

National Legal Framework- Albania

A. Overview

Structures at the National Level

- National Anti-Trafficking Coordinator
- National Coordinating Anti trafficking Office
- National Committee for the Fight against Trafficking of Human Beings
- National Task Force against Trafficking
- Working group for the National Mechanism of Referee
- Responsible authority

Regional Actors

- Regional Anti-trafficking Committees, Technical Tables, Technical Secretariat

Municipal Level

- Social Aid Offices/ Defence Entity

Inter – Disciplinary Groups/ Local Reference Mechanism

B. Basic Legal Framework

- Law nr. 7895, date 27.01.1995 “Penal Code of the Republic of Albania”
- Law nr. 8733, date 24.01.2001 “Changes in the Penal Code”
- Law nr. 8920, date 11.7.2002, “Ratification of the United Nations Convent against International Organized Crime”
- Law nr. 9188 date 12.02.2004, introduced in the Penal Code the crime of trafficking of woman and child (according to Palermo Protocol against Trafficking)
- Law nr. 9187, date 12.02.2004 “Changes in the Penal Code”
- Law nr. 9205, date 15.03.2004 “For the defence of witnesses”
- Law nr. 9284, date 30.9.2004 “For the prevention of Organized Crime”
- Law nr. 9355, date 10. 03. 2005 “Aid and Social Services”
- Law nr. 9642, date 20.11.2006 “Ratification of the Council of Europe Convent “Action against Trafficking in Human Beings”
- Law nr. 9668, date 18.12.06, “Migration of Albanian Nationals for Work Purposes”
- Law nr. 9669, date 18.12.2006 “Measures against Domestic Violence”
- Law nr. 9686, date 26.02.2007 “Changes in the Penal Code for the Illegal Passing of the Border”
- Law nr. 9749 date 04. 06. 2007 “State Police”

- Law Nr.1083, date 23.7.2008 “National Strategy against Trafficking in Human Beings 2008 – 2010”
- Law Nr.9642, date 20.11.2006 “For the Ratification of European Council Convent “Measures against Trafficking in Human Beings”

C. Provisions of the Albanian Criminal Code regarding trafficking in persons

1. Article 110/a: **Trafficking in Humans:** Recruitment, transportation, harbouring or receipt of persons through threat or use of force or other forms of compulsion, abduction, deception, abuse of office, or taking advantage from the social, physical or psychological state, or the giving or receipt of payment or other benefits to obtain the consent of a person who controls another person, for the purpose of exploitation of others for prostitution, or other forms of sexual exploitation, work or compelled services, slavery or other forms similar to slavery, making use of or transplanting organs, as well as other forms of exploitation. ***(5-15 years imprisonment, plus fine from 2-5 million lek)***
Organization, management and financing of the trafficking of persons ***(7-15 years imprisonment, plus fine from 4-6 million lek)***

When this act is perpetrated in collusion with others, or repeatedly, or accompanied by mistreatment, making the victim commit various actions through the use of physical or psychological force, or causing serious harm to the trafficked person’s health ***(Not less than 15 years imprisonment, plus fine from 6-8 million lek)***.

When the act causes the death of the trafficked person ***(Not less than 20 years imprisonment or life imprisonment, plus fine from 7 – 10 million lek)***.

When the penal act is perpetrated by abusing the state function or public service ***(Imprisonment and fine increased by one fourth)***.

2. Article 114/b: **Trafficking in Women:** Recruitment, transportation, harbouring or receipt of women through threat or use of force or other forms of compulsion, deception, abduction, abuse of office, or taking advantage from the social, physical or psychological state, or the giving or receipt of payment or other benefits to obtain the consent of a person who controls another person, for the purpose of exploitation for prostitution of others or other forms of sexual exploitation, work or compelled services, slavery or others forms similar to slavery, making use of or transplanting organs, as well as other forms of exploitation ***(7-15 years imprisonment, plus fine from 3-6 million lek)***.
Organization, management and financing of trafficking in women ***(10-15 years imprisonment, plus fine from 5-7 million lek)***.

When this act is perpetrated in collusion with others, or repeatedly, or accompanied by mistreatment, making the woman victim commit various actions through the use of physical or psychological force, or causing serious harm to the victim’s health ***(Not less than 15 years imprisonment, plus fine from 6-8 million lek)***.

When the act causes the death of the victim ***(Not less than 20 years or life imprisonment, plus fine from 7 – 10 million lek)***.

When the penal act is perpetrated by abusing the state function or public service ***(Imprisonment and fine increased by one fourth)***.

3. Article 128/b: **Trafficking in Minors:** Recruitment, transportation, harbouring or receipt of minors, for the purpose of exploitation for prostitution or other forms of sexual exploitation, work or compelled services, slavery or other forms similar to slavery, making use of or transplanting organs, as well as other forms of exploitation (**7-15 years imprisonment, plus fine from 4-6 million lek**).

