

The Macrotheme Review

A multidisciplinary journal of global macro trends

The right to information in Albania

Ma.Kasem CENAJ* and Myzafer ELEZI**

*European University of Tirana, Albania**

*Lecturer, Department of Justice, Ismail Qemali Vlore University, Albania***

Abstract

A democratic state cannot be understood without the right and freedom of information. The right to information is directly linked with the fundamental freedoms and human rights, as such, every citizen of a state that builds its operation on democratic principles, should be informed of what is happening in his country, but shall enjoy the right to see information on official documents. Albania as a ex communist country, only after 1990 began to build a democratic constitution for the country. Law on the right of information was founded in 1999. Although there are a several years experience again observed not only in the operation of the law, its implementation by administrate. The aim of the article is to identify the importance of the right of informing, training mode and path, the legal framework and the main problems encountered in Albania with law enforcement.

Keywords: The right to information, Albania

1. Introduction

Many decades ago, many countries began creating freedom of information legislation. Law itself is the first step, as important is its implementation. For the implementation of such legislation should take into consideration the administrative transformations concerning the right to information.

Albania as an isolated country for decades, in relation to the countries of Western Europe, and other developed countries, has launched later way of creating legislation, but also the implementation of the right to information. Great wave of change that characterized Albania after 1990, brought the concepts and notions entirely new in the normative provisions, which appeared necessary for the design. The necessity of drafting normative provisions concerning the right to information associated with them and the system model in which entered Albania and the Albanian society.

Democracy is based on the principles of law and freedom, where every citizen has the right to be informed of what is happening in his country. Countries such as Albania, with a fragile and initial democracy, during the first years of transition, promotion or transmission of the right to

information, not broadcast in the daily life of citizens and that as a result of legal inapplicability. In 1999 part of the normative provisions of the Republic of Albania became the Law on the Right to Information.

Development of the right of information is important not just in the context of important information, but also in view of human rights. The article aims to analyze and explain the meaning of the value of freedom of information, and to explain the principles of the law on informing, what guarantees this right.

2. The importance of the right of Information

E drejta e informimit perben bazen e garantimit te lirive dhe te drejtave te njeriut. Right to information (RTI) is harnessed as a tool for promoting participatory development, strengthening democratic governance and facilitating effective delivery of socio-economic services. In the knowledge society, in which we live today, acquisition of information and new knowledge and its application have intense and pervasive impact on processes of taking informed decisions, resulting in overall productivity gains (Ansari, 2006).

The right to information cannot be received due importance, in case that was not strongly promoted by many organizations to be sanctioned by the various documents, which helped in the introduction of the right to information, in the internal legal framework in many countries. Some conventions are important European Convention for the Protection of Human Rights and Fundamental Freedoms, the International Covenant on Civil and Political Right, the African Charter of Human Rights, the American Convention on Human Rights.

In a democratic country, people have the right to know what happens in their country, therefore the necessary legal framework for the construction of the right of informing. However, the right to information, there are some information which are excluded, because the category those belongs to, as in the case of state secrets, which are not made available to the public.

History of the freedom of information law marks an important step in 1946, when the General Assembly of the United Nations adopted the resolution on freedom of information as a fundamental human right, and the basis for the rights and freedoms of others. Having considered to freedom of information as a fundamental human right, is defined in the international standards of human rights, which is formulated in Article 19, Universal Declaration of Human Rights:

- *Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.*

The right to information is important for all stakeholders, as the officials or parties to broadcast official information, as well as the community, the public, to whom receive this information, because they are interested in, or affected directly or indirectly by this information.

3. Benefits from Right of Information Act

The right to information has many benefits for all stakeholders, not just this, as are many directions in which positive developments come as a result of the implementation of normative provisions, related to the right to public information.

The existence of the right legal framework for informing the public, or the signing of various agreements and conventions, brings positive effects, especially in government, because the obligation to inform the public, in any case, for any decision or development trend, project for the future, increases the responsibility of the government and legal persons, who are official representatives of different institutions and very important, for their activity and impacts on the territory or in the community.

