

THE ALBANIAN COMMISSIONER OF RIGHT TO INFORMATION AND DATA PROTECTION, NEW LEGAL CHALLENGES ON PROTECTING HUMAN RIGHTS

Ervin Karamuço¹ Irvin Faniko²

¹ University “Aleksandër Moisiu: Durrës, Albania. E mail: ekaramuco@yahoo.com

² University “Hëna e Plotë” (Bedër), Tirana. Albania. E mail: irvinfaniko@yahoo.com

Abstract

According to the Albanian Constitution and Law on Right to Information, any person enjoys the right to access public information, not being subject to explain the motives. The public sector body shall be obliged to inform the applicant whether it holds the requested information or not. The public information being made available to one person shall not be rejected to any other person applying for it, except the cases then the information contains personal data or other restrictions. The new law on Right to Information No.119, 2014 for the first time is forging individual guarantees to every person to fulfill his rights in relation to public administration. Challenges in this context belong to a new independent institution established by law, which enjoys powers to intervene in any case when these rights are violated. The Albanian Commissioner of Right to Information and Data Protection, according to new law, is entitled to handle and investigate individual complains, to submit recommendation, put fines and ask for administrative measures in order to protect human rights and to reinforce good governance. These tasks require from this institution to increase the human and administrative capacities and to exercise a great job of promoting the law in all public administration offices for the recognition and enforcement of it. This academic research aims to find out the main obstacles and problematic phenomenon which bans the Commissioner to fully implement the above law and to protect the human rights properly. Right to information has been an problematic issue along development of administrative reforms in Albania and by these interests the above academic research fits a broad attention to the field of human rights.

Keywords: *Human Rights, Data Protection, Right to Information, Commissioner, Constitution.*

Introduction

After 90s Albania intensified its efforts to adopt new laws in the field of human rights in the framework of establishing a new legal basis according to democratic standards. The right to information and personal data were dealt with in two separate laws and at the beginning was not determined a competent body for the implementation of laws, but it was left on duty of

each body administration to deal with. In the recent years after legal amendments, for the first time it was given the task to an independent institution established by law called the Commissioner for the Right to Information and Personal Data. The law establishes a series of new powers to this institution which are a novelty for administrative work in this field. The new competencies were established as new hope to improve the situation of human rights in this area, but on the other hand they need to be dictated by a number of measures to strengthen the administrative capacity of institutional commissioner so that the law is applied with fully efficiency.

Albanian Constitution, human rights on information and data protection

According to Albanian Constitution (Article 15) the fundamental human rights and freedoms are indivisible, inalienable, and inviolable and stand at the basis of the entire juridical order. The organs of public power, in fulfillment of their duties, shall respect the fundamental rights and freedoms, as well as contribute to their realization. The fundamental rights and freedoms and the duties contemplated in this Constitution for Albanian citizens are also valid for foreigners and stateless persons in the territory of the Republic of Albania, except for cases when the Constitution specifically attaches the exercise of particular rights and freedoms with Albanian citizenship. The fundamental rights and freedoms and the duties contemplated in this Constitution are valid also for juridical persons so long as they comport with the general purposes of these persons and with the core of these rights, freedoms and duties (Albanian Constitution article 16).

The Constitution states the universal principle (UN Declaration of Human Rights, Article 2) that all are equal before the law and no one may be unjustly discriminated against for reasons such as gender, race, religion, ethnicity, language, political, religious or philosophical beliefs, economic condition, education, social status, or ancestry. No one may be discriminated against for reasons mentioned in above paragraph if reasonable and objective legal grounds do not exist (Article 18 of Albanian Constitution). Regarding the right to information, the Constitution foreseen that the right to information is guaranteed and 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. Meanwhile regarding the accessibility to public administrative bodies, everybody is given the possibility to follow the meetings of collectively elected organs (Article 23 of Albanian Constitution).

Dealing with personal data protection, the Albanian Constitution in comply with European international acts (European Convention on Human Rights and Fundamental Freedoms, Article 8) gives the guarantee that no one may be obliged, except when the law requires it, to make public data connected with his person. The collection, use and making public of data about a person are done with his consent, except for the cases provided by law. Everyone has the right to become acquainted with data collected about him, except for the cases provided by law. Everyone has the right to request the correction or expunging of untrue or incomplete data or data collected in violation of law (Article 35 of Albanian Constitution). No one can be forced, except when is required by law, to make public information to his person.

