REPUBLIC OF ALBANIA

PEOPLE'S ADVOCATE

Special Report on the right to information

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Content:

1. Introduction

The right to information is one of the fundamental human rights, which is focused on the freedom of the individual to receive information from public authorities on the way the latter govern and manage state resources, for purposes of good governance.

By presenting a key element of the implementation of functional democracy, the right to information has been affirmed in a number of international acts, which at the same time set standards for respecting it, standards which are reflected in the domestic legislation which specifically affirms and regulates such right.

The institution of the People's Advocate is one of the main actors in the framework of the respect, promotion and protection of the right to information not only from a general point of view, but also due to the fact that the specific legislation entitles it to be the guardian for the implementation of the right to information.

As such, this institution has a rich experience and practice of 13 years, during which it has found how such a right has been applied, has recommended how it should be applied on a case by case basis and from a general viewpoint it has given recommendations on the measures to be taken by the public administration to facilitate the exercising of this right by individuals, has promoted good models of the functioning of the right to information and has requested an improvement of the specific legal framework for a bigger and standardized guarantee of the respect for and protection of the right to information.

This report aims to highlight exactly this view of the institution of the People's Advocate on the concrete realization of the right to information in our country, in the exercise of the mandate of the guardian given to it by the law and to assess the issues and legal regime that the right to information has faced and continues to face, in order to improve it and to strengthen the role of the individual while participating in decision-making.

2. History and meaning of the right to information

Formal recognition and reflection on legal documents of juridical regimes of the right to information belongs to our days. In its historical roots, this right has been first guaranteed in the Swedish legislation of the 18th century and more concretely in the Swedish Constitution of 1776.[1]

The first contemporary law that guarantees such right is the Freedom of Information Act in the USA, of 1966.[2] The tendency of national legislations is to guarantee more and more the right to provide the information kept by the state bodies and this is seen in the always growing number of states, including our country, that guarantee this right by law.
In the Albanian legislation until the World War II there was no law on the right to information. This absence continued also during the communist regime in the country, due to the closed and isolated nature of this political system. The Constitution, as well as the legislation of the time, did not uphold the right to information, by listing it "de facto" and "de jure" among the rights that were violated in Albania. The democratic changes in the life of the country after the nineties brought the recognition and guaranteeing of this right.
The formulation, "No one may be denied the right to information"[3], is how this right was envisaged for the first time in Law no.7692, dated 31.03.1993 "For an Annex in Law no. 7491, dated 29.04.1991 "On the main constitutional provisions".
The Constitution of the Republic of Albania of 1998 guarantees the right to information as one of the fundamental human rights and such right was regulated for the first time by a specific law, Law no. 8503 dated 30.06.1999 "On the right to information on official documents". The notion of the right to information in itself means that everyone has the right to be given information of public interest, and to inspect official documents, thus, it refers to the right that every person has to study the documents kept by public authorities.
However, the information is not just a need for the people; it is an indispensable part of a good government. It is the information that allows people to review the actions of a government and it is the ground for the pertinent and informed debate on those actions.

The relation between democracy and access to official information has been assessed as self-evident in many countries and for a long time. This relation can be seen especially in the countries in transition, just like our country, where the issue of the access to official information in the legislative processes has been confronted and often considered as part of the work for the establishment of administrative structures, which are created to serve to the democratic decision-making process.
The protection of the right to access official documents, envisaged in the Constitution of the Republic of Albania, sets forth and establishes rules for purposes of a proper functioning and transparency of the Public Administration, towards the public at large, during its daily activities. This way of functioning requires that the citizens be aware that they can exercise control on the

[1] Freedom of information: Training manual for officials, page 15.
[2] Commentary "Law on the right to information", published by the Institute of Public and Legal Studies, page 13.
[3] See article 2 of Law no.7692 dated 31.03.1993 "On an addition to Law no.7491, dated 29.04.1991 "On the Main Constitutional Provisions".

administration, for purposes of making it more efficient. The main points where the principle of public access to official documents is based are:

1- facilitating the exchange of free democratic points of view, while contributing in this way to the democratic legitimacy of the decisions,
2- strengthening the control of the administration by the public and the media,
3- contributing to a bigger efficiency of the organization.

The need to inform the public on these documents considers as insufficient the information given by public authorities themselves on their work. There is need to have public activities open for the citizens and the media, so that they can select the information they want to have and receive it, without the need for support by the services of public information for such purpose. All civil servants must be conscious of such rule of making official files and documents known to everyone.
Another aspect of the right to information is that it is closely connected to many other rights.
It is a precondition for the realisation of the freedom of expression and, at the same time, it is a composing part of such freedom. It is understandable that in absence of information it is impossible for an individual to create a conviction or opinion.[4]
However, such right, like other human rights, is not absolute, for the right to information is limited in two ways:

- The public has the right to study only documents deemed to be official documents.
- The information contained in an official document may be secret. Pertinent limitations are done pursuant to the legal definition for this term. This definition includes also cases when the document contains personal data of a third person, which are protected by law, with regards to making them public.

Regardless of the above-mentioned limitations, such right and its implementation diminishes the risk of arbitrary action and, moreover, contributes to the reduction of corruption by making it a rare phenomenon in the public administration. Therefore, it can be said that the right to information is a pivotal mechanism for the development of constant transparency, with improvements time after time, in order to reflect the technological developments and matured interests of the society through open and fully responsible governance, which promotes and develops our democratic way of life.

3. Principles for the legislation of the right to information

Such principles set the standards for national and international regimes, which give meaning to the right to information and standardize it.
These principles set forth the following:

1. Legislation on freedom of information shall be guided by the principle of maximum openness. Under certain circumstances, information may not be open, but public interest may always outrun such definition.

[4] Commentary "Law on the right to information", page 12, publication of the Institute for Public and Legal Studies

2. Public institutions shall have the obligation to publish important information. Freedom of information means not only an answer from public institutions to requests for information, but also that they publish and largely disseminate important documents that have the interest of the public.
3. Public institutions shall actively promote open governance.
4. Exceptions shall be clearly defined and shall be subject to rigorous tests for "potential damage" and "public interest". The law should include a complete list of legitimate aims which may justify non exposure, which should include only interests that constitute legitimate grounds for refusal, such as law enforcement, national security, privacy, commercial confidentiality, etc.
5. Requests for information should be answered quickly and accurately and in independent cases there may be an objection.
6. Individuals should not be prevented from making requests for information through extreme costs, which are approved by the public institution itself. The cost of obtaining access to information held by public institutions should not be so high as to deter potential applicants.
7. Meetings of public institutions should be open to the public. The public has a right to know what the government is doing on its behalf and to participate in the decision-making processes.
8. Laws that are contrary to the principle of maximum disclosure should be amended or repealed.
9. Individuals who know well what type of activity is exercised in a particular institution are precisely those who work there. This is one important reason why the right to information includes the right of officials to make public information about serious offenses committed in the institution where they work. Such violations shall be considered; conducting a criminal act, neglecting a legal duty, corruption, mismanagement of the public institution, danger to public health, threats to the environment, etc.[5]

4. Most important international acts of the right to information

The right to information is one of the fundamental human rights, enshrined and guaranteed in international instruments, definitions of which have found their reflection in the national legislation of many countries in different forms and modalities appropriate to each specific case.

In determining its essential meaning the right to information guarantees the right of everyone to know and receive information without any limitation and discrimination.

Some of the major international acts are:

- **Universal Declaration of Human Rights,** passed by the General Assembly of the United Nations on 10 December 1948, affirms the most fundamental human rights, among which is the right to information.[6]

[5] Freedom of Information: Training manual for officials, prepared by Article 19 & the Centre for the Development and Democratization of Institutions, page 35.

