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International Cooperation Mechanisms in Criminal Justice: Human Rights Implications and Sovereignty Constraints in Cross-Border Access to Electronic Evidence

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ABSTRACT

As the digital component's relativity in criminal proceedings is notable, electronic evidence is no longer confined only to cybercrimes, but as well largely involved in other type of offences. A significant margin of investigations is now bound to data located extra-territorially, whereas the volatile nature of electronic evidence requisites for more time efficient investigative powers. Traditional constraints inherited in state sovereignty and the principle of non-intervention, reflect the structural limitations in Mutual Legal Assistance framework. This paper provides a normative assessment of international cooperation mechanisms under the frameworks of the Council of Europe and European Union governing cross-border access to electronic evidence. The analysis conducts a legal assessment of the consistency of normative regulations, with a focus on the issues connected to sovereignty and human rights safeguards. The study further employs a comparative assessment of the Albania's legal framework compliance with the standards enshrined in the Council of Europe framework, examining the regulation of electronic evidence within Albanian criminal procedure, the practical efficiency of MLA via letters rogatory, and the jurisprudence of the Constitutional Court. The findings address procedural bottlenecks, legal loopholes regarding electronic evidence legality and judicial reluctance toward interpretative harmonization.

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Introduction

Whether investigating transnational crimes or offences committed in the cyberspace, the relevance of the electronic evidence has become of primary importance. 2024 data published by the Council of the European Union confirms that 85% of the criminal investigations in the European Union (*hereinafter* EU) involve electronic evidence,¹ whereas 50% of criminal investigations requisite a request to obtain e-evidence located in another jurisdiction.² Constrains bound to national sovereignty, and to that extent the principle of non-intervention,³ constitute procedural barriers for public authorities to obtain evidence located extra-territorially, with limiting options available. Criminal justice is inherently a domain of the sovereign state, with law enforcement and criminal matters administered within a state's territorial jurisdiction. As such, when investigations include an international component, states are strictly constrained in their ability to wield investigative powers beyond their geographical territory.⁴ Bilateral or multilateral international agreements, in this regard, constitute the legal basis for transnational cooperation within the Mutual Legal Assistance (*hereinafter* MLA) framework. Experience with the flow of formal requests indicates that approximately 60% are processed under bilateral agreements, while only about 20% rely on multilateral instruments.⁵ Study also confirms that in cases of cybercrimes, 70% of requests for the collection of extra-territorial evidence is covered by the MLA, whereas alternative mechanisms account for approximately 17%.⁶

Though MLA clearly constitutes an effective measure

for offenses involving electronic evidence, due to the volatile nature of electronic evidence the execution timeframes are considered too complex, lengthy or cumbersome.⁷ As a result, enforcement authorities have resorted alternative channels such as police-to-police cooperation or contacting directly with Service Providers (*hereinafter* SP); however, such evidence does not satisfy evidentiary admissibility requirements, often leading to the discontinuation of investigations.⁸

In response, legislative reforms have been introduced aimed at improving the efficiency of international cooperation mechanisms by introducing new instruments that bypass the administrative procedures handled by central authorities, allowing the requesting authority to communicate directly with service providers. Within the field of criminal procedure, hence, two frameworks have been developed to remedy the procedure of obtaining cross-border access to electronic evidence directly from service providers: (i) Council of Europe framework, comprised of the Budapest Convention and Second Additional Protocol to the Convention on Cybercrime on enhanced co-operation and disclosure of electronic evidence, and (ii) EU e-evidence package comprised of a Regulation and an accompanying Directive.

This study aims to answer two main research questions. First, through a normative analysis of the Council of Europe and EU legal frameworks, it examines how both traditional and newly introduced cooperation mechanisms implicate state sovereignty and fundamental rights. Second, it assesses how these implications are reflected within the Albanian legal system, taking into account Albania's dual status as a member of the Council of Europe and a candidate country for EU accession.

¹ During this study and in the sources subject to analysis, it is common to see used interchangeably two terms: electronic evidence and digital evidence. While technically there is a slight difference between the two, for the purpose of this study both terms, when used, will be referring to data as per the definition provided in the Council of Europe framework on electronic evidence. Pursuant to article 1(b) of the Budapest Convention on Cybercrimes, hence, both terms in this study will refer to the computer data - meaning any representation of facts, information or concepts in a form suitable for processing in a computer system, including a program suitable to cause a computer system to perform a function. Whilst there is no international definition, the understanding of the electronic/digital evidence in addition to the provisioning in the convention, also relies in the definitions provided by Eoghan Casey in his publication "Digital Evidence and Computer Crime: Forensic Science, Computers and the Internet." 2nd ed. Amsterdam: Academic Press, 2004, 48–49.

² Council of the European Union. "Better access to e-evidence to fight crime." Accessed November 3, 2025.

<https://www.consilium.europa.eu/en/policies/e-evidence/>

³ United Nations. *Charter of the United Nations*. June 26, 1945. Art. 2(7). Accessed November 3, 2025

<https://www.un.org/en/about-us/un-charter/full-text> .

⁴ United Nations Office on Drugs and Crime. *Comprehensive Study on Cybercrime* (Vienna: United Nations, 2013), 184.

⁵ *Ibid.* Executive Summary.

⁶ *Ibid.*

⁷ Council of Europe Cybercrime Convention Committee (T-CY). *The Mutual Legal Assistance Provisions of the Budapest Convention on Cybercrime*. 2014, 3.

Stanisław Tosza, "Mutual Recognition by Private Actors in Criminal Justice? E-Evidence Regulation and Service Providers as the New Guardians of Fundamental Rights," *Common Market Law Review* 61 (2024): 145. <https://doi.org/10.54648/cola2024005>

⁸ *Supra* note 4, pg.7.

To address these questions, the first section of the study employs a normative assessment of the newly introduced mechanisms through a two-layer analysis governing international and EU law. The analysis examines the consistency of the applicable procedural rules and evaluates their potential implications for human rights and the principle of territoriality principle.

The second part of the study will extend the normative analysis on the legal framework governing cross-border access to electronic evidence in Albania. As a case study, Albania offers an excellent opportunity to assess compliance implications of both frameworks subject to this analysis. As a member of the Council of Europe, Albania has ratified the Budapest Convention on Cybercrime and signed the Second Additional Protocol. At the same time, as an EU candidate country, it is currently engaged in the accelerated efforts to approximate its domestic legislation with the EU acquis. A special focus will be devoted to the question of whether Albanian courts may rely on the case-law of the Court of Justice of the European Union (hereinafter CJEU) within the constitutional framework governing the interpretation of international agreement.