Clearly, the Act has laid emphasis on good governance, of which the major elements that have been identified are: informed citizenry for encouraging people's participation in development process, transparency, accountability and reduction in corruption. According to M. M. Ansari (2006) in his study, identified the major objectives of the Act of right of information with good governance are:

- Greater Transparency in functioning of public authorities;
- Informed citizenry for promotion of partnership between citizens and the Government in decision making process;
- Improvement in accountability and performance of the Government;
- Reduction in corruption in the Government departments.

However, the right to information, there are many other influences, such as to be informed about the events and developments in the parliament, to be informed on the activities of public institutions that make up a country, right on the information for a clean environment, avoidance and lack of hunger.

The right to information, democracy gives the chance to promote dignity in countries which have no history of democracy development. Freedom of information is primary to have an effective democracy. Society also feels safe in her of the right to information, except as information relating to the security of the territory, economic laws, social policy, closely related, with health and safety and the safety of food.

However, this freedom of information, is responsible for all those involved in the structures which are obliged to give information, or that serve as transmitting information. transmitting information, and that play a role for freedom of information as positive but also some negative cases are media.

The media in general are a very important pillar of freedom of information of society and institutions. Their role is positive as they inform citizens about decisions and activities of the institutions. If the media did not exist then the right to information would not have received this great extension after its massification and recognition from society, did not see another better

way except the media, which distributes information in short time, and the infinite geographic distribution.

However, the responsibility should be to the media, after the way the information they transmit, publish or events for which the states classify information as secret, not in some cases has shaken global balances.

The lack of access to information on Government policies, programmes, schemes, benefits and deliveries makes corrupt practices thrive. When corruption siphons off amounts from employment guarantee, unemployment or disability benefit, misdirects public funds for service delivery or delays pension and social security payments, it is usually the poor who suffer the most. Freedom of information can be a potent tool to prevent and fight corruption (Tiwari, 2010). In this context it is worth to note that the right to information and its effective exercise reduces the risk of arbitrary action, and contributes to the reduction of corruption and return, in a rare phenomenon in public administration.

4. The story of right of information in Albania

Many developed countries with consolidated democracies have not only present law of the right to information, but also functional, and see it as an integral and very important to the functioning of the government, the state and its efficiency. Moving from international acts in the domestic laws of informing rights has brought significant improvements and numerous positive evolutions for the legislation of many countries. The necessity of the act of information is relating not only to the fact of its adoption, but also with the implementation. For this it is necessary not only acts signing, or establishment and adoption of international or internal legislative acts, but also the establishment of bodies that monitor, observe and encourage the implementation of the law on the right to information.

The right to information is part of Constitution of Republic of Albania, in Article 23, since 1998 . The legal recognition of the right of access to information in Albania has made significant progress in the past ten years. The most important development was the adoption of Article 23 of the Constitution which provides for the right of every person to access information held by state bodies and to attend public meetings (Banisar, 2006).

Article 22 of the Albanian Constitution guarantees freedom of expression as follows:

- Freedom of expression is guaranteed.
- Freedom of the press, radio and television is guaranteed.
- Prior censorship of means of communication is prohibited.
- The law may require authorization to be granted for the operation of radio or television stations.

The Albanian Constitution also provides for a specific guarantee for freedom of information in Article 23:

- The right to information is guaranteed.
- Everyone has the right, in compliance with law to get information about the activity of state organs, as well as of persons who exercise state functions.

- Everybody is given the possibility to follow meetings of collectively elected organs.

In virtue of articles 23 and 17 of the Constitution, on the proposal of the Council of Ministers, the Assembly of the Republic of Albania, Republic of Albania Assembly decided: Law No. 8503, date 30.6.1999 “*On the right to information over the official documents*” .

