

**THE RIGHT TO INFORMATION AS A MEANS OF PARTICIPATION IN GOVERNANCE
AND ADMINISTRATION.**

ALBANIAN LEGISLATION ALIGNMENT WITH THE COUNCIL OF EUROPE STANDARDS

Dr. Heliona MIÇO

Associate Professor, Department of Law, Epoka University

E-mail: hmico@epoka.edu.al

Prof. Dr. Eralda (Methasani) Çani

Professor, Department of Public Law, University of Tirana

E-mail: eralda.methasani@fdut.edu.al

Abstract

The right to information represents a key pillar for the well-being of democracy and the general interest of transparency towards the public. It is a key human right, and also a precondition for the enjoyment of other human rights, including the freedom of expression. While during the communist regime, Albania did not recognize it substantially, during the transition to a pluralist democratic country, democratic principles, and human rights are unequivocally embraced. The current Constitution guarantees it among other human rights. Albania is a member of the Council of Europe and has ratified ECHR since 1996. The Albanian Constitution stipulates that human rights if and when limited cannot exceed the European Convention on Human Rights. The right to information, as a human right and as a means to participate in the process of public governance and administration, is also sanctioned in different laws in Albania. These include the Administrative Procedure Law, the law “On the right to information”, the law “On public notification and consultation”, and several sectorial laws. The Commissioner for the Right to Information and Protection of Personal Data is established as a dedicated administrative institution to address infringements to this right. The article will shed light on the development of the right to information in the Albanian legal framework and analyses how the country meets the Council of Europe standards regarding this human right, highlighting the progress made throughout the political turmoil and the obstacles encountered in its implementation, in the framework of administrative practices in Albania.

Keywords: The right to information, the European Convention on Human Rights, Open Governance, Transparency, Democracy, Freedom of Expression

1. Introduction

The right to information represents one of the most important rights for the well-being of democracy. Freedom of information is considered to be an essential right for every person. It allows individuals and groups to protect their rights and serve as a guard against abuses, mismanagement, and corruption (Banisar, 2006). It guarantees transparency in government affairs, ensures public participation in the governance of the country, and provides positive effects on accountability (UN, 1995). It fosters the

integrity, efficiency, effectiveness, and accountability of public authorities, helping affirm their legitimacy (Council of Europe, 2008). Political representation and accountability are both considered important traits of democracy (Held, 2006). Given that political representatives are elected periodically to direct the country's policies, obtaining and imparting information on the way the state is run, the use of public revenues, and the implementation of laws is the best mechanism for building a democratic state with functional government institutions. According to Mendel (2003), the freedom of information is considered to be the underpinning of democracy. Information held by public authorities is not acquired for the benefit of officials or politicians but for the public as a whole (Manova, 2018). Unless there are good reasons for withholding such information, everyone should be able to access it.

The increase of transparency in the decision-making of the government affects the weakening of the authoritarian state, the increasing of public participation in decision-making processes, the public disclosure of corrupt affairs of government, and state accountability towards law implementation and public service. According to the United Nations Development Program [UNDP] (2008), government transparency “comprises all means of facilitating citizens”, access to information, and their understanding of decision-making mechanisms. Transparency is built on the free flow of information: processes, institutions, and information should be directly accessible to those concerned and enough information should be provided to understand and monitor them”. This makes transparency related to the right of access to information, without which would be difficult for public sector authorities to be accountable in decision-making processes. Thereby transparency envelops elements like the publication of legislation and decisions, the duty to give reasons, access to documents and information, legal clarity, and openness of the decision-making procedures (Prechal & de Leeuw, 2007; Rossi, 2019).

The right to information is closely related to the freedom of expression and is recognized as a human right by several international instruments, such as the Universal Declaration on Human Rights, article 19 (United Nations [UN], 1948), the International Covenant on Civil and Political Rights, article 19 (UN, 1966), the European Convention on Human Rights [ECHR], article 10 (Council of Europe, 1950), the African Charter on Human and Peoples' Rights [ACHPR], article 9 (Organization of African Unity, 1981) and the American Convention on Human Rights [ACHR] Article 13 (Organization of the American States, 1979).

The Universal Declaration on Human Rights (UN, 1948) and the International Covenant on Civil and Political Rights (UN, 1966) recognize not only the right to “impart” information but also the right to request and receive information. However, in the European context, the embodiment of the positive obligation of the government to collect and disseminate information took a long time (Rossi, 2019; Voorhoof, 2014). In light of international guarantees, the right to information is recognized by every citizen as the right holder to request government information, as well as to state authorities, as duty bearers to make public the government information upon request or voluntarily (Yannoukakou & Araka, 2014).

Regardless of the importance of the right to information, the principle of maximum disclosure of government information can be restricted nevertheless for limited cases provided only by international and national legal instruments. Limitations provided by law, should be conditioned by necessity and be in proportion with the situation that has dictated them, in the protection of public or private interest from potential harm (Rossi, 2019; UN, 2011). The reasons for derogation include public interest such as national security, as well as individual rights such as the right to private life (Manova, 2018). According to Florini (2007), there is competition and a power struggle between “transparency” and “the right to know” versus “privacy” and “national security”. States have a measure of discretion to assess what constitutes privacy and national security. Public authorities must verify whether the right to information constitutes a threat on the rational basis for national security and privacy (Council of Europe / European Court of Human Rights, 2013).

The extent of the right to information goes beyond national borders, it is international and above all, a matter of open governance. According to Wirtz and Birkmeyer (2015), open government is generally defined as “a multilateral, political, and social process, which includes in particular transparent, collaborative, and participatory action by government and administration”. The Organization for Economic

Co-operation and Development [OECD] defines it as “a culture of governance that promotes the principles of transparency, integrity, accountability and stakeholders’ participation in support of democracy and inclusive growth” (OECD, 2022). The connection between the right to information, freedom of expression, and open government is particularly visible in countries in transition. In Eastern Europe, many countries are still struggling to overcome the cultural and political heritage of the communist period, including the culture of secrecy (Freedom of Information Advocates Network, 2013). And in this context, Albania is no exception.

