

ISSN 1127-8579

Pubblicato dal 24/06/2015

All'indirizzo <http://www.diritto.it/docs/37175-data-protection-in-albania-a-comparative-overview-of-albanian-and-bulgarian-general-data-protection-legislation>

Autori: Phd. Jorida Xhafaj, Eriona Katro

Data protection in Albania. A comparative overview of albanian and bulgarian general data protection legislation.

DATA PROTECTION IN ALBANIA. A COMPARATIVE OVERVIEW OF ALBANIAN AND BULGARIAN GENERAL DATA PROTECTION LEGISLATION.

Authors: Phd. Jorida Xhafaj¹ and Prof.asoc Eriona Katro²

The protection of personal data is one of the basic values for the person, which is construed with particular reference to the right to respect for private life. The fundamental right to data protection is guaranteed in Albania from ratification of the international legal framework and the national laws, which ensure the lawful use of personal data, and their processing by public authorities.

The research focus of this paper will be the crucial moments of the legal enforcement on data protection and the comparative perspective on the Albanian Legislation and the Bulgarian as one of the Balkans country has implemented the EU data protection reform package, including the proposed EU General Data Protection Regulation.

The crucial moments of the paper's structure consist on the below issues:

1. A brief overview of evolution of legislation in the Republic of Albania
2. Comparative perspective on the two legislations. Initially, we have focused the common points of national regimes for privacy and the also the differences between the two national legal systems related to "Key terms of the Law on Data Protection" and "The substantive rules of law."

¹ Head of Law Sciences Department and, Lecture in Albanian University.

² Lecture, European Studies Institute, University of Tirana.

1. A brief overview of evolution of legislation in the Republic of Albania.

After decades of government below the dictatorial political regime, which was reflected in all the ideology of the law institutions, Republic of Albania was the last country in the south-east Europe, which changed his political regime during 1990 and put the core of a democratic and constitutional state. Protection of ideology implemented by controlling information and communications through a system of authorities shaped the culture of public espionage and lack of tradition towards the respect of the right for private life³.

During 1991 was admitted the first democratic Constitution⁴, which established the rule of law and the right of respect for private life. So, Constitution was a reference point and a framework for the other laws in the country and at the same time provided new order of organization of relations in Albanian society.

The Constitution sanctioned a number of provisions about the freedom of expression, the right to private family life, the right of correspondence and the right of protection of personal data⁵. The provision ensures the general framework of the right to privacy⁶, by prohibiting "no one can be forced to disclose information related to his personality, except where is required by law." Furthermore, the provision provides the necessity of the consent for collection, use and disclosure of information about a person, except in case of exceptions, specified in the special law⁷ or/and in case of rights guaranteed to a data subject for access to their own data and the right to request the correction or deletion of untrue or incomplete data collected in violation of the law. This provision is based on the entire legal framework for privacy and lawful processing of personal data.

Protection of personal data in the Albanian legislation is regulated for the first time with special provisions by the Law on Personal Data Protection № 8517, adopted in 1999. This law was an important act, which intended to ensure protection and legal

³ For numerous Anglo-Saxon and French authors, the right to respect "private life" is the right to privacy, the right to live, as far as one wishes, protected from publicity.
See X vs. Iceland, Commin H.R. 86.87(1976).

⁴Constitution of the Republic of Albania was admitted by Law №. 8417 from 21.10.1998, amended by Law №. 9675 from 13.1.2007i Law №. 9904, of 21.4.2008

⁵Article 35 of the Constitution of the Republic of Albania.

⁶ Alan Westin, author of the seminal 1967 work "Privacy and Freedom," defined privacy as the desire of people to choose freely under what circumstances and to what extent they will expose themselves, their attitude and their behavior to others.