Organization, management and financing of the trafficking of minors (**10-20 years imprisonment, plus fine from 6-8 million lek**).

When this act is perpetrated in collusion with others, or repeatedly, or accompanied by mistreatment, making the child victim commit various actions through the use of physical or psychological force, or causes serious harm to the health of the trafficked child (**Not less than 15 years imprisonment, plus fine from 6-8 million lek**).

When the act causes the death of the child (**Not less than 20 years or life imprisonment, plus a fine from 8-10 million lek**).

When the penal act is perpetrated by abusing the state function or public service (**Imprisonment and fine increased by one fourth**).

4. Article 114/a: **Aggravated exploitation of prostitution**

Exploitation of prostitution perpetrated:

- a. with minors
- b. against several persons
- c. with persons with whom there are close family, marital, guardianship relations, or benefiting from official relations
- d. with deception, compulsion, force or taking advantage of the physical or mental inability of the person
- e. against a person who is induced or coerced to practice prostitution outside the territory of the Republic of Albania
- f. in collusion with others or repeatedly, or by persons charged with state and public functions (**7 – 15 years of imprisonment**)

5. Article 297: **Illegal Crossing of the Border:** The illegal crossing of the border constitutes a penal offence (**Fine of imprisonment of up to 2 years.**)

6. Article 298: **Assistance to Illegal Crossing of the Border:** Sheltering, accompanying, making available or using vessels, aircraft or other means of transportation, or any other type of assistance with the purpose of assisting in the illegal crossing of the border of Republic of Albania, or assisting the illegal entry of a person into another state, whilst not being a citizen thereof, or not having a residence permit therein, constitutes a penal act (**1-4 years imprisonment, plus fine from 3-6 million lek**)

When assistance is given for purposes of profit (**3-7 years imprisonment, plus fine from 4-8 million lek**).

When this act is perpetrated in collusion with others, or repeatedly, or causing serious harm (**5-10 years imprisonment, plus fine from 6-8 million lek**).

When the act causes the death of the person (**Not less than 15 years imprisonment or life imprisonment, plus fine from 8-10 million lek**).

When the penal act is perpetrated by abusing the state function or public service
(Imprisonment and fine increased by one fourth)

7. Article 113: **Prostitution:** Practicing prostitution (*fine or up to 3 years imprisonment*)

8. Article 114: **Exploitation of prostitution:** Inducement, intermediation or recompensing in practicing prostitution (*fine or up to 5 years imprisonment*)

9. Article 115: **Possession of Facilities for Prostitution:** Possession, exploitation, financing or renting facilities for practicing prostitution (*fine or up to 10 years imprisonment*)

D. Provisions of the Albanian Code of Criminal Procedure regarding simulated acts and infiltrations

Article 294/a

Simulated actions

1. A judicial police officer and agent or a person authorized by them may be assigned to (perform) a simulated purchase of items that derive from a crime or to simulate a corrupt act or to commit other simulated acts in order to uncover financial or ownership information of a person who is suspected of committing a crime, concealing the cooperation with the police or their duty as police personnel.
2. These acts are done with the authorization of the prosecutor who oversees the investigations or the prosecutor who has territorial jurisdictions of the place where the action will take place. After these acts are performed, the judicial police should submit all the evidence collected to the prosecutor and a summary report.
3. A criminal act should not be provoked, by abetting a person to commit a crime, which he would not have committed it if police had not intervened. When provocation is proved the results may not be used.

Article 294/b

Infiltrated Police Personnel

1. For the purposes of uncovering serious crimes, a judicial police officer may, with the authorization of the prosecutor, be infiltrated into composition of a criminal group in order to identify the members of the group and collect information necessary for the investigation, concealing his cooperation with the police or his duty as police personnel.
2. The infiltrated police personnel should not provoke a criminal act that would not have been committed without his intervention. When provocation is proved the results may not be used.
3. The authorization of the prosecutor should specify the time period of the infiltration, which may be extended by the prosecutor for up to six months and the permitted scope of the infiltrated personnel, stipulating, according to the case, the unlawful actions that he may commit, without endangering the life of others.
4. The infiltrated police personnel may be questioned as a witness.

Surveillances

Article 221

Restriction on permission

1. Interception of communications of a person or a telephone number, by telephone, fax, computer or other means of any kind, the secret interception by technical means of conversation in private place, the interception by audio and video in private places and the recording of incoming and outgoing telephone numbers, is permitted only where there is a proceeding:

a) for intentionally committed crimes for which is provided a punishment of imprisonment of not less than seven years, in maximum;

b) for the criminal contravention of insult and threat committed through the means of telecommunications.

2. Secret photographic, filmed or video surveillance of persons in public places and use of tracking devices of whereabouts are permitted only when there is a proceeding for intentionally committed crimes which a punishment of imprisonment of no less than two years is provided.