Since the right to information is a human right and a key pillar of a democratic society, it is not only a national issue. Regarding the European context, the Council of Europe plays an important role in the recognition and protection of this right, as well as in establishing a positive obligation towards the states to publicize information. In light of this discourse, this contribution aims to outline the evolution of the right to information in international instruments, to identify the progress in the Albanian legal framework, and analyses how the country meets the Council of Europe standards regarding this human right. In doing so, special attention is devoted to the dynamics and the emerging issues of the right to information made throughout the political turmoil and the obstacles encountered in its implementation, in the framework of administrative practices in Albania.

2. The right to information in the international and domestic human rights legal framework

2.1 International Instruments developed by the UN

The right to information on government data has been directly linked with the right to information movement. The Freedom of Press Act served as the first piece of legislation on the right to information sanctioned by Sweden in 1766, almost two centuries before it was widely sanctioned at the international level (Yannoukakou & Araka, 2014; Çani (Methasani) & Theodhori, 2010; Mendel, 2003). Internationally, the right to information is established by the Universal Declaration of Human Rights [UDHR], as adopted by UN General Assembly in 1948. Article 19 states that:

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.

Moreover, the International Covenant on Civil and Political Rights [ICCPR] adopted by UN General Assembly in 1966, in article 19, paragraph 2 stipulates that:

everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.

Both international instruments guarantee the right to freedom of opinion and expression and the right to information in very similar terms. They recognize not only the right to express oneself but also the right to have freedom in looking for, receiving, and making the information known. They recognize the importance of protecting not only the speaker but also the recipient of information. According to Mendel (2008), this recognition is now being understood as including the right to information in the sense of the right to request and be given access to information held by public bodies.

According to the UN Human Rights Committee, the right to information embraces a right of access to information held by public bodies, in all branches of the State (executive, legislative, and judicial) and other public or governmental authorities, at whatever level – national, regional or local – are, in a position to engage the responsibility of the State party. This requires a proactive commitment of the state, to put in the public domain Government information of public interest. Moreover, the right to information requires states to ensure easy, prompt, effective, and practical access to such information (UN Human Rights Committee,

2011). Emphasizing legislation as one of the main tools through which the right to information comes to life, the General Comment on Article 19 of the ICCPR states that:

“States parties should also enact the necessary procedures, whereby one may gain access to information, such as by means of freedom of information legislation. The procedures should provide for the timely processing of requests for information according to clear rules that are compatible with the Covenant. Fees for requests for information should not be such as to constitute an unreasonable impediment to access to information. Authorities should provide reasons for any refusal to provide access to information. Arrangements should be put in place for appeals from refusals to provide access to information as well as in cases of failure to respond to requests.”

Regional human rights systems embrace a similar approach to human rights. In *Claude Reyes v. Chile*, 2006, the Inter-American Court of Human Rights [IACHR], emphasized the dimension of the right to information. The case was brought by members of a Chilean environmental NGO, who had been denied access to information on the environmental impact of a deforestation project without valid justification. The Court analyzed the claimant’s allegations under Article 13 of the American Convention on Human Rights⁵⁵⁷ (ACHR). It highlighted that, by stipulating the right to “seek” and “receive” “information,” Article 13 of the ACHR protects the right of all individuals to request access to state-held information, with the exceptions permitted by the restrictions established in the Convention. Consequently, this article protects the right of the individual to receive such information and the positive obligation of the State to provide it, so that the individual may have access to such information or receive an answer that includes a justification when, for any reason permitted by the ACHR, the State is allowed to restrict access to the information in a specific case. By describing the individual and social dimension of the right to information, the court reasons that the delivery of information to an individual can, in turn, permit it to circulate in society, so that the latter can become acquainted with it, have access to it, and assess it (*Claude Reyes v. Chile*, 2006).

It is an overall accepted approach that the right to information belongs to every individual, beyond the public interest information related to media freedom. It is a precondition that human beings fulfill and realize themselves. This is the reason it can be exercised without providing explanations for the reasons for seeking information (Rossi, 2019).

2.2 The recognition of the right to information by the Council of Europe

The freedom of information is sanctioned in Article 10 of the Convention on the Protection of Human Rights and Fundamental Freedoms [ECHR] (Council of Europe, 1950). It is considered inseparable from the freedom of expression. The Convention stipulates that it shall include freedom to hold opinions, receive and impart information and ideas, without interference by public authority and regardless of frontiers.

The ECHR’s Article 10 includes a more limited definition of freedom of expression compared to the range given to this right by the UDHR and ICCPR. Article 10 of the ECHR guarantees all persons the right to “receive and distribute information,” but omits the word “seek,” included in the UDHR and later international documents (Peled & Rabin, 2011). This limits the right of the individual and society to request information from public authorities, as well as disengages the state from its obligation to proactively disseminate information, disregarding the importance of the right to information in the democratic functions of the state (Yannoukakou & Araka, 2014).

⁵⁵⁷ The American Convention on Human Rights, also known as the Pact of San José, is an international human rights instrument. It was adopted by many countries in the Western Hemisphere in San José, Costa Rica, on 22 November 1969.

The Recommendation No. R (81) 19 of the Council of Europe adopted in 1981 was an attempt to mitigate this difference between the European Convention on Human Rights and the UDHR and the ICCPR (Council of Europe, 1981). The first principle of the Recommendation stated that “[e]veryone within the jurisdiction of a member state shall have the right to obtain, on request, information held by the public authorities other than legislative bodies and judicial authorities.” However, the phrase “on request” limits the functioning of the right to information exempting the state from its obligation to provide information in a proactive manner whenever requested.