Method

This study is primarily carried out as normative legal assessment, conducting a close examination of legal norms enshrined in conventions, EU law, and Albanian national law. The in-law analysis is further complemented by relevant jurisprudence of European Court of Human Rights, Constitutional Court of Albania, and coherent research studies in the field. We assess the consistency of legal norms governing international

cooperation in criminal matters and seek to identify potential legal loopholes. As a result, elements of comparative analysis are also employed, as the second part of the study focuses primarily on the Albanian domestic legislation and its compliance with international and EU legal standards. In addition, secondary sources, including reports, policy documents, and academic commentaries, are examined to support and contextualize the normative findings.

The doctrinal analysis is complemented with limited empirical data, which aims map the front-line impact of traditional cooperation mechanisms. Hence, the statistical data on letters rogatory is used descriptively, reflecting procedural trends, rates of completion, and institutional capacity limitations.

From Mutual Legal Assistance to Direct Cooperation with Service Providers: The Council of Europe Framework

To date,⁹ the Council of Europe framework constitutes a comprehensive multilateral regime for international cooperation in criminal matters concerning cybercrime and electronic evidence, integrating classical MLA tools with newly developed modalities of evidence collection. The Council of Europe package includes the Budapest Convention on Cybercrime¹⁰ (*hereinafter* Budapest Convention) and Second Additional Protocol to the Convention on Cybercrime on Enhanced Cooperation and Disclosure of Electronic Evidence (*hereinafter* Second Additional Protocol).¹¹ The framework's regulative norms constituting of (i) criminalization of crimes committed in the cyberspace, (ii) procedural powers to acquire electronic evidence and (iii) international cooperation, are supported

⁹ In addition to the CoE framework subject to this study, in international level there is an important development. The United Nations has adopted on 24 December 2024 by resolution 79/243 its Convention against Cybercrime. The Convention, likewise, Budapest Convention and its Second Additional Protocol, provides States with several measures toward cybercrime combating, and as well aims to strengthen international cooperation by regulation electronic evidence exchange. Currently the United Nations Convention is open for signatures and will enter in force when 40 states become parties. See United Nations Office on Drugs and Crime. *United Nations Convention against Cybercrime; Strengthening International Cooperation for Combating Certain Crimes Committed by Means of Information and Communications Technology Systems and for the Sharing of Evidence in Electronic Form of Serious Crimes*. Adopted December 24, 2024. Accessed November 3, 2025.

<https://www.unodc.org/unodc/en/cybercrime/convention/text/convention-full-text.html>

Detailed data on its status can be accessed here: <https://www.unodc.org/unodc/cybercrime/convention/home.html>

¹⁰ Council of Europe. *Convention on Cybercrime* (Budapest Convention), ETS No. 185, adopted November 23, 2001.

Accessed November 3, 2025. <https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/185>

¹¹ Council of Europe. *Second Additional Protocol to the Convention on Cybercrime on Enhanced Cooperation and Disclosure of Electronic Evidence*, CETS No. 224, adopted November 12, 2021. Accessed November 3, 2025.

<https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/224>

by capacity-building programs aiming to strengthen criminal justice capacities.

The international cooperation regime within the Budapest Convention is based on the traditional mechanisms within the MLA framework, while simultaneously presenting innovations tailored to the digital environment. Embedded in the sovereignty principle, it aims to facilitate an efficient exchange of electronic evidence across borders while safeguarding human rights' preservation. As mandated in articles 23 and 25, parties are required to cooperate with each other to the widest extent possible, confined not only to the crimes committed in the cyberspace but also those involving electronic evidence. While the Convention itself does not provide an explicit definition or explanation of the "widest extent possible"-, read together with pertaining articles in Chapter III – International co-operation, it is bounded to the limitation of grounds of refusal on formalistic differences in offence classification (dual criminality criteria),¹² removal of dual criminality criteria for preservation of data stored requests¹³ and expedition procedures for stored computer data and traffic data.¹⁴ Concurrently, the Budapest Convention delineates the legal boundaries of international cooperation within the Mutual Legal Assistance framework by conditioning cooperation on two main safeguards: sovereignty principle, and compliance with human rights standards.

The principle of sovereignty is embedded as a foundational limit on cross-border cooperation regulation in the Convention. Sovereignty is thus reflected as a structural safeguard that conditions the application of every cooperation mechanism in Articles 23–35. Normative architecture of the Convention makes it clear that cooperation must occur without infringing the territorial, judicial, or legislative autonomy of any State Party. Article 15 explicitly requires that investigative powers and procedures subject to the Budapest Convention comply with conditions and safeguards provided under domestic law, including judicial oversight, proportionality, and human rights protections. Furthermore, grounds of

refusal presented in Article 25 constrain requests for mutual assistance as bounded to the conditions provided for by domestic law of the requested Party. *inter alia*. Same conditioning is vested to the requirements of Article 27 governing mutual legal assistance in the absence of international agreements, where the requests are requested to comply with domestic law.¹⁵ The protection of State sovereignty further is embedded in the provisions governing direct access and real-time investigative measures. Article 32 allows cross-border access to data stored abroad only in narrowly defined circumstances – namely when the information is publicly available or when the lawful and competent individual voluntarily consents. Such formulation thereby avoids any authorization of unilateral extraterritorial searches that could infringe another State's territorial authority. The same approach is reflected in articles 33 and 34, which regulate the real-time collection of traffic data and the interception of content data. Both articles require that such cooperation is subject to the compliance with domestic law of the requested Party, bound to its procedural safeguards and judicial authorization. Read together, these provisions reflect a careful balance between enabling effective cooperation in cybercrime investigations and preserving the core sovereign prerogatives of States over investigative actions carried out within their jurisdiction.

In 2016 an ad-hoc working group, the Cloud Evidence Group - commissioned to assess the framework on place regarding substantive and procedural regulations governing cybercrimes, concluded that given challenges related to cloud computing, territoriality and jurisdiction, only a margin of offenses involving electronic evidence were investigated.¹⁶ Rather than amending the Budapest Convention, the Group proposed the adoption of a new protocol aimed at strengthening international cooperation. The objective was to enhance the capacity of criminal justice authorities to obtain electronic evidence across borders and uphold the rule of law.

Second Additional Protocol to the Convention on Cybercrime on enhanced co-operation and disclosure of electronic evidence, thus opened for signature in 2022 and since is yet pending to ratification.¹⁷ The significance of the

¹² Supra note 9, Article 25(5)

¹³ Ibid. Article 29(3)

¹⁴ Ibid. Articles 29 and 30

¹⁵ Ibid. Article 29(3)

¹⁶ Council of Europe. *Explanatory Report to the Second Additional Protocol to the Convention on Cybercrime on Enhanced Co-operation and Disclosure of Electronic Evidence*. Council of Europe Treaty Series No. 224. Strasbourg, 12 May

2022, paras. 10–11. Accessed November 3, 2025. <https://www.coe.int/en/web/conventions/full-list?module=signatures-by-treaty&treaty-num=224>

¹⁷ As of November 14th, 2025, the Protocol is signed by 51 countries and ratified by two. Entry in force of the instrument requisites at least 5 ratifications. Accessed November 3, 2025 <https://www.coe.int/en/web/conventions/full-list?module=signatures-by-treaty&treaty-num=224>

Protocol - and arguably the reason for its delayed entry into force - lies in the substantial shift it introduces. It combines traditional MLA-based cooperation with an entirely new paradigm of direct cooperation with service providers, enabling authorities to bypass lengthy and burdensome procedures.

