurisprudence, we aim to identify legislative discrepancies and recommend adjustments to better align with these standards.

Our analysis seeks not only to evaluate Albania's legal framework in the era of digital surveillance but also to offer insights that could guide future legislative reforms. By integrating the critical perspective that Franklin's words offer, this paper contributes to the ongoing debate on privacy rights, aiming to chart a course towards a legal framework that harmonizes the need for public security with the imperative to protect fundamental human liberties.

Shortcomings, weak formulation, and misuse of this law can lead to violations of legal rules. Therefore, our legal analysis will focus on this aspect, and we will draft proposals for the reformulation of specific provisions of the law with the aim of providing solutions to these legal gaps.

2. State vs. Privacy: Analyzing Law No. 19/2016's ECHR Compliance

2.1 *The Conflict Between State Interests and Individual Privacy: Fair Trial as a Guarantee of Due Legal Process*

In the analyzed legal object, the unrestricted nature of the rights and powers granted not only to the law enforcement authority in the execution and use of data but also to private or public entities mandated by law for this process is easily observed. In connection with this, there is also the risk of data misuse as a result of expanding the user base of this data⁵. To ensure their management, the only

¹ Quoting Benjamin Franklin (drafter of the American Declaration of Independence).

² Accessed online on May 1, 2023, from the link:

https://www.asp.gov.al/wp-content/uploads/2022/12/LIGJI_19_2016_per_masat_shtese_te_sigurise_publike.pdf.

³ Orwell, G. (2008). 1984. Penguin Books. Chapter 1, 'Big Brother'.

⁴ Article 121, Criminal Code of the Republic of Albania:

The installation of devices serving for eavesdropping or recording of words or images, the eavesdropping, recording, or transmission of words, the fixation, recording, or transmission of images, as well as the storage for publication or the publication of such data exposing an aspect of a person's private life without their consent, constitutes a criminal offense and is punishable by a fine or imprisonment for up to two years.

⁵ Article 4, Law "On additional measures for public security":

Private entities obligated to take additional security measures.

The categories of subjects required to take additional security measures following the risk assessment conducted by the State Police are as follows:

guarantee specified is the law "On the Protection of Personal Data"⁶. The relationship between public interest and an individual's private life, in its entirety, should not be considered as a perfect balance that, a priori, and only because of the law, must ensure these balances at all times and for every individual in society. It is understandable that laws of this nature, during their implementation, aim for a significant purpose, such as enhancing the State Police's striking ability against individuals with criminal records. However, not every effect produced by the law will have positive effects on society as a whole. In this sense, even this approved law, despite its positive intent, does not exclude the possibility of intervening in the private lives of specific individuals in society. Therefore, when examining such reports related to an individual's personal life, the issue for discussion is not simply between the state on one side and society as a whole. This conflict should be considered as a real conflict between the state and the interests of some individuals who, nevertheless, are not excluded from their right to seek secure reports that may be denied by this law. However the issue is approached, the conflict is inevitable, and the essence of state policy should be to, through competitive elements, choose those that enable the achievement of the goal while minimizing the infringement on an individual's private life.

In this ongoing conflict, we have two opposing parties represented by *state officials* on one side, as representatives of the authority that must exercise for a legal purpose, and *the individual* whose interests are affected through the means used to achieve this goal.

This conflict manifests in three basic directions, which are:

- The absolutist direction, representing the unilateral prioritization of the aforementioned balances in favor of state interests in every case.
- The impartial direction, where interests start from equal positions, and conflict will arise based on the interest that is more powerful.
- The balanced direction, where, before considering which interests should prevail, there is a presumption (prior merits) in favor of one or the other party. Usually, the presumption is made in favor of individual interests, as they are specifically protected by conventions and the Constitution. Therefore, if the state's interest prevails in such a case, it means that this interest is very strong.

Referring to the above theory, it is always necessary to find an effective means to determine who will be given priority. The existence of the law is one aspect, but in our perspective, a mechanism is needed that has the role of interpreting the law in the conditions of justified claims of the parties. Better than any other authority, such a guarantee can be ensured through the provision of the right to appeal in the law⁷. In essence, this should constitute an additional guarantee, especially in the conditions of such a law where misuse due to the expansion of the data administration base and their misuse is possible.

Subjects with their headquarters and workspaces engaged in commercial activities in places exposed to increased security risks.

Subjects with over 50 employees and/or visitors who continuously occupy or frequent an open or enclosed space simultaneously.

Subjects engaging in commercial activities between 23:00 – 06:00.

Subjects with an annual turnover exceeding 10 million lekë.

Subjects involved in gambling activities.

Subjects managing open or enclosed spaces for children, such as schools, play areas, and assessed by the State Police as an increased risk source.

Subjects conducting public transportation activities for passengers, students, and scholars, as well as the transport of monetary values and hazardous goods.

⁶ Accessed online on May 1, 2023, from the link:

https://www.idp.al/wp-content/uploads/2020/03/Ligj_Nr.9887_dat%C3%AB_10.3.2008_i_ndryshuar.pdf.

⁷ Even though the right to appeal is a constitutional right, its inclusion in the provisions would further enrich this law.

If we refer to legislation on legal interceptions, it is sufficient to mention that in only six articles dealing with procedural wiretapping in the Criminal Procedure Code⁸, three of them include additional appeal guarantees in court. Beyond the guarantee regarding the role played by the court in the entire process, starting from issuing the authorization, implementing procedures, and up to the storage, use, and administration of data obtained from wiretapping. For preventive wiretapping, where the court's competencies in the case of procedural wiretapping are transferred to a similar institution, such as the General Prosecutor.

