

# The right to information in Albania

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## Abstract

The dual nature of the right to information. Constitutional regulation of the right to information. Regulation by law of the right to information. The rights and obligations set Albanian law "On the right to information on official documents" Roads right of appeal to the Administrative Appeals informing the complaint to the Ombudsman, the complaint gjyqësor.Kushtetuta the Republic of Albania as an expression of the citizens' agreement governors and state law constitutes a fundamental important step to protect the right to information, including the catalog of human rights and fundamental freedoms. The right to information is not absolute and is limited through constitutional provisions, a general limitation provided for all constitutional rights through Article 17, which defines the conditions when these restrictions are legitimate and their maximum limit determined by the constraints established by the European Convention of Human Rights. The law does not require giving the motive for requesting the information. It provides a guarantee for the applicant. Certainly, the subject can provide motivation if you want and if it believes it can accelerate information procedure për award of public authority

The right to information can already say that means as freedom of provide information, as well as the freedom to receive information. The first way understanding of the underlying right of freedom of media and protects not only the right to inform journalists or editors forwarded for information but also information resources. Manner The second understanding protects the public's right to information. This concept has evolved from the statement that the public has the right to take information was disclosed to the principle that the public has the right to ask itself information and concluded that the right of access to documents official.

***Key Words: Right, information, constitutional ,bodies, state***

## **1 Dual nature of the right to information.**

Right to information relating to the right to communicate, which is understood as the right to receive and impart information. The right to information is double aspect, freedom of information and freedom of information, the right to be informed and the right to communicate, to make them disclose our information. These two related side make very necessary for every human activity. A rate that would prohibit anyone exercise activity information, it would be impossible to apply, because it would entail the cessation of human activity and the legal system itself. It can be said that in democratic societies the first intervention is exactly the restriction of freedom of information <sup>1</sup>. The democratic system is determined among other things by the significant amount of information circulating within it, without restrictions. The importance of protecting freedom of information has led to many legal systems of the right to information recognized in the constitutions of the states, as one of the fundamental human rights

### **1. Constitutional regulation of the right to information.**

The right to information as a fundamental human right.

Viewing the Constitution as "the fundamental law of a state, but also as an agreement between citizens and rulers"<sup>2</sup> naturally understand that "the Constitution is intended to guarantee fundamental rights and freedoms of citizens and governance useful for society"<sup>3</sup> Constitutional regulation of the right to information provided for in Article 23, under which:

1. The right to information is guaranteed.
2. Everyone has the right, in accordance with the law, to get information about activity of state bodies, as well as persons who exercise

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<sup>1</sup> Martines T., "Diritto costituzionale", Giuffrè Editore, Milano 2003, fq. 380.

<sup>2</sup> Kushtetuta është një akt, kuptimi i së cilës në përkufizimet e ndryshme lidhet me "raportet e saj me shtetin, me sistemin ligjor, me shtetasit". Për më tepër shih: OMARI L., ANASTASI A., "E drejta kushtetuese, Botimet ABC, Tiranë 2010, fq. 23.

<sup>3</sup> Këtë kuptim të kushtetutës të mbështetur në rëndësinë e kodifikimit të të drejtave themelore të njeriut në kushtetuta e gjejmë tek: GARDINI G., "Regole dell' informazione" - Principi giuridici, strumenti, casi", Pearson Paravia, Bruno Mondador, S.p.A, 2009, fq 4, dhe tek: ZAGANJORI XH., A.ANASTASI

state.

3. Everyone is given the opportunity to attend meetings of elected bodies

collective.

1. In point 1<sup>4</sup> provided a general principle of freedom of information. Having a declarative character, it guarantees the right of everyone to have access, which means that as a negative right to be exercised without interference by public authority.

2. While getting the constitutional guarantee of the right to information in section 2 we can say that the expected legal reserve, to further regulate by law the special right to request official information for state bodies or persons who perform such functions. This provision has not only made a general protection of the right to information on matters of public interest, but is specified as a right in itself the right to seek and receive information from the official state bodies or officials their

3. The deepening of the defense of the right to information, the Constitution has treated it as a key element to achieve a more open government and transparency. This goal aims to ensure paragraph 3 of Article 23 of the Constitution, which provides for the right of everyone to attend meetings of elected bodies collectively. It must be said that this point can be analyzed and combined with other provisions of the Constitution, which, although not directly regulate freedom of information, and include it as an important element and transparency as a principle in the work of the special , the activity of which these constitutional provisions governing.

