



**REPUBLIC OF ALBANIA
THE ASSEMBLY**

LAW

No. 9887 dated 10.03.2008

ON PROTECTION OF PERSONAL DATA

Based on articles 78 and 83 item 1 of the Constitution, upon a proposal of the Council of Ministers,

**THE ASSEMBLY
OF THE REPUBLIC OF ALBANIA**

DECIDED:

**CHAPTER I
GENERAL PROVISIONS**

Article 1

The object

This law aims at defining the rules for the protection and legal processing of the personal data.

Article 2

General Principle

The legal processing of the personal data shall respect and guarantee the fundamental rights and freedoms of persons and in particular their right to privacy.

Article 3

Definitions

For the purposes of this law, the following terms shall mean:

1. *“Personal Data”* shall mean any information relating to an identified or identifiable natural person. Elements used to identify a person directly or indirectly are identity numbers or other factors specific to his physical, psychological, economic, social and cultural identity etc.

2. "*Sensitive data*" shall mean any piece of information related to the natural person in relation to his racial or ethnic origin, political opinions, trade union membership, religious or philosophical beliefs, criminal prosecution, as well as with data concerning his health and sexual life.
3. "*Controller*" shall mean the natural or legal person, public authority, agency or any other body, which alone or jointly with others store, process, administer, archive and therefore control personal data.
4. "*Personal data subject*" shall mean any natural person, whose personal data are processed.
5. "*Processor*" shall mean a natural or legal person, public authority, agency or other body, except for the employees of the Controller, which processes personal data on behalf of the Controller.
6. "*Personal data filing system*" shall mean any structured set of personal data, which are accessible according to at least one specific criterion.
7. "*Processing of data*" shall mean any operation which is performed upon personal data, whether or not by automatic means, such as the collection, recording, storage, organization, adaptation, alteration, consultation, use, retrieval, blocking, erasure, destruction or any other action, as well as data transmission.
8. "*Recipient*" shall mean a natural or legal person, public authority, agency or any other body to whom data are disclosed.
9. "*Transmission*" shall mean the transfer of personal data to recipients.
10. "*International transfer*" shall mean the transfer of personal data to recipients in a foreign state.
11. "*Disclosure*" shall mean the communication of the personal data among controllers or the communication of the personal data to any other person, other than the processor or the subject of personal data, including publication of the data.
12. "*Consent*" shall mean a specific declaration given on a free will by the subject for the processing of his data.

Article 4

Scope

1. This law shall apply to the processing of personal data, wholly or partly by automatic means and to the processing by other means of a personal data stored in a filing system.
2. This law shall apply to the processing of personal data by:
 - a) Controllers established in the Republic of Albania;
 - b) Diplomatic missions or consular offices of the Albanian state;
 - c) Controllers who are not established in the Republic of Albania, making use of any equipment situated in the Republic of Albania;

3. In circumstances stipulated in point 2 (c) of this article, the controller designates a representative established in the territory of Albania. Stipulations of this law applying to controllers are also applicable to their representatives.

4. This law does not apply to the processing of data by a natural person for purely personal or family purposes.

CHAPTER II PROCESSING OF PERSONAL DATA

Article 5

Protection of personal data

1. Protection of personal data is based on:
 - a) a processing that is honest, fair and lawful;
 - b) a collection for specific, clearly defined and legitimate purposes and shall be processed in a way that is compatible with these purposes;
 - c) sufficient data, related with the purpose of their processing and not exceeding the purpose for which they are processed;
 - ç) accuracy as to factual existence of the data and when necessary, updating and taking every measure in order to ensure that incorrect or irregular data are erased or altered;
 - d) keeping data in a form that allows the identification of data subjects for no longer than it is necessary for the purpose for which they were collected or further processed;
2. The controller is responsible for applying these requirements to all kinds of processing of data, be it automatically or by other means.