Not coincidentally, we cited both of these legal interceptions⁹, which, in terms of the significance of data collection, have a much higher percentage of achieving the intended purpose compared to the results of recordings through security cameras. This means that the possibilities of animating absolutist balances in favor of the opposite interest of the individual are incomparable between the results that this process will produce and those of both legal interceptions. It is necessary for such an element to be anticipated in the law. Anticipation of the right to appeal in general, and specifically appealing against the use of obtained data, would reduce the risk of unauthorized interventions in this data. The object of the appeal should be a request for the destruction of personal data when an individual realizes that they have been filmed by a security camera, and they are convinced that the recording against them has nothing to do with actions leading toward a criminal goal, the sole reason for such a process. Not only should the obligation to appeal be specified, but the law should also precisely determine the deadline for review, decision-making, and destruction of materials produced against the individual. Delays in legal procedures can lead to degradation effects on human personality with irreversible consequences for the individual's private life. Similarly, the law should provide strictly defined deadlines for the retention of data in general and those not related to the purpose of the process in particular, which in any case should be the subject of judicial appeal.

Even in the only provision¹⁰ that the law envisages involving the court in such a delicate process, it is related to the right to appeal against penalties imposed on subjects and the methods of its appeal. This is incomprehensible, considering that for the drafters and approvers of the law, the manner in which a financial penalty should be imposed and executed has more value than the violation of an individual's private life, this time through a controversial law.

2.2 Law No. 19/2016¹¹ vs. ECHR¹² : Critical Analysis

The introduction of Law No. 19/2016 in Albania has sparked a significant debate regarding the balance between public security and the protection of individual rights to privacy and a fair trial. This legal analysis seeks to evaluate the compatibility of specific provisions of the law with the European Convention on Human Rights (ECHR), to provide context on how such issues are approached at a European level.

*Comparison with ECHR Standards:

a) Right to Privacy (Article 8 of the ECHR):

Law No. 19/2016 allows for extensive surveillance and data collection in public spaces to

⁸ Articles 221-226, *Criminal Procedure Code of the Republic of Albania*. Accessed online on May 2, 2023, at the link: https://www.pp.gov.al/rc/doc/kodi_i_procedures_penale_28_07_2017_1367_5285.pdf.

⁹ *Procedural wiretapping and preventive wiretapping*.

¹⁰ Art. 16, *Law on Additional Public Security Measures*. Accessed online on May 1, 2023, at the link:

https://www.asp.gov.al/wp-content/uploads/2022/12/LIGJI_19_2016_per_masat_shtese_te_sigurise_publike.pdf.

¹¹ Law "On additional measures for public security". Accessed online on May 1, 2023, at the link: [Ligji_nr_19-2016_PER_MASAT_SHTESE_TE_SIGURISE_PUBLIKE.pdf](https://www.ligji.nr_19-2016_PER_MASAT_SHTESE_TE_SIGURISE_PUBLIKE.pdf) (krimizjedhor.com).

¹² *European Convention on Human Rights*. Accessed online on May 1, 2023, at the link: [European Convention on Human Rights \(coe.int\)](https://www.echr.coe.int/).

enhance public security. However, Article 8¹³ of the ECHR mandates that any interference with the right to privacy must be "in accordance with the law" and "necessary in a democratic society." The ECtHR in *Segerstedt-Wiberg v. Sweden* emphasized the need for such laws to have adequate safeguards against abuse, ensuring they are proportionate and targeted.

Law No. 19/2016's broad authorization of surveillance lacks specificity regarding the circumstances under which surveillance is permitted and does not provide clear safeguards against abuse, potentially contravening the proportionality and necessity criteria established by Article 8 of the ECHR and interpreted by the ECtHR.

b) Fair Trial (Article 6¹⁴ of the ECHR):

The use of data obtained through surveillance under Law No. 19/2016 in criminal proceedings raises concerns about the right to a fair trial as guaranteed by Article 6 of the ECHR. The ECtHR has consistently held that evidence must be obtained in a manner that respects rights under the Convention and allows for adequate and effective scrutiny by the defense.

Without clear guidelines on how surveillance data is to be used in trials and lacking provisions for defendants to challenge the admissibility of such evidence, Law No. 19/2016 could undermine the fairness of trials, diverging from the standards set forth by Article 6 of the ECHR.

c) Protection of Data (General Principles of the ECtHR Jurisprudence):

In *Segerstedt-Wiberg and Others v. Sweden*, the Court highlighted the importance of protecting data obtained through surveillance from misuse or arbitrary access. The judgment stressed the need for legislation to provide clear rules on data handling, storage, access, and destruction to protect individuals' privacy rights.

The *Segerstedt-Wiberg and Others v. Sweden* case¹⁵, adjudicated by the European Court of

¹³ Article 8 – Right to respect for private and family life

1. Everyone has the right to respect for his private and family life, his home and his correspondence.
2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

¹⁴ ARTICLE 6 - Right to a fair trial :

1. In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.
2. Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law.
3. Everyone charged with a criminal offence has the following minimum rights:
to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him;
to have adequate time and facilities for the preparation of his defence;
to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require;
to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;
to have the free assistance of an interpreter if he cannot understand or speak the language used in court.