Administrative Procedure Code, approved by Law no. 8485, dated 12.05.1999, provides for the right to information as a basic principle of operation of the Public Administration. It makes a specific regulation of the right to information, by recognizing the right entities that are parties to an administrative proceeding or those who have a legitimate interest in connection with this process. The approval of this law was welcomed by the public opinion, especially by the Albanian independent press organs, which regard this law as a protection in their activity of informing public opinion on the activity of the organs of state. But the implementation of this law has had shortcomings that are becoming more obvious now that the investigative press is being more aggressive towards state corruption, as well as the abuse of power by different individuals or groups in power (Jupe, 2002)

Through Articles 5 and 122 of the Albanian Constitution, the rights guaranteed in international treaties to which it is party take precedence over any Albanian laws or practices that are incompatible with them. This law has as goal to guarantees the enjoyment of the right to information on official documents. Albania has also recognized through international agreements that it realizes the importance of access to information. In 2002, Albania ratified the Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (Aarhus Convention) which requires that countries adopt laws on access to environmental information.

5. Some problems of right to information in Albania

The government has changed several times since the law was adopted, and each change normally leads to the reorganization or abolishment of various ministries, with senior public officials being moved or replaced. This is a fundamental problem for the whole process of legal and administrative reform in Albania and underlies the failure to develop administrative capacity – including setting up systems and procedures, to train officials, and so on – in order to bring about effective application of the FOI Law, as well as other reforms (OSCE & GCFE, 2004).

The Ombudsman Institution, established since 1999, bases its activity on the law No. 8454 dated 4.02.1999 "On Ombudsman". The Ombudsman is an institution that has great importance to the right to information. Ombudsman Institution, plays the role of a ekujdestari, observer, and in some cases driving force to enforce the law Law No. 8503 dated 30.6.1999 "On the Right of Access to official documents."

The changed law makes a wider field of its activity in the framework of the protection of human rights, but in particular loading of Ombudsman Institution the special mission, which is related to that of guardian of implementation and respect for this right to the wider public, by the administration of both levels. The bundle of issues to be considered a violation of the right to information in 2010, have highlighted the issue of enforcement of public administration, which concluded that legal deadlines do not apply to receive a response to requests for information, if for refusal, either for their implementation.

Also, the legislation is found on the right to information on official documents, in a partially known unsatisfactory level of public administration, and we apply the same level, thus avoiding the responsibility for providing the required documentation. This brings difficulties and obstacles in the normal functioning and transparent administration, the relationship of the latter with the public. The public, on the other hand, there is sufficient knowledge concerning his right of Information (Avokati Popullit, 2010).

Institutioni the Ombudsman, the official report concludes that while working for analyzing the annual activity, we examined the issue of violation of the right to information, in 2010, by the institution, has highlighted the issue of law enforcement Public administration, from which concluded that:

- No respect legal deadlines for receiving responses to requests for information, or refusal, either to fulfill their.
- Legislation on the Right to Information over official documents, in a partially known unsatisfactory level of public administration, but it does not apply, thus avoiding responsibility for providing the required documentation.

6. The right of Information-Albania in front of other countries in region

The legal framework (including jurisprudence) recognizes a fundamental right of access to information. Article 23 of the 1998 Constitution states:

- 1- The right to information is guaranteed.
- 2- 2-Everyone has the right, in compliance with law, to get information about the activity of state organs, as well as of persons who exercise state functions.
- 3- 3-Everybody is given the possibility to follow the meetings of collectively elected organs.

Access Info Europe (Spain) and the Centre for Law and Democracy (Canada) are today launching a report providing an analysis of the results and trends in the global RTI Rating, which assesses the legal framework for the right to information (RTI) in every country in the world which has adopted a national RTI law.

A major finding of the report is that as international standards have developed laws have got stronger. At the same time, there is still a lot of room for improvement, with only 23 countries scoring more than 100 points. Albania is ranked with 69 point. Compared with other country in region of Balkan, Macedonia is with 113 point, Serbia is with 135 point, Croatia with 112 point, Kosovo is with 106 point, Bulgaria with 91, Romania with 81, Turkey with 70 points.