Article 6

Legal criteria for processing

1. The personal data may be processed only:
 - a) if the personal data subject has given his consent;
 - b) for the preparation and performance of a contract to which the personal data subject is party;
 - c) in order to protect the vital interests of the data subject;
 - ç) to comply with a legal obligation of the controller;
 - d) for the performance of a legal task of public interest or in exercise of powers of the controller or of a third party to whom the data are disclosed;
 - dh) for the purposes of the legitimate interests pursued by the controller or by the third party to which the data are disclosed, except when such interests override interests or fundamental rights and freedoms of the data subject.
2. Processing of personal data in the framework of crime prevention and prosecution activities, in cases of a criminal offence against the public order and other violations in the field of criminal law, defence and national security, shall be performed by official authorities as stipulated in the law.

Article 7

Processing of sensitive data

- 1) Except for cases specified in point 2 and 3 of this Article, processing of data that reveal racial or ethnic origin, political beliefs, trade unions membership, religious or philosophical beliefs, criminal convictions and health and sexual life is prohibited.
- 2) Processing of sensitive data shall be done only if:
 - a) the data subject has given his/her consent, which may be revoked at any given moment making illegal any further processing of data;
 - b) it is in the vital interest of the data subject or another person and the data subject is physically or mentally incapable of giving his/her consent;
 - c) it is authorized by the responsible authority for an important public interest;
 - ç) It is related to data which are manifestly made public by the data subject or is necessary for the exercise or defence of legal rights;
 - d) data are processed for scientific or statistics research,
 - dh) data are required for the purposes of preventive medicine, medical diagnosis, the provision of health care, treatment or management of health care services and data are used by medical personnel or other persons with the obligation to preserve confidentiality;
 - e) data are processed by non-profit political, philosophical or religious organisations and trade unions for purposes of their legitimate activity, only for members, sponsors, or other persons related to their activity. These data shall not be disclosed to a third party without the consent of the data subject unless otherwise stipulated by law.
 - ë) data processing is necessary for the purpose of accomplishing a legal obligation and specific rights of the controller in the field of employment in compliance with the Labour Code.
3. Processing of sensitive data in circumstances other than those stipulated in point 2 of this Article, is regulated upon a Decision of the Council of Ministers, only for purposes of important public interests, under appropriate protective measures.

Article 8

International transfer

1. The international transfer of personal data is done with recipients from states which have an adequate level of personal data protection. The level of personal data protection for a state is established by assessing all circumstances related to processing, nature, purpose and duration of processing, country of origin and final destination, legal provisions and security standards in force in the recipient state. States that have an adequate level of data protection are specified by a decision of the Council of Ministers.
2. International transfer of personal data with a state that does not have an adequate level of personal data protection may be done when:
 - a) it is authorised by international acts ratified by the Republic of Albania and are directly applicable;
 - b) data subject has given his/her consent for the international transfer;

- c) it constitutes a contractual obligation concluded between the controller and data subject or a third party to the interest of the data subject;
 - ç) it is a legal obligation of the controller;
 - d) it is necessary for protecting vital interests of the data subject;
 - dh) it is necessary or constitutes a legal requirement over an important public interest or for exercising and protecting a legal right;
 - e) transfer is done from a register that is open for consultation and provides information to the general public.
3. Exchange of personal data to the diplomatic representations of foreign governments or international institutions in the Republic of Albania shall be considered an international transfer of data.

Article 9

International transfer of data that need to be authorized

1. In cases other than those provided for in Article 8 herein, the international transfer of personal data with a state that does not have an adequate level of data protection, shall be carried out upon an authorization from the Commissioner.
2. The Commissioner, after making an assessment, may give the authorisation for transfer of personal data to the recipient State by defining conditions and obligations.
3. The Commissioner issues instructions in order to allow certain categories of personal data international transfer to a state that does not have an adequate level of personal data protection. In these cases, the controller is exempted from the authorization request.
4. The controller shall submit a request for authorisation to the Commissioner prior to the data transfer. In the authorization request, the controller shall guarantee the observance of the interests of the data subject to protection of confidentiality outside the Republic of Albania.

CHAPTER III SPECIAL DATA PROCESSING

Article 10

Processing for scientific and statistical research

1. Personal data collected for any purpose, may be further processed for scientific or statistical research purposes provided that the data is not processed in order to take measures or decisions related to an individual.
2. The transfer of sensitive data for scientific research shall take place only in case of an important public interest. Personal data shall be used exclusively by individuals who are bound by confidentiality.
3. When data processing is made in a manner that allows the identification of the data subject, the data should immediately be encrypted in order for the subjects to be no longer identifiable. Encrypted personal data shall be used exclusively by individuals bound by confidentiality.

