

THE RIGHT TO INFORMATION DURING NATURAL DISASTERS IN ALBANIA 2020

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1. INTRODUCTION



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This report was prepared by Dorian Matlija with the assistance of Res Publica Centre staff, at the request and with the support of Civil Right Defenders.

This report addresses the implementation of special principles and rules on freedom of information and government performance during periods of natural disaster, with respect to the publication of reliable notifications, proactive transparency, and the response of institutions to requests for information.

In parenthesis, it is worth noting that emergency situations are not handled with the usual tools and methodologies that take into account the assessment of routine elements provided by legislation. In times of crisis, the way the government communicates with the public, its openness to journalists and cooperation with them to jointly manage the crisis and its side effects caused by false news that create panic, are of paramount importance.

During crises, access to information is more important than ever. Only through accurate and prompt information can the public know exactly how the government is handling the crisis. In this way, the government also gains the trust of the public and reduces the possibility of misinformation. The government is responsible for policies during crises and if it cuts communication with the public, this can create room for abuse and corruption.

Precisely for the above reasons, this report will focus on the specific standards of the Council of Europe pertaining to freedom of expression and information in situations of crisis and how these standards are reflected in the actions of the Albanian Government during the crises caused by the earthquake of 26 November 2019 and the Covid-19 pandemic from March 2020 onwards.

Based on the findings presented in it, the report is accompanied by relevant recommendations to improve Government's communication with the public in order to increase transparency and public confidence in the Government during crises for the benefit of all.

2. METHODOLOGY

This report aims to answer the following questions:

1. What are the relevant international standards for freedom of information in crisis situations?
2. Have international standards for freedom of information been applied in crisis situations?
3. How has freedom of information been reflected in practice during the natural disaster caused by the earthquake of 26 November and the Covid-19 pandemic?
4. How does the implementation of the Law on the Right to Information during periods of natural disasters compare to the normal situation, in quantitative and qualitative terms?

In order to answer these questions, the following having been evaluated during the research:

- International standards relevant to the right to information in cases of natural disasters;
- Relevant legislation regulating the right to information;
- Data from the monitoring of proactive transparency of the most important institutions in the country;
- A comparative assessment of responses of institutions to requests for information;
- Other sources, such as reports of organisations, articles in online media on cases of violation of freedom of information during the state of natural disaster caused by the earthquake of 26 November 2019 and the Covid-19 pandemic;
- Semi-structured interviews and opinions obtained from civil society activists, journalists and lawyers, engaged in issues that are relevant to the topic of the report.

The report is divided into four parts:

- The first part deals with the standards of the Council of Europe, as the most relevant standards for the protection of freedom of expression and information in crisis situations;
- The second part deals with concrete cases of violation of the right to information based on international standards;
- The third part deals with measurable findings of the monitoring and measuring the responses of the institutions to requests for information. In addition, this part provides a comparative evaluation of the work of the Commissioner for the Right to Information;
- The last section summarises the findings and recommendations.

3. COUNCIL OF EUROPE STANDARDS ON THE RIGHT TO INFORMATION IN TIMES OF CRISIS

According to the Council of Europe, providing prompt and accurate information on public health risks and measures taken by governments to counteract these risks is an essential part of tackling the Covid-19 pandemic.¹

The basic standards for freedom of information are set out in Article 10 of the European Convention on Human Rights. This article stipulates sanctions for the violation of the right to give and receive information; therefore, freedom of expression and information are protected by this principle.

Although Article 10 does not contain any specific reference to freedom of the press and the role of journalists, the European Court of Human Rights not only established from the outset that the term “anyone” includes journalists, it also provided a wider scope of protection for journalists under Article 10 because of the important role they play in a democratic society, namely that of a “public watchdog”. As a result, the Court has repeatedly acknowledged that journalists should enjoy a wider scope of exercising their right to freedom of expression and information under Article 10 than other individuals and will evaluate whether the person in question acted in his/her capacity as a journalist or not.²

The Court acknowledged that news is a “perishable” good and that delaying the publication of an event beyond a reasonable time in order for the journalist to check the accuracy of the event in the particular circumstances of each case could diminish the value of the event.³ Thus, in case of

important news, when journalists are under time pressure and cannot postpone the publication of the news, the Court takes into account the urgency of the case when assessing whether the journalists acted responsibly.⁴

Also, according to the Court, member states have an obligation under Article 10 to guarantee the diversity of the media to ensure that the public has access to content which reflects as much as possible the diversity of opinions encountered in the society to which the programmes are addressed.⁵ Freedom of expression must be rooted in the principle of pluralism to ensure that the public has access to a range of information and ideas. A situation in which one group dominates the content of the print or audiovisual media in the country [...] cannot be justified under Article 10, unless it can be shown that there was an urgent need for it.⁶

The Council of Europe, in addition to the ECHR, has also approved the Convention on Access to Official Documents (Tromsø Convention), which enters into force, after ratification by the tenth state (Ukraine), on 1 December 2020. This document has not been ratified by Albania, but, in general, domestic legislation provides rules similar to those of this Convention.