3. Interception/Surveillance may be ordered against:

a) a person suspected of committing a criminal offence;

b) a person who is suspected of receiving or transmitting communications from the suspect;

c) a person who takes part in transaction with the suspect;

ç) a person whose surveillance may lead to the discovery of the crime scene or the identity of the suspect.

4. The results of interception/surveillance are valid for all the communicators.

5. Preventive interception/surveillance is governed by a separate law. Its results may not be used as evidence.

Article 222

Decision on permitting interception/surveillance

1. The court authorizes interception on the request of prosecutor or private prosecutor (injured party), in cases permitted by law on a reasoned decision, when it is indispensable for carrying on the investigations, and when there are sufficient evidence to prove the charge. A special appeal lies against the decision of the court, which refuses the request for interception.

Surveillance in public places, recording of incoming and outgoing telephone numbers and the use of tracking devices for whereabouts are authorized by the prosecutor.

When one of the two persons who will be subjected to surveillance is willing to commit and record the respective action, according to an agreement with the judicial police officer, the action is permitted with the authorization of the prosecutor.

2. When there are reasonable grounds to think that the delay may seriously damage the investigations, the prosecutor orders the interception by a reasoned decision and informs the court immediately, but not later than twenty-four hours. The judge, within twenty-four hours from the order of the prosecutor, makes the evaluation by a reasoned decision. When evaluation is not done within the determined time period, interception cannot continue and its results cannot be used.

3. Decision on interception stipulates the way it shall be done and its duration, which cannot exceed fifteen days. This time-limit can be extended by the court on the request of the prosecutor whenever it is necessary for a period of 20 days when proceeding for crimes and up to 40 days when proceeding for serious crimes.

The decision of the court on secret photographic or video surveillance or on the interception/surveillance of conversations in private places (premises) may authorize a judicial police officer or a qualified expert to enter into these places in a secret way, acting in conformity with the decision. This authorization should be carried out within 15 days.

4. A prosecutor acts in person or through a judicial police officer in performing an interception/surveillance.

5. In the book which is maintained by the prosecution office are entered documents ordering, authorizing, evaluating or extending interceptions/surveillances, as well as the time of commencing and finishing each interception/surveillance proceeding.

Article 222/a

Appeal against a decision permitting interception/surveillance

1. An appeal may be made against a decision permitting interception/surveillance within ten days by an interested party who has learned of the surveillance for breach of criteria provided under article 221.

2. The appeal is examined by Court of Appeal or General Prosecutor if the authorization is issued by a prosecutor. When the appeal is found correct, the Court of Appeal or the General Prosecutor cancels the writ that authorizes the interception/surveillance and orders the deletion of all materials obtained from interception/surveillance.

Article 223

Interception Proceedings

1. Interception proceedings may be performed only through equipments installed in designated places, authorized and supervised/controlled by the district prosecutor.

1/1 When one of the conditions of interception/surveillance no longer exist, the judicial police officer immediately notifies the prosecutor who orders the discontinuance of interception/surveillance and informs the court, when the order is issued by the court.

2. Communications intercepted are recorded and the actions performed are recorded. The records specify the transcription of the contents of communications intercepted.

3. Minutes and (other) records shall be immediately handed over to the prosecutor and within five days from the conclusion of the actions, they are filed with the secretariat alongside writs which have ordered, authorized, evaluated or extended the interception/surveillance. When the filing may damage the investigation, the court authorizes the prosecutor to postpone the filing until the conclusion of the preliminary investigations.

4. Defence lawyers and representatives of the parties are immediately informed on the filing with the secretariat and of their right to examine the documents and to listen to the records. The court, after hearing the prosecutor and defence lawyers, decides to remove records and minutes, which use is prohibited.

5. The court orders full transcription of records that must be obtained. Transcriptions are entered into trial file. Defence lawyers may make copies of transcriptions.

Article 224

Custody of documents

1. Minutes and records are kept under the custody of the prosecution office which ordered the interception until the decision becomes final, except those which use is prohibited. But, when these documents are not necessary, the interested persons may request their destruction. The court that has made the evaluation of interception rules on the request. The destruction of (documents) shall be done under the control of the judge and records of the actions shall be kept.

2. When the prosecutor decides to dismiss the case, he shall inform in writing the court on this decision. The court decides on destroying the minutes and records within the time designated by it and informs the person intercepted. On the request of the prosecutor, service of notice may not be served when there is a danger to the life or health of others or when a commenced investigation is endangered.

Article 225

Use of interception results in other proceedings

1. Interception results may be used in other proceedings only in cases where they are necessary to the investigation of crimes. In these cases, the minutes and records of interception are filed with the other proceeding authority.

Article 226

Prohibition of use

1. Interception results may not be used when they are made out of cases permitted by law or when the provisions of this section are not complied with.

2. Interception of conversations or communications of those who are obliged to keep the secrecy because of their profession or duty may not be used, except when those persons have testified on the same facts or have revealed them in any other way.

3. The court orders the destruction of interception documents that may not be used, except when they constitute material evidence.