Article 11

Processing for other purposes

The processing of personal data for journalistic, literature or artistic purposes shall be exempt from application of the provisions of Articles 5, 6, 7, 8, 12, 18, 21 and 28, only if the personal data protection according to such provisions hinders the exercise of the right to freedom of speech.

CHAPTER IV

RIGHTS OF DATA SUBJECT

Article 12

Right to access

1. Every data subject is entitled the right to obtain from the controller on his written request:

- a) confirmation whether or not his personal data are being processed, information on the purposes of processing, the categories of processed data and the recipients or categories of recipients to whom personal data are disclosed;
- b) communication to him in a comprehensible form of the data undergoing processing and of any available information as to their source;
- c) in case of automated decisions taken based on Article 14 herein, information about the logic applied in the decision-making;

The information about the data shall be communicated in the form they were at the time when the request was made.

2. Within 30 days upon receipt of the request, the controller informs the data subject or explains the reasons why the information cannot be provided.

3. The right to access, as provided for in section 1 herein, shall be exercised in respect of the constitutional principles of freedom of speech and information, freedom of press and professional confidentiality and it may be restricted if it violates national security interests, the foreign policy, the economic and financial interests of the state, prevention and prosecution of criminal offences.

4. The right to access cannot be exercised in cases provided for in Article 10 (1) herein.

5. If access is denied on arguments of violation of national security interests, foreign policy, economic and financial interests of the state, prevention and prosecution of criminal offences or of the freedom of speech and information or press freedom, the data subject may require from the Commissioner to check on the exemption for the concrete case. The Commissioner shall inform the data subject about the undertaken measures.

Article 13

The right to request correction and erasure

1. Every data subject has the right to request the correction or erasure of his data whenever he is informed that data relating to him are irregular, untrue, and incomplete or have been processed and collected in contradiction with the provisions of this law.

2. Within 30 days from receipt of the request by the data subject, the controller notifies the data subject on the lawful processing of the data, on the correction or erasure or lack thereof.

3. When the controller does not carry out the correction or erasure of the data requested, the data subject has the right to file a complaint with the Commissioner.

Article 14

Automatic decision-taking

1. Each person shall be entitled not to be subject to decisions, that cause legal effects on him or that influence him significantly and the decision is based only on the automatic processing of the data, which aim at assessing certain personal aspects related to him, particularly his efficiency at work, his credibility or behaviour.

2. A person may be subject to a decision taken according to point 1 herein, when measures are taken to protect his legitimate interests, particularly the decisions including his point of view.

Article 15

The right of the data subject to refuse

1. The data subject may refuse at any time on legal basis, the processing of data related to him done according to article 6 herein, letters 'd' and 'dh', unless otherwise stipulated by the law.

2. The data subject shall be entitled to ask the controller not to start the processing of personal data related to him for purposes of direct business or to stop it, if it has already started.

Article 16

The right to complain

1. Every person who claims that his rights, freedoms and legal interests concerning his personal data have been violated shall have the right to complain or to notify the Commissioner and to request his intervention to remedy the infringed right.

Following this complaint, in accordance with the Code of Civil Procedure, the data subject may file a complaint in court.

2. When the data subject has filed a complaint, the controller shall have no right to make any changes to the personal data until a final decision ruled.

Article 17

Compensation of the damage

Every person to whom damage has been caused due to an unlawful processing of personal data shall have the right to claim compensation by the controller for the suffered damage.

CHAPTER V OBLIGATIONS OF THE CONTROLLER AND PROCESSOR

Article 18

Obligation to Inform

1. When the controller collects personal data, he shall inform the data subject. The information shall contain the categories of personal data to be processed, the purpose of processing, controller's name and address as well as any other necessary information to ensure a fair processing of the personal data. The information is not given when the data subject is aware.
2. Data may be collected through transfer from another processing performed by the same controller or by other controllers. In such cases, information shall not be disclosed when data processing is provided by the law, when it is impossible provide the information because the data subject cannot be located or when data are processed in compliance with point 1 of Article 10 herein.

