



**INTERCEPTION OF COMMUNICATIONS IN
ALBANIA**

Legislation and Paractice

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Abstract

In a paper published a year ago,¹ the IDM brought in for the first time the issue of the control and oversight of the interception of telecommunications by confronting the related legislation with the best practices on the use of the special methods of investigation. These practices suggest that there should be mechanisms in place for guaranteeing that the intelligence and law enforcement services use these methods only when provided by law and that the executive, the legislative and the judiciary should take their responsibility for controlling and overseeing this process. In October 2009 the law on interception was amended for the second time, to increase once more the number of the institutions with competences to use interception, but without touching upon to the control and oversight aspect. Following the discussion of a year ago, this paper presents another analysis of the legislation and the practices applied for carrying out the interception of telecommunications. This paper considers that in Albania, the control and oversight of the interception of telecommunications, as mechanisms for guaranteeing that human rights are fully respected of and that such method is used only for lawful purposes, is inexistent or exists only formally. It suggests that the legislation should be revised in order to provide for establishing such functional mechanisms.

Key words: *interception of telecommunications, fundamental human rights, control and oversight*

1. Introduction

The right to communicate freely and with some degree of privacy is one of the basic tenets of democracy, sanctioned in the fundamental documents of most of the states. However this has not prevented the intelligence and security institutions to always make efforts to covertly try to get access to communications by using a range of techniques, from the simple opening of letters to

¹ Arjan Dyrnishi, 'Interception of Communications in Albania: Control and Oversight', IDM, May 2009

read their content to the use of sophisticated technologies for intercepting telecommunications of all types.

In the last couple of decades the developments of the legislation in the field of interception has been conditioned by the growth in the communication technologies and the human rights developments, in an environment where the need for security has continuously increased.² The Council of Europe considers that the interception of telecommunications interferes with privacy as a fundamental right and therefore has recommended that such a measure must be provided for by law and that it must be possible to challenge the lawfulness of this measure before a court.³ Similarly the European Parliament states that the interference with rights guaranteed by the Convention for the Protection of Human Rights and Fundamental Freedoms should be 'in accordance with the law'.⁴

In line with this trend, Albania approved the law on the interception of telecommunications (LI) in 2003.⁵ To a certain degree the law serves as an instrument for carrying out the interception needed by the concerned intelligence and police services but it does not provide for control and oversight mechanisms.⁶

While the law was amended twice (in 2009 and 2009), with the aim to increase the number of the services which use the interception, no accountability mechanisms were established. Given that there are oversight mechanisms in place for intelligence and law enforcement services which are responsible for carrying out the interceptions also, it was assumed that the control over the use of interception is performed along with the overall control and oversight of these services. Therefore, the scope of this paper was expanded to analyse of the legislation and the practice that regulate the control and oversight of the intelligence and law enforcement services by the executive, the legislative, the judiciary and the independent institutions.

In order to test the validity of the findings, the intercept legislation was compared with that of two west European countries. The final part draws some conclusions and recommendations.

² Council Resolution of 17 January 1995 on the lawful interception of telecommunications, Official Journal C 329, 04/11/1996 P. 0001 - 0006

³ Guidelines on human rights and the fight against terrorism as adopted by the Committee of Ministers of the Council of Europe on 11 July 2002,

⁴ EP REPORT, PE 229.986/fin.A4-0243/99, 23 April 1999, on the draft Council Resolution on the lawful interception of telecommunications in relation to new technologies (10951/2/98 - C4-0052/99 - 99/0906(CNS))

⁵ Law Nr. 9157, date 4.12.2003, On the interception of the Telecommunication, amended by Law Nr.9885, date 3.3.2008 and Law Nr.10 172, date 22.10.2009

⁶ Arjan Dyrmishi, 'Interception of Communications in Albania: Control and Oversight', IDM, May 2009