The Protocol is not drafted as an amendment to the Budapest Convention, rather it extends the cooperation framework as a reflection of the constantly changing electronic evidence and cloud-based investigation. Article 5(1) requires Parties to cooperate “*to the widest extent possible,*” and when read together with the general cooperation mandated in Article 23 of the Convention, marks an important extension to the traditional cooperation framework – direct cooperating with service providers, bypassing central-authority MLA channels. The most-weight carrying articles – and criticism subjected, are Articles 6 and 7, mandating investigative powers direct to service providers. While this mechanism represents a significant innovation, its scope remains confined to domain name registration information and subscriber information. By contrast, traffic data and content data continue to fall exclusively within traditional MLA channels, thereby maintaining a higher threshold of judicial and inter-state control for more intrusive categories of data.¹⁸

While the Protocol introduces direct cooperation, it does so consciously respecting sovereignty. In both cases - domain name registration data, or subscriber data, the cooperation of the service providers is voluntary,¹⁹ and if non-cooperation is met, then measures under the MLA shall be resorted. Furthermore, for the subscriber data, another lawyer of safeguard is provided in Article 7(5), with Parties’ right to require for every case or in identified circumstances, to be informed of the order, and may request the service provider not to disclose subscriber data shall there be conditions as provisioned by law. Also, Article 8 provides investigative powers for enhanced

international cooperation for stored computer data yet provides ground for refusal based on Article 25(4) of the Budapest Convention – that is non-compliance with the domestic law of the requested party. Similarly, Article 10 on emergency mutual assistance involves authorities from both parties tasked with the assessment of the request and its compliance with pertaining domestic law. The sovereignty principle thus remains embedded: although the Protocol facilitates cross-border access to data for the less intrusive data, the sensitive data is yet processed through legally authorised channels, respecting the territorial and procedural limits of each State.

Regarding the human rights accounts, the normative regulation of the Protocol carefully makes sure safeguards are a foundational layer to the Protocol’s cooperation mechanisms. Article 13 of the Protocol, in conjunction with Article 15 of the Convention, lays out the binding responsibility that establishment, implementation and application of measures under this Protocol are not only subject to domestic law but also to adequate protection of human rights and fundamental freedoms. This includes data protection, the right to privacy, and due process guarantees. Notwithstanding the human rights approach, the Second Protocol has been subject to criticism of human rights’ implications with regard to data protection. Considering that jurisdictions share different, and largely asymmetric data protection safeguards, there is no guarantee that parties to the Budapest Convention and Second Additional Protocol will uniformly benefit from the same level of protection.²⁰

Notably, when in 2022 the Council of Europe adopted a decision²¹ authorizing the EU Member States to sign the Second Additional Protocol to the Budapest Convention, European Data Protection Supervisor submitted its Opinion. It expresses explicitly its concern that requests by non-EU countries - party to the Protocol, when directly requesting service providers in the EU to disclose certain types of information will potentially pose a significant risk

¹⁸ Supra note 16, paras. 81, 92. The Budapest Convention, its Second Additional Protocol, and accompanying key instruments identify three categories of electronic evidence: subscriber data, traffic data, and content data. Subscriber data is generally regarded as the least intrusive from a human-rights perspective. Whereas the latter two – containing more sensitive data, are more sensitive in nature, and thus subject to stricter procedural regulations.

¹⁹ Supra note 11, Articles 6 (5) and 7(7)

²⁰ Giola Cami, “Legal Standards for Cross-Border Access to Electronic Evidence in Criminal Procedure: An Albanian Perspective on International Standards,” *Studia Iuridica*

Lublinensia 33, no. 5 (2024): 11–30. <https://doi.org/10.17951/sil.2024.33.5.11-30>

Access Now. *Access Now’s Comments on the Draft Second Additional Protocol to the Budapest Convention on Cybercrime*. 30 April 2021. <https://rm.coe.int/0900001680a25783>

²¹ Council of the European Union. “Access to e-evidence: Council authorises member states to sign international agreement.” Press release, April 5, 2022. Accessed November 3, 2025. <https://www.consilium.europa.eu/en/press/press-releases/2022/04/05/access-to-e-evidence-council-authorises-member-states-to-sign-international-agreement/>

to the fundamental rights to privacy and data protection.²² As a result, the authority recommends the Member States to reserve the right not to apply the direct-cooperation provision with service providers in this context. Same concerns have been shared by the European Digital Rights (*hereinafter* EDRI) recommending European Parliament to request the opinion of the European Court of Justice regarding the Second Additional Protocol, as its compliance with EU law is unclear.²³ Specifically, the mechanism of notification as discussed above provided by the means of Article 7(5) of the Protocol is, according to the EDRI – not sufficient to safeguard fundamental rights.

Outsourcing Mutual Recognition? Assessing the Role of Service Providers in the EU E-Evidence Package

The role of SP in criminal justice is of a more pervasive nature in the EU framework governing exchange of electronic evidence, having raised significant questions regarding their role in the justice system. Following entering into force of the Treaty of Lisbon in 2009, the competences of the Security, Freedom and Justice area were reconfigured.²⁴ Within the legal landscape of Article 82 of the Treaty on the Functioning of the European Union (TFEU), mechanisms developed in criminal justice and police cooperation matters employ asymmetrically the principle of mutual recognition. While the earlier introduced instruments enshrined in Article 82 TFEU such as the European Arrest Warrant and European Investigation Order are bound to cooperation between public authorities, the newly

adopted e-evidence framework revisits the traditional limits of mutual recognition by extending public functions to private service providers.²⁵

Namely the e-package, is composed of a Regulation on Production and Preservation of Orders (*hereinafter* the Regulation)²⁶ and a Directive on the appointment of legal representatives.²⁷ The Regulation governs the exchange of electronic evidence within the EU jurisdictions²⁸ by instituting direct cooperation with SP. The procedural flow is initiated, pursuant to Article 4, by a judicial authority in one Member State who issues a European Production Order (*hereinafter* EPdO) to the representatives of a service provider to produce the requested data. The EU lawmaker has intended to approach cross-border data collection through a balanced approach by introducing a procedural guarantee for the data requested. Article 7(1) of the EPdO is employed for subscriber data to be produced by the legal representative of the SP; whereas traffic and content data contain an additional notification obligation to public authorities as stipulated in Article 8(1). Such notification allows public authorities to contest the request and present their grounds for refusal within a 10 (ten) day period following receipt of the EPdO. However, such notification is limited by the rules outlined in Article 8(2) which restrict the notification requirement by mapping its necessity tied to two conditions: (a) the offence has been committed, is being committed or is likely to be committed in the issuing State; and (b) the person whose data are requested resides in the issuing State. As such, the capacity of the notification to serve as a safeguard has been put in question.²⁹ Under the current legal architecture of the e-evidence package, service providers are vested with significant responsibilities that resemble the exercise of

²² European Data Protection Supervisor. *Opinion 1/2022 on the Two Proposals for Council Decisions Authorising Member States to Sign and to Ratify, in the Interest of the European Union, the Second Additional Protocol to the Convention on Cybercrime on Enhanced Co-operation and Disclosure of Electronic Evidence*. 20 January 2022.