Article 19

Obligation for Correction and Erasure

1. The controller shall carry out upon his initiative or request of the data subject the correction or erasure of personal data, when he/she finds that the personal data are irregular, untrue, and incomplete or have been processed in contradiction with the provisions of this law.
2. Within 30 days from receipt of the request by the data subject, the controller notifies the data subject about the correction or erasure or lack thereof.
3. The controller notifies the recipient of personal data on the correction or erasure of the personal data transmitted prior to the correction or erasure.

Article 20

Obligations of the Processor

1. The controllers may recruit processors to process personal data. The processor shall guarantee lawful and safe use of data. All personal data processors shall have the following obligations:
 - a) to process data only according to the instructions of the controller; not to transmit data unless so instructed by the controller;
 - b) to take all required safety measures, in compliance with this law and to employ operators who are bound by confidentiality;

c) to create in agreement with the controller the necessary technical and organisational requirements for the fulfilment of the controller's obligations to ensure the protection of data subjects' rights;

ç) to hand over to the controller after the completion of the processing service all the results of processing and documentation containing data or to keep or destroy them on controller's request;

d) to make available to the controller all information necessary to control the compliance with the obligations stemming from the abovementioned provisions.

2. Obligations of point 1 are stipulated in the contract entered between the Controller and Processor.

CHAPTER VI NOTIFICATION

Article 21

Responsibility to notify

1. Every controller shall notify the Commissioner about the processing of personal data for which he is responsible. The notification shall be made before the controller processes the data for the first time, or when a change of the processing purpose notified earlier is required.

2. The processing of personal data the sole purpose of which is to keep a record, which in accordance with the law or sub-legal acts provides information for the public in general, is exempted from the obligation to notify the processing of data.

3. Data that are processed for the purpose of protection of the constitutional institutions, interests of national security, foreign policy, economic or financial interests of the state, prevention or prosecution of the criminal offences are exempted from the obligation to notify.

4. Other cases on which notification is not necessary are stipulated by a decision of the Council of Ministers.

Article 22

Content of notification

The notification shall contain the following:

- a) name and address of the controller;
- b) purposes of processing of personal data;
- c) categories of data subjects and the categories of the personal data;
- ç) recipients and the categories of recipients of the personal data;
- d) the proposal on the international transfer that the controller aims to carry out;

dh) a general description of the measures for the security of personal data.

Article 23

Examination procedure

The Commissioner shall examine all notifications and when a notification is insufficient the Commissioner shall order the controller to complete the data within the deadline established by him.

Article 24

Prior checking

1. Authorization by the Commissioner is required for:
 - a) processing of sensitive data in accordance with Article 7, item 2, letter 'c' herein;
 - b) processing of personal data in accordance with Article 9, item 1, herein;
2. In cases when the data processing in compliance with point 1 herein is authorized by a legal provision, an authorization from the Commissioner is not required.

Article 25

Beginning of processing

1. The processing of data begins after the notification.
2. The data processing that requires an authorization in accordance with Article 24, item 1 herein, may start only following receipt of the authorization.

Article 26

Publication of processing

1. As regards the data for which an authorization is required, a special decision is made and reflected in the register that is administered by the Commissioner and open for consultations by any person.
2. The register shall contain information according to Article 22 herein, except for the information according to Article 22 and letter 'dh' herein, which is not to be published.
3. A controller who is exempt from the obligation to notify shall at least make available information about his name and address, the categories of the processed personal data, the purposes of processing, the categories of recipients to which data are disclosed in an appropriate form to every person and in accordance with their request.
4. This article shall not apply to processing the purpose of which is to keep a record, which in accordance with the primary or secondary legislation provides information for the public in general.

CHAPTER VII

SECURITY OF PERSONAL DATA

Article 27

Measures for the security of personal data

1. The controller or the processor shall take appropriate organizational and technical measures in order to protect personal data from unlawful or accidental destruction, accidental loss, from access or disclosure to unauthorized persons, especially when the processing of data takes place in a network, as well as from any other unlawful form of processing.