Even the position held by the European Court of Human Rights [ECtHR] has been resistant to the broad recognition of the right to information provided for in Article 10 of the European Convention (Rossi, 2019; Mendel, 2008). According to this Court, the notion of “receiving information” prohibits the government from restricting a person from receiving information that others wish to impart to him, but it does not embody an obligation on the Government to impart information (*Leander v Sweden*, (dec.), no. 9248/81, 26 March 1987).

However, it was the decision of the ECtHR taken in April 2009, on the case *Társaság a Szabadságjogokért v Hungary* that gave a broader interpretation to the notion of 'freedom to receive information'. According to the ECtHR decision, withholding information on matters of public importance may pose a violation of freedom of expression as enshrined in Article 10 of the Convention. On the one hand, the Court took steps towards an advanced interpretation of the right to information, on the other hand, it reiterated the ruling in *Leander* that “[a]rticle 10 . . . does not . . . confer on the individual a right of access to a register containing information on his position, nor does it embody an obligation on the Government to impart such information to the individual.” (*Társaság a Szabadságjogokért v Hungary*, (dec.) no. 37374/05, 14 April 2009; Peled & Rabin, 2011).

The approach towards allowing the public to have a critical attitude on state functioning and the society in which they live and on the authorities that govern them, whilst encouraging informed participation in matters of common interest, is anticipated by another Recommendation of the Council of Europe. The Recommendation Rec (2002)2 on access to official documents emphasized the need for the guarantee without discrimination on any ground, including that of national origin by the Member States the right of everyone to have access, on request, to official documents held by public authorities (Council of Europe, 2002).

The influence of the broader interpretation of the right to information comes as a result of another important development from the Council of Europe when its Committee of Ministers adopted, in November 2008, the Convention on Access to Official Documents, known as the Tromsø Convention. It was the first binding international legal instrument to recognize everyone the right to access official documents held by public authorities without discrimination and regardless of the requester's status or motives in seeking access (Council of Europe, 2008). The term “public authorities” for the purposes of this Convention covers a wide range of authorities from administrative authorities at the national, regional, and local level, legislative bodies and judicial authorities as they perform administrative functions, and natural or legal persons as they exercise administrative authority. Considering that a considerable part of public services has increasingly performed by private entities, this expansion of authorities is indicative of the tendency to improve administrative governance. The Tromsø Convention again fails to strengthen the proactive dissemination of government information shown in Article 2: *Each Party shall guarantee the right of everyone, without discrimination on any ground, to have access, on request, to official documents held by public authorities.* However, the Convention represents a breakthrough regarding the status of freedom of information in international law (Peled & Rabin, 2011). Albania is one of the few countries that have ratified the Tromsø Convention (On the Ratification of the Convention of the Council of Europe On Access to Official Documents, Law of 2022, Pub. L. No. 45/2022).

3. Constituent aspects of the right to information in the Albanian legal framework

3.1. The Constitution of Albania

From a state that tried at all costs to indoctrinate its citizens and to forbid individuals from holding one opinion or another, promoting one-sided information only by the state sources, therefore constituting a serious and unacceptable obstacle to freedom and democracy before '90-s (Constitution of Popular, Socialist Republic of Albania, Law of 1976, Pub. L. No. 5506/1976) Albania has embraced human rights and freedoms stipulated in the international instruments. Fundamental human rights and freedoms are an integral part of the Albanian Constitution, and among them, the right to information occupies a crucial place (Constitution of the Republic of Albanian, Law of 1998, Pub. L. No. 8417/1998). This right is sanctioned in Article 23 of the Constitution, in two aspects: the right to be informed on the activity of state bodies, as well as information on the personal data of persons exercising state functions. The information is guaranteed to all persons without any distinction and regardless of sex, race, religion, political beliefs, social background, etc., thus avoiding any kind of discrimination. Two important principles are affirmed in the third paragraph of Article 23, the principle of transparency, which is achieved by making public the meetings of elected collective bodies, as well as the principle of cooperation of private persons with public administration bodies. This principle is realized through the participation and informing of private persons about the decision-making process of the elected central or local bodies, regulation expressly required by the Constitution in Article 23.

Public participation thus becomes an efficient tool for increasing the quality of decisions, transparency, and public awareness of their rights and freedoms (Omari & Anastasi, 2017). The Constitution in this context has included the legislative body, as well as the elected bodies at the local level, such as the municipal councils, providing as a transparency mechanism in Article 79 the holding of open meetings by the Assembly.

The right to information in the Constitution is regulated as well by other articles. It includes the right of the person who has been deprived of liberty (Article 28) to be familiar with the reasons for this measure, with the accusation brought against him, as well as with a set of rights related to the respective conditions. The criminal procedural guarantees of the individual occupy an important place. In this regard, Article 31/1 sanctions that anyone during the criminal process has the right to be informed immediately and in detail about the accusation against him and about the rights he enjoys during the criminal proceedings.

The right to information is linked to data protection, both in terms of non-publication of personal data and in cases of collection, use, and publication of personal data after the consent of the person and for the cases provided by law. Article 35 of the Constitution guarantees the right of everyone not to make public the data connected with his person, without consent, except for when provided by law. In addition, the Constitution states that everyone has the right to become acquainted with data collected about him, except for the cases provided by law.

Another aspect related to the right to information is the environment. The Constitution pays specific attention in Article 56 to the recognition of the right to information to anyone who wants to be informed about the status of the environment and its protection. The guarantee of this right should also be seen in the light of the Aarhus Convention, already ratified by Albania (United Nations Economic Commission for Europe [UNECE], 1998). Utilizing three pillars such as access to information, public participation, and access to justice, the Aarhus Convention guarantees the security of information and the involvement of the public and civil society in decision-making processes for the environment (UNECE, 2014).