[6] Article 19 of this declaration reads:

- **European Convention of Human Rights,** compiled by the member states of the Council of Europe, as one of the first efficient attempts to ensure collective guarantee of some rights, affirmed in the Universal Declaration of Human Rights.[7]
- In support of the Universal Declaration of Human Rights, its signatories have signed the **International Pact on Civil and Political Rights** (December 1966). This important act also recognizes and guarantees the right to information.
- **Council of Europe Declaration on Freedom of Expression and Information**, 1982, states access to information as a priority in the activity of the Council of Europe. This statement sets forth the main principles regarding the right to information and the role that this right plays in the society "as a necessary condition for the development of society"[8].
- **The Aarhus Convention** "Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters", signed at the Conference of the Ministers of Environment, held on June 25, 1998 Aarhus, Denmark, from thirty-five European states and the European Union. Especially important is the commitment and obligation that arises for signatories to respect the right of the public to information on environmental issues.
- **European Charter on Human Rights**, adopted at the Nice Summit in December 2000, is the first official text in the world in the field of human rights, which officially sanctioned the right to good administration as a fundamental human right. The provision in this Charter of the right of good administration (Article 41), the right of access to official documents (Article 42), of the Institution of Ombudsman (Article 43), are a new and significant development in the development of human rights within the European Community.
- **The European Code of Good Administrative Behaviour** adopted by the European Parliament on 6 September 2001, aims to explain in detail the European Charter of Fundamental Human Rights and, more specifically, the right to good administration and what such right means in practice. An important part of the definitions provided in this Code, is the addressing of the right to information as a right in solidarity with the right to good administration.
- **Recommendation 2002 (2) of the Council of Europe on Access to Official Documents.** The recommendation specifies the right to information, with a focus on the right to access official documents. The general principle of this recommendation is that member states must guarantee the right of all to access, pursuant to the request, official documents which are held by public authorities.
- **The Council of Europe Convention "On access to official documents",** *Tromsø***,** adopted in the meeting of the Committee of Ministers of Council of Europe, on 27. 11. 2008,[9]

"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".

[7] Paragraph 1 of Article 10 gives a reformulation and emphasis of the provision of article 19 of the Universal Declaration of Human Rights: "Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers.…".

[8] The main objectives of members states, in the framework of principles envisaged in this declaration are:
- lack of censure/control on the participants in the process of information,
- pursuit of an open policy in the public sector, including access to information,
- existence of a variety of independent and autonomous media,
- access to information and implementation in a national level.

[9] Procedures have started from our country for the ratification of this Convention. Letters of the Minister of Justice, respectively no. 5053/1, dated 18.06.2009 and no. 5053/4, dated 18.11.2009, an opinion from some state institutions

established informative obligations for subjects, such as legislative bodies, judicial authorities, as well as natural or legal persons, to the extent of their public functions, or when operating on public funds, pursuant to the domestic legislation.

5. Albanian legislation in this area

- The most important document pursuant to the normative acts which affirm and guarantee the right to information is the ***Constitution of the Republic of Albania,*** which envisages exclusively that:

"1. The right to information is guaranteed.

2. Everyone has the right, in compliance with the law, to obtain information about the activity of state organs, and of persons who exercise state functions.

3. Everyone is given the possibility to attend meetings of elected collective organs."[10]

- Law No. 8503 dated 30.06.1999 "On the right to information on official documents". Of significance is the fact that this is one of the first laws of the right to information, adopted by the parliaments of post-communist countries of South-Eastern Europe.

Pursuant to the law, the right to information gives life to an administrative juridical relation which arises between bodies of public administration and other subjects that have the right to request information, pursuant to the law, on official documents.

A synthesis of the content of the administrative juridical relation, of the right to information on official documents, is found in article 3 of the Law "On the right to information on official documents," which sets forth that:

"*Everyone* has the right to request information on *official documents,* pertaining to the activity of state organs and persons that exercise state functions, *without being obliged to explain the motives*.

The public authority is obliged to give any information pertaining to an official document, *except in cases when the law provides differently.*

Any information on an official document, granted to a person, shall not be refused to other persons who request it, *excluding the case when this information constitutes personal data of the individual himself, to whom the information was granted.*"

- The Code of Administrative Procedures, envisages the right to information as one of the main principles for the functioning of the Public Administration. It makes a specific regulation of the right to information, by recognizing this right to subjects that are a party in an administrative proceeding, or those who have a legitimate interest in this process. In principle, all participants in an administrative procedure have the right to receive information and to get familiar with the documents used in this procedure, except for cases when the law has set forth limitations.[11]

This Code addresses the right to information as a specific arrangement, with an even narrower focus, than the arrangement that the Law "On the right to information on official documents" makes to such right.

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is needed regarding a draft-decision of the Council of Ministers "On the approval in principle of the Council of Europe Convention "On the right to information on official documents"..

[10] See article 23 of the Constitution of the Republic of Albania.

[11] See Article 20, Administrative Procedure Code

There are a number of other laws which refer the regulation of the right to information as pertaining specific juridical relations, to the juridical regime of this right, envisaged in the two above-mentioned laws.

6. The right to information and the People's Advocate

In the general framework of the protection and promotion of human rights, Law No. 8454, dated 4.02.1999 "On the people's Advocate", but particularly Law No. 8503, dated 30.6.1999 "On the right to information on official documents," assign to this institution a special mission, which is related to that of the custodian for the implementation and respect for this right by the public administration. Considering the right to information as a fundamental right, the institution sees itself not just as observer or guardian of law enforcement. Rather, the vision has been clearly defined by the correct and creative application of the law, which guarantees this right.

The activity of the institution in this field is oriented in these main directions, observation of law enforcement which guarantees the effective exercise of the right to information, through the examination of specific issues or through recommendations of a generalized nature addressed to the public administration bodies; promotion of the right to information and the concrete implementation of this right by the institution itself.

The organization of the National Conference "The right to information, a fundamental human right", organized in December 2002 by the Institution of the People's Advocate served for this purpose. The conference aimed to raise awareness of the Public Administration, both at central and local levels, on the right and its obligations, in performing functions recognized by law, so that the work of civil servants be properly oriented and guarantee to the parties involved in the administrative proceedings, not only a qualified service, but also a correct approach for the realization of the rights, freedoms and lawful interests of individuals. Pertinent conclusions and recommendations that emerged during the conference were sent to central and local government bodies, together with a calendar of 2003, every page of which cited an article of the Law "On the right to information on official documents".

During these years, (2000-2012) the Institution of the People's Advocate results to have reviewed 498 complaints or requests related to the problems that have to do directly with the right to information. As regards the cases of the above-mentioned nature, that have been completed, it resulted that 206 cases were resolved in favour and the rest resulted in requests, or complaints, unfounded, or outside the jurisdiction and competence of the institution. During this work practice the People's Advocate institution has prepared a total of 38 recommendations, which are addressed on a case by case basis to the Public Administration bodies.[12]

This number of cases is related to two main reasons;

- The daily activity of the Public Administration, which constitutes a cause for the violation of the right to information.

[12] This information was made possible by a search in the "Doculive" system, which is applied for the management and administration of cases that are reviewed year after year. The system itself, which was financed by the project of the support of the Danish government for Albania, "Danida", contributes to the increase of transparency and efficiency of the work in this institution.

- Awareness of the public about this right and the knowledge that it has on the role of the Institution of the People's Advocate, in guaranteeing this right.

Cases that have been reviewed by the Institution of the People's Advocate and which relate to the right to information can be categorized into:

1. Cases that relate to and have as their direct subject the violation of the right to information.
2. Cases that do not have as their direct subject the violation of the right to information, but which, from the review carried out by the People's Advocate result to include violations of such right. This violation results in failure to provide various documents, needed for a specific purpose by the complainant, or failure to give information on that specific group of information, which must be given without a request by interested persons, which has brought about violation of other legal rights. (No correct numbers can be given about this group, for these cases were reviewed in the framework of another subject).

A feature that has been noticed in the work practice for the review of these cases by the People's Advocate, is that the positive resolution in many cases has been achieved through the intermediation process, without the need to prepare and send pertinent recommendations.

However, it must be understood that the review process itself, as a whole, by the People's Advocate and the information provided to the complainants or requesters on a case by case basis, is in essence a direct realization of the right to information of the individual.