2. The controller shall take the following special security measures:

a) defines the functions of the organizational units and those of the operators as regards the use of data;

b) data shall be used with the order of authorized organizational units or operators;

c) instructs all operators concerning their obligations, in conformity with this law and the internal regulations on data protection, including the regulations on data security;

ç) Prohibits access of unauthorized persons to the working facilities of the data controller or processors;

d) data and programmes shall be accessed only by authorized persons;

dh) Prohibits access to the filing system and their use by unauthorized persons;

e) Operation of the data processing equipment shall be carried out upon authorization and every device shall be secured with preventive measures against unauthorized operation;

ë) records and documents the alteration, correction, erasure, transfer, etc..

3. The documented data may not be used for other purposes incompatible with the purpose of collection. Acquaintance with or processing of the data registered in files for a purpose other than the right to enter the data shall be prohibited. This rule shall not apply when the data are used with the purpose of prevention or prosecution of a criminal offence.

4. Documentation of the data shall be kept for as long as it is necessary for the purpose for which they were collected.

5. The security level shall be in compliance with the nature of personal data processing. Detailed rules on data security shall be specified by decision of the Commissioner.

6. Procedures for the administering of the data registration, data entry, their processing and disclosure shall be regulated by a decision of the Commissioner.

Article 28

Data Confidentiality

Controllers, processors and persons who come to know the content of the processed data while exercising their duty, shall remain under obligation of confidentiality and credibility even after termination of their functions. These data shall not be disclosed save when otherwise provided by law.

CHAPTER VIII
THE COMMISSIONER FOR THE PERSONAL DATA PROTECTION

Article 29

The Commissioner

1. The Commissioner for the Protection of Personal Data shall be the authority responsible for supervising and monitoring the protection of personal data by respecting and guaranteeing the fundamental human rights and freedoms in compliance with the law.
2. The Commissioner is a public legal person.
3. Information ensured by the Commissioner while exercising his duties shall be used only for supervisory purposes in compliance with the legislation on the protection of personal data. The Commissioner shall remain under obligation of confidentiality even after termination of his functions.

Article 30

The rights

1. The Commissioner shall enjoy the right to:
 - a) conduct an administrative investigation, have access to personal data processing and collect all necessary information with the view of fulfilling his supervisory obligations;
 - b) order for the blocking, erasure, destruction or suspension of the unlawful processing of personal data;
 - c) issue instructions prior to the data processing and ensure their publication;
2. In cases of recurring or intentional serious infringement of law by a controller or processor, especially in cases of recurring failure to carry out the Commissioner's recommendations, he acts in compliance with article 39 herein and may report the case publicly in accordance with his duties or report it to the Assembly and the Council of Ministers.

Article 31

Responsibilities

1. The Commissioner shall be responsible for:
 - a) giving opinions on legal and sub legal acts concerning personal data;
 - b) authorizing in special cases the use of personal data for purposes not designated during the phase of their collection by observing the principles of article 5 of this law;
 - c) authorizing the international transfer of personal data in compliance to article 9 herein;
 - ç) issuing guidelines that regulate the length of retention of personal data according to their purpose in the activity of specific sectors;
 - d) ensuring the right to information and the exercise of the right to correct and update data;

dh) authorizing the use of sensitive data in compliance with Article 7 point 2 letter 'c' herein;

e) checking the processing of data in conformity with the law, upon request of a person when such a processing is exempted of the right to information and to inform the person that the check is carried out and whether the process is lawful or not;

ë) taking action regarding complaints of any private person for the protection of his/her private rights and freedoms in relation to the personal data processing and inform him/her on the progress;

f) issuing guidelines on security measures in the activity of specific sectors,

g) overseeing the execution of penalties;

gj) Preparing in cooperation the of codes of ethics;

h) the publication and explanation of the rights related to the data protection and the periodic publication of his activities;

i) cooperating with the supervisory authorities on the personal data of foreign states regarding the protection of individuals who reside in those states;

j) representing the supervisory authority in the field of personal data protection in the national and international events;

k) exercising other legal obligations.

2. The Commissioner shall create a register to document all notifications and authorizations that he performs in exercise of his powers in the field of personal data protection.

3. The Commissioner shall submit an annual report to the Assembly and reports in front of the Assembly when asked to do so. In addition he may ask to the Assembly to be heard for issues that he deems to be important.

Article 32

Obligation to Cooperate

1. Public and private institutions shall cooperate with the Commissioner providing all the information required by this institution for the fulfilment of its duties.