¹⁵ ECtHR *Segerstedt-Wiberg and Others v. Sweden* case. Accessed online on May 1, 2023, at the link: https://www.bing.com/ck/a?!&p=cf4e8a626ce1b27cJmltdHM9MTcwOTk0MjQwMjZpZD0zMGFmMjIxOC0zNTIzLTUzNjctMjQ3OC0zMzliMzRlNTYyZTUmaW5zaWQ9NTE4Ng&ptm=3&ver=2&hsh=3&fclid=30af2218-3523-6367-2478-339b34e562e5&psq=Segerstedt-Wiberg+and+Others+v.+Sweden&u=a1aHR0cHM6Ly9odWRvYy5lY2hyLmNvZS5pbmQvYXBwL2Nvb3ZlcnNpb24vZG9jeC8_bGlicmFyeT1FQ0hSjmlkPTAwMS03NTU5MSZmaWxlbnRlZT1DQVNFJTlW7TOYIMjBTRUdFUINURURULVdJQkYSRyUyMEFORCUyME9USEVSVUyUyMHYyJTlWU1dFREVOlMvRvY3gmbG9nRXZlbnQ9RmFsc2U&ntb=1

Human Rights (ECtHR) in 2006, stands as a seminal examination of state surveillance practices in light of the European Convention on Human Rights (ECHR), particularly Article 8, which safeguards the right to respect for private and family life. The case was brought forth by several applicants, including journalists and a university professor, who alleged that the secret police in Sweden had been systematically collecting and storing personal information about them without apparent justification, thereby infringing on their privacy rights.

The ECtHR's decision focused on determining whether Sweden's surveillance and data collection practices were "in accordance with the law" and necessary "in a democratic society" for the protection of national security or public safety, the prevention of disorder or crime, or the protection of the rights and freedoms of others. A critical aspect of this case was the Court's analysis of the legal framework governing surveillance in Sweden, its accessibility to the public, and the foreseeability of its application.

The Court found that while the collection and storage of information by the security services could be considered as "interference" with the applicants' right to private life, such interference was not "in accordance with the law" as required by Article 8 of the ECHR. The Court highlighted deficiencies in the Swedish legal system, including the lack of clarity in the law's provisions, the absence of sufficient safeguards against abuse, and the inadequate legal protection against arbitrary collection and storage of personal data.

Ultimately, the ECtHR ruled in favor of the applicants, concluding that Sweden had violated Article 8 of the ECHR. This judgment underscored the importance of having precise, clear, and accessible legal regulations governing state surveillance, accompanied by adequate and effective safeguards to prevent abuses, thus reinforcing the necessity of balancing state security needs with individuals' privacy rights in a democratic society.

Albanian Law No. 19/2016 provides limited detail on the mechanisms for protecting the data collected through surveillance, including its storage, access, and eventual deletion. This omission could result in practices that do not align with the protective principles outlined by the ECtHR, thereby risking violation of Article 8 of the ECHR.

The analysis reveals significant areas where Law No. 19/2016 diverges from the human rights protections enshrined in the ECHR and elucidated by the ECtHR. To align with European standards, it is recommended that the Albanian legislature:

- Introduce clear and precise criteria for surveillance measures, ensuring they are necessary, proportionate, and accompanied by strong safeguards against abuse;
- Establish explicit guidelines for the use of surveillance data in legal proceedings, guaranteeing the right to a fair trial;
- Implement detailed provisions for the protection, storage, access, and destruction of data, in line with the principles of privacy protection emphasized by the ECtHR.

3. Legal Guarantee of the Fair Trial

Although the court serves as a guarantee for upholding the law, the overall assurance of the legal process through the content of its provisions is undoubtedly paramount in a legal system. The way the provisions of this law are formulated does not create such assurance; at least, this is the preliminary perception that we definitely want to analyze more deeply.

The jurisprudence of the European Court of Human Rights¹⁶ is guided by fundamental principles in judging¹⁷ interventions in the private life of individuals, primarily referring to concepts such as compliance with domestic law and the necessity of intervention in a democratic society.

¹⁶ Further, ECHR.

¹⁷ Article 6, ECHR. Retrieved online on May 2, 2023, from European Convention on Human Rights (coe.int)

3.1 Intervention in the private life of individuals must be in accordance with the law

The concept of the expression "within the limits prescribed by law," as a requirement stemming from Article 8 of the European Convention on Human Rights, primarily demands that interference in private life be based on domestic law. Regarding the concept of the existence of the law in the specific case of interference, jurisprudence emphasizes that,

*"... the law must be efficiently clear in its terms to give individuals adequate guidance as to the circumstances and conditions under which public authorities are entitled to use such covert measure..."*¹⁸.

However, even though formulated in this way, such a requirement is not sufficient to justify intervention: the law in question¹⁹ must be available to the public, and its consequences must be foreseeable. If the first requirement is fulfilled through the publication of the law, where the public has full access to it, predictability in the context of covert recordings of citizens regarding criminal activity may not be the same in different aspects of life. The law does not create such concepts. For example, it does not specify in particular terms how far the reach of surveillance cameras in public and private spaces should extend, with the aim that the presence or performance of a specific action by them is not considered to be against the public interest²⁰. In this sense, the law does not provide any provision for determining the extent of public behavior, as well as the conditions under which law enforcement authorities are authorized to use such covert and potentially risky interventions.

Similarly, the provisions do not clearly anticipate the consequences of such intervention through the law, in the sense that the produced recordings may or may not serve as means of securing evidence or as evidence itself in a criminal process. In the conditions of this unpredictability, the citizen is unable to assess whether their presence in the respective recording is an intrusion into their private life, whether it is punishable under criminal legislation or not, and, worse still, whether the data collected about them, in cases where they do not constitute a criminal act, can be used as evidence for administratively punishable actions or not. In simpler terms, can the data collected from this process be used as evidence for various offenses?