Moreover, the right to information was brought to the attention of the new bodies created by the justice reform. The Constitution provides, in articles 147/a and 149/a, the obligation of the High Judicial Council

and the High Prosecutorial Council to inform the public and the Assembly on the state of the judicial system and the state of the Prosecution Office respectively. Since the justice system reform has as its objective the fight against corruption (Ad hoc Parliamentary Committee on Justice System Reform, 2015), transparency and publication of information serve to promote the prevention and detection of corrupt activities by public officials (Shehaj, 2020).

The right to be informed is addressed in the Constitution in other dimensions, not only as a relationship between the individual or the public, and the public administration, but also as a relationship between different state bodies. The Ombudsman has the right to receive information from public bodies and officials, which are responsible for providing the respective information recognized in the Article 63 of the Constitution.

It has been acknowledged by the Albanian Constitution that, the right to be informed, unlike other human rights, is not absolute. Article 17 provides for clear limitations, that however, are justified only if they do not breach basic principles set out in the Constitution. These principles are also stipulated in the European Convention on Human Rights and constitute the main pillars of its Court jurisprudence. According to Article 17 (1), these principles are public interest, the protection of the rights of others, legitimacy, and the principle of proportionality (Bianku, 2001). Article 17 (1) states that: *“The limitation of the rights and freedoms provided for in this Constitution may be established only by law for a public interest or for the protection of the rights of others. A limitation shall be in proportion with the situation that has dictated it.”* On the other hand, Article 17 (2) stipulates that: *“These limitations may not infringe the essence of the rights and freedoms and in no case may exceed the limitations provided for in the European Convention on Human Rights.”* The Albanian Constitution marks a particularly positive achievement by providing minimum standards for the limitation of freedoms and human rights provided for in the European Convention on Human Rights and its decision-making bodies in the field of law.

In this way, the Albanian Constitution presents the ratification of the European Convention on Human Rights and its inclusion as a constituent part of the internal juridical system after its publication in the Official Journal of the Republic of Albania (Article 116, Article 122 of the Constitution). The International Covenant on Civil and Political Rights [ICCPR], as well as the Convention on Access to Official Documents, which is recently ratified by Albania, are added to the international instruments ratified by Albania in the protection of the right to information.

3.2 The legal analyses of the right to information

The practical and effective impact of Article 10 of the ECHR, particularly regarding the enforcement instruments of the Convention indicates that the situation in terms of freedom of expression and information in the “new member states” of the Council of Europe, including Albania, is problematic (Voorhoof, 2014). Another position is held by “The Right to Information Rating”, which listed Albania among the countries with a strong legal framework for the right to access information held by public authorities (Japarashvili, 2021).

In effect, the constitutional principles are established into a series of laws that focus on the protection of the right to information, as well as the relationship of this right with other rights, such as data protection, privacy, or the protection of classified information. The legal framework that has sanctioned the protection of the right to information includes:

- a) Law no. 44/2015 "Code of Administrative Procedures of the Republic of Albania";
- b) Law no. 119/2014, "On the right to information";
- c) Law no. 10/2023, "On classified information";
- d) Law no. 9887/ 2008 “On the Protection of Personal Data”;
- e) Law no. 146/2014 "On public notification and consultation;

f) Law no. 45/2015 “On the right to information about former state security documents of the People's Socialist Republic of Albania”;

g) Law no. 33/2022 "On open data and reuse of public sector information";

as well as any other law that addresses the essence of the right to information. The Albanian legislature has sanctioned that the right to access public information is recognized by everyone who has an interest in data discharged by state organs, without providing any explanation regarding the reasons for requesting such information. The guarantee of the right to information requires that the principles sanctioned in the international instruments ratified by Albania are reflected in the domestic legal frameworks that sanction this right.

a) Principle of maximum disclosure

In effect, the law on the right to information (On the right to information, Law of 2014, Pub. L. No. 119/2014) has included a broad definition for the public bodies that participate in the decision-making process of the state, or assume public functions. The public authorities belong to the horizontal division of power such as legislative, executive and judicial, and prosecution bodies at any level, as well as to the vertical division such as the local government units, state authorities, and public entities, created by the Constitution or by law, as far as they perform administrative functions. Moreover, even the commercial companies where the state owns most of the shares, or where the public functions are discharged as well as natural or legal persons who discharge public functions are obliged to disclose information. This is accompanied by a broad definition of "public information", which includes any data recorded in any form or format, during discharge of the public function, whether or not prepared by a public authority. Including a wide range of public bodies in charge of providing information and data to make it available to the public, paves the way for the implementation of the principle of maximum disclosure (Article 19, 2016; Meijer & Thaens, 2009). The principle of maximum disclosure is ascertained by ECtHR judgment in the *Grundbesitzes v. Austria* case (*Grundbesitzes v. Austria*, (dec.) no. 39534/07, 28.11.2013). The applicant was a registered association whose aims were to research the impact of transfers of ownership of agricultural and forest land on society and to give opinions on relevant draft legislation. In April 2005, its request was refused by the Tyrol Real Property Transactions Commission, because the decisions were needed to anonymize and it required substantial resources. According to the European Court, the reasons relied on by the domestic authorities for refusing the association's request for access to the Commission's decisions were “relevant”, but not “sufficient”. A complete refusal to give the applicant access to any of its decisions was disproportionate and could not be regarded as having been necessary in a democratic society.

This position of the court is reinforced in the *Roşianu v. Romania* case (*Roşianu v. Romania*, (dec.) no. 27329/06, 24.6.2014) where ECtHR held that Romania violated Article 10 of the European Convention on Human Rights (ECHR) when it denied a journalist access to public documents concerning the use of public funds. The Court found that there had not been adequate execution of the judicial decisions in question. The complexity of the requested information and the considerable work required in order to compile the requested documents had been referred to solely to explain the impossibility of providing that information rapidly, but could not be a pertinent argument to refuse access to the requested documents. The Court concluded that the Romanian authorities had adduced no argument showing that the interference in Roşianu's right had been prescribed by law, or that it pursued one or several legitimate aims, hence finding a violation of Article 10 of the Convention.

b) Obligation to publish

The right to information implies not only the response of public authorities to requests for information but also the proactive dissemination of information of general interest to the public (UN Human Rights Committee, 2011). In this context, the law on the right to information has introduced transparency programs that contain the entirety of information of public authorities, in easily understandable and accessible formats, made available to the public on their internet site for an extensive range of information.