## **2.2. Regulation by law of the right to information.**

Respect for the right to information on official documents is likely to be met through the setting of international standards, which although not fully implemented by local laws may serve as a test for the level of expansion of the public's right to information and criteria mates for the implementation of reforms in this area. World Organization for Free Expression<sup>5</sup>, provides a set of principles that also apply in national law that protects the right of information, which can be grouped as follows:

1. Public institutions should be obliged to publish key information; their meetings should be open to the public, these institutions should promote open government, legislation, freedom of information should 'serve the maximum transparency.

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<sup>4</sup> Kushtetuta është miratuar nga Kuvendi me ligjin 8417, datë 21.10.1998

<sup>5</sup> Kjo organizatë njihet si ARTICLE 19.

2. Requests for information should be answered quickly and accurately and in certain cases may even refusals; exemptions should be presented clearly and in detail.

3. Individuals should not be deterred by the public authority to submit their requests for information through administrative cost.

### **The rights and obligations set Albanian law "On the Right to Information official documents "**

According to Article 3 of the Law "On access to information on official documents" recognized a general right to information on official documents, which is specified in the law recognizes the right of every person<sup>6</sup> seeking:

Information on official documents, dealing with the state authorities and persons exercising public functions; (Article 3 § 1)

Information on an official document, which has previously been given to another person;

(article 3 § 3) Information for entities with state functions, ie to personal data of persons who perform public functions or public services, held in an official document, to the extent such information relates to the quality required by law or a regulation for persons who perform these duties (Article 5).

The law also recognizes the right of a person to feel compelled to explain the motives for which information. The rights of an entity associated with the corresponding obligations of the parties the right to information. Thus, the right of every person to seek information on official documents is not considered separate from the obligation of public authorities to provide the information requested. Forcing public iautoritetit defined as:

The obligation of public authorities to provide any information about an official document, unless otherwise provided by law;

Obligation of public authority, not to refuse a nformacion information if it is given before another person

**Form of giving information regulated by Article 6** of the law which stipulated that those responsible for providing information to realize an access to information on official documents in an accurate, comprehensive, convenient and fast. Receiving a request for information on official documents associated with an institution whose answers addressed. Authority is idetyruar give researchers a complete copy of the required documentation. These documents "can be printed, printed on a typewriter in the form of photographs, maps, programs, or the floppy disk depending on the technology used by the institution for the maintenance and preservation of

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<sup>6</sup> Në kuptimin që ligji i jep konceptit "person", kreu I, neni 2, pika c.

documents<sup>7</sup>. But there may be times when information is stored in different ways or at different languages. In this case the applicant has the right to choose the form they need. Article 7 of the law provides and other forms of information disclosure, including verbal. But it should be noted that the information can be given in other forms, at the request of interested person or officer or suggestion, always accompanied by the written consent of the applicant to provide information. A form of time determined by Article 11 of the law, that demand must be completed within 40 days of depositing her. Obviously it intersects with exceptions or other arrangements. Thus, if the request is granted, after 15 days, the applicant may contact the officer to be informed about the progress of the application. If the application is not accepted, then the officer must decide to accept full or partial within 15 days of submission of the request, this is accompanied by a written reply authority except rejection of a request identifies the reasons for this rejection (Article 10). There are also exceptions to the deadline of 40 days to fulfill the request for information, exceptions are defined by the law and dealing with the delivery period for the response. The Authority may extend the filing of the application, if it is impossible to fulfill the request within 40 days for two reasons: the specificity of demand and necessity of consultation with a third party

This delay associated with the obligation of public authorities to notify the applicant in writing inability to respect the deadline, no later than 7 days from the previous date (Article 12). This notice must also contain the reasons for the deferment, but the applicant notice of the officer suggested two alternatives:

- o Appointment of a new term, which begins at the end of the previous term and can not be more than 10 days without renewal;
- o Adjust the request of the person, so that it can be observed by the public authority deadline specified in the law (Article 12).

