

## **ASSISTANCE ON THE BETTER PROTECTION OF THE INFORMATION RIGHT THROUGH THE IMPLEMENTATION OF THE ECHR STANDARDS IN THE ALBANIAN ADMINIS- TRATIVE COURTS**

**TIRANA, OCTOBER 20-21 2015**

It is a great pleasure for me to welcome you to our second workshop on behalf of the Rule of Law Program South East Europe of the Konrad Adenauer Foundation.

Let me express my profound thanks to our Albanian partner, the European Centre, for the excellent cooperation that we enjoyed in the past months and that we hope to continue.

The Konrad-Adenauer-Stiftung is a political foundation affiliated to the Christian Democratic Movement and stands for the Christian Democratic values of freedom, solidarity, and justice.

We work in more than 120 countries, having more than 80 offices all around the world, which are in charge of more than 200 projects. We focus on consolidating democracy, on the unification of Europe and the strengthening of transatlantic relations, as well as on development cooperation.

As a think-tank and consulting agency, our soundly researched scientific fundamental concepts and current analyses are meant to offer a basis for possible political action.

[...]

It is the objective of this conference to give assistance on the better protection of the information right through the implementation of the standards of the European Court of Human Rights in the Albanian administrative courts.

According to Article 10 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, the right to receive and impart information without interference by public authorities and regardless of frontiers is part of the right to freedom of expression which is enjoyed by everybody.

It is a vital right.

Abid Hussain, the UN Special Rapporteur on Freedom of Opinion and Expression, brought it to the point when he said:

"Freedom will be bereft of all effectiveness if the people have no access to information. Access to information is basic to the democratic way of life."

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Therefore, the right to information is enshrined in Article 10 of the European Convention on Human Rights which was ratified by Albania on 3rd October 1996. It says that the right to freedom of expression shall include freedom to receive and impart information.

For many years, however, the ECHR was reluctant to recognize the right of access to public information under the right to receive information guaranteed by Article 10 and to impose the positive obligation for the state to supply relevant public information and give access to official documents regarding matters of public interest. Meanwhile, the ECHR has changed this approach.

In the case of *Tarsasag a Szabadsagjogokert v Hungary* on 14th April 2009, the ECHR broadly interpreted Article 10 and implicitly recognized the right of access to official documents. In this case, the ECHR first time stated the violation of Article 10 regarding the refusal to public information.

The ECHR pays particular attention to the public interest involved in the disclosure of information. In the case of *Guja v Moldova*, the Court interpreted that "the interest which the public may have in particular information can sometimes be so strong as to override even a legally imposed duty of confidence" and pointed out that, in such circumstances, journalists, civil servants, activists or staff members of an NGO should not be prosecuted or sanctioned because of a breach of confidentiality or the use of illegally obtained documents.

So the ECHR has set clear standards.

Furthermore there is growing consensus that the right to access information should not be exercised only through individual requests, but that public bodies need to be proactive in disclosing information.

As a response to this need, the Convention on Access to Official Documents of the Council of Europe stated in Art. 10:

"At its own initiative and where appropriate, a public authority shall take the necessary measures to make public official documents which it holds in the interest of promoting the transparency and efficiency of public administration and to encourage informed participation by the public in matters of general interest."

The principle of proactive disclosure is thus a main component of transparent and accountable government, and as such it is one of the key principles of the multilateral Open Government Partnership (OGP) of which Albania has been a member since 2011.

Therefore, the Albanian parliament in 2014 passed the Law 119/2014 on the right of information.

By this law:

- a new body was set up, charged with supervising and monitoring compliance with the new law,
- shorter deadlines were set up: the deadlines for responding to requests of citizens were shortened to 10 days,
- proactive dissemination of information: public authorities are now obliged to make certain categories of information available proactively,
- a more extensive definition of the terms public information and public authority were introduced,
- every public authority is obliged to designate a Coordinator for the Right to Information, whose task will be to supervise the authorities' responses to information requests, and

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- severe sanctions in the form of monetary fines were introduced for officials violating the provisions of the law.

Now it is important that this law is properly implemented and this requires capacities and professional knowledge.

Fortunately, the Albanian Parliament in 2012 passed the Law on the introduction of Administrative Courts to ensure that legal action of citizens against public institutions are dealt by specialized judges. However, specialization never ends.

I hope that you will find this conference beneficial for your work and I would like to thank each of you for your participation.

We all acknowledge that Albania has made substantial progress in many fields including a better protection of the rights of the citizens. These efforts must be continued. It would be our pleasure and honour to support you in meeting the challenges that are ahead of you in this regard.

The Rule of Law Program SEE of the Konrad Adenauer Foundation looks forward to co-operating with you in the future.