2. The Preceding Legislation

The interception of telecommunications has been a known practice in Albania prior to the adoption of the LI in 2003. In the absence of a unified legislation, the interceptions were carried out based on the organic legislation that regulated the activity of the intelligence and law enforcement services. Thus, the law adopted in 1991 that dismantled the secret service of the communist era and established the National Intelligence Service (NIS) provided for the interception as a method of intelligence collection to be approved and controlled by the Prosecutor General (PG).⁷ Similarly the revised law on NIS, adopted in 1998 endorsed the same procedure for carrying out the interceptions.⁸ The law on the Military Intelligence Service (MIS) established a procedure according to which special methods are approved by the Minister of Defence and then ‘*acknowledged and signed*’ by the PG.⁹ The legislation that to a certain extent provided for a clearer procedure for carrying out the interceptions was the Code of the Penal Procedure (CPP) that was mainly used by the police and the prosecution.¹⁰ Given that the interception product acquired through this procedure could be used as and evidence, there was some kind of check that has compelled the respect for the procedural provisions as they were to be tested before the court.

3. The Law on the Interceptions

The growth of the mobile telecommunications market, the constitutional provisions for the fundamental rights can only be breached by law,¹¹ along with and the international standards on the matter,¹² led the need of using advanced intercept technologies but also of adopting a unified legislation in order to regulate the interception of telecommunication.

The LI is composed of five parts; the general provisions, the procedures for carrying out the interceptions, specific requirements in relation to the interceptions, the obligations of the telecommunication service providers and finally the procedures for carrying out the interceptions

⁷ Law Nr. 7495, date 2.7.1991, On the Organisation of the National Intelligence Service, Article 4

⁸ Law Nr. 8391, date 28.10.1998, On the National Intelligence Service, Article 6

⁹ Law Nr.9074, date 29.5.2003 On the Military Intelligence Service, Article 12

¹⁰ Law Nr.9074, date 21.3.1995, Code of the Penal Procedure of the Republic of Albania. Articles 221-226

¹¹ Constitution of Albania, Articles 15-18

¹² Convention for the Protection of Human Rights and Fundamental Freedoms

approved by a court warrant in accordance with the CPP and the authorities for issuing by-law acts.

The first part, general provisions, defines the scope of the law '*to increase the effectiveness of the work of the state intelligence institutions*',¹³ and the basic principles that should uphold the process among them the '*respect for the human freedoms and rights, the need, the proportionality*'.¹⁴

The main rationale of this paper is precisely to establish how and to what extent the balance between the scope and the basic principles of the law is maintained, and which authorities are responsible for controlling and overseeing the implementation of this law. As mentioned above, the law doesn't provide for the establishment of any control and oversight institution, except for the competences of the PG.

4. The Requirements in Relation to the Interceptions

Within the scope of the activity provided in the respective organic laws, the NIS, the intelligence and police services of the ministries of Interior, of Defence, of Justice and of Finances, have the right to apply for interception so as to get the intelligence needed for performing their tasks.¹⁵ In order to get an interception warrant the intelligence and police services must send an request to the PG with the details of the target and the number or numbers to be intercepted, the grounds on which the request is made and the period of time.¹⁶ The authorities that have the right to submit such requests is the Director of NIS and the ministers of those ministries within which operate intelligence or police services as established by law.¹⁷ As for the interceptions carried out in accordance with the CPP,¹⁸ the requests for a warrant are approved by the prosecutor responsible for the case upon the application of the judicial police officer and the warrants are approved by the court.¹⁹

¹³ LI, Article 2

¹⁴ LI, Article 4

¹⁵ LI, Article 6

¹⁶ LI, Article 7

¹⁷ LI, Article 8 and 17

¹⁸ Code of the Penal Procedure; updated with case law. Centre for the Official Publications. Tirana December 2008 Articles 221-226

¹⁹ Directive of the Prosecutor General Nr.1 date 21.04. 2006, 'On the Interceptions'

The two amendments of the LI,²⁰ the reference to the interception as a specified method in the law on the State Police and the law on the Internal Control in the Ministry of Interior, as well as the last draft amendments to the law on NIS that proposed for a widening of the scope of its activity and therefore increasing the category of the targets to be intercepted,²¹ demonstrate that there is a growth the use of interceptions as an intelligence collection method.