²³ European Digital Rights (EDRI). Ratification by EU Member States of the Second Additional Protocol of the Council of Europe Cybercrime Convention. 30 April 2021. Accessed November 3, 2025. <https://edri.org/wp-content/uploads/2022/04/EDRI-Position-Ratification-EU-Member-States-Cybercrime-Second-Additional-Protocol.pdf>

²⁴ Krisztina Karsai. "Division of Competences between Member States and the European Union in Criminal Procedural Law." In *XXVII FIDE Congress*, vol. 32, 2016.

²⁵ *Supra* note 7, Tosza, 156.

²⁶ European Union. *Regulation (EU) 2023/1543 of the European Parliament and of the Council of 12 July 2023 on*

European Production Orders and European Preservation Orders for electronic evidence in criminal proceedings and for the execution of custodial sentences following criminal proceedings. Accessed November 3, 2025.

<https://eur-lex.europa.eu/eli/reg/2023/1543/oj/eng>

²⁷ European Union. *Directive (EU) 2023/1544 of the European Parliament and of the Council of 12 July 2023 laying down harmonised rules on the designation of designated establishments and the appointment of legal representatives for the purpose of gathering electronic evidence in criminal proceedings*. Accessed November 3, 2025. <https://eur-lex.europa.eu/eli/dir/2023/1544/oj/eng>

²⁸ The adopted e-package legitimizes investigative powers only within the European Union jurisdictions; whereas same power with non-EU jurisdictions are yet subject to MLA procedures within bilateral or multilateral agreements.

²⁹ *Supra* note 7, Tosza, 148-153.

public authority in criminal justice. While this shift has already raised principled concerns,³⁰ the imposition of legal penalties for non-compliance further amplifies these apprehensions. Article 15(1) provisions effective, proportionate and dissuasive penalties to be applicable for SP, accounting for up to 2 % of the total worldwide annual turnover of the service provider's preceding financial year. Such sanctions bear substantial financial consequences for service providers and will have a major influence on their decision to disclose the requested data. As a result, service providers are effectively placed in a position where they must choose between safeguarding data protection obligations and avoiding significant financial penalties,³¹ thereby risking a distortion of the proportionality balance.

While the instruments seek to address efficiency concerns with regard to access to data located extra-territorially bypassing traditional mutual legal assistance channels, this shift simultaneously reallocates essential public functions from judicial authorities to private actors. We are risking "privatising mutual recognition," empowering service providers assess compliance, process orders, and carry substantial liability for errors.³² As a result, the evidentiary chain may be potentially weakened, since service providers are not equipped to employ legality assessments comparable to public authorities, thereby raising questions of reliability, authenticity, and admissibility in court.³³ While the e-Evidence Orders provide, normatively, procedural efficiency, they simultaneously pose systemic risks for due process, proportionality, and the integrity of judicial cooperation in the EU.

International Cooperation and Domestic Criminal Procedure: Perspectives from the Albanian Legal Framework

Cooperation has been enshrined in the preamble of the Constitution of Albania as a constitutional principle, acknowledging that *cooperation between nations* constitutes a highest value of humanity".³⁴ Not limited to a declarative statement, the Albanian lawmaker has further established constitutional guarantees for international agreements ratified by the Republic of Albania. Specifically, pursuant to article 116 of the Constitution of Albania, read together with its article 122, a ratified international agreement is part of the internal juridical system and takes precedence over any conflicting national legislation.

With regard to international cooperation in criminal matters, as a State Party to the European Convention on Mutual Assistance in Criminal Matters³⁵ and its additional protocol, Albania has aligned its domestic legal framework with the mechanisms set forth the Convention.³⁶ Accordingly, the Convention has been incorporated into the national legislation and implemented through the Criminal Code (hereinafter CP), the Code of Criminal Procedure (hereinafter CPC), and Law no. 10 193, dated 3.12.2009, "On Jurisdictional Relations with Foreign Authorities in Criminal Matters", as amended. The Law operationalizes the legal framework governing international cooperation, through the principle of mutual legal assistance, facilitated by the means of execution of letters rogatory, to be carried out in accordance with ratified international agreements and subject to reciprocity, unless otherwise provided by treaty. The integration of letters rogatory into Albania's domestic legal order, while anchored in the traditional mutual legal

³⁰ Mitsilegas, Valsamis. "The Privatisation of Mutual Trust in Europe's Area of Criminal Justice: The Case of E-evidence."

Maastricht Journal of European and Comparative Law 25, no. 3, 2018, 263.

Stanisław Tosza, "Internet service providers as law enforcers and adjudicators: A public role of private actors,"

Computer Law & Security Review 43 (2021): 1–17.

³¹ Adam Juszcak and Elina Sason, "The Use of Electronic Evidence in the European Area of Freedom, Security, and

Justice: An Introduction to the New EU Package on E-evidence," *Eucrim* 2 (2023).

³² *Supra* note 7, Tosza, 148-153.

³³ Sharon Okunrobo Perez, "Proliferation of e-Evidence: Reliability Standards and the Right to a Fair Trial," *European Journal of Crime, Criminal Law and Criminal Justice* 33 (2025): 187–211.

³⁴ Republic of Albania. Constitution of the Republic of Albania. Preamble. Accessed November 3, 2025.

https://www.gjk.gov.al/web/constitution_of_albania_1722.pdf

³⁵ Council of Europe. *European Convention on Mutual Assistance in Criminal Matters*, European Treaty Series No. 30, 20 April 1959.

Accessed November 3, 2025. <https://rm.coe.int/16800656ce>

³⁶ Republic of Albania signed the Convention in 1998, and its ratification was facilitated by Law No. 8498, dated 10 June 1999,

"On the Ratification of the Council of Europe Convention 'On Mutual Assistance in Criminal Matters' and its Additional Protocol." Accessed November 3, 2025.