To simplify further, can a recording obtained from a security camera, which shows a vehicle parked against the vertical traffic signs placed on a road axis, be used as evidence for a traffic violation of the Traffic Code? Can sanctions be imposed on the person who committed this violation?

The same can be said in the case where data records show that tobacco has been consumed in a specific location; will the responsibility of the owner and the consumer be punishable according to the relevant law? The answers to these rhetorical questions are not provided in this law, meaning that the predictability of the law does not clearly indicate the conditions, circumstances, or appropriate criteria for making these recordings. The limits of discretion granted to any competent authority are not clearly defined enough to provide adequate protection against arbitrary interventions to the individual. In assessing the predictability of the law, *ECHR also takes into account administrative instructions and practices that do not have the status of substantive law, as long as those interested are aware of their content*²¹.

Similarly, in a rather unclear and contradictory manner, concerning the individual interests of a

¹⁸ *Malone v. United Kingdom (1984) 7 EHRR 14, Series A, No.82, § 67. Retrieved online on June 1, 2023, from <https://hudoc.echr.coe.int/rus#%7B%22itemid%22:%5B%22001-57533%22%5D%7D>.*

¹⁹ *Law 19/2016 "On additional measures for public security."*

²⁰ *We believe that the law should be enriched with such detailed regulations, in compliance with the Manual of the Commissioner for the Right to Information and Personal Data Protection (KMDHPDI), "Protection of Personal Data," as well as other applicable legal acts. Accessed online on June 1, 2023, at the link: https://www.idp.al/wp-content/uploads/2016/11/manual_per_median_dhe_mbrojtjen_e_te_dhenave_personale.pdf*

²¹ *Silver and Others v. United Kingdom (1983) 5 EHRR 347, Series A, No. 61, § 88-89.*

private subject versus the public interest, this law presents both the removal and the right to be re-equipped with "security certification."

It is stated that the "security certification" is removed in these cases²²:

- a) When the additional security measures specified in this law are not met;
- b) Upon the request of the subject itself, when there is a change in the object of the activity, and the new object does not entail obligations according to this law, or when the subject closes the activity;
- c) When the subject is fined twice within 1 calendar year.

Below continues with "...The subject, whose security certification has been revoked, has the right to apply for reissuance of the 'Security Certification' after fulfilling the additional security measures specified in this law."²³

Analyzing these descriptions of the above-mentioned provisions in the criminal aspect, the contradiction between the obligation regarding the subject's right to additional security measures is easily observed. The law's spirit analysis does not create the idea that subjects are so interested in installing security cameras that even after being fined and their security certification revoked, they should not "worry" because the right to reissue exists. We believe that the obligation to equip oneself with a security certificate contradicts the subject's "right" to reissue it. A legal requirement against a subject cannot simultaneously be an obligation and a right, as repeated indefinitely would lead to abuse. The concept of the birth of a right through the law exists in cases where the action to be taken is determined as the will of the subject. But in the specific case, when the law provides reciprocal obligations towards subjects and the State Police, obligations that are stipulated by law regarding taking measures for the installation of security cameras by the subject²⁴ and the reciprocal obligation that the police have to equip with security certification²⁵ when verifying the fulfillment of this obligation, we believe that there is no room for exercising a "right."

Therefore, the conclusion is that a qualitative regulation of the aforementioned provisions is needed, which is based on the principle of the obligation that the subject must have to improve the situation, avoiding or reducing fines (which are determined in the sanctions chapter of this law).

3.2 *Invasion of Privacy as a Necessity in a Democratic Society*²⁶

The necessity of intruding into an individual's privacy in a democratic society encapsulates more than one concept; it primarily reflects the principle of the proportionality of intervention. From the jurisprudence of the ECtHR, the concept arises that national authorities, in each case, have a margin of appreciation whose goal depends not only on the nature of the legitimate purpose pursued but also on the specific nature of the intervention for each particular case.

However, in every instance, the state's interest in maintaining public order and peace must be balanced with the intensity of the intrusion and with respect for an individual's private life. The necessity in a democratic society inevitably accompanies phenomena of violating privacy, even through the creation of special data archives, where public intervention is impossible, while the state entity can use this data for the needs of a democratic society.

Therefore, the assessment margin available to the state in choosing means to achieve the legitimate goal of protecting order from criminal acts must necessarily be accompanied by legal

²² Article 17, Law "On Additional Public Security Measures."

²³ Article 18, Law "On Additional Public Security Measures."

²⁴ Articles 4, 5 and 6, Law "On Additional Public Security Measures."

²⁵ Article 9, Law "On Additional Public Security Measures."

²⁶ A guide to the implementation of Article 8 of the European Convention on Human Rights, Directorate General of Human Rights, Council of Europe. Accessed online on June 1, 2023, at the link: [Refworld | The right to respect for private and family life: A guide to the implementation of Article 8 of the European convention on Human Rights](#)

provisions for this purpose. On the other hand, given that the secret surveillance system through additional security measures carries the risk of disrupting or destroying democracy, and moreover, this is done in the name of claiming to protect it, there is a necessity for the existence of appropriate and effective legal guarantees against abuse. In the relevant law, there is a lack of legal guarantees expressed through provisions. The general manner of expression in these provisions, without specific competencies and authorities, creates the conditions for ensuring unrestricted discretion towards violating private life. Thus, as early as in its first article²⁷, where it states

"...the purpose of this law is to create legal conditions to ensure cooperation between the State Police and public and private entities, whose activities pose an increased risk to security, with the aim of protecting life, property, and ensuring public safety..."

The concepts of life, property, and public safety are overly broad and unrestricted to enable a legal framework for this definition. The law should specify specific parameters of intervention, which in each case would be proportionate to the actual intrusion.