5. The Approval of the Interception Warrants

The authority responsible for the approval of the intercept warrants is the Prosecutor General. In order to control the execution of the warrants, the law empowers the PG with the right to have the command over the equipment that enables the interception.²² The PG can also access at any time the results of the interception either during or upon the termination of the warrant.²³ The PG may revoke the intercept warrant if he/she deems that it is not *‘effectual any more in accordance with the law’*.²⁴

Regarding the warrants approved by the court in accordance with the CPP, except the clause providing for the right of complain against an interception warrant,²⁵ the court, as an issuing authority, has no right to unilaterally revoke a warrant as in the case of the PG.

The maximum period for an intercept warrant is three months that may be renewed but each renewal cannot exceed the three months.²⁶ As for the warrants approved by the court the initial period cannot be longer than fifteen days but may be renewed for another twenty days for crimes and forty days for serious crimes.²⁷

The LI provides also for interception warrants in an emergency that can be approved by the PG ‘upon *‘verbal request of the head of the institution’*, who must submit a written request within twenty four hours, describing the reason for the request and the materials intercepted within that

²⁰ The LI was amended in 2008 and 2009 to provide for an increase in the access and responsibilities of the Ministry of Interior and other ministries.

²¹ Draft Law “On Some Amendments and Additions to the Law No. 8391 Date 28.10.1998 “On the State Intelligence Service

²² LI, Article 13

²³ LI, Article 15

²⁴ LI, Article 18

²⁵ CPP, Article 222/a

²⁶ LI, Article 14

²⁷ CPP, Article 222

time.²⁸ The PG may ‘*immediately interrupt the interception*’ in case such conditions are not met. In a similar manner, the CPP provides for the interception in an emergency with the approval of the prosecutor in charge of the case with the condition to apply to the court in written no later than twenty four hours.²⁹

Differently from the LI, the CPP provides for the lawful interception without a court warrant, with the approval of the prosecutor of the case ‘*when one of the two people that will be intercepted is willing to be intercepted according to an agreement with the prosecutor*’.³⁰

However, neither the LI nor the CPP provide for any sanction in order to prevent the misuse of the above clauses. On the other hand the fact that there is no evidence or report that such clauses may have been misused only strengthen our assumption that control and oversight over such practices is virtually impractical.

6. The Safeguard Mechanisms

The LI provides for some safeguard mechanisms, the most important being the prevention from using the interceptions acquired according to this law as evidence in the court.³¹ The LI provides also for some generalised provisions such as ‘taking measures to preserve the secrecy’ of the process and the ‘ban to intercept without the authorisation or other than the procedures established by the PG’.³² Some more concrete provisions consist on the restrictions to the using, copying and saving of the intercepted materials. The LI provides that intercepted materials must be destroyed immediately in case they may not be used to ‘*saving the live [of a person], [to the interest of] national security, public order or for preventing serious crimes*’.³³

In order to prevent for the unilateral misuse of the intercepting capabilities, the LI provides that the ‘*intercept system must always be composed of two parts that cannot function independently from each other*’.³⁴

In accordance with this provision the PG controls that part of the system that enables or interrupts the interception. However, for the interception capabilities run by the PG’s office,³⁵ it

²⁸ LI, Article 17

²⁹ CPP, Article 222

³⁰ CPP, Article 222, paragraph 1

³¹ LI, Article 5

³² LI, Article 16

³³ LI, Article 20

³⁴ LI, Article 12

is unclear how this requirement is served as neither the LI nor the CPP provide for any clause on who accesses the controlling part of this interception suite. Practically the PG controls both parts. The law delegates powers to the PG, the Director of NIS, and with the 2008 amendments, to the Minister of Interior, for issuing the acts to implement these safeguard procedures.³⁶ The CPP also provides for safeguard procedures such as the limitation to use intercepted materials in other cases as well as for the destruction of the intercepted materials.

However, both the LI and the CPP do not provide for any procedure that would allow for an objective and impartial control of the interception after the materials are destroyed.

7. Internal Control

The internal control is part of the democratic control that ensures that the policies and laws of the government are carried out in an efficient, professional and legal manner.³⁷ In addition, it is an essential foundation for the control and oversight by the executive, parliament and independent bodies.