<https://qbz.gov.al/eli/ligi/1999/06/10/8498/bb2ef457-d3f5-4469-86da-21da7e9b6c10;q=8498> . In ratifying the Council of

Europe Convention on Mutual Assistance in Criminal Matters, Albania entered several reservations and declarations. Inter alia, in accordance with Article 15(6), Albania requested that copies of all requests for mutual legal assistance communicated directly between judicial authorities, together with accompanying documents, to be sent to the Ministry of Justice.

assistance paradigm, also harmonizes judicial cooperation with European norms.

Hence, the mechanism of letters rogatory constitutes the formal mechanism of international judicial cooperation in criminal matters in the Albanian legal system, founded primarily in Articles 505 et seq of the CPC, applicable for both the traditional and digital evidence. It is further regulated through Law no. 10 193/2009, which gives effect to the principles of mutual assistance under the European Convention on Mutual Assistance in Criminal Matters. Both establish the basis for the exchange of judicial assistance between Albania and foreign jurisdictions, reflecting the principle that cooperation shall take place in conformity with international agreements and domestic law. Rooted in an institutional framework of cooperation, mutual assistance as a traditional cooperation mechanism is governed by competent public authorities. Albanian legislator has vested with the mentioned competence the Ministry of Justice – as the central authority responsible for receiving and transmitting requests for mutual assistance, including letters rogatory.³⁷ Hence, the cooperation is based in a two-tier control system— administrative (Ministry) and judicial (court) – aiming at complying with international legality and Albania’s constitutional order.

Two types of letters rogatory are recognized: (i) incoming letters rogatory³⁸ – requests received from foreign authorities seeking assistance from Albanian authorities for the execution of acts including collection of evidence; (ii) outgoing letters rogatory³⁹ – sent by Albanian judicial authorities to foreign states similarly. Both categories are subject to the same normative requirements – the lawmaker prerequisites the execution of the request to respect the *sovereignty, security, and legal order* of the Albanian State and comply with both international obligations and national law.⁴⁰

From the content of the provisions, the letter rogatory mechanism has been vested with a procedural nature, rather than substantive. Compliant to the sovereignty principle embedded in the Constitution, the mechanism does not transfer jurisdiction to a third party; instead, the cooperation is legally constructed solely for procedural purposes remaining bound by the principle

of territorial jurisdiction. The provided procedural assistance is established on reciprocal and treaty-based foundation, with a clear political component at the heart of the regulation - that is the requirement for parties involved in the procedure, judicial and prosecutorial authorities, to communicate through the intermediary of the Ministry of Justice. Even in cases of urgency, as stipulated in article 509 (4) of the CPC and article 13 of Law no. 10 193, dated 3.12.2009, allowing authorities to directly communicate between them, the Ministry of Justice is to be informed as a procedural guarantee for potential lawful objections to be raised, if relative.

The normative regulation embedded in the mutual assistance principle, thus seeks to maintain a procedural balance between domestic procedural autonomy and international cooperation obligations, while regulating safeguards designed to protect national judicial standards. These safeguards include, inter alia, compliance with sovereignty (article 505(1) CPC), compatibility with the judicial order (article 505(2) CPC), human rights with respect to race, religion, sex, nationality, language, political beliefs or the social state (article 505(2) CPC), and judicial oversight (article 506 (1) CPC). Violation of the safeguards mentioned constitutes grounds for refusal of execution.

Within the current legal framework on international cooperation, in addition to the urgency procedure pursuant to article 509 (4) CPC, another provision allowing for a bypass procedure to the MLA framework is governed by article 27 of Law no. 10 193, dated 3.12.2009. It allows for the national judicial authorities to act on their own initiative and forward to foreign judicial authorities’ information that is related to criminal offences collected during a criminal proceeding. Such action is based on the authority acting within its discretion, assessing that such information may assist in the opening of a criminal proceeding or the submission of a request for legal assistance from the foreign state. This provision requisites compliance with the principles of reciprocity and non-Interference with domestic proceedings. Such information, hence, is not vested with evidentiary weight, but rather serves as indicia forming the basis for, or potentially developing into, evidentiary material in subsequent proceedings.

Though the execution of a letter rogatory follows a structured timeline,⁴¹ the execution and transmission

³⁷ See Article 505 of the CPC, in conjunction with Article 6 of Law no. 10 193/2009. Also, through article 2 (3) of law no.8498 dated 10.06.1999, Albania designates the Ministry of Justice as the competent judicial authority.

³⁸ Articles 505-507 of the CPC

³⁹ Articles 509-511 of the CPC

⁴⁰ Articles 505 (1) (2) and 509 (2) of the CPC

⁴¹ According to article 506 CPC, the district prosecutor, after obtaining the acts from the Ministry of Justice, submits a request to the court, within five days of the submission of acts by the

procedures wholly constitute a more complex practice, accommodating delays and prolonged procedures, up to 10 (ten) months.⁴² Particularly, when subject to the letter rogatory is electronic evidence, given the volatile nature of such evidence and the lack of national binding guidelines governing collection and preservation of such data, the process of data transmission through the MLA is subject to considerable delays.⁴³

Institutional available data on letter rogatory to and from Albania provides an important overlook on the efficiency and practical implementation of this

mechanism in the international cooperation in criminal matters. Notably, both incoming/outgoing requests have been met with increasing rates. However, the data also reflects comparatively low completion rates, fluctuating between 20% and 60% over the years. The best performance was recorded in 2021, with approximately 66% of requests successfully executed, whereas the lowest rate occurred in 2024, when only 23% of requests were completed.

Table No.1: Number of Letter Rogatory Administered by Albanian Authorities

Year	Requests from Foreign Authorities to Albania	Completed	Requests to Foreign Authorities from Albania	Completed
2024	599	219	539	125
2023	431	229	491	152
2022	489	284	526	173
2021	599	397	655	209
2020	550	n.a	620	n.a

Source: General Prosecution Office, Yearly Reports 2020-2024⁴⁴

For both incoming and outgoing requests, the list of countries varies; however, based on the data provided in the yearly reports by the General Prosecution Office notably in all the observed years multiple states are consistent, including, but not limited to: Austria, Germany, Italy, Greece, France, Spain, United Kingdom,

Kosovo, Montenegro and Türkiye. While electronic evidence constitutes the predominant category of requests, those pertaining specifically to cybercrime are distributed as follows:

Ministry of Justice. Whereas the court rules on the execution of the rogatory letter by decision, within 10 days from the submission of the request.

⁴² European Commission. *Frequently Asked Questions: New EU Rules to Obtain Electronic Evidence*. 17 April 2018. Accessed November 3, 2025. https://ec.europa.eu/commission/presscorner/detail/en/memo_18_3345 European Commission confirmed that the exchange of electronic evidence through the Mutual Legal Assistance can take up to 10 months.