To further clarify our concept regarding what we referred to above, we are once again referencing a provision²⁸, precisely the one through which the obligation is defined:

"Entities under this law make available audio-visual materials or other data obtained through the use of additional security measures, upon request by the State Police or judicial authorities, solely for investigative purposes, based on the Code of Criminal Procedure and existing legislation."

In a way, the purpose of making the obtained materials available to the authorities, as authorized by this provision based on the Code of Criminal Procedure, can be understood. However, it must be considered entirely illegitimate and in blatant contradiction with the principle of the state's functioning through the law²⁹, the last part of this provision referring to the phrase

"... and existing legislation."

What space does this provision allow state authorities to infringe on an individual's rights in a democratic society, and what proportional relationship do these spaces create under such unrestricted discretion? How effective is this measure in the existing legislation, and does this imply that the state doesn't have to "worry" if it fails in an attempt to qualify a criminal fact, as there are many other possibilities for its unfounded suspicion to find legal ground? This does not imply a lack of democratization in society but rather an abuse of the rule of law, this time entirely supported by law³⁰. Certainly, such a provision cannot exist in the legal system of a rule of law state.

3.3 *The Use of Data Solely by the Police Authority, a Guarantee of a Fair Legal Process*

Even from the perspective of managing acquired data, the expansion of the responsible individuals' base for administering this data³¹ reflects a direct alignment with the guarantees that the law must provide. In comparison to any other legal provisions, this law creates usage spaces with limits that extend towards infinity. As such, the vector of privacy abuse has only one direction, that of

²⁷ Law "On Additional Public Security Measures."

²⁸ Art. 13, Law "On Additional Public Security Measures."

²⁹ Art. 4, Constitution of the Republic of Albania.

Accessed online on May 4, 2023, at the link: <https://www.pp.gov.al/Legjislacioni/Kushtetuta/>.

³⁰ President of the Albanian Republic has conducted a detailed legal analysis concerning this issue, as indicated in the decree for the reconsideration of this law in the Parliament. For more detailed information, please visit the link: <http://staging.parlament.al/Files/LigjeRishqyrtim/Dekret26.pdf>

³¹ Read as "users," as access to the obtained data does not provide the possibility of limiting its use.

intervention in the private life of the citizen. At least in principle, the possibility of intervention in the database (archive) of data is proportionate to the number of subjects who have the possibility of intervention. This means that the broader the base of authorities that the law authorizes to intervene in personal data, the greater the potential risk of misuse of this data.

Every registration process aims to ultimately secure a database that should result in a determinant effect on further use, in line with the purpose for which the entire process is constructed. Even the anticipated data obtained from surveillance cameras, as well as in the case of using data acquired from procedural and preventive surveillance, will be subject to the same purpose of use. This purpose is the enhancement of the efficiency of the State Police in detecting and preventing criminal activities. In essence, nothing changes; only the procedures are different. The moment of using the obtained results is even more decisive in this entire process.

To ensure success in their use, in line with the intended purpose, it is essential that the acquired data not only be legally justified but also of *high quality*. Such a requirement is inseparably linked to the professionalism of the individuals responsible for the overall functioning of the process. This professionalism encompasses not only the functional treatment from a technical perspective but also the assurance of the quality of the obtained material. Managing such high-tech electronic devices necessarily requires a qualified human infrastructure, not only in terms of general training but primarily in the scientific knowledge of this technology.

In the case of collecting and processing data in procedural and preventive surveillance, the selection of individuals working with these devices is based on precisely defined legal criteria and on the basis of high professional integrity, training, and security certification. In contrast, the situation in the application of the provisions of the law under consideration is entirely different when amateur individuals are assigned the responsibility for administration from a human resources perspective. It is unacceptable that a law, in the direction of collecting, preserving, and delivering data obtained from such a sensitive process concerning an individual's private life, allows the administration to be assigned to completely amateur personnel, creating ample opportunities for manipulating data acquired from the process itself.

We do not exaggerate at all when we say that data collected as a product of this process will lead to indisputable situations of extortion through illegal trafficking and corruption with personal data of the individual. Such a conclusion gains even more significance in today's conditions when, due to the rapid development of electronic technology, piracy in the form of *hacking* exists at every stage of the implementation of this technology. Therefore, the administration of advancing technology must clearly be a concern and an imperative for society, which should react and not allow its freedom to fall into anonymous hands.

The situation seems to have possible solutions; however, there is a lack of necessary trustworthiness in how information is handled³² in terms of legal security. On the other hand, the law "On the Protection of Personal Data" envisages the obligation of delegation for the use of personal data for investigative purposes to specified authorities. It states,

"The processing of personal data, determined within the framework of activities for the prevention and prosecution of criminal offenses against public order and other offenses in the field of criminal law, as well as in the field of national defense and security, is carried out by the official authorities specified by law."³³

Therefore, we believe it is more appropriate for the law governing cameras to specify the processing of this data according to the "State Police" law, as the legislature has authorized this body

³² In accordance with the "Law on the Protection of Personal Data."

³³ Article 6/2, Law "On the Protection of Personal Data." Retrieved online on May 3, 2023, from https://www.idp.al/wp-content/uploads/2020/03/Ligj_Nr.9887_dat%C3%AB_10.3.2008_i_ndryshuar.pdf.

to process not only this data but also any other information needed for investigative, preventive, and criminal prosecution purposes³⁴.