Given that the LI doesn't lay down any provision on the internal control, the assumption is that this control over the implementation of the LI is performed in accordance with other legislation.

The other assumption is that the quality of internal control, in the nearly seven institutions that use interception,³⁸ must vary according to the differences in the institutional culture and the expertise in intelligence collection and handling of classified documents.

Further analysis and assessment of the internal control will be made below while discussing the executive and legislative control, but before moving to this, it is noteworthy examining the role of the PG who has extensive overlapping competences that go beyond the internal control ones. According to the preceding legislation that regulated interception procedures before 2003, but as discussed so far in the LI also, the PG was established as the key authority in the process of approving and to a certain extent controlling the interception. Along with the competences allocated by the CPP the PG's competences include:

³⁵ Report of the PG to the Parliament on the 'Situation of the Criminality in Albanian for 2007'

³⁶ LI, Article 24

³⁷ H. Born & I. Leigh 'Making Intelligence Accountable: Legal Standards and Best Practices for Oversight of Intelligence Agencies.'

³⁸ As mentioned, the NIS, the Ministry of Interior, of Justice, of Finances, of Defence, the Prosecution and the courts have various sorts of access to interception.

- a) The approval of the intercept warrants pursuant to the LI,
- b) The technical control over the system of the interception,
- c) The right to approve the staff employed to perform interception functions,³⁹
- d) The right to access all intercepted materials,
- e) The revocation of the intercept warrants,
- f) The approval of the intercept warrants in an emergency pursuant the LI,
- g) The approval of the interception in an emergency pursuant the CPP,⁴⁰
- h) The approval for coping and saving intercepted materials,
- i) The interception in the PG's premises on an equal footing with the other intelligence and police services,
- j) The right to issue acts and regulations for:
 - i. the detailed manner for carrying out the interception,
 - ii. the rules for preserving the secrecy of the intercepted materials,
 - iii. the manner and conditions for saving and destroying the intercepted materials

As it can be seen, the PG has internal control competences but can act also as an external control to all other institutions that perform interception tasks, except the courts. However neither the LI nor the CPP provide for any obligation of the PG to report to any institution in discharging all his/her competences. As the PG reports yearly to the Parliament,⁴¹ the rational expectation is that the PG reports on implementation of the intercept legislation also.

8. Executive Control

The control by the executive of the intelligence and law enforcement services focuses on tasking and prioritizing the services, including ministerial knowledge and control over the services, control over covert operations, control over international cooperation and safeguards against

³⁹ LI, Article 12. The PG has the right to give final confirmation for the employees of all the institutions that have access the interception suite.

⁴⁰ This is a competence that all the prosecutors that are in charge of a case enjoy, however the PG is responsible for the controlling that this competence is use for lawful purposes

⁴¹ Law Nr.8737, date 12.2.2001, On the Organisation and Functioning of the Prosecution in the Republic of Albania, amended with the Constitutional Court Decision Nr. 25, date 13.02.2002, the law Nr. 9102, date 10.07.2003, and the law Nr. 10051, date 29.12.2008

ministerial abuse.⁴² Given that the LI doesn't provide for the executive control and considering that there are three types of institutions that have different relationships with the executive, the competences of the executive over these three categories vary in accordance with the provisions that regulate such relationship in the respective organic laws.

Thus, for those intelligence and police services that operate under within the ministries, formally it may be assumed that this control exists in the fact that the ministers have the authority to apply for an intercept warrant but may also exercise controls over these services. However there is no public reporting or any other evidence that would allow us to assess the quality of such control.

As for the NIS, it is controlled by the Council of Ministers and the Prime minister directly or through the Inspector General.⁴³ Even for NIS there are no evidences that would allow for an assessment of such control. As for the Prosecution, the executive control is exercised through the control of the Ministry of Justice which reports to the parliament annually.⁴⁴ However, the reporting examined for the purpose of this paper does not contain any reference to the implementation of the legislation on the interception.⁴⁵

9. Control by the Independent Institutions

Independent oversight is an important pillar of intelligence accountability, carried out by institutions whose independence is secured by law as well as special reporting and appointment mechanisms.⁴⁶ In Albania the independent institutions that control and oversee the intelligence and police services are the People's Advocate (PA) and the High State Audit. The Prosecutor General performs control functions as an independent institution with regard to the use of special methods of investigation, as provided in all organic laws that regulate the activity of the intelligence and police services, and more specifically with regard to the interception as provided in the LI.