Legal Framework on Right to Information in Albania

The law on the right to public information in Albania was approved for the first time in 1999 (Law No 8503 date 30.06.1999 On Right to Information for Public Documents) by implementing the constitutional provisions provided for this area. The law did not set a special body to follow the implementation of this law, but gave the Ombudsman the right to care for the progress of this law by the administration. The law did not put sanctions on violations that could be performed by public administration and created a space for moral reflection and voluntary action by public bodies to implement it. Gaps in the content of this law brought a lot of problems in the protection of fundamental rights of citizens, creating multiple conflicts with administrative nature in this area. The situation where the articles of law did not forced the public administration by sanctions to enforce this law; their failures to inform citizens had reduced effectiveness of law by creating more administrative disputes.

The new law on the right to information brought many new innovations in the field of human rights, improving relations between the administration and citizens. The law for the first time defined the new standard regarding sanctions that should be placed on administration or employees who abuse the task implementation of this law (Law No 119/2014 On the Right to Information). While law decided for the creation of an independent institution that will investigate and penalize any irregularities in the area of the right to be informed. The law forced every public body to manage its own unique set of employees that will deal with administrative procedures to public information setting at the head of each office a responsible coordinator.

The Law stretched powers of Commissioner not only to the public administration but also to those who exercise judicial administrative functions in relation to citizens. The law also set a shorter time period within the right to information should be realized by taking satisfied service with the quality in relation to citizen legal requirements. All these aspects of the law have created a satisfactory discipline in this area, but there are still problems in the intensification of the work of the Commissioner to ascertain all violations by his legal authority.

Legal Framework on Personal Data Protection in Albania

On 2008 the Albanian Parliament adopts the new law (Law No 9887 date 10.03.2008 On Personal Data Protection) on protection of personal data which also led to the establishment of the institution of the Commissioner for the Protection of this fundamental right. The personal data provided in this law were protected by a series of measures envisaged also in other laws (Law No. 10279 date 20.05.2013 On Administrative Offenses), but for the first time they were treated by an independent institution which took the responsibility to control the implementation of this law in every organ of the public administration.

The law on protection of personal data made changes in 2012 by providing access to other innovations that greatly strengthened the role of the commissioner and the protection of personal rights of individuals. Due to new changes the new law has arranged a number of areas where personal data are processed by certain rules and seeking to preserve the privacy obligations. The law provides strict rules regarding the processing of personal data by public employees authorized and strictly prohibits handling by unauthorized employees who in case of abuse with these task are punished with disciplinary measures up to remove them from office according to the law (Law 152/2013 On Status of Civil Servant). The lawful processing of personal data has to guarantee and respect the human fundamental rights and freedoms and specifically the right to privacy.

The law provides penalties for public offices and private companies if they do not respect the personal data and oppose the rules defined for this purpose. The Commissioner is appointed as an independent body by law with the duty to investigate complaints based on the individuals affected or ex officio in order to investigate on and puts the blame on the responsible authorities.

On the other hand the law specifies the procedures through which estimated a breach of personal data by including as Commissioner as the authority to continue the investigation and to advise those affected to turn to the court through lawsuits to seek damages. The Commissioner also refers to other legal provisions (Code of Administrative Procedures Law No 8485 date 12.05.1999) to convey an investigation and to come to recommendations and concrete measures regarding these violations. The law stipulates liability for any public body or private company to adopt internal rules regarding the processing of personal data and the persons authorized to be taken with this job so special.

The challenges of Commissioner on Right to Information and Data Protection

With the adoption of the new law on the right to information on 2014, it was determined that the Commissioner for the protection of personal data was also added the control function to exercise investigation and be responsible for implementation of this law. The fusion process between the law on right to information and law on personal data protection brought excellent possibilities for the Commissioner to fulfill his duties and responsibilities regarding the protection of human right in effective way.

The Albanian Parliament starting from the logical aspect that personal data is directly linked with the right to information, by creating a critical balance between them, unified procedures by establishing all competences in one institution responsible for its role in both these areas. On this purpose, the Commissioner's institution underwent a reformation (Council of Minister Decision No 106/2014) expanding employees and logistic capacities in order to afford the new flow of charged powers. However given the annual reports of recent years the Commissioner noticed that his opportunities to meet large volume of work are very insufficient (Annual Report 2014 of Commissioner of Right to Information and Personal Data Protection, pg. 6).