The transparency programs information contains the description of the organizational structure; functions and duties of the public authority; the full text of the legal framework and strategic documents of the proper sector; information on the procedures to be followed to request information; details on the education, qualifications, and salaries of officials; monitoring and control mechanisms for the public authority; details on the budget and spending plan for the current and previous financial years; information on the procurement procedures or concession/public-private bidding process; information about the services public authorities offer to the public; any mechanism and procedure for making claims and complaints relating to acts or inactions of the public authority, as well as a series of other information that may help the public (Article 4 and 7 of On the right to information, Law of 2014, Pub. L. No. 119/2014). The principle of transparency is widely sanctioned by providing for the publication of a register of requests and responses for the public authority, showing all the requests for information and the information contained in the responses.

This position is also supported by the ECtHR, since the information is sought to be of public interest, in case of factual information concerning the use of electronic surveillance measures (Youth Initiative for Human Rights v. Serbia, (dec.) no. 48135/06, 25.06.2013), “information about a constitutional complaint” and “on a matter of public importance” (Társaság a Szabadságjogokért v. Hungary, (dec.) no. 37374/05, 14.04.2009), as well as in case of decisions concerning real property transaction commissions (Österreichische Vereinigung zur Erhaltung, Stärkung und Schaffung v. Austria, (dec.) no. 39534/07, 28.11.2013; Council of Europe, 2018).

c) Processes to facilitate access

The principle of facilitating access to information is accompanied by innovation in the legal framework by setting up the coordinator for the right to information to every public authority (UN Human Rights Committee, 2011). The coordinator for the right to information (hereinafter the coordinator) is a civil servant, who is assigned with the coordination of the work for guaranteeing the right to information. The legislator has combined the powers of the coordinator with the corresponding administrative responsibility, in case of refusal to provide information or committing other administrative offenses (Articles 4 and 7, On the right to information, Law of 2014, Pub. L. No. 119/2014). The coordinator is the main institutional officer for transparency of the institution, as it carries out most of the tasks provided by the law on the right to information. In addition to the competencies foreseen for the coordinators of the right to information, responsibilities, and relevant sanctions have been determined in case of their non-fulfillment (Commissioner for the Freedom of Information and Personal Data & Open Society Foundation for Albania, 2018).

As an unconditional right of access to information, several ways of providing information are recognized by the legislator. Requests are handled through free-of-charge access to information in the premises of a public authority, through the unique portal e-Albania.al, or the official website of the public authority on the internet. While, requests related to written documents, are handled by making available to the individual a full copy, in the same format as the one used by the public authority, except in special cases, or a full copy of the information via email (Article 14, On the right to information, Law of 2014, Pub. L. No. 119/2014).

In the framework of the practical implementation of the right to information, a deadline for receiving information is provided by law (Article 15, On the right to information, Law of 2014, Pub. L. No. 119/2014). The public authority should provide the required information no later than 10 working days from the day of submission unless otherwise provided by legal provisions.

d) Costs

The right to information could not be considered sanctioned and protected, in case the requested information would be provided at a cost. In the Albanian legal framework, the exercise of this right is foreseen to be exercised free of charge. Disclosure of information can be made against a fee, previously arrived at and made public by the public authority, which should cover only the cost of the reproduction (Article 13, On

the right to information, Law of 2014, Pub. L. No. 119/2014). While information requested electronically is free of charge. Providing free information enables the proactive disclosure of data by public authorities.

e) Limited scope of exceptions

Given the conflicting public interests with the right to information, some limitations are necessary and unavoidable to ensure the right balance (Manova, 2018). Limitations should be stipulated precisely in law, be necessary in a democratic society and be proportionate to the aim of protecting other public interests. Examples of such limitations include privacy; copyright, patents, trade secret; national security, international and intergovernmental relations; investigation and prosecution of criminal activity; investigation in disciplinary proceedings; public safety; auditing procedures and monetary policy; equality of parties in court proceedings, etc. (Article 17, On the right to information, Law of 2014, Pub. L. No. 119/2014). Notwithstanding the limitations, it is established that the information requested is not rejected if there is a higher public interest to grant it. Evidently, in any case, the higher public interest is still the rule (Council of Europe, 2008). The interference of access to information with other human rights is a matter of court interpretation and must be assessed in each individual case, in the light of particular circumstances. To define further the scope of each right, the ECtHR evaluated a series of necessary criteria to be taken into consideration in case of denial of the right to information (Magyar Helsinki Bizottság v. Hungary, (dec.) no. 18030/11, 08.11.2016), such as the purpose of the information requested; the nature of the information sought; the role of the applicant and the availability of the information.

f) The process of appeal

The intentions originally declared by the legislature towards implementation of the international standards on the domestic legislation regarding the right to information won't be achieved without the legal recognition of the right to appeal. The complaint can be directed to the state body that violated the right to information (Code of Administrative Procedures of the Republic of Albania, Law of 2015, Pub. L. No. 44/2015), to the Commissioner for the Freedom of Information and Personal Data (Article 24, On the right to information, Law of 2014, Pub. L. No. 119/2014), and to the People's Advocate (On People's Advocate, Law of 1999, Pub. L. No. 8454/1999) and the court (On administrative courts and adjudication of administrative disputes, Law of 2012, Pub. L. No. 49/2012). Moreover, the Commissioner for the Freedom of Information and Personal Data is responsible for the creation of implementing mechanisms for the right to information, as well as for the monitoring of the implementation of this right by public authorities, holding the relevant bodies accountable.