⁴² H. Born & I. Leigh 'Making Intelligence Accountable: Legal Standards and Best Practices for Oversight of Intelligence Agencies.

⁴³ Law Nr.8391, date 28.10.1998, On the National Intelligence Service, Articles 4 and 12.

⁴⁴ Law Nr.8737, date 12.2.2001, On the Organisation and Functioning of the Prosecution in the Republic of Albania

⁴⁵ Minutes from the annual reporting 'On the inspections performed by the Ministry of Justice to the Prosecution' in the Permanent Committee on the Legal Affairs, Public Administration and Human Rights, date 01.06.2010

⁴⁶ H. Born & I. Leigh 'Making Intelligence Accountable: Legal Standards and Best Practices for Oversight of Intelligence Agencies.

The Constitution of Albania dedicates an entire section to the human rights protection.⁴⁷ Under this part, Chapter 6 provides for the establishment of the People's Advocate as an institution that 'defends the rights, freedoms and lawful interests of individuals from unlawful or improper actions or failures to act of the organs of public administration'.⁴⁸ The law provides for the control by the PsA of the security sector by establishing a dedicated Commissioner and a section with the mandate to cover the police, the secret service, the prisons, the Armed Forces and the judiciary.⁴⁹ For the discharge of the above duties the PA reports annually to the Parliament, more precisely to the Permanent Committee on the Legal Affairs, Public Administration and Human Rights (PCLAPHR).

Having analysed all the PA's reports delivered to the Parliament since 2006, there is no evidence on the control over the implementation of the intercept legislation, being the PG office or the intelligence and police services or the judiciary, except for one case that was triggered by the complaint of one citizen.⁵⁰

The PG makes part of the independent institutions as provided by the Constitution.⁵¹ The PG reports to the Parliament, as a rule to the PCLAPHR but in a plenary session also, at least every six months.⁵² However the established practice so far is that the PG reports annually.

Having analysed the PG's reports to the parliament since 2006, there is a continuous decline towards the absolute nothing concerning the reporting on the implementation over the implementation of the intercept legislation and the discharge of the competences mentioned above. The 2006 report of the PG dedicated a noteworthy part to the implementation of the LI, provided statistics and even an assessment of the PG towards the use of the interceptions as a method.⁵³ In the PG's reports that have followed, there is almost nothing with relation to the implementation of the LI, except for some minor details describing the 'successful' use of the interceptions and the expansion of the technical intercept capabilities.^{54 55}

⁴⁷ Constitution of Albania, Part II, The Fundamental human rights and freedoms - Article 15 to 63

⁴⁸ Constitution of Albania, Part II, Chapter VI, Article 60

⁴⁹ Law 8454, date 4.2.1999, amended by Law 8600 date 10.04.2000, and by Law 9398, date 12.05.2005, On the People's Advocate. Article 31

⁵⁰ Report on the activity of the People's Advocate, 1 January – 31 December 2006, Reported in 2007

⁵¹ Constitution of Albania, Articles 148-149

⁵² Law Nr.8737, date 12.2.2001, On the Organisation and Functioning of the Prosecution in the Republic of Albania, Article 53

⁵³ A.Rama, 'Sollaku: Albania same number of interceptions as the US', Gazeta Shekulli 13 March 2007,

⁵⁴ Report of the PG to the Parliament on the 'Situation of the Criminality in Albanian for 2008'

⁵⁵ Report of the PG to the Parliament on the 'Situation of the Criminality in Albanian for 2009'

10. The Control and Oversight by the Parliament

The parliamentary oversight fulfils an important role in the system of checks and balances by overseeing general policy, finance and the legality of the services.⁵⁶ There is an overall *ex ante* control by the parliament that is provided by the Constitution, consisting in the exclusivity of the parliament to adopt legislation,⁵⁷ and in the Rules of Procedures of the parliament that establishes the permanent committees as responsible bodies for pursuing the adoption of the legislation according to policy areas.⁵⁸

The fact that the parliament has failed to provide for the omissions in the LI, as it is being argued so far, demonstrates that the *ex ante* parliamentary control has not worked properly. It may be assumed that the lawmakers have estimated that the existing legislation framework that regulates the relationship between the intelligence and police services with the executive, the independent institutions and the legislative itself would be sufficient.