The problematic related to the implementation of the law in the Public Administration emerged also from the review of cases on violation of the right to information. The conclusions are:

- Legal deadlines for replying to the requests for information are not met in both cases; be it when they are rejected, or upheld.
- The requests of interested parties are in compliance with the legal provisions and their object is not information limited by the law.
- The Public Administration has an unsatisfactory level of knowledge on the legislation on the right to information on official documents and, moreover, it does not implement it, by avoiding, thus, the responsibility to provide the requested documentation.

Regarding the regulation that the Administrative Procedure Code makes to the right to information, from the cases under consideration it results that the Public Administration does not respect and implement this right during an administrative proceeding, towards those subjects of the administrative law who have a direct or legal interest in this proceeding.

The conclusions that are drawn from this experience of several years of the People's Advocate highlight the need for;

- Entry into force of a law setting procedures for complaints and damage compensation in cases of violations of the right to information.
- The issuance of internal rules of procedures on the right to information, pursuant to Article 6 of the Law "On the Right of access official documents".
- Assignment of a person in charge of the requests for information on official documents, to anybody or institution of Public Administration.
- Instruction to administrative bodies, to include in their responses to requests for information on official documents the legal possibility of complaint with regards to the decision that they take for such requests.
- Organization of a considerable number of activities and trainings to increase knowledge on the right to information.

7. Some measures taken by the People's Advocate that relate to the right to information

The People's Advocate has been active in protecting and guaranteeing the right to information. In order to achieve this, concrete steps have been taken in the following directions:

- Initiation of the activity has been preceded by the entry into force of the internal rules of procedure for the functioning of the institution, as well as the code of ethics, which sanction important elements of transparency towards the public. Currently, the institution has reviewed these two by-laws for purposes of increasing efficiency and transparency of its activities.

- By means of a recommendation addressed to all bodies of the Public Administration in 2000, issuance of regulations and other secondary legislation has been requested for purposes of implementing article 6 of the Law "On the right to information on official documents". Such a recommendation has been repeated by the People's Advocate in 2001 and 2002 as a result of gaps noticed in this regard.

- The establishment of the Office for Public Relations and Information. This office was established in early 2001, initially named as the office for receiving citizens for purposes of informing them on the competencies and work of the institution. The way this office functions has been redesigned through changes in the working method and by increasing the number of employees.

- A series of TV spots and a short documentary about the meaning and work of the institution have been recorded. They have been shown on national TV channels, and in most local TV stations, where an importance place was taken by the spot for the right to information. The logo of the institution: "People's Advocate, at your service" also has a purpose. Leaflets have been prepared and distributed for purposes of informing the public, not only on the work of the institution, but also on the rights that it enjoys, including the right to information.

- The official web-page of the People's Advocate was created online. It is creatively updated and various and valuable pieces of information can be found there on the work of this institution. (www.avokatipopullit.gov.al)
- There have been various publications to promote human rights, such as "People's Advocate in Albania", 2003, "The rights of employees", 2004, or the publication "Together for the protection of the rights of children", 2005, as well as the publication that was distributed to prisoners who are Albanian citizens and who serve sentences in other countries, named "Legal acts for prisoners abroad".

- During all this time, a broad participation in all meetings, activities or meetings organized by various stakeholders regarding the right to information has developed, be it by the People's advocate, as well as representatives of the institution.

- The organization of and participation of the People's Advocate and many representatives of this institution in meetings or various debates on television has always been for purposes of informing the public. Cooperation with the media is seen as a long-term priority, not only for the promotion of work, but, in particular, as a tool of information and positive pressure to the Public Administration bodies.

- There has always been and continues to be cooperation with NGOs in trainings organized by them in collaboration with the Training Institute for Public Administration for the right to information, through direct participation with specialists of the institution in the role of trainers.

- Cooperation with NGOs in the framework of implementation and protection of the right to information has been developed and continues to develop in the framework of joint projects that have an impact on the promotion of this right. One of the last projects has been the one that took place in 2007, in collaboration with the USAID, "On the rule of law in Albania" and the Institute for Political and Legal Studies, focusing on drafting a regulation on access to information. More details on the content of this draft regulation will be given below.

- Requests submitted from various individuals for information and copies of official documents have been given the highest priority by meeting them in very short periods of time and, of course, without applying any fee for this service. A series of official documents are publicly available at any time, without the need for a formal request.

  This broad activity that actually is in line with the strategy of the Institution of the People's Advocate for the promotion and protection of the right to information has had its results.

  - The first visible result is the annual increase in the number of complaints directly related to the right to information.

  - A satisfactory recognition of the Institution of the People's Advocate from the broad public, as well as its participation in the drafting of reports that represent our country in international organizations, on the situation of human rights in Albania.

  - The success achieved case after case while dealing with issues related to the right to information. Many of them are positively resolved through direct intermediation, while another considerable part through the acceptance of the recommendations that have been addressed to the relevant bodies of the Public Administration. These recommendations did not intend to simply find a violation, but aimed at further deepening the role of the People's Advocate for purposes of developing a culture of good governance.
    Certainly, these achievements will now be consolidated with the new action strategy of the institution that defines an even more active role of the People's Advocate in the protection and promotion of fundamental rights and freedoms of the individual.

8. Recommendation on the standard rules of procedure "On the right to information"

Creating facilities for the public at the first contact with the Public Administration and raising its awareness, as well as the awareness of the administration itself on the rights and duties arising from Law "On the right to information on official documents", is estimated by the People's Advocate as a direct contribution to good governance. Starting in 2000 until the end of 2006, the

People's Advocate has sent to all bodies of the Administration a recommendation to implement the provision made in Article 6 of the law, for the issuance of regulations on the right to information, as well as for taking measures to fully implement the legislation on the right to information.

Also, studies conducted by NGOs operating in this field, such as the study of the Centre for Parliamentary Studies in 2005, with the subject "Monitoring the implementation of the law" "On the right to information on official documents" in the central state institutions" [13], have made known the need of conceiving and designing a standard internal rules of procedure for the right to information, which will serve as a regulator and as a determining factor for the organization of the work for purposes of a better functioning of the administration in this regard and transparent communication with the public.

In these circumstances, the People's Advocate, in collaboration with the USAID project "On the rule of law in Albania" and the Institute for Political and Legal Studies has drafted a regulation that would serve this purpose.

In these standard rules of procedure we find innovations in the organs' nominated description included in the term "Public Administration", the definition of "official document", exact determination of the cases of limitations of the right to information, the new concept for "offices for public relations and information", as well as for the establishment of procedures for handling requests for information. This regulation is intended to be readable; to give details on the arrangements of the law, both in terms of its application, as well as regarding limitations; to encourage the Public Administration bodies to create the necessary infrastructure for the implementation of the law, to raise the awareness of these bodies with regards to the obligation to compensate subjects in cases of proven violation of the right to information; to apply the template forms as an effective way to respect legal deadlines; to guarantee public access; to unify the procedural way requests for information follow and finally, to guarantee the implementation of the law, in order to increase the effectiveness and transparency of Public Administration bodies.

Meaning of the term "official document". The definition given in these standard rules of procedures is a serious attempt to define the term "official document", to see thus that the law is understood and implemented by the Public Administration. Pursuant to its definitions:

"Official document" for purposes of these rules of procedure shall mean every document, regardless of its manner of registration (written, electronic, footage, photographic, etc.), which:
- Is drafted by the entity, pursuant to law no.9154, dated 6.11.2003 "On archives" and the Rules of Procedure of the General Directorate of Archives, "Technical-professional and Methodological Norms of the Archive Service in the Republic of Albania",

[13] Pursuant to this study conducted in 20 main institutions that were monitored, it resulted that only 2 institutions had adopted particular rules of procedure for the right to information, but they did not set forth detailed rules for the fulfillment of this right, and one of the rules of procedure limited the legal provisions. Also, there was no unification of the work practice and the naming of the offices that carried out the service of public relations.