3.3 Contradictions in the implementation of the right to information

Notwithstanding the aim of the legislator to guarantee the right to information of the public and the freedom of forming views on the state and the society through transparency and accountability of public authorities, the implementation of this right is a challenging process.

According to the People's Advocate Annual Reports of the last two years, the proactive dissemination of information on the part of public authorities encountered obstacles, especially during the pandemic period. This is noticed particularly in the field of public health protection, in the lack of transparency regarding the steps and procedures to be followed during the pandemic, but also in penitentiary institutions, in the lack of information regarding health issues. On the other hand, this has been encountered in the steps followed by the Ministry of the Interior and state police authorities, by not providing the necessary information to the public about the measures taken during the pandemic to facilitate the daily activity of people (People's Advocate, 2020).

The right to information of vulnerable people, such as imprisoned persons, regarding their legal right to defense, meetings with their lawyers, health treatment, employment, and remuneration for work performed is found perplexing by the People's Advocate (People's Advocate, 2021).

The implementation of the transparency program remains a challenge, despite the entry into force of the law on the right to information in 2014. Of 374 public authorities in charge of the implementation of the

institutional transparency program published by the Commissioner for the Freedom of Information and Personal Data Protection, up to 239 in 2020 and 300 in 2021 have published the required information (European Commission, 2022). The final findings of the Index of Proactive Transparency of Central and Subsidiary Institutions show a minority of institutions that fulfill their obligations to inform the public and publish data. This lack of implementation of the legal framework in force, infringes the right to information, thus having consequences on the realization of other human rights (Commissioner for the Freedom of Information and Personal Data Protection, 2022).

The role of the coordinator is found in an unbalanced position concerning the responsibilities and rights recognized for guaranteeing the right to information. The lack of special status for the coordinator within the institution to increase direct access to the decision-making and technical structures impedes the implementation of the right to information at the institutional level, letting the responsibility to the coordinator.

Moreover, since the right to information of the individuals is connected to the current and previous documents and data of public authorities, a better interweaving of the right to information about the former state security documents of the Socialist People's Republic of Albania on the law on the right to information remains to be adopted.

4. The conclusions

Academic literature, as well as the practical implementation of the legal framework, suggests that an effective right-to-information regime broadly requires a strong legislative mechanism to create conditions for offering this right and a strong corresponding institution to respond to requests for information. The last twenty-five years' experience, from the implementation of the democratic Constitution of Albania, registered ambiguous steps taken towards recognition, protection, and implementation of the right to information in the Albanian legal framework. The ratification of several international instruments of the organizations of the United Nations and Council of Europe presents the irreversible achievements towards Europeanisation of the right to information for aligning with principles and standards stipulated by the Council of Europe. The adaptation of the legal framework protecting the right to information recognizes the importance of this right for the better functioning of democratic societies. However, important steps need to be taken to create access to information and transparency on matters of interest for society. Since human rights treaties are live instruments whose interpretation must adapt to the evolution of the times, it is important to reflect this approach into the Albanian legislative amendments. The complete recognition and implementation of this right in the domestic legal framework help the process of integration of Albania into the European Union.

References list

1. Ad hoc Parliamentary Committee on Justice System Reform. (2015). Analyses of the Justice System in Albania. <https://euralius.eu/images/Justice-Reform/Analysis-of-the-Justice-System-in-Albania.pdf>.
2. Article 19. (2016). The Public's Right to Know: Principles on Right to Information Legislation. London 2016. ISBN 978-1-910793-09-1. Retrieved from https://www.article19.org/data/files/RTI_Principles_Updated_EN.pdf.

3. Banisar, D. (2006). *Freedom of Information Around the World 2006: A Global Survey of Access to Government Information Laws. Privacy International*, 2006. <https://dx.doi.org/10.2139/ssrn.1707336>.
4. Bianku, L. (2001). *Human Rights Background and Evaluation in Albania and Compatibility of the Albanian Legislation with Articles, 1, 14, 15, 16, 17, 18 of the Convention, Article 3, Protocol 1, Articles 2, 3 & 4 Protocol 4 and Article 1 Protocol 7 of the European Convention on Human Rights. Report on the Compatibility Study of the Albanian Legislation with the Requirements of the European Convention on Human Rights*. Tirana, October 2001. Retrieved from <https://rm.coe.int/16806f1404>.
5. Commissioner for the Freedom of Information and Personal Data, Open Society Foundation for Albania. (2018). Raport “Vlerësimi i Kapaciteteve të Koordinatorëve të së Drejtës së Informimit dhe Njoftimit dhe Konsultimit Publik” (Report "Assessment of the Capacities of the Coordinators of the Right to Information and Notification and Public Consultation"). Retrieved from https://www.osfa.al/sites/default/files/raport_web_0.pdf.
6. Commissioner for the Freedom of Information and Personal Data Protection. (2022). *Index of Proactive Transparency of Central and Subsidiary Institutions*. Retrieved from <https://www.idp.al/raporte-monitorimi-2022/>.
7. Constitution of the Republic of Albania, Law of 1998, Pub. L. No. 8417/1998, as amended. Retrieved from <https://qbz.gov.al/preview/635d44bd-96ee-4bc5-8d93-d928cf6f2abd>.
8. Council of Europe. (1950). *The European Convention for the Protection of Human Rights and Fundamental Freedoms* (ECHR), as amended. Rome, 4.XI.1950. Retrieved from https://www.echr.coe.int/documents/convention_eng.pdf.
9. Council of Europe. (1981). Recommendation No. R (81) 19 of the Committee of Ministers to Member States on the Access to Information held by Public Authorities. Adopted by the Committee of Ministers on 25 November 1981 at the 340th meeting of the Ministers' Deputies. Retrieved from <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=0900016804f7a6e>.
10. Council of Europe, European Court of Human Rights. (2013). *National security and European case-law*. Retrieved from <http://www.echr.coe.int/>.
11. Council of Europe. (2002). Recommendation Rec(2002)2 of the Committee of Ministers to member states on access to official documents. *Adopted by the Committee of Ministers on 21 February 2002 at the 784th meeting of the Ministers' Deputies*. https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=09000016804c6fcc.
12. Council of Europe. (2008). Council of Europe Convention on Access to Official Documents. *Council of Europe Treaty Series* - No. 205. Tromsø, 18.VI.2009. <https://rm.coe.int/1680084826>.
13. Council of Europe. (2018). *The Right of Access to Information, a Key Prerequisite for the Freedom of Expression*. Retrieved from <https://rm.coe.int/the-right-to-access-of-information-22mar21/native/1680a1dca2>.