Following this assumption this paper has looked at the *ex post* parliamentary control over the implementation of the intercept legislation on the efficiency, the effectiveness and the respect of human rights aspects. For the last two legislatures the control and oversight of the intelligence and police services is performed by three permanent parliamentary committees:

The Permanent Committee on National Security (PCNS) that is responsible for the organisation of the national defence and the Armed Forces, the military cooperation, the internal affairs, the civil emergencies, the public order and the secret services. To this committee the intelligence and police services report directly, as in the case of the annual report presented by the director of NIS, or indirectly through the reporting of the ministers who have such services under their control.

The Permanent Committee on the Legal Affairs, Public Administration and Human Rights (PCLAPHR) that is, among other things, responsible for the organisation of the judiciary, the independent institutions and the human rights. This committee is responsible for hearing the reports of the People's Advocate, the Prosecutor General and the Minister of Justice.

⁵⁶ H. Born & I. Leigh 'Making Intelligence Accountable: Legal Standards and Best Practices for Oversight of Intelligence Agencies.

⁵⁷ Constitution of Albania, Articles 81-85

⁵⁸ Assembly's Rules of Procedure, approved by Decision nr.166, date 16.12.2004, amended by Decision Nr. 15, date 27.12.2005, Decision Nr. 193, date 07.07.2008, and Decision Nr. 21, date 27.12.2010,

The Permanent Committee on the Economy and Finances (PCEF) that is responsible for the state budget and the oversight of its execution. To this committee report the Chairman of the High State Audit on matters related to the execution of the budget by the intelligence and police services, including financial matters related to the interception.

From the organisational and the division of labour point of view this control and oversight system may seem plausible, but having checked how these committees work in practice, either with regard to how they receive the information and assess the reports but also regarding how they coordinate their findings and activity it results that this mechanisms functions only formally. The analysis of the minutes from the questions and answers session in the PCLAPHR, following the report of the PA,⁵⁹ but also from the resolution adopted by the parliament on the report,⁶⁰ show that there is not even any minor detail with reference to the implementation of the legislation of the interception or any question raised by any member of the parliament.

Similarly, from the analysis of the minutes from the questions and answers sessions in the PCLAPHR,⁶¹ or in a plenary session in the parliament,⁶² following the reports of the PG, it is evident that the interest of the MPs with reference to the implementation of the intercept legislation and the discharge of the PG's duties, as the key authority in the process, has been minimal.⁶³

Even in the yearly report of the Minister of Justice on the inspections carried out to the Prosecution, presented to the PCLAPHR there is no mention on the implementation of the intercept legislation nor was it any question raised by any MP on the matter.⁶⁴

⁵⁹ Minutes from the annual reporting 'On the activity of the People's Advocate' for year 2009', date 31.03.2010 in the Permanent Committee on the Legal Affairs, Public Administration and Human Rights,

⁶⁰ Assembly's Resolution on the Assessment of the Activity of the Institution of the People's Advocate for year 2009, 22 April 2010,

⁶¹ Minutes from the annual reporting of the PG to the parliament on the 'Situation of the Criminality in Albanian for 2009' on 25.05.2010,

⁶² Minutes from the annual reporting of the PG to the parliament on the 'Situation of the Criminality in Albanian for 2007' on 17.07.2008,

⁶³ In the question and answers session after PG's report in 2008, there is only one intervention by an MP who warned the PG to be careful not to approve all the requests in order to protect citizens rights and that the intercepts should be used as a last means of investigation rather than to initiate an investigation.

In the question and answers session after PG's report in 2010, to the request for information by one MP on whether intercept was used by NIS as a means to survey the MPs the PG replied that this is a secret she couldn't tell.