⁴³ Council of Europe. *Assessment Report on Obtaining and Using Electronic Evidence in Criminal Proceedings Under Domestic Legislation in South-Eastern Europe and Turkey*. 5 March 2018. Accessed November 3, 2025. <https://rm.coe.int/3156-52-iproceeds-electronic-evidence-report-eng/16807bdfdf>

⁴⁴ General Prosecution Office of Albania. *Annual Reports of the Prosecutor General (2020–2024)*. Accessed November 3, 2025. https://www.pp.gov.al/Dokumente/RAPORTE_T_PROKURORIT_T_P_RGJITHSH_M/

Table No.1: Categorization of Letter Rogatory Administered for Cybercrimes

Year	Requests from Foreign Authorities to Albania	Cybercrimes related	Requests to Foreign Authorities from Albania	Cybercrimes related
2024	599	12	539	85
2023	431	11	491	64
2022	489	2	526	89
2021	599	11	655	62
2020	550	4	620	47

Source: General Prosecution Office, Yearly Reports 2020-2024

Data indicates a consistent engagement of Albanian authorities in mutual legal assistance through letters rogatory, affirming the instrument’s significance in international criminal cooperation. The total number of both incoming and outgoing requests has remained relatively high throughout the years, however low completion rates are concerning. Requests involving electronic evidence are relatively significant, constituting evidence kin category. Even though number of requests specifically related to cybercrime are comparatively lower, data reveals that such offences yet account for a considerate proportion of transnational cooperation cases. Overall, the data clearly addresses the operational limitations of traditional mechanisms of cooperation, not capable of accommodating increasing demands of evidence exchange.

Exchange of Electronic Evidence: Implementation of the Council of Europe Framework in Albanian Criminal Procedure

Albania is a signatory state of the CoE framework on cybercrime, having signed both the Budapest Convention and the 2nd Additional Protocol.⁴⁵ While the Convention was ratified by means of Law No. 8888 dated 25.04.2002 “On the Ratification of the “Convention on Cybercrime”, the 2nd Additional Protocol remains pending to ratification.⁴⁶ As discussed above, the Budapest Convention provisions the letter rogatory as the default cooperation mechanism for the electronic evidence exchange. However, several amendments were adopted to the criminal procedural law regarding the preservation and administration of electronic evidence in criminal proceedings. Specifically, the following articles governing processing of electronic evidence were added to CPC:⁴⁷

1. Article 191/a Obligation to produce computer data
2. Article 221 Limits of permission
3. Article 222 The decision authorizing the interception

⁴⁵ Detailed information on the signature, ratification and entry in force status for both the Budapest Convention and 2nd Additional Protocol available at <https://www.coe.int/en/web/cybercrime/the-budapest-convention>. (Accessed on November 3rd, 2025).

⁴⁶ Council of Europe. *CyberSEE: Albania Commences Legislative Reform for the Ratification and Effective Implementation of the Second Additional Protocol to the Budapest Convention*. November 2024. Accessed November 3, 2025. <https://www.coe.int/en/web/cybercrime/-/cybersee-albania-commences-legislative-reform-for-the-ratification-and-effective-implementation-of-the-second-additional-protocol-to-the-budapest-convention>

[ratification- and-effective-implementation-of-the-second-additional-protocol-to-the-budapest-convention](https://www.coe.int/en/web/cybercrime/-/cybersee-albania-commences-legislative-reform-for-the-ratification-and-effective-implementation-of-the-second-additional-protocol-to-the-budapest-convention) In November 2024 important developments were confirmed by CoE, affirming that Ministry of Justice of Albania is undertaking commitments to align its national legislation with the provisions of the Second Additional Protocol, and ensure effective implementation of the instrument.

⁴⁷ Other relevant regulations, include Law no. 9918 dated 19.05.2008 “On electronic communication”, provisioning in its Article 101 normative regulation concerning the preservation and administration of data for the purpose of criminal prosecution.

4. Article 299/a Expedited preservation and maintenance of computer data
5. Article 299/b Expedited preservation and partial disclosure of computer data
6. Article 208/a Sequestration of computer data

Evidence produced within the scope of the aforementioned provisions shall be subject to the domestic legal framework governing mutual legal assistance when its acquisition is requested by third countries. In this respect, Articles 505 et seq. of the Criminal Procedure Code and Law no. 10 193, dated 3 December 2009, constitute the core framework of mutual legal assistance, as reflected in Articles 23 and 25 of the Budapest Convention. The Albanian legislator has also ensured compliance with the requirement set forth in Article 25(5) of the Budapest Convention, which implicitly adopts a functional interpretation of the dual criminality principle - conditioning cooperation under the Convention on the compatibility of the criminal conduct with domestic criminal law, rather than on identical offence denominations. In this regard, Article 506(4)(b) of the CPC provides that a request for mutual legal assistance may be refused where the act for which assistance is sought does not constitute a criminal offence under Albanian law, thereby reflecting the same conduct-based understanding as stipulated in the Convention. In addition, in compliance with the requirements of Article 35 of the Convention, Albania has appointed its 24/7 contact point, which is responsible for processing of requests international preservation requests. This role sits at the Sector against Computer Crime, Ministry of Interior and is followed by Office of Prosecutor General.⁴⁸

Until the ratification of the Second Additional Protocol, the cross-border exchange of electronic evidence is carried out based on MLA procedures as discussed in this chapter. Judicial authorities are involved in

validating the request and providing collection of the evidence, providing procedural guarantees related to legality of the evidence and human rights. However, Albanian authorities have expressed concerns regarding legal and practical challenges related to the reliability of electronic evidence, though collected under the MLA procedure. These challenges stem primarily from the lack of national guidelines for seizure of electronic evidence, absence of written standards for accessing electronic evidence, limited technical capacity of Internet Service Providers and forensic institute.⁴⁹ Furthermore, concern has been raised that the Criminal Procedure Code regulates the admissibility of electronic evidence under the general standards applicable to all types of evidence.⁵⁰ Consequently, electronic evidence transmitted to or from Albania may raise questions of legality and authenticity when subjected to judicial scrutiny.

Equally important, considering the lengthy procedures and volatile nature of e-evidence, Albanian authorities confirm to have approached electronic evidence collection by the means of informal cooperation as an alternative to MLA, given that the provisions in place do not satisfy the need for an effective cooperation in terms of cross-border electronic evidence acquisition.⁵¹

Constitutional Jurisprudence and the Relevance of EU Case Law in Albania's Judicial Practice

Constitutional Court's case-law jurisprudence governing cross-border of electronic evidence is limited and focused on legal issues concerning letter rogatory within the MLA framework.⁵² The most notable case law in this context is the Judgment of the Constitutional Court of Albania dated 30 December 2024.⁵³ The decision reflects the legal tension between the established normative framework governing international cooperation through letters rogatory and the emerging "bypass" practices employed by public authorities in criminal proceedings.