- Is taken by the entity in the framework of the correspondence with other entities and is registered in the form of an incoming document in the correspondence register, pursuant to the law "On archives" and the Rules of Procedure of the General Directorate of Archives,
- Is sent by the entity, in the framework of the correspondence with other entities and is registered in the form of an exit document in the correspondence register, in compliance with the law "On archives" and the Rules of Procedure of the General Directorate of Archives,
- Is administered in any other way by the entity,
- Pursuant to the term "official document", for purposes of the regulation, the data owned by private subjects and which are the result of scientific research funded by each of the entities set forth in article 2 of these rules of procedure (nominated Public Administration bodies) [14] are also included.

This definition excludes objects from the term "official document".
Expedited handling of the requests for information. The standard rules of procedure aim to put in motion the mechanism of discretion that the law recognizes to the Public Administration bodies for the fulfilment of requests for information, within the deadlines set forth in articles 11 and 12 of law no.8503 dated 30.06.1999 "On the right to information on official documents".
Such discretion aims to achieve the fulfilment of submitted requests, by giving priority to them instead of other requests submitted in the following cases;
"- when the applicant gives reasons that failure to take the data on time would cause to him an irreparable damage in the enjoyment of fundamental rights;
- when the applicant is an official of means of public information and provides a reasoning on the need of the public to be immediately informed about a certain problem".[15]
Offices for public relations and information (OPRI). The unification of the name of these offices was the first step in this direction, because experience and existence of such offices in different Public Administration bodies have seen different types of names. At the same time, through giving a name to it, it was aimed from the very beginning to separate the role of the spokesperson from that of the official who looks after the implementation and respect for the right to information in these organs.

The structure provided for these offices in article 9 of recommendation no.177, dated 13.06.2006 of the People's Advocate, "On the adoption of standard rules of procedure for the right to information (SRPRI)", recognizes two sectors; that of public relations and sector of relations with the protocol and archives, and internal structures of the bodies of Public Administration.

Even though the law does not foresee any set forms for the request submitted by interested subjects, these rules of procedure are accompanied by a form, the filling out of which facilitates the request of the interested subject, as well as the work of the Public Administration body.
At the same time, duties of the pertinent above-mentioned sectors are set forth. More concretely, the sector of relations with protocol archives and internal structures carries out the manual and electronic search of the documentation specified in the request for information. This function has

[14] This definition is given in article 4 of recommendation no. 177, dated 13.06.2006 of the people's Advocate "On the approval of the standard rules of procedure on the right to information (SRPRI)".
[15] This is envisaged in article 7 of recommendation no. 177, dated 13.06.2006 of the people's Advocate "On the approval of the standard rules of procedure on the right to information (SRPRI)".

been foreseen to be assisted at all cases by the section of administration, the work of which is closer to the pertinent request for information.

In the meantime, the public relations sector equips the applicant with a certificate that proves that the request for information has been submitted, does the work needed to search and identify the documentation which can be put at the disposal of the public following a request, based on articles 8 and 9 of Law "On the right to information on official documents", speaks with the applicant and helps the latter formulate the request for information, so as to help the administration look for it and fulfil the request. Among other duties, this sector sees that the institution's webpage is maintained and updated constantly with that part of information for purposes of implementing these rules of procedure.

This provision, besides unifying a practice, regulates a number of other cases that have to do exactly with creating facilities and internal infrastructure for the proper implementation of the right to information. It is so due to the fact that we find in it the concept of the person who is responsible for addressing requests for information in every institution, as well as the establishment of a practice which is exclusively dedicated to, pursuant to the law, the respect for and implementation of the right to information.
Through the establishment and activities of the ZMPI (Office for Public Relations and Information) it is aimed to achieve:

- the implementation of the principle of transparency of the administrative activity, the right to access to official documents and proper information of the public,
- the systematic assessment of the needs of the public and the level of their fulfilment and the cooperation to constantly adopt factors that determine quality,
- the proposal of amendments in favour of a modernisation of the structures, simplification of the language, update in line with modalities that the administration proposes to the public.

Special protocoling of requests for information. The standard rules of procedure set forth the creation of a special register, where, pursuant to the protocol rules, requests for information shall be registered.[16]
The register performs two functions; that of giving priority to addressing these requests towards requests of a different nature that are submitted before Public Administration bodies, by forwarding them directly to the relevant sector to provide answers to them, and in turn, this register may be made publicly available at any time, constituting thus another tool that provides transparency in the implementation of the law by the Public Administration.

9. Courts and the right to information

Although one of the ways of re-establishing the right to information is filing a complaint in the cases of violations, as provided for by the applicable law, it should be underlined that the judicial practice in this aspect remains very poor.

[16] This is envisaged in article 10 of recommendation no. 177, dated 13.06.2006 of the people's Advocate "On the approval of the standard rules of procedure on the right to information (SRRI)".

The causes for this situation are different, starting from the lack of public awareness on the manners of protecting the right to information, giving more priority to the procedure of administrative complaining, uncertainty and flaws of the specific legislation on the right to information, procrastinated court procedures and the lack of confidence in the judiciary, etc.

It is a fact that until a few years ago, in the courts of all instances there was not a single trial case, the object of which was the violation of the right to information. Even today, the trial cases the object of which is the violation of the right to information are very few in numbers. Apart from a continuous activity by certain NGOs in the country,[17] aiming to increase the public awareness on this right, the number of persons exercising this right to file a complaint through judicial procedures remains very low. This does not mean that everything works perfectly and that all possible violations against this right are resolved by bringing justice during the administrative review of cases. On the contrary, the activity of the Institution of the People's Advocate shows that the violations not only exist and it is impossible to resolve them during the administrative review of certain cases, but there is also a lack of knowledge on the role of the judiciary in this area.

10. Jurisprudence of the Constitutional Court

The Constitutional Court has taken under review the request submitted from respectively; the Centre for the Development and Democratisation of Institutions, The Albanian Group of Human Rights, League of Albanian Journalists, Association of Professional Journalists, Union of Albanian Journalists, with the subject: "For the declaration as unconstitutional of Order no. 226, dated 20.08.2002, of the Prime Minister "On the communication with the bodies of Print and Electronic Media"".

This Court, through decision no. 34, dated 8.12.2003, has decided to dismiss the case with the reasoning that the submitted request's object did no longer exist at the time of review, for the contested order did no longer exist, because it had been revoked by the organ that had issued it. During the review of this request by the Constitutional Court it resulted that the Prime Minister with Order no.157, dated 12.11.2003, had revoked Order no.226, dated 20.08.2002 "On the communication with print and electronic media", which the applicants were requiring to be declared as anti-constitutional.

Also, decision no. 16 dated 11.11.2004, based on the request of the Albanian Helsinki Committee, with the object: "Abrogation, as incompliant with the Constitution, of article 34 of Law no. 9049, dated 10.04.2003 "On the declaration and control of assets, financial obligations of the elected and public officials", constitutes a valid part of its jurisprudence in this area, in reference of the existing relationship between right to information and privacy.

[17] According to an information received by the Centre for Development and Democratization of the Institutions, as one of the most active NGOs in the country for the protection of the right to information, it results that the latter has submitted in the District Court of Tirana 11 requests for judicial review during 2003 – 2008, the subject of which was the obligation to provide information or official documents by various state authorities.

The Constitutional Court, in this decision, has reasoned that the lack of the confidentiality of that part of data which had to do with concrete names of the family members of the official is no longer necessary for purposes of information of the public. Due to these reasons, these data must be secret from the public.[18]

11. Legal amendments necessary for the law "On the right to information on official documents"

Despite continuous efforts during this period of transition, the functioning of the public information regime in the country continues to have obvious problems.