⁶⁴ Minutes from the annual reporting of the Minister of Justice on the inspections carried out to the Prosecution presented to the PCLAPHR on 01.06.2010,

11. The French and British Examples

For the sake of this paper, and in order to compare how the control and oversight over the interceptions works elsewhere, the interception in France and the Great Britain was examined.

As for the control by the executive, according to the French legislation, the Prime minister is responsible for the approval of the intercept warrants and the organization of the centralised execution of the authorized interceptions by defining the maximum number of the interceptions that can be carried out simultaneously and the distributing the quotas for each institution.⁶⁵ The President of the republic appoints the head of the National Commission for the Control of the Interceptions (NCCI), as the main body for exercising the control over the process of interceptions for a renewable three years period. The NCCI is composed by a member of the Assembly, the French lower house of the parliament and a senator from the Senate.⁶⁶ The NCCI controls the interception process *ex ante* through the right to be informed by the Prime minister within forty eight hours on all intercept warrants issued by him. In case the NCCI estimates that the intercept warrant doesn't comply with the requirements of the legalisation it sends to the Prime minister a recommendation asking for the immediate interruption of the interception. The recommendation is sent also to the ministry requesting the intercept.⁶⁷

The NCCI controls the interception process in the process of execution also by its own initiative or based on any request by 'every person that has a direct and personal interest'. In case the commission finds that the interception is not carried out in compliance with the legal provisions, it requests the Prime minister to immediately interrupt the interception.⁶⁸ The ministries, the other authorities and the personnel involved must take all measures to facilitate the activity of the commission.⁶⁹ The findings of the NCCI are presented to the Prime minister,⁷⁰ in an annual report that is made public. The reports contain details on the methodology of controls, statistical details and various issues that may have come out as a result of the control process. The

⁶⁵ Loi n°91-646 du 10 juillet 1991 relative au secret des correspondances émises par la voie des communications électroniques.NOR: JUSX9100068L .Version consolidée au 31 décembre 2008. Articles 4-5

⁶⁶ Ibid, Article 13

⁶⁷ Ibid, Article 14

⁶⁸ Ibid, Article 15

⁶⁹ Loi n°91-646 du 10 juillet 1991 relative au secret des correspondances émises par la voie des communications électroniques.NOR: JUSX9100068L .Version consolidée au 31 décembre 2008, Article 16

⁷⁰ Ibid, Article 19

following tables present some statistics on the number and nature of interceptions in France in five years.

	2004	2005	2006	2007	2008
National Security	548	625	622	479	567
Economic and scientific potential	66	43	47	52	38
Terrorism	1 292	1 468	1 330	1 295	1 138
Organised Crime	1 881	2 006	2 195	2 381	2 565
Disrupted criminal groups	0	2	9	8	22
Total	3 787	4 144	4 203	4 215	4 330

Table 1: Initial intercept demands in five years,⁷¹

	2004	2005	2006	2007	2008
National Security	629	624	735	793	754
Economic and scientific potential	36	42	28	20	23
Terrorism	1 050	848	794	779	551
Organised Crime	201	182	243	251	275
Disrupted criminal groups	0	1	9	7	2
Total	1 918	1 697	1 809	1 850	1 605

Table 2: Demands for intercept renewals in five years,⁷²

In the British legislation also, with regard to the control by the executive, the Secretary of State is responsible for the approval of the intercept warrants.⁷³ The Prime minister has the power to appoint the Interception of Communications Commissioner (ICC) as the main body for the controlling and reporting on the implementation of the interception legislation. The Interception of Communications Commissioner keeps under review among others:

- i. The Secretary of State's role in issuing warrants for the interception of communications.
- ii. The procedures adopted by those agencies involved in interception under warrant, to ensure they are compliant with RIPA.

⁷¹ Commission Nationale de Contrôle des Interceptions de Sécurité. 17^e Rapport d'activité, Année 2008. La documentation Française

⁷² Ibid

⁷³ Regulation of Investigatory Powers Act 2000 (c. 23), Part I, Chapter I

- iii. The procedures adopted by any other organisations that assist those agencies in warranted interception.
- iv. The adequacy of arrangements made by the Secretary of State for the handling and protection of intercepted material.⁷⁴

The ICC inspects twice a year those agencies conducting warranted interception and the departments of the relevant Secretaries of State and to the Communications Service Providers also. The findings of the ICC controls are reported annually to the Prime minister who subsequently lays it down to the parliament after omit parts that may compromise the operational activity of the services.