In principle, public authorities should publish, without any request, the information they possess in the interest of promoting transparency and efficiency of public administration and encourage informed participation by the public on matters of general interest. Domestic legislation provides for this aspect in “transparency

1 See: <http://www.coe.int/en/web/freedom-expression/freedom-of-expression-and-information-in-times-of-crisis> The Council of Europe Declaration, 21 March 2020 “Freedom of expression and information in times of crisis”.

2 *Jaworski v. Poloni* [GC] (1999), paragraph 32: “Jaworski v. Poland [GC] (1999), paragraph 32: The applicant’s observations were not part of an open discussion on matters of public interest; nor did they have to do with the issue of press freedom as the applicant, although a journalist by profession, clearly acted as a private individual in this case.”

3 “*The Observer and the Guardian v. United Kingdom*” (1991).

4 “*Bozhkov v. Bulgaria*” (2011).

5 “*Informationsverein Lentia and Others v. Austria*” (1993).

6 *Di Stefano v. Italy* [GC] (2012).

programmes” which, as will be shown below, are still far from acceptable standards.

Information in the time of crisis is not the main subject of the above arrangements, as this problem is completely solvable if the usual rules are interpreted and applied correctly. However, for special circumstances, the Council of Europe has also provided a soft law instrument that addresses precisely the aspects of freedom of expression and information in crisis situations. At their 1005th meeting, the Committee of Ministers adopted the *Guidelines of the Committee of Ministers of the Council of Europe on protecting freedom of expression and information in times of crisis*.⁷

This document, *inter alia*, reads that:

1. Not only the media coverage can be crucial in times of crisis by providing accurate, timely and comprehensive information, but also that media professionals can make a positive contribution to the prevention or resolution of certain crisis situations by adhering to the highest professional standards and by fostering a culture of tolerance and understanding between different groups in society;
2. Member states should assure to the maximum possible extent the safety of media professionals – both national and foreign. The need to guarantee that safety, however, should not be used by member states as a pretext to limit unnecessarily the rights of media professionals, such as their freedom of movement and access to information;
3. Member states should guarantee freedom of movement and access to information to media professionals, in times of crisis. In order to

accomplish this task, authorities in charge of managing crisis situations should allow media professionals accredited by their media organisations access to crisis areas. Where appropriate, accreditation systems for media professionals covering crisis situations should be used in accordance with Principle 11 of the Appendix to Recommendation No. R (96) 4 of the Committee of Ministers to member states on the protection of journalists in situations of conflict and tension;

4. Military and civilian authorities in charge of managing crisis situations should provide regular information to all media professionals covering the events through briefings, press conferences, press tours, or other appropriate means. If possible, the authorities should set up a secure information centre with appropriate equipment for the media professionals;
5. Member states should not misuse in crisis situations libel and defamation legislation and thus limit freedom of expression. In particular, member states should not intimidate media professionals by law suits or disproportionate sanctions in libel and defamation proceedings;
6. Member states should always bear in mind that free access to information can help effectively resolve the crisis and expose abuses that may occur. In response to the legitimate need for information in situations of great public concern, the authorities should guarantee to the public free access to information, including through the media;
7. International and national courts should always weigh the public’s legitimate need for essential information against the need

⁷ See CM/Del/Dec(2007)1005/5.3-appendix11, that can be accessed at: https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=09000016805ae60e

to protect the integrity of court proceedings;

8. Member states should consider criminal or administrative liability for public officials who try to manipulate, including through the media, public opinion exploiting its increased vulnerability in times of crisis;
9. Self-regulation as the most appropriate mechanism for ensuring that media professionals perform in a responsible and professional way needs to be made more effective in times of crisis. In this regard, co-operation between self-regulatory bodies is encouraged at both the regional and the European levels;
10. At the national level, relevant stakeholders such as governmental bodies, regulatory authorities, non-governmental organisations and the media, including owners, publishers and editors, might consider the establishment of voluntary fora to facilitate, through dialogue, the exercise of the right to freedom of expression and information in times of crisis;
11. Governmental and non-governmental donor institutions are strongly encouraged to include media development and media assistance as part of their strategies for conflict prevention, conflict resolution and post-conflict reconstruction.

It is this list that largely guides the comparative standards used to produce this report. The reason is that the usual methods for assessing the right to information are designed for a normal situation and cannot be used in isolation to assess the application of the right to information in crisis situations.

4. TRANSPARENCY IN ALBANIA DURING THE 2019-2020 CRISES

As follows from the Council of Europe guidelines, crisis media coverage plays a key role in providing accurate and timely information. Media professionals can make a positive contribution to preventing and resolving certain situations.

4.1. CENTRALISATION OF INFORMATION RESULTING IN PUBLIC INSECURITY AND EXPLOITATION FOR PROPAGANDA

The situation caused by the earthquake of 26 November 2019 was followed by a state of panic about the possibility of subsequent aftershocks, uncertainty about the number of victims or even material damage, and the problem of temporary and long-term housing for earthquake victims.