14. Çani (Methasani), E., Theodhori, V. (2010). E Drejta për Informim dhe mbrojtja e të dhënave personale. Analizë e rregullimit ligjor në Republikën e Kosovës dhe atë të Shqipërisë. (Right to Information and protection of personal data. Analysis of the legal regulation in the Republic of Kosovo and that of Albania). *Jeta Juridike*. Nr. 2, Viti VIII. Shkolla e Magjistraturës. Tirane, June 2010.
15. European Commission. (2022). Commission Staff Working Document. Albania 2022 Report Accompanying the document Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee, and the Committee of the Regions 2022 Communication on EU Enlargement policy. Brussels, 12.10.2022 SWD (2022) 332 final. Retrieved from <https://neighbourhood-enlargement.ec.europa.eu/system/files/2022-10/Albania%20Report%202022.pdf>.
16. European Court of Human Rights. (1987). Case of Leander versus Sweden. (Application no. 9248/81). <https://hudoc.echr.coe.int/?i=001-57519>.
17. European Court of Human Rights. (2009). Case of Társaság a Szabadságjogokért versus Hungary. (Application no. 37374/05). <https://hudoc.echr.coe.int/?i=001-92171>.
18. European Court of Human Rights. (2013). Case of Grundbesitzes versus Austria. (Application no. 27329/06). <https://hudoc.echr.coe.int/fre#%22itemid%22:%22002-9076%22>.
19. European Court of Human Rights. (2014). Case of Roşiiianu versus Romania. (Application no. 39534/07). <https://hudoc.echr.coe.int/app/conversion/pdf/?library=ECHR&id=002-9550&filename=002-9550.pdf&TID=ihgdqbxnfi>.
20. European Court of Human Rights. (2013). Case of Youth Initiative for Human Rights versus Serbia. (Application no. 48135/06). <https://hudoc.echr.coe.int/fre/#%22itemid%22:%22001-120955%22>.
21. European Court of Human Rights. (2009). Case of Társaság a Szabadságjogokért versus Hungary. (Application no. 37374/05). [TÁRSASÁG A SZABADSÁGJOGOKÉRT v. HUNGARY \(coe.int\)](https://hudoc.echr.coe.int/fre/#%22itemid%22:%22001-120955%22).
22. European Court of Human Rights. (2013). Case of Österreichische Vereinigung zur Erhaltung, Stärkung und Schaffung versus Austria. (Application no. 39534/07). [ÖSTERREICHISCHE VEREINIGUNG ZUR ERHALTUNG, STÄRKUNG UND SCHAFFUNG v. AUSTRIA \(coe.int\)](https://hudoc.echr.coe.int/fre/#%22itemid%22:%22001-120955%22).
23. European Court of Human Rights. (2016). Case of Magyar Helsinki Bizottság versus Hungary. (Application no. 18030/11). <https://hudoc.echr.coe.int/fre/#%22itemid%22:%22001-167828%22>.
24. Florini, A. (2007). Introduction. The Battle Over Transparency. *The right to know. Transparency for an Open World*. Publisher: Columbia University Press. ISBN 9780231512077. <https://doi.org/10.7312/flor14158-intro>.
25. Freedom of Information Advocates Network. (2013). *Global Right to Information Update: An Analysis by Region*. Retrieved from https://www.access-info.org/wp-content/uploads/global_right_to_information_update_28-8-2013.pdf.
26. Held, D. (2006). Models of Democracy. 3d Edition. *Polity Press*. ISBN: 9780804754712.

27. Hussain, A. (1995). *Report of the Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression*. United Nations Doc. E/CN.4/1995/32 (1994), para. 35. Retrieved from <https://digitallibrary.un.org/record/235297?ln=en>.
28. Inter-American Court of Human Rights (Case of Claude-Reyes et al. v. Chile) Judgment of September 19, 2006. Retrieved from https://www.corteidh.or.cr/docs/casos/articulos/seriec_151_ing.pdf.
29. Japarashvili, N. (2021). Access to Information (ATI). Desk research for Free Press Unlimited, February 2021. Retrieved from <https://kq.freepressunlimited.org/wp-content/uploads/2021/05/Access-to-Information-in-Europe.pdf>.
30. Kushtetuta e Republikës Popullore Socialiste të Shqipërisë. (Constitution of Popular, Socialist Republic of Albania), Law of 1976, Pub. L. No. 5506/1976. Retrieved from <http://licodu.cois.it/?p=383&lang=en>.
31. Manova, B. (2018). The conflicting implications of the right to information as recognized by public international law. *International conference KNOWLEDGE-BASED ORGANIZATION*, vol.24, no.2, 2018, pp.212-220. <https://doi.org/10.1515/kbo-2018-0092>.
32. Meijer, A., Thaens, M. (2009). Public information strategies: Making government information available to citizens. *Information Polity* 14 (2009) 31–45. DOI 10.3233/IP-2009-0167. Retrieved from <https://content.iospress.com/articles/information-polity/ip000167>.
33. Mendel, T. (2003). Freedom of Information: an internationally protected human right. *Comparative Media Law Journal*, 1. 1.
34. Mendel, T. (2008). *Freedom of Information: A Comparative Legal Survey*. Second Edition. UNESCO, Paris 2008. www.unesco.org/webworld/en/foi.
35. OECD. (2022). *Recommendation of the Council on OECD Legal Instruments Open Government*. OECD/LEGAL/0438. Retrieved from <https://legalinstruments.oecd.org/public/doc/359/359.en.pdf>.
36. Omari, L., Anastasi, A. (2017). *E drejta kushtetuese*. Publishing House Dajti 2000, Tiranë, 2017. ISBN 978-99956-01-41-6.
37. On administrative courts and adjudication of administrative disputes, Law of 2012, Pub. L. No. 49/2012, as amended. Retrieved from <https://www.qbz.gov.al/eli/ligj/2012/05/03/49/eaad8df4-44be-4523-a6f0-4b54a5817900;q=ligji%2049,%202012%20gjykata%20administrative>.
38. On People’s Advocate, Law of 1999, Pub. L. No. 8454/1999, as amended. Retrieved from www.qbz.gov.al.
39. On the Ratification of the Convention of the Council of Europe On Access to Official Documents, Law of 2022, Pub. L. No. 45/2022. Retrieved from www.qbz.gov.al.
40. On the accession of Albania to the Aarhus Convention, Law of 2000, Pub. L. No. 8672/2000. Retrieved from www.qbz.gov.al.

