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ASSISTANCE ON THE BETTER PROTECTION OF THE INFORMATION RIGHT THROUGH THE IMPLEMENTATION OF THE ECHR STANDARDS IN THE ALBANIAN COURTS

TIRANA, 21TH JULY 2015

It is a great pleasure for me to welcome you to our conference on the topic of „Assistance on the better protection of the information right through the implementation of the ECHR standards in the Albanian courts“ on behalf of the Rule of Law Program South East Europe of the Konrad Adenauer Foundation.

I am delighted to welcome so many high ranking personalities who play a vital role in Albania. And it is a great pleasure for me to welcome Professor Angelika Nussberger, German judge at the European Court of Human Rights.

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

In the past years, the Albanian parliament has passed several important laws; among them was the law on the introduction of Administrative Courts which was passed in 2012.

In countries that obey the principles of rule of law the exercise of public power must be

consistent with the law. It is the role of administrative courts to ascertain that official acts are consistent with the law.

Furthermore, administrative courts

- relieve the excessive workload of judges at the other courts, reducing thus the lengthy and expensive procedures at all levels of the judiciary
- ensure that legal action of citizens against public institutions are dealt by specialized judges and they also
- increase security for investors in the business sector who depend on a quick settlement of their legal complaints by highly competent judges.

It must be noted that the creation of administrative courts was a recommendation of the EU Commission, their implementation and operation has been carefully supervised. The Commission noted the progress made in this respect in its Albania Progress Report 2014, but understandably there are

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still some shortcomings in the court operation. It is only a matter of time that these initial problems will be resolved.

An important task of administrative courts is to ensure that the right of citizens to receive and impart information is respected by public authorities.

It is a vital right.

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

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

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

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

The ECHR changed its approach on 10 July 2006 in the case of *Sdruzeni Jiboceske v Czech Republic* and stated that the refusal to access to public information was an interference with the right to receive information guaranteed by Article 10. In this case, the Court pointed out that “when the requested documents are related to a matter of public interest or an ongoing public debate, the states will be under a strict scrutiny as to whether the reasons invoked to refuse a

request for access to such documents were relevant and sufficient.” The Court decided that the refusal of access to information was justified in the interest of national security, for the protection of the rights of others and for the protection of health in accordance Article 10(2) of the Convention.

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

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

So the ECHR has set clear standards.

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

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

“At its own initiative and where appropriate, a public authority shall take the necessary measures to make public official documents which it holds in the interest of promoting

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the transparency and efficiency of public administration and to encourage informed participation by the public in matters of general interest.”

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

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

By this law:

- a new body was set up, charged with supervising and monitoring compliance with the new law: the existing Commissioner for the Protection of Personal Data is vested with extensive competences and disciplinary powers and is renamed to Commissioner for the Right to Information and Protection of Personal Data.
- shorter deadlines were set up: the deadlines for responding to requests of citizens are shortened to 10 days.
- proactive dissemination of information: public authorities are now obliged to make certain categories of information available proactively.
- more extensive definitions of the term public information and public authority were introduced.
- every public authority is obliged to designate a Coordinator for the Right to Information whose task will be to supervise the authorities responses to information requests.

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

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

I hope that the judges that took part in the trainings that were organized in the context of this project found them beneficial for their work and I would like to thank each of them for their participation.

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

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