⁷ During this period Republic of Albania has not a special law on data protection.

collection of personal data and their administration from public authorities⁸. The main features of the first law consisted on the following directions:

- Types of data processing - the law allowed a wide range of actions in the processing of personal data and the means of these processes according to point "ç" of Article 2, "data processing means any act done with or without the support of electronic tools to collect, to record, *to organize and any other act of data*";

- Regulated sectors - the main disadvantage of this law was that it does not regulate the activities of individuals and refers only to the bodies of state administration, public institutions, organizational unit and any other person who exercised on the basis of law public functions. This is considered as unacceptable Implementation of the Law on Access to Official Documents, which was adopted in the same year in the country;

- Supervisory organ-provision of article 15 of the law established as a supervisory body, the Ombudsman, who had the power to establish a register of personal data and to review the complaints in cases of violations. These powers were regulated by the Law on the Ombudsman⁹. To the Ombudsman were not defined yet other duties or powers related to privacy and data protection. This was a particular factor that led to the wrong implementation of the law which was stipulated in the Stabilization and Association Agreement¹⁰ as an emergency issue to be regulated¹¹. Establishment of an independent supervisory authority would lead to effective monitoring of the legislation on data protection and the successful implementation of policies related to the harmonization of the Albanian legislation in this area with the Acquis.

In order to complete further the regulations regarding automatic processing of personal data, in 2004, Republic of Albania ratified the Convention № 108. "On the *protection of individuals with regard to automatic processing of personal data*"¹². The ratification of the Convention took the commitment to complement the legislative gaps and adoption of general rules of the Convention. The last stage of legislative developments in this area is associated with too muffled changes in the Law on Protection of personal data in 2008 and 2012.

⁸ See article 1 of amended Law On Personal Data Protection.

⁹ Law on Ombudsman №. 8454 / 02.04.1999, Prom. SG nr. 5 / 15.02. 1999, p 152.

¹⁰ See Article 79 of the SAA "Albania will harmonize its legislation concerning personal data protection with Community law and other European and international legislation on privacy after the date of entry into force of this Agreement. Albania will establish independent supervisory authority and it with sufficient financial and human resources to effectively monitor and ensure the application of national legislation on protection of personal data. The Parties shall cooperate to achieve this goal ".

¹¹ The proposed recommendations to amend this law, was based on an analysis of the Agenda Institute "Albanian experience for harmonization of data protection in accordance with European standards: What can we learn from the implementation of the SAA", October 2007.

¹² The Convention is signed on 9th of June, 2004, ratified from Republic of Albania on 14th of February , 2005 and entered into force on 1st of June, 2005.

The most important moments in the development of the legal framework established by the special law were made in 2010. With these changes the legal framework is in harmony with that of the European Community¹³.

Although Albania is not an EU Member State, it held its policy on the law with a tendency towards integration. Moreover, the new law fills the gaps on the body to control the registration of controllers and their work in the processing of data available to them. The public authority in Albania is the Commissioner for Data Protection, which is responsible for monitoring and controlling the compliance with the law, and the respect for the right to privacy when processing personal data.

Problems associated with the limited range of controllers (limited only to public institutions) that could collect and process personal data were revised by introducing broader range of persons that could carry out processing. After these changes, these persons can be members of both the public and private sector.

The new law regulates the protection of a specific category of data - processing of sensitive data is carried out only in cases where the data subject has given his consent, which may be withdrawn at any time and under conditions exclusively listed therein. They are related with vital needs of the data subject which are physically incapacitated or hurdled, in the presence of important public interest, when sensitive data are processed for medical purposes and other historical, research or statistical purposes.

Also, for the first time were established the rules on the international transfer of personal data, which ensured the preliminary criteria for an adequate level of protection¹⁴ and the determination of the list from Council of Ministers for the countries which have the necessary level of protection.

On 26.04.2012, the Albanian Parliament adopted the Law №. 48/2012 “On amendments to the Law on the protection of personal data”. Albanian legislation has made significant changes to the previous law, which are related to the:

a. Implementation of clear rules on the main conditions for the processing of personal data, i.e. the consent of the data subject. The latter must be expressed in a written statement and thus the legislator leaves no interpretation regarding the form of the "consent" for data processing. This provision achieved a more comprehensive regulation, in view of the unclear definition of the amended law, which provided "a specific statement" as the only formal requirement for expression of free will for the processing of data defined by the law as personal.