41. On the right to information, Law of 2014, Pub. L. No. 119/2014. Retrieved from www.qbz.gov.al.
42. Organization of African Unity. (1981). *African Charter on Human and Peoples' Rights*. Adopted on 1 June 1981 and came into force on 21 October 1986. Retrieved from <https://treaties.un.org/doc/Publication/UNTS/Volume%201520/volume-1520-I-26363-English.pdf>.
43. Organization of American States. (1979). *American Convention on Human Rights*. Adopted in the Western Hemisphere in San José, Costa Rica, on 22 November 1969. Retrieved from <https://treaties.un.org/doc/publication/unts/volume%201144/volume-1144-i-17955-english.pdf>.
44. People's Advocate. (2020). Annual Report on the Activity of People's Advocate 2020. Retrieved from <https://www.avokatipopullit.gov.al/media/manager/website/reports/Annual%20report%202020%20english.pdf>.
45. People's Advocate. (2021). Annual Report on the Activity of People's Advocate 2021. Retrieved from <https://www.avokatipopullit.gov.al/media/manager/website/reports/PA%202021%20Annual%20Report.pdf>.
46. Peled, R., Rabin, Y. (2011). The Constitutional Right to Information. *Columbia Human Rights Law Review*. Vol 22, No. 2, Winter 2011. Retrieved from https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1706606.
47. Prechal, S., de Leeuw, M. (2007). Dimensions of Transparency: The Building Blocks for a New Legal Principle? *Review of European Administrative Law*; Vol. 0, nr. 1, p. 51-61, Europa Law Publishing © 2007. Retrieved from https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1555469.
48. Rossi, V. (2019). Government Transparency and the Right of Access to Information: Evolving International and European Standards and their Implementation in the Italian Legal System. *The Italian Yearbook of International Law Online*. Vol 28, Issue 1. Publisher Brill, Nijhoff. https://doi.org/10.1163/22116133_02801012.
49. Shehaj, A. (2020). The Impact of Transparency in the Fight Against Corruption. The Case of Albania. (unpublished dissertation). University of Tirana. <https://unitir.edu.al/impakti-i-transparences-ne-luften-kunder-korrupsionit-rasti-i-shqiperise/>.
50. UN. (1966). *International Convention on Civil and Political Rights*, adopted on 16 December 1966, by General Assembly Resolution 2200A (XXI). Retrieved from <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights>.
51. UN Human Rights Committee. (2011). General comment No. 34 Article 19: Freedoms of opinion and expression. Dist. General 12 September 2011. CCPR/C/GC/34. Retrieved from <https://www.ohchr.org/en/documents/general-comments-and-recommendations/general-comment-no34-article-19-freedoms-opinion-and>.
52. UNDP. (2008). Mainstreaming Anti-Corruption in Development. Anti-Corruption Practice Note. p. 37. Retrieved from

53. https://www.undp.org/sites/g/files/zskgke326/files/publications/Mainstreaming_Anti-Corruption_in_Development.pdf.
54. UNECE. (2014). The Aarhus Convention: An implementation guide. *United Nations Publication*. Second Edition. ISBN 978-92-1-117069-6. https://unece.org/DAM/env/pp/Publications/Aarhus_Implementation_Guide_interactive_eng.pdf.
55. United Nations. (1948). *Universal Declaration of Human Rights*. UN General Assembly Resolution 217 A (III), 10 December 1948. Retrieved from <https://www.un.org/en/about-us/universal-declaration-of-human-rights>.
56. United Nations Economic Commission for Europe. (1998). Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in the Environmental Matters. Aarhus, Denmark, 25 June 1998. https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=XXVII-13&chapter=27.
57. Voorhoof, D. (2014). The right to freedom of expression and information under the European Human Rights System: Towards a more Transparent Democratic Society. EUI Working Papers RSCAS 2014/12. ISSN: 1028-3625. <https://hdl.handle.net/1814/29871>.
58. Wirtz, B., Birkmeyer, S. (2015). Open Government: Origin, Development, and Conceptual Perspectives. *International Journal of Public Administration*. Vol 38, 2015. Issue 5. <https://doi.org/10.1080/01900692.2014.942735>.
59. Yannoukakou, A., Araka, I. (2014). Access to Government Information: Right to Information and Open Government Data Synergy. *Procedia- Social and Behavioral Sciences*, 147 (2014), 332-340. <https://doi.org/10.1016/j.sbspro.2014.07.107>.