The reasons for the situation created are of an infrastructural character, influenced by the lack of sufficient political will, and expressed through the weaknesses of administrative capacities, autocratic tendencies inherited by the administration, but also conditioned by gaps in the legal framework of the right to information, which has remained unchanged since 1999 and without secondary legislation that would facilitate its understanding and implementation.
In these conditions of primary importance are the amendments and improvements to Law "On the right to information on official documents", as a request for the alignment of the national legislation with the "Acquis Communitaire". Amendments are also a requirement of the new developments in the conceptualization of the right to information in the international framework and the increasing specific weight that it is given as a catalyst in the processes of good governance.
Possible amendments to the law must consist of:

- Enlarging the number of subjects that have the obligation to provide information

The generally accepted international standards for the formulation of legislation on the right to information, as well as international developments in this area, determine the possibility of accessibility to a larger amount of official information with the fewest possible restrictions, without excluding the possibility of obliging a broader number of public or private entities, which operate in the public area, to provide information to entities entitled to receive it. Our legislation in this area has generally respected these principles there is still need for consideration on the number of subjects that receive or have the obligation to provide information.

The provisions of the Administrative Procedure Code provide that the general principles enshrined in it, including the principle of the right to information, may become mandatory by law for the activities of private entities when such activities have effects on the public interest.[19]

Meanwhile it is noticed that the group of entities that are obligated to provide the information specified in the law "On the right to information on official documents", is relatively narrow when compared to the legislative practice of the new European democracies and beyond. Moreover, the Council of Europe Convention "On access to official documents," Tromso,

[18] The content of decision no.16 dated 11.11.2004 of the Constitutional Court of the Republic of Albania is found on the following Website: http://www.gjk.gov.al/
[19] See article 1 of the Administrative Procedures Code.

adopted at the meeting of the Committee of Ministers of the Council of Europe, on 27.11.2008, creates information obligations for entities such as legislative bodies, judicial authorities, or natural or legal persons for as long as they perform public functions, or when operating on public funds, in accordance with the national legislation.

Particularly in the case of natural or legal persons, such as private companies that have monopolies or concessions for the water supply, electricity, etc. [20], or in the case of legal entities that operate, entirely or partially, with public funds, their inclusion in the group of entities that have an obligation to inform the public becomes of specific importance.

The inclusion of these new entities in the group of subjects of the right to information is considered important, for many public functions or services that are traditionally exercised by the state, are increasingly being delegated into the hands of private entities or state-private partnerships as a development trend of the modern administrative state.

Best practices would dictate that, for purposes of providing information, the definition of "public authority", will be focused on the type of service offered and not on formal name.[21]
The Council of Europe Convention "On access to official documents", gives a broader definition of the term "public authority". In compliance with it, "public authority" shall mean;

- Governance and administration in a national, regional or local level,
- Legislative bodies and judicial authorities, to the extent they conduct administrative functions in compliance with the national legislation,
- Natural or legal persons, to the extent they exercise administrative authority.[22]

As a proper step for this purpose would serve the ratification[23] of the Council of Europe Convention "On access to official documents" by the Assembly of Albania, a process already initiated by the government.

From this perspective, the foreseen extended application of the Council of Europe Convention "On access to official documents", is an approach that our lawmaker has foreseen in the Administrative Procedure Code, to the extent this code regulates the right to information. The ratification of this convention would turn it into a regulatory normative act on the right to

[20] In article 1 of Law no.9663, dated 18.12.2006 "On concessions", it has been set forth that the purpose of this law is to establish the necessary framework for the promotion and facilitation of the implementation of concessionary projects, funded by the private sector, by increasing transparency, equality, efficiency and long-term sustainability in the development of projects for the infrastructure and public services.
[21] Memorandum for the Albanian law "On the right to information on official documents", "Article 19", London, September 2004, page 8.
[22] Article 1, point 2, letter "a"/"i", of the Council of Europe Convention "On access to official documents", Tromso, adopted in the meeting of the Committee of Ministers of the Council of Europe, on 27.11.2008.

[23] In article 1, point 2, letter "a"/"ii", the Convention gives to signatories the opportunity, at the moment of ratification, to declare that, the definition of "Public (state) authorities" includes one, or more, of the definitions:
a) Legislative bodies as regards their other activities;
b) Judicial authorities, as regards their other activities;
c) Natural or legal persons insofar as they perform public functions, or operate with public funds, according to national law.

information, which foresees a broader range of subjects that have the obligation to provide information.

- Addition of exceptional criteria

Law "On the right to information on official documents", does not envisage specific material criteria for the limitation of the right to information; such as reasons for not providing official documents/information requested by individuals, conditioned by requirements of national security, private life, investigative secret, etc.[24]

In article 3 of the law only the prohibiting criteria is determined as in: "except for when otherwise envisaged in the law". Because it is of a very general nature, the formulation given identifies a perception that is not right, perhaps, of the discretion of the public administration bodies, and can, indirectly, be considered as a problematic part of this law.

Currently, the law "On the right to information on official documents", contains that form of limitation of access to official documents that articulates the drafting of its content to an obvious extent in the culture of the so-called "reflexes of the secret.[25]

The reformation of the law in this part may be referred at in the process that took place with regards to some other laws, as well, such as those on the classification of secret information. The best example is law no.9154, dated 6.11.2003 "On archives", article 65 of which contains a list of criteria as to when archived information is not disclosed. It can be said that the content of this article has been taken almost word per word from Recommendation (2002)2 of the Council of Europe.

Experience in this area can be summarised in the following principles:

- law of information must foresee an exhaustive list of criteria for when information is not provided;
- the list must include only important public or private interests, the protection of which makes protection of confidentiality of information indispensable;
- the criteria of the law operate in an autonomous way and generally prevail over limitations set forth in other laws;
- in any case that rejects a request for information, the subject which is obliged to give the information pursuant to the law, must state the reason for the rejection, as provided for in the law;
- regardless of the damage that may be caused to public of private interests set forth in the law, for purposes of respecting the superior public interest, information must be given if its publication serves a bigger public interest;[26]
- apart for when the law sets forth mandatory limitations, or when interests of third parties are violated, it is up to the discretion of the institution whether to provide the information or not. –

Harmonization with regimes of information classification

The priority requirement for the adoption of a specific law on the right to information is its harmonization with applicable existing laws, which prohibit or limit the publication of state

[24] See article 4 of recommendation (2002)2 of the Council of Europe.

[25] This information can be found on the link: http://www.soros.al/nosa/Propozim_per ndryshime ne ligjin e informimit.mars07.pdf

[26] See article 66, of Law no. 9154 dated 6.11.2003 "On archives".

information in one way or another. The same requirement applies in the case of the classification of information for motives of national defence and security.

The reference for this harmonization request can be Law No. 8457, dated 11.02.1999, "On information classified "state secret"", amended, which establishes a system of classification in four levels: information that is very secret, secret, confidential and for limited circulation. Other applicable laws have similar classifications of the police secret, investigative secret, etc. The general rule in the compared practice is that, the classification of a certain document, as a rule, must not result automatically in the rejection of the request for information.

From this point of view it is of primary importance for the transparency to be dominated by the priority that the public interest has on receiving information on matters that have a direct impact on the entirety of elements that have an impact on the standard or quality of the relation with the right to information, towards limited interests that often bear individual interests, or those of a group that cannot be compared with the term "public".[27]

Regardless of the categorization of some official documents and the criterion of a deadline as the condition for the limitation of access to these documents, exclusively specified in the Law "On information classified "state secret"", or in the Law "On archives", the lawmaker has again foreseen the legal tool of discretional action, which consists of the de-classification of information, as well as the permit for early use of documents, or the right of the de-classification that the General Directorate of Archives has for documents classified as "State Secret".

Even though the law gives the opportunity, the administration in charge of its implementation and which has such a discretion does not exercise it, not only due to a mentality of "withdrawal", but also as the result of a gap in the harmonization of provisions set forth in the Law "On the right to information on official documents", with the above-mentioned laws.
In this sense, it must be clear when the individual with his request to exercise the right to information becomes a carrier of public interest, a fact which may and must serve as an impulse for putting into motion this discretion right that the above-mentioned authorities have for de-classification, or for giving permission for early use of documents the provision of which is limited.[28]

Each time a request for information is filed under these conditions, the legal mechanism that must act must serve for the initiation of an administrative proceeding for the de-classification of the official document case by case and not be tied exclusively to the set maturity date (for example in archives), or to the fact of the preliminary classification that has been done to the pertinent document.