¹³ In particular with the Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data. <http://www.odpr.org/restofit/Legislation/Directive/Directive_Content.html>.

¹⁴ The level of protection of personal data for a country is determined by evaluation of all the circumstances relating to the treatment, the nature, scope and duration, country of origin and destination, legal and safety standards in force in the host country. Article 25 of the Directive stipulates that in many circumstances, the level of protection in the receiving country must be "adequate" - an expression which is widely accepted to mean "equivalent". Article 26 lays out certain options for transferring data out of Europe in circumstances where the level of protection is not deemed adequate. These include consent and contracts.

b. Assignment of the Commissioner for Personal Data Protection as the authorized body to make the assessment and determination of the parties to ensure an adequate level of data protection at international transfers. Earlier this competence belonged to the Council of Ministers, which did not have such direct connection of its powers like the supervisory authority.

c. Lawfulness of actions of controllers and mechanisms for preliminary review. In this context, controllers are required to notify the Commissioner for Personal Data Protection regarding the data, which they have access and the right to process. This requirement must be fulfilled before the first processing of data in terms of formal requirements prescribed by law (notification shall be deemed to have not been filed if it is filed with errors or if these errors are not corrected within the period prescribed by the Commissioner). In order to establish effective means of control and avoidance of bureaucratic processes, there are foreseen shorter time limits within which the Commissioner must exercise control and to allow or not the processing of personal data. In the scope of changes in the law, the lawmaker requires the controller to immediately respond to the Commissioner within the time limit set by it, only in cases when the Commissioner deems as necessary. Notification shall be deemed to have not been filed, if the controller fails to respond properly.

d. the system of administrative sanctions in the case of control and evidencing of offenses. The administrative sanctions have become harsher and they are subject to appeal before the Regional Court.

2. Comparative perspective on the two legislations.

2.1 Regulations of the Republic of Bulgaria and the Republic of Albania are regarded as relatively new and part of the new era of the protection of the fundamental right for information privacy¹⁵. Initially, we would like to focus on common points of national regimes for privacy, which are as follows:

¹⁵Privacy turns out not to be a single interest, but rather has several dimensions:

- privacy of the person, sometimes referred to as 'bodily privacy' ;
- privacy of personal behaviour. This relates to all aspects of behaviour, but especially to sensitive matters, such as sexual preferences and habits, political activities and religious practices, both in private and in public places. It includes what is sometimes referred to as 'media privacy';
- privacy of personal communications. Individuals claim an interest in being able to communicate among themselves, using various media, without routine monitoring of their communications by other persons or organisations. This includes what is sometimes referred to as 'interception privacy'; and
- privacy of personal data. Individuals claim that data about themselves should not be automatically available to other individuals and organisations, and that, even where data is possessed by another party, the individual must be able to exercise a substantial degree of control over that data and its use. This is sometimes referred to as 'data privacy' and 'information privacy'.

- The application of a wide range of procedural principles, some of which are not found elsewhere;
- Uniform application made on protection of personal data and information on them to the public and private sector;
 - Application of the law against a wide spectrum of action or set of actions that can be performed upon personal data by automated or other means (such as collection, recording, organization, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination, making available, alignment or combination, blocking, erasure or destruction);
 - Stricter regulation on certain categories of sensitive data relating to racial or ethnic origin, political, religious or philosophical beliefs, concerning health, sexual life or the human genome;
 - Restrictions on cross-border flow of personal data;
 - Existence of independent supervisory bodies for the protection of personal data with wide discretionary powers to monitor the implementation and development of data confidentiality rules;
 - complete subordination of data processing by notification and record-keeping of data controllers, who implement the requirements set by law and controlled by the supervisory authority on confidentiality of collected data;
 - extensive use of almost identical conditions for processing data is available; and
 - the same mechanisms in administrative and / or judicial proceedings in cases of violations.