Following is a table with statistics from the ICC reports.

	2004	2005	2006	2007	2008
Warrants approved by the Home Secretary	674 ^a 1849 ^b	553 ^a 2243 ^b	754 ^a 1333 ^b	929 ^a 1881 ^b	844 ^a 1881 ^b
Warrants approved by the Scottish Executive	34 ^a 124 ^b	43 ^a 164 ^b	43 ^a 102 ^b	28 ^a 145 ^b	43 ^a 102 ^b
Total	708^a 1973^b	596^a 2407^b	797^a 1435^b	957^a 2026^b	887^a 1983^b

Table 3: Warrants approved in five years,⁷⁵

(a) Warrants in force as at 31 December of each year

(b) Warrants issued during the period 1 January to 31 December

Such statistics are an important element for informing the public on the scale of use of the interception and may help to generate an informed debate on the matter. By a comparison of the above data and data published on the interception in other European countries it comes out that for the 2006 data, Italy was the country that used most the interception, with 76 out of every 100.000 people intercepted, followed by the Netherlands with 62 out of every 100.000, and by Switzerland with 32 people out of every 100.000.⁷⁶

⁷⁴ Regulation of Investigatory Powers Act 2000 (c. 23), Part I, Chapter I

⁷⁵ Complied with data from the ICC reports 2004-2008

⁷⁶ Duncan Kennedy, 'Italian bill to limit wiretaps draws fire', 11 June 2010,

12. Conclusions and Recommendations

The legislation regulating the interception of the telecommunications in terms of control and oversight provisions is incomplete. But as it was discussed, the legislation that regulates the activity of the security and police services also, with regard to relations with the executive, the independent institutions and the parliament, has failed to serve as complementary to this incompleteness.

Given that, differently from the experience of other countries where public reports related to the use of interceptions have served to generate a debate that has consequently led not only to the adoption of better legislation or even more court cases have contributed to enriching the European Court of Human Rights case-law, in Albania the public debate on this subject is absent. Therefore the LI has borrowed much of the preceding practice with the PG at the epicentre of the process but with no clear roles for the executive, the independent institutions and the legislative.

In these circumstances, except for the need to complete the legislation with provisions that would enhance interception such as the interception of internet, Voice over Internet Protocol (VoIP) and other technological solutions, the legislation needs to be revised and completed in order to guarantee avoiding the following potentials for misuse:

- To guarantee the implementation of the clause that the system should be composed of two divided parts as one of the parts may perform both functions.
- To prevent unlawful legislation in case the two institutions responsible for the interceptions collude to circumventing the legal provisions.
- Regulate checks on the use of emergency interceptions.
- To guarantee that the numbers approved in a warrant belong to the people under investigation.
- To prevent the misuse of the clause for lawful interception with the consent of one party in the interception.
- To provide guarantees for the personnel performing intercept tasks in order to avoid putting them under pressure to circumvent the legal procedures.

- To provide for procedures that prevent from string and disseminating interceptions unrelated to the investigation such as communications with doctors, lawyers or other similar professionals.

Furthermore, the legislation should provide for a clear role of the executive and set up an independent controlling institution to report to the executive and the legislative. The legislative should develop capacities and expertise in order to oversee and assess all other control mechanisms.

List of Abbreviations

1. CPP - Code of Penal Procedure
2. ICC - Interception of Communications Commissioner
3. LI - Law on Interception
4. MoJ - Minister of Justice
5. NCCI - National Commission for the Control of the Interceptions
6. NIS - National Intelligence Service
7. PG - Prosecutor General
8. PA - People's Advocate
9. PCEF - Permanent Committee on the Economy and Finances
10. PCLAPHR - Permanent Committee on the Legal Affairs, Public Administration and Human Rights
11. PCNS - Permanent Committee on National Security
12. RIPA - Regulation of Investigatory Powers Act

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