Table Nr.1 Results of Study for Albania

Section	Max Score	Score
Right to Access	6	4
Scope	30	27
Requesting procedures	30	11
Exceptions	30	3
Appeals	30	18
Sanctions	8	2
Promotional measures	16	4
TOTAL	150	69

Source: http://www.rti-rating.org/country_rating.php

The results of the world's first rating of RTI laws in 89 countries shows a significant spread: out of a possible total of 150 points, the range is from 39 points (Austria, one of 30 countries currently pending final review by national experts) to 135 points (Serbia) (rti-rating.org, 2013). According to the methodology of study it is find that countries with scores over 100 tend to be younger laws which reflect the progress made in international standard setting on this right in the past 20 years.

Right to information from the 6 point maximum, Albania evaluated with 4 points. As understood from the data table some of the disadvantages of operating above the law of the right to information on official documents, "Requesting procedure" are more than clear that not function properly. Sanctions is connected with those who wilfully act to undermine the right to information, including throught unauthorized destructions of information.

In Article 14. General Rule "Violation of the provisions of this law, when not a criminal offense, is an administrative offense and shall be regulated according to law 7697, dated 7.4.1993 "On administrative contravention" of the later additions."

7. Conclusions and Recommendations

The right to information is very important because it is the basic element and component for ensuring democracy and for freedom and rights njeriut. Albania since 1998 has the constitutional right as the right to information, and then is enable the drafting of a law on the right and freedom to have information on official documents.

Based on the work of several years, the Institution of The Ombudsman, as an important institution in respect of the law, and above all for the effort to be closer to citizens in cases of various problems, recommends some possible changes in the law public information. More specifically these should consist in:

- a) Expanding the circle of entities have the obligation, the provision of information, including;
 - physical or legal persons who fulfill public functions or administrative

- legal entities that operate, in whole or in part, with public funds-
- b) Appendix exceptional criteria, which means to predict an exhaustive list of criteria for withholding information;
- c) Review deadlines for providing information,
- d) Obligation to help the applicant to identify the documents required as the administration has full knowledge of what keeps official documents and in the end, clarify the application simplifies the work of both parties, necessarily accepting the request, if the available documents question, or otherwise, the obligation is, as possible, the applicant addressed, or the competent entity shall disclose by law.
- e) Form of information disclosure, as the law states that the applicant shall be given a "full copy" documents or requiring a response "in verbal form."

Besides these it is necessary to build mechanism for freedom of information, in such a way that the freedom of information function not only in theory but also in practice. It required the development of a procedure for public must realize Kerim information at an institution. The law on the right to information should decide clauses for public education and dissemination of information concerning the right of access to information, the type of information made available, and the exact specification and determination and clear for how they can be exercised this right.

References

- Ansari, M., 2006. *Right to Information and its Relationship to Good Governance and Development*, New Delhi: Central Information Commission.
- Avokati Popullit, R., 2010. *RAPORTI VJETOR 2010*, Tirana: Avokati i Popullit Republika e Shqiperise.
- Banisar, D., 2006. *Comments on Legal Regulations on Access to Information and State Secrets in Albania*, Tirana: OSCE.
- Jupe, H., 2002. *IRIS Merlin*. [Online]
Available at: <http://merlin.obs.coe.int/iris/2002/3/article27.en.html>
[Accessed 27 March 2002].
- OSCE & GCFE, 2004. *MEMORANDUM ON "The Albanian Law On the Right to Information on Official Documents*, London: OSCE & Global Campaign for Free Expression.
- rri-rating.org, 2013. *Global Right to Information Rating*, Halifax/Madrid: Access Info Europe (Spain) and the Centre for Law and Democracy (Canada).
- Tiwari, S. K., 2010. RIGHT TO INFORMATION: AN IMPORTANT TOOL OF SOCIAL DEVELOPMENT, GOOD GOVERNANCE AND STRONG DEMOCRACY. *Global Media Journal - Indian Edition*, December(Winter Issue), pp. 1-7.