2.2 There are also differences between the two national legal systems. Viewed from a comparative perspective, the Albanian e Bulgarian laws represent interest in the view that these systems are part of the new laws and their acceptance is performed in harmonization with the Acquis Communautaire in the field of protection of human rights¹⁶. Despite the introduction of European Union standards¹⁷ to ensure access to information

With the close coupling that has occurred between computing and communications, particularly since the 1980s, the last two aspects have become closely linked. It is useful to use the term 'information privacy' to refer to the combination of communications privacy and data privacy.

¹⁶ Updated National Programme for Information Society Development in the Republic of Bulgaria, adopted by Decision Council of Ministers Nr. 213, Prom. SG. 36 of April 12, 2001 2. Strategy for the protection of personal data from 2012 to 2013, the Commissioner for Personal Data Protection http://www.kmdp.al/web/pub/strategjia_2012_13_309_1.pdf

¹⁷At present, in order to enable the priorities in this area, the both countries have implemented the main principles of Convention 108 of 1981 of the Council of Europe for the Protection of Individuals with regard to Automatic Processing of Personal Data (Convention 108 of 1981) and Directive 95 / 46 of the European Community for the protection of individuals with regard to the processing of personal data and the free movement of such data (Directive 95/46). Also Republic of Bulgaria has accepted the new reformed rules settled by the General Data Protection Regulation from June, 2014.

while ensuring data security and fundamental human rights as a high priority in both countries, their national laws reflect the mentality and features related to democratic principles in societies.

We decided to mention the dimensions of the differences between these judicial systems in this area in a logical order:

2.2.1 Key terms of the Law on Data Protection.

At first, there is no doubt about the fact that the legislature's intention was to provide adequate protection of privacy, which takes into account the principles of European Community law on data protection, while at the same time to determine the terminological content of the concept of personal sensitive data and determining the conditions under which is allow edits processing. Similarly, the provisions lay down the basic concepts in both legal systems for data protection and establish definitions relating to subjects related to these relationships.

a. according to Article 3 of Albanian law on protection of personal data, beside the determination of the sensitive data in paragraph 1 of this provision, there are defined those data that are prohibited to be processed, the so-called sensitive data. The latter according to the provisions constitute "...any information relating to an individual, which refers to its genetic and ethnic origin, political opinions, trade union membership, religious or philosophical beliefs, criminal sanctions, data revealing information about health and sexual life of the individual." By comparison with Article 5 of Bulgarian law as they relate to data revealing racial or ethnic origin, reveal political, membership in political parties or organizations, associations with religious, philosophical, political or trade union purposes and which relate to health, sexual life or human genome.

From this comparison it is ascertained a different set of data that are prohibited from processing, except in special cases specified by law. Albanian law governs such data and also penalties for perpetrators. The law does not specify whether it relates to data for punishments already underwent or currently serving by the data subject. But more important is the fact that Bulgarian law does not classify such data to the group of data that is forbidden to be handled or processed by permitting regime. Bulgarian legislation provides that for criminal proceeding or enforcement of sentences purposes to apply the rules of law on the protection of personal data, unless otherwise provided by special law¹⁸.

¹⁸According to Article 1, paragraph 4, item 4 and 5 of Bulgarian Law on Data Protection.

Under the law is permitted to process the same data in the framework of police or judicial cooperation when they are received by or made available to Union Member State, authorities or information systems established on the basis of the Treaty on European Union or of the Treaty on the Functioning of the European Union¹⁹. The data processing is carried out under the control of the respective State authority, but the regime is permissive and not prohibitive, as provisioned in the Albanian legislation. According to Article 8 paragraph 5 of the Directive, the processing of data relating to criminal offence, sentences or security measures may be carried out only under the control of official authority. In cases when domestic law provides adequate safeguards, a Member State may be derogated to process such data.