2. The Commissioner shall have the right to access computer and filing systems that process personal data and all the documentation related to their processing and transferring, with the view of performing his rights and duties as stipulated in the law.

Article 33

Election and term of office

1. The Commissioner shall be elected by the Assembly upon a proposal of the Council of Ministers for a 5 year term eligible for re-election.

Article 34

Incompatibility of the function

The function of the Commissioner shall be incompatible with every other state function, affiliation in political parties and partaking in their activities, with every other profitable activity, save teaching.

Article 35

Election Criteria

Every Albanian citizen may be elected for the position of Commissioner if he/she meets the following criteria:

- a) University degree in law;
- b) breadth of knowledge and extinguished activities in the field of human rights and fundamental freedoms;
- c) outstanding professional skills and a clean ethic and moral profile;
- ç) not less than 10 years of work experience as a lawyer;
- d) has not been convicted for a criminal offence by a court final decision;
- dh) no disciplinary measures taken to remove him from duty or from the civil service.

Article 36

Termination of the mandate

1. The mandate of the Commissioner shall have an early termination when:
 - a) he is given a final court decision for committing a criminal offence;
 - b) he is absent from duty without justification for more than one month;
 - c) he resigns;
 - ç) a final court decision declares his ineffectiveness.

2. The Commissioner may be discharged by the Assembly when:
 - a) he fails to act in compliance with the provisions arising from this law or other legal acts;
 - b) he engages in activities that generate a conflict of interests;
 - c) cases of incompatibility with the function are identified.

3. When the post of the Commissioner is vacant, the Council of Ministers proposes to the Assembly the new nominee within 15 days. The Assembly elects the new Commissioner within 15 days upon receipt of the nomination.

Article 37

Office of the Commissioner

1. The Assembly shall determine the remuneration of the Commissioner, the organizational structure and remuneration for the employees of the Commissioner for the protection of personal data. These employees shall enjoy the status of civil servant.

Article 38

Budget

The Commissioner has his own independent budget which is funded by the state budget and various financial donations.

CHAPTER IX ADMINISTRATIVE SANCTIONS

Article 39

Administrative offences

1. Cases of data processing in contradiction with the provisions of this law constitute an administrative offence and shall be subject to a fine as follows:
 - a) controllers who use personal data in contradiction with the Chapter II “Processing of Personal Data” shall be fined from 10 000 to 50 000 ALL;
 - b) controllers, who do not meet the obligation to inform, as specified in Article 18 of this law, shall be fined from 10 000 ALL to 30 000 ALL.
 - c) controllers, who do not meet the obligations to correct or erase data, specified in Article 19 of this law, shall be fined from 15 000 ALL to 30 000 ALL;
 - ç) processors, who do not abide by obligations stipulated in Article 20 of this law, shall be fined from 10 000 ALL to 30 000 ALL
 - d) controllers, who do not meet the legal obligation to inform laid down in Article 21 herein, shall be fined from 10 000 ALL to 50 000 ALL;
 - dh) controllers or processors, who do not take the security measures specified in Article 27 of this law, shall be fined from 10 000 ALL to 15 000 ALL.
2. As regards the above offences, legal persons shall be fined double the figure for the fine specified in point 1 herein.
3. Maximum of the fine is doubled in cases of failure to comply with Article 16 point 2 and when the data are processed without an authorization pursuant to Article 31 point 1 (b).
4. Fines shall be imposed by the Commissioner when he finds that the obligations set forth in the law are infringed.

Article 40

Complaint

The offender may file a complaint with the court within 30 days upon receipt of the notification for the fine, in compliance with the Code of Civil Procedures.

Article 41

Execution of fines

1. Fines shall be paid by the offender not later than 30 days from the imposing of the fine. When the deadline expires, the decision becomes an executive title and is executed in a mandatory manner by the bailiff office, upon request of the Commissioner.

2. Fines are cashed in the state budget.

CHAPTER X
FINAL PROVISIONS

Article 42

Sub legal acts

Council of Ministers shall issue the sub legal acts in line with Articles 7, 8 and 21 herein.

Article 44

Repeals

Law no. 8517, dated 22.07.1999 “On the protection of personal data” is repealed.

Article 45

Entering into force

This law enters into force 15 days following publication in the Official Journal.