The applicant must give consent for one of the proposals, if such consent is not given before the first deadline, then the authority decides to extend the deadline

### **Roads to appeal for the right to information**

"Law on the Right of Access to official documents"<sup>8</sup> provides that any violation of

provisions of this law shall be treated as administrative offenses (when not a criminal offense). The law provides three ways to realize the appeal against the violation of the right to information:

1. The administrative complaint.

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<sup>7</sup> Udhëzues praktik "Ligji për të drejtën e informimit për dokumentat zyrtare", Tiranë 2004, fq 15

<sup>8</sup> Ligji për të drejtën e informimit për dokumenta zyrtare

2. The complaint to the Ombudsman.

3. The appeal court.

The administrative complaint. The administrative appeal is a tool to control

the administration as it is the means to restore the right violated. The law recognizes the right of citizens initiated the grievance procedure<sup>9</sup>Article 15 of the law provides for the right of every person to "an administrative appeal, as

time considers that his rights under the law. "This article is presented as a reference rate, because it determines the grievance procedure itself, but refers to the procedures established by the Code of Administrative Procedure. If a public authority refuses to fully or partially shut provide the information requested, subject to the right of appeal to challenge the refusal by the public administration illegal. (Administrative Appeal is treated extensively in question 2.2.2)

The complaint for violation of the right to information at Advocate constitutional Popullit.Parashikimi independent of the institution is the first step to protecting human rights in relation to public administration. But, the next important step is forecast by the law "On freedom of information on official documents" that "of the Ombudsman for law enforcement." Even this article is just for reference, because we refer the law "On Ombudsman"<sup>10</sup> to which may be known to the powers and procedures of the institution to complain to him. This appeal

can be implemented in parallel with the administrative appeal and there is an obligation to be exhausted to exercise the right of administrative appeal or gjyqësor.Ndërsa Article 2 of the law in question përcaton that "the Ombudsman defends the rights, freedoms and lawful interests of individuals from actions or inactions of irregular bodies of public administration, as well as third parties acting on its behalf ", Section 1 reiterates the position of the institution as custodian to allow law enforcement access to official documents, determining "iPopullit lawyer performs other duties determined by special laws." Simultaneously law recognizes the right of the Ombudsman to make recommendations and propose actions when violations of human rights by public administration (Article 21). All its activities the institution supports the principles of fairness, confidentiality, professionalism and independence (article 2)

The appeal court. The appeal court is expressly provided for by Article 16 iligjit "For the right to information on official documents". Even this provision has reference, because no judicial appeal procedures established by law for the right to information, but the provisions of the Code of Civil Procedure, governing administrative disputes. The complaint in this case is through a petition, which the court has jurisdiction under its public institution, through which a public duty is

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<sup>9</sup> Ky është qëndrimi i SADUSHI S., tek: E drejta administrative 2", Tiranë 2005, fq. 181.

<sup>10</sup> 8 Ligji "Për Avokatin e Popullit" nr 8454, datë 4.2.1999, ndryshuar me ligjin nr 8600, date 10.4.2000.

required to make available to the applicant requested document. The deadline for submitting the petition to the court is within 30 days from the day when the highest given His refusal decision. It is important to note that the right to judicial appeal shall be exercised after exhausted all avenues of administrative appeal.

### **2.3. conclusions**

1-Development of domestic legislation not only protects the right to information on official documents, but also provides the necessary institutional mechanisms to guarantee this right

2 Constitution of the Republic of Albania as an expression of agreement with governors and citizens as the fundamental law of the state constitutes an important step to protect the right to information, including the catalog of human rights and fundamental freedoms.

3 - The right to information is not absolute and is limited through constitutional provisions, a general limitation provided for all constitutional rights through Article 17, which defines the conditions when these restrictions are legitimate and that their maximum limit set the restrictions imposed by the European Convention of Human Rights.

4-Law "On access to information on official documents" marks a qualitative step in aligning its legislation with protection of the right to information. Although Albania has not signed the Council of Europe Convention on access to official documents, it must be said that it has a similar approach in this regard.

5-law does not require giving the motive for requesting the information. It provides a guarantee for the applicant. Certainly, the subject can provide motivation if you want and if it believes it can accelerate information procedurepër award of public authority.

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