However, a complete register of criminal convictions may be kept only under the control of official authority. This provision of the Directive was adopted in the previous Law on data in the Republic of Bulgaria in its Article 5, which proved particularly controversial. This article states that the processing of data relating to offenses, criminal convictions and administrative violations can be carried out only under the control of the competent authorities. This text provoked concerns by the journalists on the grounds that it will create a pre-censorship of journalistic writing on such topics and that permission will be necessary for each case of disclosing the name of any criminal person in the media. Thus the media feared that it violates the constitutional right of freedom of expression and freedom of the press and other media. Furthermore, it was pointed out that this proposal is contrary to European standards, which provide for exceptions to the rules of data processing when it comes to journalism or artistic expression.

In the final version of the adopted amendments, this article was abolished, and instead it was introduced a text according to which the processing of personal data for the purposes of criminal proceedings should be settled by special order, with easing in favor of the mass media and artistic and literary expression to ensure that freedom of expression will be taken into account and balanced with other public interests.

In line with the EU directive, albeit this law regulates the processing of data in cases of breaches and crimes, as an activity that can be done only under the supervision of the relevant authorities, expressly is provided for Member States to ensure exemptions and easing for processing of personal data, which is performed only for journalistic purposes or the purpose of artistic or literary expression.

b. The next difference concerns the concept related to the entity, which alone or jointly with another person determines the purposes and equipment of processing personal data. As already discussed, the person referred as "data administrator" for the purposes of Bulgarian law exercises in a monitored manner, his powers on others personal data through legally defined actions. The terminology used in Albanian law for this subject is the "controller". This definition has been established based on the existing

¹⁹ M. CINOVA, M. FILIPOVA, The guarantees under Code of Criminal Procedure for the protection of personal data and classified information ", Ciela, Sofia 2011, page 13.

definition in Directive 95/46 / EC of 1995 on protection of individuals with regard to the processing of personal data and on the free movement of such data ("... means a natural or legal person, public authority, agency or any other body which alone or jointly with others determines the purposes and means of processing personal data ... "), however it has been literally translated into Albanian into a word that does not express accurately the scope of the position. Bulgarian legislation adapted this term to provision related to this subject not only to perform control actions related to personal data quality and compliance with the rules, but at the same time extends the powers of collection, storage and dissemination of personal data.

c. Finally, the reasons for the collection and processing of personal data are aligned in both laws and this is due to the strict implementation of a European directive. In line with the conditions under which all personal data are processed both laws provide for special situations related to processing of specific data categories. Despite the ban on the processing of personal data revealing racial or ethnic origin, political opinions, religious or philosophical beliefs, trade-union membership, and the processing of data concerning health or sex life, the law provides exceptions to this prohibition. The exceptions are associated with situations where processing is necessary to protect other legitimate rights and interests, and has occurred under the explicit consent of the data subject or other reasons related to the processing of personal data in the course of legitimate activities of the controller or other processing entities.

Albanian law provides the same grounds for processing the data of special category called "sensitive data", with the only difference that it does not provision among these reasons processing for journalism activities. While Bulgarian law provides such grounds under Article 5, paragraph 2, item 7, the processing is carried out solely for journalistic, literary or artistic expression, that it does not violate the right to privacy of the person to whom the data are related. In connection with this exception we think that its implementation requires high moral values in media activities and in this context, due to transitional phase that Albania is undergoing, it has not been created yet such an appropriate environment. Assessing the merits of the existence or not of such an exception would have to be done after finding a reasonable balance between the right to privacy, the right to freedom of press, freedom of the individual in a democratic society to be informed, that is the balance between the public interest and privacy²⁰.