In annual reports that the Commissioner has published and presented to parliament flaring concern that although the number of employees is added, due to increasing the number of complaints, he cannot be covered and investigated within a short time all files. The law does not provide regional offices or additional staff distributed in various areas of Albania, which would enable more effective coverage of the complaints and this is a deficiency that creates a lot of problems for the Commissioner.

In the annual reports, the Commissioner has raised also concerns about the lack of sufficient facilities about offices and logistic equipment to face large volume of working which is growing increasingly. The Commissioner explained that the financial income set for the activity of his office do not provide opportunities for coping with the financial costs associated with the investigation of complaints and the creation of new jobs and standards. In the framework of the powers of the Commissioner added recently, along with the public administration bodies, this institution should investigate the complaints coming from judicial authorities regarding the right to information or the handling of personal data.

So far the efforts made by Commissioner have not yet clarified the extent and limits of accessibility in the court doing that many of the complaints are rejected by him as outside the his jurisdiction. In this aspect also play a role the inactivity of judicial bodies which have not had a positive response to the establishment of institutional relations with the Commissioner to fulfill his task. In addition to that, numerous courts have not yet opened the public information office as required by law and have not yet appointed employees as coordinator for the right to information, what complicates even more their position against the law.

Another challenge is the determination of the Commissioner and the establishment of administrative fines to public or private institutions that violate the law. Firstly, the Commissioner has no capacity to control and set the fine at any company or on any abusive practice but it suffices only to cover those complaints to be submitted by individuals in his office. Secondly, the Commissioner has placed a moratorium period for the imposition of fines until the institutions to harmonize the rules of the new law in their activity, but this dateline has already end and no further action has been noticed. Thirdly is noted that the implementation and enforcement of fines will be another challenge for the Commissioner as long as our country still has difficulties for the implementation of judicial decisions. This situation threatens to reduce the authority of the Commissioner and this may infringe it on its effectiveness to accomplish his tasks.

Conclusions

Albania enjoys a comprehensive and modern legal framework to individual exercise the right to information and personal data protection. Actually, Albania is facing the issues and problems

of personal data protection of its citizens as a fundamental task of every democratic state. The new role defined for Commissioner placing him the responsibility for control and implementation of two laws simultaneously respectively of the right of information and protection of personal data, is a positive development that has given its effects on the daily activity of administrative and private activities. The new executive powers given to the commissioner and strengthening of the task to judicial authorities has made this institution very important in terms of human rights protection. The efficient protection has to be the correct measuring of the level of personal data protection and the proper verification of the fulfillment of legal requirements for the storage and processing of citizens' personal data.

The volume of work increased and new competencies has brought a great challenge for the Commissioner ranging from the lack of sufficient staff, office environments, and logistical support. The Commissioner is also facing its lack of effectiveness in relations with judicial bodies as long as these bodies have not yet clarified their authority between them in order to fully exercise the right to information and public access. The problem of placement and execution of fines presents another difficulty for the Commissioner in conditions when in our country the level of implementation of the decisions and the rule of law is still at low levels.

Commissioner has urgent need to increase the number of employees to cope with its tasks, which will add to the confidence and accountability to the public and will increase its efficiency against public and private bodies. Also is suggested that legal amendments to refine the role of the Commissioner in relation to the courts in order to determine boundaries of jurisdiction are well expected. In addition to that, the state should show special attention to the Commissioner in fines execution in order to increase his authority and not be affected in decision-making in interaction with other institutions.

These changes and improvements will mark another positive step in activity of the Commissioner facing the challenges even greater regarding the protection of human rights and the rule of law in public and private administration in Albania.

References:

Constitution of Albania 1998

Commissioner of Right to Information and Personal Data Protection, Annual Report 2014

Council of Minister, Decision No 106/2014 '*On the organization and administrative structure of Commissioner of Right to Information and Personal Data Protection*'

European Convention of Human Rights and Fundamental Freedoms 1950

Law No. 8485 date 12.05.1999 '*Code of Administrative Procedures*'

Law No. 8503 date 30.06.1999 '*On Right to Information for Public Documents*'

Law No. 9887 date 10.03.2008 '*On Personal Data Protection*'

Law No. 48/2012 '*On Personal Data Protection*'

Law No. 152/2013 '*On Status of Civil Servant*'

Law No. 10279 date 20.05.2013 '*On Administrative Offenses*'

Law No. 119/2014 '*On the Right to Information*'

Law No. 146/2014 '*On Public Notification and Consultation*'

United Nation Declaration of Human Rights 1948