

# Restrictions on Access to Environmental Information in Albania

by Enkelejda Malaj

Aarhus Convention Task Force on Access to Information

Geneva, 08-10 December 2015



### The Right to Information

- O Constitution sanctifies the right of information as a fundamental human right Art. 23 & Art. 56 (specifically for environmental information);
- O Law No. 10431, 09/06/2011, "On protection of the Environment", Art. 13 & Art. 47 "without having or showing a specific interest";
- o Law 10448, 14/07/2011, "On Environmental Permits", Art. 23, public SIM System of Environmental Information;
- O Law No. 119/2014, "On the right of information"; Art. 3, "without having to explain motives"; and "within 10 working days", or maximum "15 working days", if the PA needs to forward the request to another institution;
- o Law No. 152/2013, "Civil Service", Art. 44, "the obligation for transparency and confidentiality".



### Restrictions to the Right to Information

• Code of Administrative Procedures in the Republic of Albania, Law 44/2015

Main Principles: Legitimacy Art. 4, Transparency Art. 5, Information Art. 6, yet

• Protection of state secret, Art. 7

"Any public official, or person called to be present at any administrative procedure, is prohibited to disseminate any information he/she has learned during the administrative procedure, when such information is "state secret", according to legislation in force.

- **Protection of confidentiality**, Art. 8 "all parties involved in an administrative procedure have the right to request their information to be treated in line with current legislation on protection of personal data"
- **Proportionality** Art. 12 "restriction must always be practiced in line with the proportionality principle".



#### Restrictions to the Right to Information

• Protection of state secret, Art. 7 refers to Law 84 57, 11.02.1999, "On information classified as state secret" amended:

"information that violates *national security* (independence, territorial integrity, constitutional order, international relations).

- Art. 10, classification is forbidden: If done to violate legislation, inefficiency or malfeasance of civil administration, to refuse information to an individual, organization or institution, if its does not violate national security".
- Art. 19, public information: institutions create bibliography of declassified information.
- Art. 21, the right to information: a person can have access to classified information, if he/she manages to obtain a security certificate, after having demonstrated the need to obtain the information, agree to non-disclosure of information, etc.



#### Restrictions to the Right to Information

- o Law No 119/2014, dated 18.09.2014, "On the right of information"; Art. 17
  - The right to information can be restricted if it is indispensable, proportional and if the requested information damages the following interests: the right to one's private life, trade secret, copyrights, patents. (unless the owner of these rights has consented or if public interest is higher).
  - O The right to information can be restricted if it is indispensable, proportional and if the requested information damages national security, prevention or investigation of a criminal act, progress of an administrative procedure, equality of parties at court, etc. (unless *public interest is higher*).
  - O The right to information can be restricted, if in spite of the efforts of the public authority to help, the request remains illusive, or if it is impossible to obtain or identify the requested information.
  - O The right to information can not be automatically restricted if the requested information is found in documents classified as state secret. PA requests the procedure of revision of category of information, by the entity that has classified the information, and requests postponement of deadline for reply within 30 days.
  - o If information is restricted or refused, *PA gives an argumentative response*. If a part of the information is restricted, the rest must be made available, explaining what and why has been restricted.



#### Enforcement mechanisms

- Law No 119/2014, dated 18.09.2014, "On the right of information";
- Commissioner for the right of Information:
  - monitors full implementation,
  - issues fines, and
  - reviews all complaints if public right to information has been infringed by the public authority; (30 days from refusal or no reply)
- Establishes administrative fines for public officials and institutions for infringements; from 1 month salary to 6,
  - nominal fines vs institutional fines
- Administrative Court final decision



#### Enforcement mechanisms

- Law No 119/2014, dated 18.09.2014, "On the right of information";
- O Transparency Programs for all public institutions made obligatory; from February 2015
  - Coordinator for the Right to Information in every public institution, contact information made public online (email and mobile number)
  - Long list of documents made public on website: legislation, structure, staff, budget, information procedures, public services, monitoring mechanisms, audit reports, procurement, contracts and financial value, etc. (including links)
  - The register of requests for environmental information updated every 3 months and uploaded on ministry website.



8/4/2015

Sqarim për terminologjinë e uljes së pamjes dhe standarteve

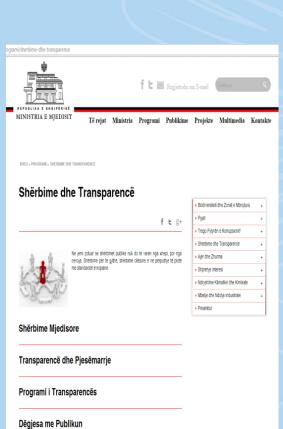
VKM Nr. 803 date

7. 1/4/15

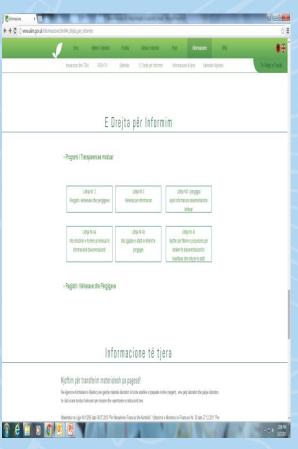


#### Transparency Programs

#### MINISTRIA E MJEDISIT







http://www.mjedisi.gov.al/al/programi/sherbime-dhe-transparence http://www.akm.gov.al/informacione.html#e drejta per informin

http://akzm.gov.al/index.php?option=com\_k2&view=item&layout=item&id=98&Itemid=411&lang=en



# Challenges

- Legislation framework and instruments to guarantee public right to information are in place;
- Low awareness at local level; new administrative reform and decentralization process might help;
  - Various projects on identifying needs for institutional and capacity building at local government level; staff change;
- In practice, cases of restrictions for requested information are rare; however they include:
  - identities, personal data of subjects, operators, old archives, not in possession of the requested information, etc.;
  - information from another institution, inspection procedures challenging for deadlines;



## Raising awareness at local level

## • During 2014:

12 regional trainings on obligations deriving from Aarhus Convention for regional Environmental structures, local authorities, general public, civil society, Aarhus centers, etc.., on information, etc.

#### • During 2015:

12 trainings on obligations deriving from Aarhus Convention for regional staff, local authorities, general public;



#### EC Progress Report 2015 for Albania

"Public consultation, access to information and cooperation with civil society organizations

have improved".

4.27. Environment and Climate Change, pg. 67

Thank You!

Enkelejda Malaj
Head of Transparency & Communication
Albanian Ministry of Environment
<a href="mailto:enkelejda.malaj@moe.gov.al">enkelejda.malaj@moe.gov.al</a>