Freedom of the press and other mass-media are guaranteed by constitutional ban for censorship - Art. 40, paragraph. 1 of the Constitution of the Republic of Bulgaria. Freedom of speech is one of the fundamental principles that underpin any democratic

²⁰ According to the jurisprudence of the European Court it seems to be confirmed the rule that in cases with object the protection of private life of parties (with exception of cases when minors are threatened), the decision for the hearing of the case in closed doors should be taken only when requested by parties. As per such practice, neither the text nor the interpretation of Article 6 of European Convent for Protection of Human Rights does obstruct the consented or explicit prohibition of the hearing in opened doors. European Court decision Hakansson and Sturesson, date 21.02.1990; European Court decision Dewe, date 27.02.1980.

society. Right to information, freedom of expression in society have been embedded in the professional commitment of journalists in the name of public good for collection, arrangement and distribution of information. The obligation of journalists to provide information and ideas on issues of public interest stems from the public's right to receive it. In this sense, freedom of speech, freedom to disseminate information without censorship is justified so as to ensure democratic public processes and the ability of citizens to build opinion and position themselves related to issues of public interest. Even in Art. 41, para. 1 of the Constitution of the Republic of Bulgaria it is limited the right of free circulation of information, as it is related to other basic civil liberties. The extent to which it is permissible to restrict the right to freely express opinions depends on the importance of the interest that it requires. Only public interest of higher order would justify imposing a restriction of the constitutionally guaranteed human rights, such as the right to respect privacy. Any intervention in the protected area of these freedoms by third parties will be considered a restriction of these freedoms and will be considered illegal until proven that it has been imposed based on superseding public interest.

2.3 The substantive rules of law.

Our focus in this part of the development work will be the comparative analysis of the legal systems of both countries and in particular the differences in the substantive provisions of the law. The substantive provisions establish the rights and obligations of subjects related to the processing of personal data subjects and data protection supervisory authority of such data.

a. Differences in the legal framework are observed also about the reasons for which may be denied the realization of the right of access from the data subject. According to the Article 34, paraf. 1 and para. 3 respectively, the controller refuses access to personal data from the data subject, when they do not exist or their provision is prohibited by the law. He refuses full or partial provision of data to the person to whom they apply, provided that this would be a risk to national defense or security or for the protection of classified information and this is provided by a special law. Albanian law provides, in Article 12, paragraph 3, only the principles on which are based the fulfillment of the right to access personal data and the grounds for partial refusal. Those reasons are connected with the interests of national security, foreign policy, economic and financial interests of the state and the interests of obstruction or investigation of criminal offenses. As noted by the Albanian law, provided grounds are wide and therefore cases of refusal will be higher. On the other hand realization of this right from the data subject should be balanced by public safety and other interests of the public level. Therefore, considering the problems and challenges that Albania has been facing in the last twenty years, the balancing of private and public interests should be well thought out in the legislation.

These formal requisites are met and in the realization of the right to request the deletion, correction or blocking of personal data of the individual, the processing of which does not meet the requirements of this Act. And in terms of these causes, Albanian and Bulgarian laws on protection of personal data have differences regarding the deadlines for responding to the data controller, which are shorter in Bulgarian legislation²¹, respectively, 14 days and 30 days in Albanian law²².

In the end we will discuss the substantive provisions that establish the legitimacy of the Commission for Protection of Personal Data and the Commissioner for Personal Data Protection, the two supervisors in this area in the Republic of Bulgaria and the Republic of Albania. Apart from the substantial difference in their type, in Albania it is an individual authority, while in Bulgaria it is a collegial body; in both jurisdictions Commissioner and the Commission for the Protection of Personal Data are elected by the Parliament on the proposal of the Council of Ministers.

The period for which they are selected is different. The mandate of the Commissioner for Personal Data Protection is for a period of four years, with the right to be re-elected, while the mandate of the Commission for Personal Data Protection is 5 years, with the right for its members to be reappointed for another term. The financial status of the Commissioner in Albania is determined by the Parliament, given that all persons assisting the Commissioner have the status of civil servant. While art. Art. 7, para. 3, 4 and 5 of the Law on Data Protection "Chairman and committee members operate in an employment relationship. Committee members receive a basic monthly salary equal to 2.5 average monthly salaries of employees under labor contract in the public sector according to the National Statistics Institute. The basic monthly salary is recalculated each quarter taking into consideration the average salary for the last month of the preceding quarter. Chairman of the Committee shall receive remuneration by 30 per cent higher than the basic monthly salary of members of the Commission. "

Powers of the Commission and the Commissioner are provided on the same lines and facilitate both supervisors the implementation of the state policy in the field of protection of personal data. Especially important is the supervising the data controllers activities from the beginning of collection of personal data and any other act of their processing. According to Art. 17. Paragraph 1, 2 and 3 of the Law on protection of personal data, the data controller is obliged to apply for registration before starting the processing of personal data. Within 14 days of submission of the application the Commission shall enter the data controller in the register under Art. 10, para. 1 pt. 2²³.