⁴⁸ Council of Europe, Cybercrime Convention Committee (TCY). *Assessment Report: Implementation of the Preservation Provisions of the Budapest Convention on Cybercrime*. 2012, 13–14. Accessed November 3, 2025. <https://rm.coe.int/16802e722e>

⁴⁹ *Supra* note 43, pp. 4-6

⁵⁰ *Ibid.*

⁵¹ *Ibid.*

⁵² While case law on letters rogatory can be found across various levels of the judiciary, from district courts to the Supreme Court, this study focuses specifically on the jurisprudence of the Constitutional Court. This choice is

premised on the Court's pivotal role in interpreting domestic normative provisions in conjunction with international agreements, within the meaning of Articles 116 and 122 of the Constitution. For the purpose of future research on Albanian judicial practice, it is worth noting the Supreme Court's Decision No. 241, dated 14 September 2023, which addressed a conflict of territorial competence by determining that the correct court to execute the Polish letter rogatory.

⁵³ Constitutional Court of Albania. Decision No. 8624, dated 30 December 2024. Accessed November 3, 2025. <https://www.gjykatakushtetuese.gov.al/wp-content/uploads/2025/03/vend.8624.pdf>

In essence, the Court assessed the constitutionality of procedural safeguards and the admissibility of electronic evidence obtained through international judicial cooperation within the scope of the Sky ECC interception of communications. The applicant claimed violations of due process and fair trial guarantees under Articles 27, 28, 31, 32, 36, and 42 of the Albanian Constitution and Articles 5, 6, 7, 8, and 13 of the European Convention on Human Rights with regard to the use of electronic evidence. As a result, according to the applicant, such evidence obtained from foreign jurisdictions without proper judicial authorization in Albania violated the principle of legality.

In its reasoning, the Constitutional Court approached the issue of the legality of electronic evidence obtained through the Sky ECC investigation in a restrained analysis, from a procedural stance. Instead of assessing the legality of intercepted communications in essence, the Court's analysis was conducted through the lens of "reasonable suspicion" under Article 27(2) of the Constitution and Article 5(1)(c) of the European Convention on Human Rights.⁵⁴ The Court was not concerned with the evidentiary weight or final admissibility of the Sky ECC data, but whether such data—when transmitted through lawful international cooperation—was sufficient to justify the temporary deprivation of liberty through a pre-trial detention measure.

The Court argued that at the pre-trial stage the evidentiary threshold is limited to reasonable suspicion, and that data, information, or facts that objectively connect the suspect to the alleged criminal activity may suffice; their full probative value is yet to be judicially assessed in the trial phase. Hence, the Court distinguishes between evidence used to justify pre-trial measures and evidence used to establish guilt, affirming that the former need not meet the same standard of proof.⁵⁵

Nevertheless, the Court opines on the legality of the Sky ECC, confirming it was transmitted lawfully to Albanian authorities via letter rogatory and under the Council of Europe Convention on Mutual Assistance in Criminal Matters and the Budapest Convention on Cybercrime. It invokes the principle of mutual trust⁵⁶ between judicial authorities of Council of Europe member states, presuming the legality of evidence transmitted in accordance with those instruments. However, the Court simultaneously clarifies those issues concerning the admissibility and lawfulness of such evidence—including potential mass surveillance⁵⁷ remain within the competence of the ordinary criminal courts during trial. In doing so, the Constitutional Court avoided a substantive ruling on the legality of the evidence at this stage, "delegating" the competence of substantial assessment of the legality of the evidence to the district courts who will deliver their verdict on the guilty or not of the applicant, in conformity with Articles 30 and 32 of the Constitution.⁵⁸

In essence, the Court defers the assessment of evidentiary legality to the trial phase while maintaining constitutional scrutiny over procedural guarantees at the pre-trial stage. Considering that the current normative regulation on cross-border evidence collection does not provide for efficient timelines in the collection process, and that the regulation of electronic evidence, in particular, lacks judicial jurisprudence to complement the existing framework, the legal issue remains largely confined to a declarative principle of proportionality between public interest and human rights in relation to data protection. It is therefore disappointing that the Constitutional Court did not render a judgment clarifying the blurred line between necessity and constraint—one that could have served as a leading precedent for future criminal proceedings and guided courts from the district to the Supreme level. The Court could have challenged the procedural regularity with regard to admissibility and lawfulness in accordance with the principles of due process and the right to a fair trial. For reference, the German courts have adopted a more

⁵⁴ Ibid. Paragraphs 86-88

⁵⁵ Ibid. Paragraph 89

⁵⁶ It is of essential importance here to clarify the choice of the author to adopt the courts statement "*parimi i përgjithshëm i prezumimit të ligjshmërisë*" as the mutual trust principle. If using a literal translation, that would account as the "principle of the presumption of legality". However, read within the normative regulation of Law no. 10193/2009 (articles 26, 27, 56-61), the "presumption of legality" serves as the internal procedural articulation of mutual trust, the backbone of judicial cooperation both within the EU and the Council of Europe context. It ensures that Albanian authorities presume

the legitimacy and conformity with the law of foreign judicial acts—such as evidence gathered abroad.

⁵⁷ Under the Albanian Code of Criminal Procedure, pursuant to Article 221 et seq., the interception of communications is permitted only on an individual basis; consequently, mass surveillance is not allowed. The applicant contended that the evidence obtained was invalid, arguing that the French authorities had gathered such information through indiscriminate mass interception rather than targeted surveillance.

⁵⁸ Supra note 54, paragraph 96.

proactive stance toward assessing the legality of data derived from Sky ECC interceptions. The Landgericht Berlin (Berlin Regional Court) on October 19, 2022, suspended proceedings and referred questions to the Court of Justice of the European Union in Case C-670/22,⁵⁹ to assess concerns over how EncroChat data was obtained and transferred, reflecting a more critical and substantive judicial approach to the admissibility and evidentiary validity of such data.

Beyond this judgement, in general the Constitutional Court remains hesitant⁶⁰ toward using CJEU case law as reference in their judgements. Pursuant to articles 116 and 122 of the Constitution, Constitutional Court rightly draws referral to the ECtHR case-law, as Albania has ratified the European Convention of Human Rights. Notwithstanding, it has been noted that the Court has used relevant CJEU case-law references in their jurisprudence;⁶¹ but even then, such references were often peripheral rather than substantive. However, the Court has, in selected cases within the area of the competition law, interpreted national law in line with the EU secondary law.⁶² This constrained approach reflects a formalist judicial culture embedded in legal positivism and procedural minimalism, rather than proactive interpretative harmonization. As argued by Constitutional Law researchers in Albania, this limited reliance on EU jurisprudence suggests a need for a stronger interpretative methodology that aligns

constitutional review with EU legal reasoning.⁶³

Albania is a candidate country since 2014 and has been undertaking reforms to accelerate the EU accession process.⁶⁴ Subject to the fulfillment of “Copenhagen Criteria”, Albania is required inter alia to have the administrative and institutional capacity to implement EU legislation (acquis), to be able to take on the obligations arising from membership.⁶⁵ The Stabilization and Association Agreement (SAA) between Albania and the European Union serves as the principal legal framework governing the gradual approximation of Albanian law to the EU acquis⁶⁶. In addition to the political dimension, Article 70 (1)(2) of the SAA establishes binding obligations for Albania to approximate domestic legislation in compliance with EU principles, particularly in areas covered by the agreement. Pursuant to article 126, Albania is bound by the obligation to take all the necessary measures to fulfill its obligations. In this regard, national courts – especially the Constitutional Court mandated to interpret international law, play a pivotal role in the harmonization process by relying on CJEU jurisprudence as an interpretative reference when adjudicating cases involving EU-related norms or principles derived from the SAA. Strengthening this dialogue with CJEU jurisprudence would be a step forward proper implementation of the acquis, and significant in ensuring coherence with the EU’s evolving legal order.⁶⁷ The divergent stance toward SAA’s position with regard to interpretation of Article 122 of the