However, the delegation that the law "On additional measures for public security" grants for the administration of data, for their processing according to the law "On the protection of personal data," also poses another legal obstacle. This obstacle may lead to the inability to make appropriate references in the processing and administration of data that authorized entities need to perform such an action. Therefore, to have access to the collection of data, you must possess an authority recognized by a specific law. Thus, the national civil status registry becomes possible to establish through the law "On civil status," which clearly defines that,

"... the administration of the National Civil Status Registry is done by the General Directorate of Civil Status. The update of registry data is carried out by the employees of the civil status service in the offices of civil status in municipalities/municipal units/communes..."³⁵.

Similarly, the national registry of data for lawyers in the Republic of Albania is established by the National Chamber of Advocacy and local chambers of advocacy based on the law "On the practice of the legal profession in the Republic of Albania." This law states,

"...the National Chamber of Advocacy and the Ministry of Justice keep the registry of all lawyers and administer the relevant documentation related to the right to practice the legal profession."³⁶.

We can continue endlessly with such legal specifications where the law mandates the compulsory collection of personal data, always accompanied by the clearly defined corresponding authority, for the collection, retention, and processing of this data. So, first and foremost, a necessary and sufficient condition for creating a data registry is that the authority assigned for this purpose must have obtained oversight through a specific law over a specific category of the community within the jurisdiction of the Albanian state. Secondly, these data must be organized through an archiving system:

"...This law applies to the processing of personal data, whether in full or in part, through automated means, as well as the processing of personal data held in an archiving system through other means..."³⁷.

The effects of the "Law on additional measures for public security" extend to the extent of the right granted by this law for the collection of this data. However, none of its provisions foresee the right of individuals to control and organize the data obtained from the process, even through reference to other provisions. Legally, the processing of data is left within the competence of no one, and as such, there cannot be an archiving system for this data. This means that, practically, this data system does not exist.

However, there is another legal obstacle stemming from the "Law on the Protection of Personal Data," related to the specification of individuals who must play the role of data administrators. The law states that a "controller" is any natural or legal person, public authority, agency, or another entity that, alone or in collaboration with others, holds, processes, administers, archives, and, for this

³⁴ Article 87, Law "On the State Police." Retrieved online on May 3, 2023, from

https://mb.gov.al/wp-content/uploads/2018/02/LIGJI_I_POLICISE_SE_SHTETIT_-2014.pdf.

³⁵ Article 33, Law "On Civil Status." Retrieved online on May 4, 2023, from <https://mb.gov.al/wp-content/uploads/2021/01/Ligji-per-Gjendjen-Civile-i-NDRYSHUAR.pdf>.

³⁶ Article 34, Law "On the Legal Profession in the Republic of Albania." Retrieved online on May 4, 2023, from <https://www.drejtësia.gov.al/wp-content/uploads/2019/02/LIGJ-Nr.-55-2018-date-23.7.2018.pdf>.

³⁷ Article 4, Law "On the Protection of Personal Data." Retrieved online on May 3, 2023, from https://www.idp.al/wp-content/uploads/2020/03/Ligj_Nr.9887_dat%C3%AB_10.3.2008_i_ndryshuar.pdf.

reason, controls personal data³⁸. This implies that in the law governing surveillance with cameras, all entities responsible for managing personal data under this law have the simultaneous right to process, administer, archive, and control (the right to control is crucial to emphasize) personal data. Such a right directly arises from the provisions of this law, stating that,

"...The processing of personal data obtained from the security systems envisaged in this law is in accordance with the legislation in force for the protection of personal data."³⁹

Therefore, the broader the authority's base given by the law to intervene in personal data, the greater the potential risk of misuse, abuse, buying and selling, and exploitation of this data.

We believe it is essential to address another issue in connection with the above argument. The law "On the Protection of Personal Data," both in spirit and in detail, considers the legal regulation of the collection, registration, processing, and administration of data in documentary form, in the real sense of the document concept. These data are mainly related to identifying information and individual data regarding a specific professional, scientific, or any other type of formation, or due to data required by a specific law. Until now, neither this law nor the "Law on the Protection of Personal Data" foresee in any case the administration of data obtained through a permanent registration system that does not create a database. Preserving data obtained from security cameras in relation to the requirements of the "Law on the Protection of Personal Data" would have inevitable consequences concerning the specific informal nature of this data. In the context of the argument we need to present, we must clarify another technical element, according to which specialized professionals in the field of recording technology through cameras, the application of which is fundamental to this entire process, are able to acquire recorded data in the DVR⁴⁰ of this system⁴¹ without physically interacting with the system installed according to legal requirements. This means that determining the data storage method should also consider external, abusive interference factors and the risk of trafficking⁴² this data. This would not only lead to confusion regarding data usage but would also create real difficulties in identifying the person responsible for the information flow in a case of seeking legal redress for the harm caused. Therefore, in principle, we *disagree* with how the "Law on additional measures for public security" has expressed itself regarding data retention, giving them the character of administrative data when, in fact, they are much more than that.

However, what should be the logic that needs to operate in the direction of such a request?

In our opinion, despite objections regarding the cost implications arising from a process inspired, directed, and controlled by the state, the entity should bear only the cost of installing and maintaining the system, in terms of additional security measures for its activities. However, it must be absolutely deprived of access for interventions in the data registration unit, which should be the

³⁸ Article 3/5, Law "On the Protection of Personal Data." Retrieved online on May 3, 2023, from https://www.idp.al/wp-content/uploads/2020/03/Ligi_Nr.9887_dat%C3%AB_10.3.2008_i_ndryshuar.pdf.

³⁹ Article 14, Law "On Additional Measures for Public Security." Retrieved online on May 5, 2023, from https://www.idp.al/wp-content/uploads/2020/11/Ligji_nr_19-2016_PER_MASAT_SHTESE_TE_SIGURISE_PUBLIKE.pdf.