²¹ See. Article 32, paragraph 4 of the Data protection law

²² See. Article 13, paragraph 2 of the Data protection law

²³ According to para.1 of Art. 10. "... the Commission shall keep a register of data controllers and registers kept by them of personal data"

The controller can start processing the data only after the application for registration, except law stipulations, that discharge him from such obligation.

Facing these provisions with those of the Albanian Law, can be established much lighter regime for the registration of personal data controllers. Thus, according to Article 21, paragraph. 1 each Controller shall notify the Commissioner for the processing of personal data, for which it is responsible. The notification must be made before starting the processing of data for the first time or when change is required prior notice is made. Due to the fact that carrying out of operations of processing of personal data by the controller is not required by the law to be provided in a limited period of time, the law doesn't foresee the deadline within which the Commissioner must register the controller. In this situation, the processing can be started immediately after the notification and before the entry is made. Only in cases where the Commissioner considers the notification incomplete, it is set a deadline for its completion. As to the cases in which notification is not required under Albanian law on data protection, some of the projected situations comply with those provided into Article 17a²⁴ of the Bulgarian law. Besides these situations, Article 21, paragraph. 3 and 4 provide as exceptions cases where processing is carried out in order to protect the constitutional institutions, the protection of national interests, the foreign policy interests, the economic and financial interests or in the case of prevention or investigation of a criminal offense.

Moreover, other exceptions related to the obligation to be registered may be stipulated by a decision of the Commissioner. Given the sensitivity of subjects to access their personal data and their processing, we think it is needed more attention and scrutiny before the registration of persons who will be entitled to process personal data, while limiting in particular way the cases of discharge from registration

One of the most important powers of the supervisory authority in both laws is the preliminary control. In cases where the controller has applied for processing of data disclosing racial or ethnic origin; political, religious or philosophical beliefs; membership of political parties or organizations; associations with religious, philosophical, political or trade union purposes or related to health, sexual life or the human genome, and where data whose processing by the Commission decision threatens the rights and legitimate interests of individuals, Bulgarian law stipulates the obligation of the Commission to

²⁴ It is not applied for registration, in cases when the controller:

1. keeps a register which, by virtue of a legal act is intended to provide public information:

a) access is free or

b) access to it is a person who has an interest;

2. The processing is performed by the non-profit organization, including political, philosophical, religious or trade-union aim, in the course of its legitimate activities and with appropriate protection, provided that:

a) the processing relates solely to the members of the body or to persons who have regular contact with it in connection with its objectives;

b) the data are not disclosed to third parties without the consent of the individual to whom they relate;

carry out a preliminary inspection before registration. Preliminary examination is carried out within two months of filing the application for registration. This kind of control is provided in Article 24 of the Albanian law, according to which there are carried out the situations of processing of the "sensitive data", after authorization by the responsible authority. It will be authorized for an important public interest, under appropriate safeguards and when the processing is related to the giving of data to a country with an insufficient level of protection, but with established adequate safeguards to protect the privacy and fundamental human rights in the correspondent country. Processing can begin only after completion of the preliminary examination and registration of the personal data in the registry. In terms of this provision, it is necessary that Albanian law is complemented by providing a deadline for a preliminary verification.

3. Conclusions

The results show that Albanian started using the same language with European directives regarding data protection law – by the legal definitions proposed and main principles implemented, while still keeping significant differences about the mechanisms for awareness and control over personal data. So, without adequate oversight and enforcement, the mere existence of a law may not provide individuals with adequate protection.