⁵⁹ Court of Justice of the European Union. Judgment of 30 April 2024, MN (EncroChat), C-670/22, EU:C:2024:372. Accessed November 3, 2025. <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:62022CJ0670>

⁶⁰ Evis Alimehmeti and Fjoralba Caka. “Reflektime mbi zbatimin e të drejtës së Bashkimit Evropian në fazën e para-anëtarësimit të vendeve kandidate, në perspektivën e Shqipërisë dhe vendeve të rajonit.” *Revista Juridike e Shkollës së Magjistraturës*, 2013, 4-8.

Denard Veshi, Enkelejda Koka, and Ervin Pupe, “The Application of the ECHR and Its Jurisprudence by Albanian Constitutional Judges in Criminal Disputes”. *Balkan Social Science Review*, no. 25 (2025). <https://doi.org/10.46763/BSSR25252591v>

⁶¹ Aurela Anastasi, Erind Merkuri, Pjereta Agalliu, and Nadia Guni. *The Constitutional Case Law and the Approach of Albanian Legislation with the European Union’ Law*. Paper presented at the National Conference “Përafrimi i legjislacionit me standardet europiane përmes gjykimit kushtetues,” University of Tirana, 2025”. The study analyzed the Constitutional Court’s case law from 2009 to 2024 and found that the Court referred to the case law of the CJEU in only six instances.

⁶² Gentjan Skara and Bojana Hajdini, *Enforcement of the European Union Law before the Albanian Constitutional Court and the High Court*. *Journal of Liberty and International Affairs* 7, no. 3 (2021). <https://doi.org/10.47305/JLIA2137229s>

⁶³ *Ibid.* pg. 19.

⁶⁴ Government is working with advanced efforts toward compliance with the “Copenhagen Criteria”, aiming achieve European Union membership by 2030.

⁶⁵ Erjon Muharremaj and Giola Cami. *Harmonisation of the Domestic Legislation with the EU Acquis on Protected Areas and the Challenges of Implementation in Albania*. Paper presented at the International Scientific Conference “Main Challenges of Sustainable Management of Albanian Protected Areas According to EU Directives and Regulations / 1st SMPA-EU,” 2025. <https://doi.org/10.5281/zenodo.17476891>

⁶⁶ European Union. *Stabilisation and Association Agreement between the European Communities and Their Member States, of the One Part, and the Republic of Albania, of the Other Part – Protocols – Declarations*. 2009. Accessed November 3, 2025. https://eur-lex.europa.eu/eli/agree_internation/2009/332/oj/eng

⁶⁷ Erjon Muharremaj. “The Role of Legislation and Courts in the Protection of the Environment in the European Union and Its

Constitution reflects a contrast between the Constitutional Court judgements and academia, with the later ones supporting a more proactive role of the Constitutional Court to reference CJEU case law.⁶⁸

Conclusion

From a doctrinal standpoint, the study claims that growing reliance on direct cooperation mechanisms impugn traditional concepts of territorial jurisdiction. Normative regulation of cross-border acquisition of electronic evidence is limited by sovereignty, and asymmetric national safeguards. While the Budapest Convention provides an MLA-based framework for the exchange of electronic evidence, its mechanisms have faced difficulties due to lengthy and complex procedures. As a result, established legal doctrines can profit from a recalibrated approach, particularly with regard to the principle of proportionality, and data protection standards. In this regard, the Second Additional Protocol denotes a meaningful step toward time-efficient investigative powers, as it introduces direct cooperation with service providers for less intrusive types of data. However, its pending ratification and the asymmetry of data-protection standards among parties question the applicability of the Protocol in the near future.

In EU level, the e-Evidence Package reshapes mutual recognition by transposing essential public functions to private service providers, but at the same time concerns are raised on legal implications on fundamental safeguards. The framework aims to tackle MLA delays and improve access to electronic evidence by vesting service providers with public functions. Projecting private elements in the mutual recognition framework, however, simultaneously will impact due process considerations and evidence reliability.

Albania's legal framework though is generally well-aligned with Council of Europe framework, faces practical implementation challenges. Judicial practice is limited, and while the Constitutional Court's jurisprudence reflects procedural caution, substantive legal assessments on the questions of legality and proportionality are necessary. Moreover, a more proactive role of the Constitutional Court in relying to the CJEU case law would support Albania's obligations under the Stabilization and Association Agreement, toward the harmonization with the *acquis*. Overall, this

study concludes that Albania's ability to effectively engage in cross-border electronic-evidence cooperation depends on strengthening both the normative framework and judicial interpretative practice.

From a policy perspective, we suggest the introduction of new legislative measures reflecting a balanced take between quests for efficient measures, and legal safeguards. Within the Albanian legal system, the following recommendations can support the strengthening of legal framework governing cross-border access to electronic evidence:

1. Notwithstanding potential legal implications, Albania should proceed with the ratification of the Second Additional Protocol to the Budapest Convention. As a necessary safeguard, carefully formulated reservations addressing data protection and sovereignty potential implications should be drafted. As such the execution of the requests is to be conditioned by a mandatory notification to national authorities, who may suspend or refuse data transfers if such requests are found to infringe national law.
2. Binding national guidelines on the collection, preservation, and authentication of electronic evidence are essential. The current lack of procedural standards governing the legality of electronic evidence can lead to evidence admissibility implications. Such guidelines are to be designed in the light of Council of Europe soft legislation on the chain custody of electronic evidence.
3. Constitutional jurisprudence may consider adopting a more proactive approach toward ensuring normative certainty on the legality of electronic evidence obtained in cross-border investigations. This requires a shift toward a more substantive review of evidence legality, as well as a more flexible approach toward the CJEU jurisprudence as an interpretive tool. Despite not being a Member State, Albania's obligations under the Stabilization and Association Agreement legally justify a more systematic engagement with EU case law in areas subject to *acquis* approximation.

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⁶⁸ *Supra* note 62

COMPETING INTERESTS

The author has no competing interests to declare.

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