Thus, the law "On the right to information on official documents", must set forth as a criterion that, the decision on providing or not information, must be taken on a case by case assessment of the legal criteria and actual public interest, and not on grounds of arbitrary deadlines.

- Deadlines for information provision

[27] This information is found in the following link: http://www.soros.al/nosa/Propozimperndryshimeneligjineinformimit.mars07.pdf
[28] Ibid.

The actual system of deadlines for handling requests for information pursuant to Law "On the right to information on official documents", recognizes a two-stage division, a division which, for the way it has been set forth in the law, shows some contradiction in the concept of the time related to an administrative proceeding, which in this case is a single process and not a process that would need several stages of deadline. On the other side, the implementation practice of these deadlines has shown some type of confusion related to the term "business day" with "calendar days", which has caused delays or protraction of the deadline set forth in the law, even beyond what is exclusively stated in it.

Effectively, the discretion recognized to the public administration in terms of the use of deadlines for handling requests for information, has resulted so far in a sense of abuse of deadlines and, moreover, it has not justified the administration's activity for this purpose.
According to the above, a reduction of the time limits, within which requests for information will be dealt with, is reasonable and practically possible, with only a single possibility for delay. Specifically, given that we are dealing with a specific law governing a specific right, then specific deadlines can be set for the regulation of the actual juridical relationship, that do not necessarily have to refer to other laws.

State authorities must take a decision "on the complete or partial rejection of a request within 15 days from its submission".[29] In case the request is accepted, the authority has 40 days to fulfil it (article 11). Due to the "particularity of the request or the need to consult a third party", the authority may extend the deadline with 10 days.[30]

These deadlines are among the longest in the European and international practice, where the average deadline for the provision of information is less than 15 calendar days. Moreover, rightfully or not, they are interpreted by the Albanian administration as business days, which means at least 3 and 8 calendar weeks, respectively.

Also, there are no motives for keeping the system on two deadlines, even though at first it may have been thought that the second deadline gives to the administration the opportunity to gather voluminous documents or documents from different sources. In fact, usually, the implementation of the law's criteria document per document needs that they are at first collected and studied, so that a legal decision can be made on whether to provide them/not provide them partially or entirely. As a result, at the moment the decision is made the institution must have gathered most of the information.[31]

In this sense, it is appropriate that the request for information be handled within a deadline of 10 business days (two calendar weeks), which includes the possibility of rejecting the request, as well as meeting it partially or fully. Due to causes that relate to particularly complex requests, a postponement option with 5 business days (one calendar week) from this deadline should be left, under the condition that the requester is made aware in advance of such postponement, within the 10-day deadline.

[29] See article 10 of Law "On the right to information on official documents".
[30] See article 12 of Law "On the right to information on official documents".
[31] This information can be found in the following link: http://www.soros.al/nosa/Propozimperndryshimeneligjineinformimit.mars07.pdf

- The obligation to help the requester and/or forwarding of the request

The principles of the right to information set forth the obligations of the subjects that are obliged to give information, to help the requestor of the information identify the documents he requests. Such an obligation is based on the fact that the administration of all subjects that must give information has fuller knowledge on the official documents it keeps and, after all, the clarification of the request facilitates the work of both parties, by obligatorily accepting the request in case it has the said documents, or, on the contrary, the obligation is that, to the possible extent, the request or requester be sent to the competent body that must give information pursuant to the law.

With regards to accepting the request submitted in these cases to the public authority by individuals, two specific cases can be identified;

1. When the person is present in the institution and establishes direct contact with the information "Office".
2. When the request for information arrives by mail, or in electronic ways.

In the first case help is direct and is given immediately by the employees who deal with and are in charge of the implementation of the right to information. In the second case, it is necessary to communicate in the same way in which the request was submitted. In this case the provision of the Administrative Procedure Code, which sets forth that for the request, complaint or petition by an individual sent, as a result of an acceptable mistake, to an administration body that does not have jurisdiction on the case submitted, it will be sent back to the complainant, requestor or petitioner, within a maximum of 48 hours, accompanied by the information as to which specific administration body it must be addressed to, is of help.[32]

By analogy, the institution or public authority directs within 48 hours the applicant with a relevant letter to another institution that is the holder of the requested information. The law "On the right to information on official documents", does not exclusively regulate such matters.

- Ways of information delivery

The requester is given a "full copy" of the requested documents, or an answer "in verbal form".[33] Although the law states that the requester is provided information in the most appropriate form, I think that in the case of persons with disabilities the law must envisage exclusively the provision of information in the most convenient form for them, depending on the disability that they have. For example, in the case of blind persons, information may be given in the form of special writing that is applied in schools of the blind.

Also, a provision that must be added is that the requestor shall be given documents in the format he prefers, including the electronic version, except for cases when this presents considerable technical difficulties.

- The cost of fees for the supply of information

[32] See article 26, Administrative Procedure Code.

[33] See article 7 of Law "On the right to information on official documents".

Pursuant to article 13 of law "On the right to information on official documents", the fees for the supply of information "cannot exceed the costs incurred for the supply of information", which includes only "direct material costs for the supply of information".
Abuses noticed in practice by subjects that set fees that are too high and artificial in order to make the delivery of information difficult, lead to the conclusion that the formulation of pertinent legal provisions is not correct and is, perhaps, evasive.

The term given in the law, "material expenses" can be interpreted in different ways, for instance, initial costs for gathering or producing information are somehow "material expenses". In the meantime, receipt of information recognizes other forms as well, about which the application of different payments is not necessary, such as for instance, inspection of documents at the entity that holds them, or their delivery in electronic form. In both cases the service offered must be free of charge.

The change that must be done in the law is that the term "fees for the supply of information", be defined as "costs for the reproduction".

This change should be made for several reasons: first, in the principles of the right to information itself the term provided about the service fee by the administration, when providing information on these cases, is "the cost for the reproduction of documents"; secondly, the term provided by the law may actually artificially increase the payment (fee) that the public authority sets in order to provide the information requested, because the working time of employees concerned to produce a copy of the requested document can be added to it, while the working time need not be added, because such work is paid for by the fund provided for employees' salaries; thirdly, this concept better supports the right of the subsidy that the state gives for the provision of certain services of the administration to individuals or entities who are unable to pay the financial obligation set forth for the service performed by the administration.[34]

- Institutionalization of Public Information Offices

Establishing structural and practical facilitations for the public to receive the information on official documents, is an obligation, which stems from the provisions of the Law "On the Right to Information on Official Documents".

Based on the legal practice of many countries, the offices of information are established as an indispensable core which coordinates all processes and other units within the institution responsible for providing information. Otherwise, the responsibility of implementing the law on information within every institution is of every one and no one, at the same time.[35]
Therefore, it is necessary that based on the legal specification, to establish and put into function the infrastructure for facilitating and correct application of the law, which will bring about the fulfilment and application of the right to information.

[34] See article 17, Administrative Procedure Code.
[35] This information can be found in the web address: http://www.soros.al/nosa/Propozimperndryshimeneligjineinformimit.mars07.pdf

Actually, the experience in the country shows a kind of confusion on this issue. First of all, due to the fact that there is a lack of by-laws that should be issued by the institutions themselves in applying the law (regulations) which would have envisaged all structural elements enabling the fulfilment of the right to information; secondly, even in the cases where those by-laws exist, they are of general regulatory nature and not specific ones on the right to information; thirdly, in most of public authorities there do not exist even the officials in charge of implementation and fulfilment of the right to information, as their primary job. The concept of an office means in itself a concrete facility, concrete devices and persons who work in it. This would have been the ideal case aiming to achieve as correctly as possible the right to information. The reality here shows that we cannot pretend for such a thing, especially for the local authority entities, where the difficulties are bigger to establish such an office. Under these conditions, establishing the office should be minimally reduced to appointing an official person, a "key person", who will be responsible, part time or full time, for the right to information as one of the work domains of the public administration.