⁴⁰ DVR (Digital Video Recorder) is the fundamental unit where the storage of recorded data and transmissions from the surveillance (recording) system is facilitated. Without its presence, the camera would only be able to perform visual monitoring in the form of a regular observer.

⁴¹ Find more information at the link: <https://habr.com/en/companies/hetmansoftware/articles/547432/>.

⁴² Data trafficking refers to the collection, transfer, distribution, or sale of data in an illegal or unauthorized manner. This includes obtaining and exploiting data without permission, often for criminal purposes such as identity theft, fraud, or unauthorized access to sensitive information. Data trafficking may also involve the buying and selling of data on the black market or the unauthorized dissemination of personal data without the individual's consent. For more information, visit the link: <https://millercenter.org/what-data-trafficking#:~:text=Data%20trafficking%20is%20the%20extraction,consented%20to%20have%20protect%20them>.

exclusive domain of a competent and specialized authority explicitly defined by this law⁴³. Since the entity fulfilling the mentioned criteria above is the State Police, we believe that only it can be authorized for the processing of such deeply private data.

Such regulation would align perfectly with the specific law "On the State Police." This is clearly demonstrated by the relevant provision of the police law which states:

"...the collection and processing of personal data by the police are limited only to data necessary for preventing a real threat to public order and security, as well as for the prevention, detection, pursuit, and investigation of criminal offenses. To carry out data collection, the police may use..., camera recording in public spaces, secret surveillance of individuals and environments,... Personal data collected for police purposes are stored in separate files from administrative files, subject to the provisions of the law on the protection of personal data. Personal data collected for police purposes are used only for that purpose, without compromising the current provisions for the protection of personal data..."⁴⁴.

More clearly than this, a law cannot express itself regarding specific discretion, and any attempt to enrich or limit legal practice would have controversial consequences in the literal interpretation of these provisions. This interpretation is also in line with the jurisprudence of the ECHR when it states,

"...before the Court arises the obligation to assess whether the state's intervention in private life fulfills a legitimate purpose for public security, crime prevention, and the protection of others' lives. The police have a specific authority to assess who and what information should be recorded. The police have discretion to keep information in the police register, with the aim of facilitating investigations undertaken to prevent and detect crimes against national security or to combat terrorism. Limitations for this purpose should be related to how this data is administered in police records..."⁴⁵.

4. Conclusions

*In synthesizing the comprehensive analysis presented, it becomes evident that while the intention behind Albania's "On additional measures for public security" law stems from a noble desire to safeguard public security, its execution raises substantial concerns regarding individual privacy rights and the potential for abuse. The law, in its current form, appears to tread precariously on the fine line between ensuring safety and infringing upon the fundamental liberties enshrined within the European Convention on Human Rights. Reflecting on Franklin's adage that those who sacrifice essential liberty for temporary safety deserve neither, it is crucial for legislative frameworks to meticulously balance these competing interests. This paper's examination underscores the necessity for Albania to revisit and refine its surveillance laws, ensuring they are both effective in combating crime and respectful of individual rights, thereby fostering a society where security does not come at the expense of freedom.

*As we look towards the future, it is imperative that Albania aligns its legal apparatus with international human rights standards, acknowledging that true security cannot be achieved through measures that undermine the very fabric of democracy. The challenge, then, is not only to protect citizens from external threats but also to safeguard their rights from the potential overreach of surveillance. In doing so, Albania can emerge as a model of how nations can navigate the complexities of modern security challenges while steadfastly upholding the principles of liberty and privacy.

⁴³ We suggest that addressing this issue should be done through Regulatory Impact Assessment elements, in compliance with and adherence to the methodology accepted in the EU.

⁴⁴ Article 124, Law on the State Police. Accessed online on May 3, 2023, from the link https://mb.gov.al/wp-content/uploads/2018/02/LIGJI_I_POLICISE_SE_SHTETIT_-_2014.pdf.

⁴⁵ *Segersted-Wiberg and Others v. Sweden* (2006) ECHR Application No. 62332/00.

5. Recommendations:

*Comprehensive Review and Revision of Surveillance Legislation:

It is recommended that the Albanian legislature undertakes a thorough review of the "On additional measures for public security" law, with the aim of introducing amendments that clearly define the scope and limits of surveillance activities. Such revisions should explicitly include safeguards against misuse, mechanisms for accountability, and transparent oversight procedures, ensuring that surveillance measures are proportionate, necessary, and in strict compliance with the European Convention on Human Rights.

*Establishment of an Independent Oversight Body:

To further protect individual rights, the creation of an independent body tasked with overseeing the implementation of surveillance laws is recommended. This body should have the authority to review surveillance operations, assess their compliance with legal standards, and address grievances from the public. Its mandate would include ensuring that any intrusion into personal privacy is justified, minimal, and accompanied by adequate legal recourse for affected individuals.

Our recommendations for taking measures to improve this law do not aim to establish the exclusivity of confirming this fact. Still, it can easily be verified in this law that the necessity of a vertical intervention, which should be implemented as soon as possible.

For this purpose, we recommend the law "On additional measures for public security" be amended as follows:

- *Amendment Proposal for Article 1:*

5.1 Article 1: Purpose of the Law

The purpose of this law is to establish legal criteria for the installation of additional security measures by public and private entities based on risk assessment factors by the State Police. It aims to define the procedures for the administration and functioning of these additional measures, as well as the collection, storage, and use of the recorded data through this process, in the context of preventing and detecting acts that endanger national order and security.