Additionally, there is need for enrichment of Albanian legislation with specific provisions on data protection especially in areas of education, health insurance, labor relations, civil and penal processes, etc.

At the end of the comparative analysis between the legislation of these two Balkan countries, acknowledging the fact that Bulgaria has approached its legislation with General Data Protection Regulation, it can be said that both legislations have implemented in similar levels the essential principles and mechanisms related to data protection. From the comparison of substantive provisions there are noted differences which mainly source from the respective domestic lawmaking mindsets, level of awareness and application of fundamental human rights in respective societies, and awareness related to the importance of confidentiality of private life and as a consequence the personal data.

4. Bibliography

1. M. CINOVA, M. FILIPOVA, The guarantees under Code of Criminal Procedure for the protection of personal data and classified information ", Ciela, Sofia 2011
2. WESTIN, Privacy and Freedom, Atheneum, New York p. 7.

3. S. WARREN, L.BRANDEIS, The right to privacy, Harvard Law Review 4, 1890 pp 193 - 220.
4. WARREN & BRANDEIS, The Right to Privacy, 4 Harvard L.R. 193 ,1890
5. R. GAVISON, Privacy and the Limits of Law. Yale Law Journal, 1980
6. J. MICHAEL, Privacy and Human Rights, UNESCO 1994 page.1
7. S. JOSEPH,“The Right to Know: Transparency for an Open World”, Columbia University Press, 2007
8. D. SOLOVE , Understanding Privacy, Research Paper No. 420, Harvard University Press, May 2008
9. L.HENKIN, Privacy and Autonomy. Columbia Law Review, page 74, 1974, 1410-33.
10. R.HIXSON, Privacy in Public Society: Human Rights in Conflict. New York: Oxford National Comprehensive Data Protection/Privacy Laws and Bills 2014 Map
11. D. BANISAR, National Comprehensive Data Protection/Privacy Laws and Bills 2014 Map, ARTICLE 19: Global Campaign for Free Expression, December 8, 2014
12. D. BANISAR, Global Trends in Privacy Protection: An International Survey of Privacy, Data Protection, and Surveillance Laws and Developments, John Marshall Journal of Computer & Information Law, Vol. XVIII, No. 1, 2012
13. Constitution of the Republic of Albania was admitted by Law №. 8417 from 21.10.1998, amended by Law №. 9675 from 13.1.2007i Law №. 9904, of 21.4.2008
14. Stabilisation and Association Agreement between the European Communities and the Republic of Albania
15. Convention 108 of 1981 of the Council of Europe for the Protection of Individuals with regard to Automatic Processing of Personal Data (Convention 108 of 1981 and
16. Directive 95 / 46 of the European Community for the protection of individuals with regard to the processing of personal data and the free movement of such data Convention for the Protection of Human Rights and Fundamental Freedoms Rome, 4.XI.1950. <<http://www.coe.fr/eng/legaltxt/5e.htm>>.
17. National Programme for Information Society Development in the Republic of Albania http://www.kmdp.al/web/pub/strategjia_2012_13_309_1.pdf
18. Law "On Ombudsman" no. 8454 / 04.02.1999, amended by Law nr.9398, dated 12.05.2005
19. Law no. 9887, dated 10.03.2008, amended by Law no. 48/2012 "On protection of personal data"
20. Law no. 9287, dated 10.07.2004 "On ratification of the Additional Protocol to the Convention for the Protection of Individuals with regard to Automatic The processing of personal data regarding supervisory authorities and transborder movement of personal data"
21. Law no. 9288, dated 10.07.2004 "On ratification of the Convention on the protection of individuals from the automatic processing of personal data"
22. European Court decision Hakansson and Sturesson, date 21.02.1990; European Court decision Dewe, date 27.02.1980.

23. OECD, *Guidelines governing the Protection of Privacy and Transborder Data Flows of Personal Data* , Paris, 1981.