As for other private entities, which can be added as subjects under the jurisdiction of the law "On the right to information on official documents", I am of the opinion that the discussion on the concept of an office should be more flexible due to the nature of their internal organization.

- Sanctions and compensation

The sanctions for violating the law "On the right to information on official Documents", insofar as it does qualify as a criminal offense, are regulated by the provisions of the Law No.7697, dated 7.04.1993, "On Administrative Offenses".[36]
Meanwhile, as for the compensation of the damage the law envisages that: "Everybody is entitled to seek reparation for the infringement of his/her rights, as recognized by this law, if such infringement causes damage.

The procedure on the appeal for compensation is provided for by law".[37]
Based on the practice so far, we found that the implementation of such provisions on the sanctions and reparations was almost inexistent.

Indeed, in many institutions, the request for information, be it from individual or civil society organizations, are treated with arrogance and negligence and there are many cases where administration is in a total silence by not providing any response, despite of the deadlines and internal administrative appeals. In most of the cases, this situation is intentional and motivated more by illegal reasons, rather than by organizational weaknesses.[38]

Taking into account the fact that the right to information can be used by individuals to protect their own private interests also, it is more than logical that the inability to benefit from this right is translated to the detriment of citizens. In the context of the right to information, it would suffice to prove that the refusal by the administration to provide the requested document is not

[36] See Article 14, of the Law "On the Right to information on official documents".
[37] See Article 17, of the Law "On the Right to information on official documents".
[38] This information can be found in the internet address: http://www.soros.al/nosa/Propozim per ndryshime ne ligjin e informimit.mars07.pdf

legally grounded and to show a causative relation between this illegal action of the administration and the damage sustained by the private persons, so that the latter can legitimately ask for a compensation from the guilty administration, as foreseen by Law No.8510, dated 15.07.1999 "On the Extra-Contractual Responsibilities of the State Administration Organs".[39] Adopting in the law of special sanctions on the violation of the provisions of this law, would bring about a better recognition of these sanctions by interested subjects and would increase their potential for implementation. The same can be applied also for the procedures of the compensation of damage.

The content of the law "On the right to information on official documents", foresees a number of material-procedural moments, which, if violated, as per definitions of the law, constitute an administrative offence or a criminal offense, depending on concrete cases. This fact provides the right that, as it is the case in a number of other applicable laws, for every violation qualified as an administrative offence, there shall be imposed one of the types of sentences as sanctions foreseen exclusively in the Law "On Administrative Offences"

- Special Protection for "Whistle-blowers"

The employees in a certain institution of the administration, who make public, in good-faith, the information related to the activity of institution, while violating at the same time their legal and contractual obligations towards their employers, believing that the information was true and that the issue in question is a serious one which has the interest of the public, will be called "whistle-blowers". In the cases when they make public the information related to the commission of a criminal offense, to ignoring a legal obligation, corruption, misadministration of a public institution, danger against public health, a threat against environment, there should be legal protection for them and they should benefit from this protection as long as they have acted in good-faith and as a result of reasonable belief that the information was completely true.

Therefore, we found that there is no special legal protection for this category of employees or officials in the public administration who might be in the position of a "whistle-blower". The special protection of "whistle-blowers", due to the violation of legal and also contractual obligations towards their employers, be it in the aspect of treating the employment relation and a legal-administrative relation, as well as the criminal aspect, there remains a legal gap in the Albanian applicable legislation, which requires the issuance of new legal acts, or completing and improving the existing applicable legal acts.

12. Parallel developments

The Institution of the People's Advocate has been recently informed through document no. 2194, dated 11.04.2013 of the Minister of Justice, about the compilation of two draft-laws, namely "On the right to information" and "On some additions and amendments to Law no. 9887, dated 10.03.2008 "On the protection of personal data", which has been sent to a number of state

[39] Law on the right to information – commentary – page 90.

institutions, as well as some foreign representation offices in Albania, so that they can give their opinion.

The drafting and consulting for these draft-laws has not included the institution of the People's Advocate, while it is the main actor in this area, in compliance with the specific competency recognized to it by Law no.8503 dated 30.06.1999 "On the right to information on official documents", article 18 of which states that the people's Advocate plays the role of the custodian for the implementation of this law. Moreover, the way these two draft-laws have been presented is concerning and violates the basic principles of the functioning of the institutional and substantial system of the rule of law.

In the official correspondence we have had with the Minister of Justice for this purpose, we have emphasized that, exclusion of the People's Advocate from the discussions on the drafting of a certain number of draft-laws, that regulate the juridical regime of human rights, exclusively envisaged in the Constitution, constitutes a violation of the principle of constitutional loyalty.

Apart from this, exclusion of the People's Advocate in the process of drafting "On the right to information on official documents", contradicts and violates the EU recommendations on the role and duty of the People's Advocate, as well as disregards a clear order of the Prime Minister regarding the inclusion of the People's Advocate in the process of drafting legal amendments, especially in the area of the human rights.
An obvious problem in the draft-law "On the right to information on official documents" is the decrease of the level of protection from the level of higher level institution, such as the People's Advocate, exclusively envisaged in the Constitution, at the level of independent institutions established by law.
In the proposed draft-laws a new public administration body is created, for which there is no specific organic law, but a mix of competencies that "bounces" you from one law to the other, without clarifying how the organ is created and what the basic object of its activity is. This right is given to the Commissioner for Data Protection, to whom the extension "on the right to information" was added through a lot of strain.

This title was created in such a rush that in the draft-law "On some additions and amendments to Law no.9887, dated 10.03.2008 "On the protection of personal data", it was forgotten that the object of the law has to do with the protection of personal data alone, therefore the proposed title of the law is incompatible with its object, regardless of the fact, that parallelly a new draft-law is being proposed, "On the right to information on official documents".

The authors of the draft-law "On the right to information on official documents" have forgotten to at least clarify in article 2 (Definitions) what we are to understand by "Commissioner on the Right to Information and Protection of Personal Data".
The protection of the right to information is inextricably linked to the competence of the Ombudsman for the protection and promotion of human rights in the country.

In the reports that accompany the draft law, it is noted that there is no compelling justification as to why the competencies of the People's Advocate to take care of the implementation of the law

"On the right to information on official documents", are transferred to the Commissioner for the right to Information and Protection of Personal Data.
The draft-law provides that the Commissioner also covers the activity of the private sector based on the new definition of the term "public authority" provided in paragraph 1 of Article 2 of the draft law "On the right to information on official documents", which also includes "commercial companies under the commercial companies' Law."

The People's Advocate in its proposals for amendments to the law "On the right to information on official documents", has insisted for years on expanding the circle of entities that have the obligation to provide information on official documents, but the definition given in the draft-law is neither correct, nor in accordance with the provisions of the Council of Europe Convention "On access to official documents," Tromso, adopted at the meeting of the Committee of Ministers of the Council of Europe on 27.11.2008.[40]
We note this fact because if we refer to the definitions in the acts of international organizations we are a member of, then regardless of the changes made to the draft-law, still, the jurisdiction remains within the scope of the people's Advocate jurisdiction.

We deem that, first of all, what matters is to guarantee the right to information for the individual, or any entity, and not to impose sanctions against violators of the law, as provided in the draft-law, through appropriate penalties. Moreover, there is no direct correlation between the imposition of sanctions and increased implementation of the law and guaranteeing the right to information. What matters is to provide in the draft-law clear rules and definitions for how the public administration organ or private entity shall operate in order to avoid abusive and subjective attitudes. Meanwhile we bring attention to the fact that the People's Advocate at the conclusion of the administrative investigation, where a violation has been found, may propose also, among others, disciplinary measures against the liable officer, who has committed the violation by denying the right to information on official documents.

On the other side, for purposes of having a clearer overview of the condition of the right to information and efficient mechanisms at its service, the reports accompanying the draft-laws should have assessed the success of the Commissioner for the Protection of Personal Data in imposing fines; how many fines she has imposed in a year, how many of those have been upheld by the court, and how many have been executed?