- *Amendment Proposal for Article 6:*

5.2 Article 6: Additional Security Measures in Common Residential Areas

1. Residents in common residential areas have the right to decide on the implementation of additional security measures. Building administrators, upon obtaining approval from residents in accordance with current legislation, take additional security measures in collaboration with the State Police, based on the risk assessment conducted by the latter according to the provisions of this law.
2. Rules for collaboration between building administrators and the State Police are determined by a Decision of the Council of Ministers.

- *Amendment Proposal for Article 7:*

5.3 Article 7: Authority and Criteria for Implementing Additional Measures

1. The authority responsible for making decisions and issuing authorization for the implementation of additional security measures is the State Police.
2. The decision to issue authorization for additional security measures is based on the analysis of the risk assessment conducted by the State Police.
3. The risk assessment analysis is based on the following factors:
 - a. The subject's activity, which has been the subject of continuous criminal attacks.
 - b. Criminal events that have compromised the subject's security in the last 5 years.

- c. Exposure of the subject's environments and activities to criminal elements.
- d. Attendance of premises and environments by individuals with criminal and penal records.
- e. The nature of the activity being carried out.
- f. The distance of the facility where the activity is carried out from the police unit or inhabited centers.
- *Amendment Proposal for Article 8/1/c:*

5.4 *Article 8/1/c: Obligation for Online Connection of Security Camera Signals*

- c. Direct connection of the signal for the security of the facility with the command/information rooms of the State Police is done according to the police assessment for objects such as:
- Urban and interurban roads, intersections, and city entrances and exits;
 - Shopping centers and business environments, the activities of which are expected to take place in large-area rooms, according to the risk analysis assessment made by the police;
 - Squares, parks, stadiums, and sports fields, whether public or private;
 - Ports, airports, and terminals where people gather for their travel needs;
 - Public/private enclosed or open parking lots, excluding those located within residential buildings' premises;
 - Public and private school and preschool educational institutions at all levels, including training and qualification activities by state, private, or international organizations operating in Albania, as well as all other healthcare institutions such as hospitals or clinics;
 - Conference and meeting rooms that provide a capacity of over 30 people;
 - Urban and interurban transport vehicles with capacities exceeding 20 seats.

Exempt from this obligation are objects such as:

- Residential building entrances and their parking lots;
- Workspaces where the daily activity of employees is carried out, excluding the category specified in the second criterion of the classification for the obligation of online connection;
- Restaurant, bar, and hotel spaces;
- Public institutions and business centers where official private or public activity is carried out.

The category of objects exempt from this obligation may be subject to such a measure only in cases where the police deems it necessary, and in any case, the online connection must be temporary.

- *Amendment Proposal for Articles 9 and 10*

Article 10 is named "Article 9" without changing its content, while Article 9 is named "Article 10" and is reformulated with the following content:

5.5 *Article 10: Security Certification*

1. Subjects obligated to take additional security measures under this law must implement all measures specified therein, following the notification made by the local structures of the State Police, according to Article 9 of this law. After verifying compliance with the requirements and criteria set out in this law, the responsible authority issues the subject the administrative act "Security Certification."
2. The authority responsible for issuing the "Security Certification" in each territorial unit is the Director of the Local Police of the respective County, where the subject operates. If a subject conducts activities or has branches in the territory of more than one county, the authority responsible for issuing the "Security Certification" is the Director of the County Police where the subject has its central office.
- *Legal Classification of Acquired Records as Defined in Articles 13 and 14:*

The legal classification of acquired records specified in Articles 13 and 14 of this law needs to be reformed. For this purpose, Articles 13 and 14 of this law should be revised as follows:

5.6 Article 13: Retention of Personal Data

The retention of personal data acquired from the security systems provided for in this law is carried out in accordance with Article 87 of the "Law on the State Police."

5.7 Article 14: Use of Personal Data

- a) The administration, access, and use of personal data obtained through the registration process by security systems are carried out by the local police authority, through individuals authorized by written order from the Director of the Local Police of the respective district, and in full compliance with the intended purpose. These data must be solely in visual form.
- b) The use of data obtained through the security camera registration process in public and private spaces for criminal investigation purposes can only be done with a written order issued by the prosecutor's office near the district court. They cannot have the value of evidence in a criminal proceeding.
- c) The data collected, which the State Police assesses as not serving the purpose defined by law, must be immediately destroyed by them, according to the order issued for this purpose by the Director of the Local Police.

In the law, there is no provision for the responsibility regarding the use of collected data outside legal requirements. For this purpose, after Article 16, which addresses sanctions and the right to appeal in case of non-installation of security systems, Article 16/1 is added with the following content:

5.8 Article 16/1: Unauthorized Acquisition and Disclosure of Data

Unauthorized acquisition of data through unlawful interference with the system and the disclosure of obtained secrets from security cameras by the person providing them due to duty are punishable under the provisions outlined in Articles 121 and 122 of the Criminal Code.

- *Amendment Proposal for Article 17*

5.9 Article 17: Revocation of the "Security Certification"

The "Security Certification" is revoked in the following cases:

- a) When, during the exercised controls by the police authority, it is determined that the existing parameters for additional security measures have deteriorated in relation to the legal standards defined in this law;
 - b) Upon the request of the subject itself, when the object of activity changes, and the new object does not entail obligations under this law, or when the subject closes its activity.
- *Amendment Proposal for Article 17*

5.10 Article 18: The Right to Reobtain the "Security Certification"

The subject, from whom the security certification has been revoked according to the provisions of Article 17 of this law, is obligated to apply for the reobtaining of the "Security Certification" after fulfilling the additional security measures defined in this law.

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