It was important to clarify the extent to which, after all, the fines imposed for purposes of improving the implementation of the law for the protection of personal data?
Effectively, there is no such study as an indispensable argument to support the idea of establishing the Commissioner for the Right to Information and Protection of Personal Data.

[40] In article 1, point 2, letter "a"/"ii", the Convention gives to signatories the opportunity, at the moment of ratification, to declare that, the definition of "Public (state) authorities" includes one, or more, of the definitions:

d) Legislative bodies as regards their other activities,
e) Judicial authorities, as regards their other activities,
f) Natural or legal persons insofar as they perform public functions, or operate with public funds, according to national law.

The authors of these two draft-laws do not understand the fact that the daily activity of the People's Advocate is in essence a vital fulfilment of the right to information.

The proposal of draft laws seeks the removal of the competencies of the People's Advocate, by directly aiming to weaken this Constitutional Institution. Removal of competencies, at the same time, destroys the constitutional balances and distorts the purpose of the mechanisms established by the Constitution, in particular, the role of the People's Advocate, as a jurisdictional guarantee for the protection of fundamental human rights and freedoms, which is achieved through the Institution that I represent, as one of the constitutional entities that are legitimated to address the Constitutional Court, pursuant to Article 134 of the Constitution.

Transfer of the competency to another institution established by law brings about serious barriers for the People's Advocate in addressing the Constitutional Court and, as a result, violates the mission of this Constitutional Institution for the protection of fundamental human rights and freedoms, in an obvious violation of the Constitution.
The attempt to reduce the competencies of the People's Advocate and to transfer them to institutions established "in a hurry", besides being denigrating for the work and professional and positively assessed activity of the People's Advocate, is also a tendency that goes against the European trend, which aims to give to a single institution competencies of the same area that have been distributed to different institutions.

This method of administration avoids overlapping of competences, reduces administrative costs and improves the efficiency of operations for the protection of human rights.
The accompanying reports mention countries that have adopted a legislation which merged the two laws, the one on information and the one on the protection of personal data. This is as true as the fact that many other developed countries have recognized such function and have assigned it to this institution, thus the People's Advocate, within the general competencies, just as there are neighbouring countries which, despite of the changes in the legislation, are facing a lot of problems during the implementation.

The competency of the guardian of the implementation of the law "On the right to information on official documents", is and must remain with the People's Advocate, who has the human, infrastructural, as well as legal capacities for this purpose. Support for this institution with a better legislative basis in this area is needed to enable maximum efficiency in the protection and promotion of the right to information and, in reality, at no additional costs. Strengthening of competencies on one side, or asking for explanations and increasing of responsibility for the implementation of the law on the other side are two vectors that go parallel, but also "interlace" at times, by creating costs, practices and precedents that do not serve to the general interests. The employees of the People's Advocate institution are now trained and well-informed on the right to information, whereas the staff of the Commissioner for Protection of Personal Data, we emphasize, will not only bring about additional costs for an increase in their number, but will also require time to adopt and to establish the needed professional capacity to exercise this new competency of the Commissioner.

This attempt to reduce the powers of the People's advocate comes exactly when we are in the final phase of preparations for the "Re-evaluation of Accreditation of the Institution of the People's Advocate".
The ICC Sub-committee on Accreditation, following accreditation with status A of the people's Advocate in 2008, recommended: "..... some criteria which must be met in the future by the institution in order to meet the accreditation criteria as a category A institution, as well as maintaining the same accreditation category in the next evaluation." The said Recommendation had to do with: "*1) Strengthening of the mandate of the People's Advocate to include the promotion of human rights with reference to General Assessments 1.2 "Mandate of human rights"; 2) Increase of accessibility (outreach) of the People's Advocate, as required by the Paris Principles and for this purpose it is recommended that a continuous presence be established, for example, through regional offices; 3) Need for periodic cooperation of the People's Advocate with the international system of human rights, referred to the General Assessments 1.4 "Cooperation with the international human rights system".*

Even though a nearly 5-year period from the appearance of the above recommendations has lapsed, we have concluded that there have been no attempts to improve the said law. In the conditions when the reconfirmation of the institution of the People's Advocate as a category A institution is an institutional obligation we have asked for cooperation with the Ministry of Justice and Euralius Mission to enable the fulfilment of the above-mentioned recommendations.

For this reason, a mission expert from Euralius came to our institution, collaborated with our specialists, and after studying the Albanian legislation, the international recommendations and the international legislation on human rights, prepared two reports on the problems found and areas of intervention in the law "On People's Advocate", changes which were fully consistent with the recommendations of the Sub-committee cited above. These reports were sent to our two institutions; the People's Advocate and the Ministry of Justice by EURALIUS Mission at least since several months ago.

We have repeatedly insisted before the Government and Parliament that there is need for improvements to the current law on the People's Advocate, so that it includes additional funding in order to enable the opening of regional offices and a full exercise of the powers that the law gives us. Just a few months ago, even though the Law Committee approved our request for the addition of three employees in our institution for purposes of opening three other regional offices, our request was eventually rejected in the parliament and the ground for this was lack of funds.

Effectively, the financial burden that this change would bring on the budget was minimal, because the opening of other regional offices was a recommendation and international obligation and that, additional funds were provided by the Danish Government, which would be used exclusively to furnish the offices and to conduct activities, while the Albanian government only had to pay the salaries of 3 specialists.
For all these reasons we asked the Minister of Justice to withdraw from this initiative which has nothing in common with law-making processes of European standards, for the two bills introduced are essentially not in function of the legal and justice system and do not serve at all to

the principles and way of functioning and exercising of rights in a country where the rule of law prevails.
This issue of concern is shared and consulted with representatives of the EU, the United States Embassy, the Council of Europe, OSCE and international organizations in the field of human rights, a member of which the institution of the people's Advocate is, or which it cooperates with.

13. Conclusions

1. Protecting the right of access to official documents, affirmed in a number of international acts and in the Constitution of the Republic of Albania sets the rules for a proper functioning and transparency of the Public Administration towards the public in its daily work. This method of operation requires that citizens be aware in the exercise of control over the administration, in order to promote its efficiency.

2. Principles of international law on the legislation pertaining to the right to information establish standards for national and international regimes, which give meaning to the right on freedom of information. Our legislation on the right to information has absorbed them considerably, but there is room for improvement, especially regarding legislation relating to principles that have not yet found their place in it.

3. In the general framework of the protection and promotion of human rights, Law No. 8454, dated 4.02.1999 "On the people's Advocate", but in particular Law No. 8503, dated 30.6.1999, "On the right to information on official documents", assign a special mission to the people's Advocate, which is that of the guardian of the implementation of and adherence to this right by the public administration.

4. The activity of the People's Advocate in this area is deemed to be not only that of a guardian of the implementation of the law on the right to information, but as a promoter and implementer of best practices for the protection of and respect for the right to information. The measures taken in this regard and numerous recommendations of a general and individual nature identify the important role that it has played and continues to play for this purpose.

5. Law No. 8503 dated 30.06.1999, "On the Right to Information on Official Documents", as well as pertinent provisions for this right in the Code of Administrative Procedures are known insufficiently and only from a limited part of the administration, which brings about difficulties and obstacles in the normal and transparent functioning of the Public Administration in the latter's relationship with the public. The situation remains the same in terms of the knowledge that the public has with respect to this right.

6. The jurisprudence of the judicial system on issues of respect and protection of the right to information is limited. Even the jurisprudence of the Constitutional Court fails to highlight the importance of protecting this right, in the sense of using remedies that are available to legal entities for the protection and respect of the right to information.

7. Law “On the right to information on official Documents,” as the basic law for determining the legal regime of the right to information in the country, clearly needs improvements in many of its elements.

8. The drafting and approval of new legislation for the protection and respect of the right to information should first and foremost include as many actors and important factors that give meaning to the right to information, where the People’s Advocate, undoubtedly, takes a key place. Expected and required amendments and improvements of this legislation should further strengthen the competences and role that the People’s Advocate institution plays naturally in this area.