In an analysis of the Reporter.al portal (operated by BIRN Albania), the Government allowed only ERTV cameras (a personal online television of the Prime Minister) to report from Government meetings, blocking media access to accurate and true reporting of the situation. “Blocking information and replacing it with propaganda helps neither to calm the public nor to manage panic. Therefore, the blame should not be placed on the citizens who turn their eyes to wherever they can be informed, as long as their government does not allow them to do so” was posted by BIRN.⁸

Later, on 9 March 2020, it was officially announced that the Covid-19 pandemic is affecting Albania. The Government responded immediately by ordering a two-month lockdown with strict restrictive measures. The state of emergency was declared on 25 March 2020 and remained in force until 23 June 2020. At this point, on 31 March 2020, the Albanian state temporarily

derogated from several articles of the Convention for the Protection of Human Rights (Articles 8 and 11 of the Convention, as well as Articles 1 and 2 of the Additional Protocol and Article 2 of Protocol 4).

Osservatorio Balcani e Caucaso Transeuropa wrote that COVID-19 has exposed the weaknesses of Albania’s public information. The monopolisation of communication on the coronavirus has raised concerns over the Government’s accountability for pandemic management, as well as media freedom.⁹

During this time, the Government took an extremely harsh rhetorical approach to the virus, constantly referred to the situation as “warlike” and [as a war] against an “invisible enemy”, pulling out armoured vehicles circulating on the streets and imposing heavy fines (up to 5,000,000 ALL or 40,000 EUR), which led to intimidation of the population.

In mid-May, the restrictions were eased and life almost returned to normal. At this time, the level of infection was less than 20 persons/day, but it gradually increased to 300 persons/day.

According to OBC Transeuropa, “In general, some confusion has been noticed among the population regarding the adopted measures, as well as distrust and negative perceptions on Albania’s capacity to properly tackle the situation, especially when considering the number of medical professionals that recently migrated to Germany. There is some fear that the infection rate may still be subject to change.”¹⁰

According to the same source, a key aspect in the management of the pandemic lies in the effective and consistent communication of risks. Like other countries, Albania established

8 See: <https://www.reporter.al/shperndarje-paniku-policia-perndoci-gazetaret-pas-termetit-dhe-covid-19/>

9 See: <https://www.balcanicaucaso.org/eng/Areas/Albania/Albania-public-information-becomes-a-casualty-of-COVID-19-202724>

10 See: <https://www.balcanicaucaso.org/eng/Areas/Albania/Albania-public-information-becomes-a-casualty-of-COVID-19-202724>

a Technical Committee of Experts in charge of taking decisions to contain the pandemic. However, the Committee's work was marked by limited public information on its competences or the extent to which its recommendations were converted into political decisions. Until early May, even the name of the Committee's chairperson was not disclosed.

The pandemic provided an opportunity for propaganda by Prime Minister Edi Rama, who took the lead in communicating with a constant presence on social media and online broadcaster ERTV. It is reported that only in the first month of the lockdown, the Prime Minister published 407 Facebook posts (13/day) and 47 hours of videos, thus creating Albania's first experience of governance via social media.¹¹

“Basically, the Prime Minister has monopolised not only the content (what we learn and think about the crisis), but also the framing (in what ways we think about the crisis) and the media (how we receive the information)” explains Blerjana Bino, co-founder of Science and Innovation for Development (SCiDEV).¹² Most decisions were first published on the Prime Minister's Facebook account and later in the Official Gazette, while “press conferences” were actually not open to journalists.

Such centralisation of information was motivated by a need to fight fake news and ‘infodemia’ on the coronavirus. Nevertheless, “the Government's state-of-war narrative threatens human rights and liberties as well as media freedom in an unproportionate manner vis-à-vis the situation”, argues Bino.

The centralisation of information by the Government, and in particular by the Prime Minister through his personal online media, reached

its peak when, in an attempt to respond to the lack of information on what happens in hospitals where COVID-19 patients are treated, the Prime Minister prepared an extended chronicle, edited by ERTV (his personal media) and distributed for broadcast to all traditional media. But, as a sign of protest, two serious media outlets in the country, A2 CNN and Euronews Albania, refused to broadcast this chronicle and openly released their positions against the situation where journalists are not allowed to produce the news themselves and where the news are prepared beforehand and made available through the personal media of the Prime Minister.

In its protest, A2 CNN stated: “We support the excellent work of doctors, their sacrifice, just as we have offered and continue to offer endless cooperation to the Ministry of Health and the entire state apparatus in this fight that belongs to us all. But, on the other hand, we cannot accept to be used only as media assets to broadcast materials prepared and edited by the Prime Minister. Asking for media cooperation does not mean we stand in front of your rostrum when you need us to, it means giving the media space to look at problems through their lens ... In the end, we do not know how long it took the Prime Minister's journalist to get into that hospital, what resources he used or how long it took him to convince the doctors or patients to become part of this clip that smells of propaganda. What we have to learn from what we saw today is that even our term “exclusive” has been stolen.”¹³

In its reaction, Euronews Albania stated: “Although he chose to attack political opponents, the Head of Government has been serving exclusive images from the Covid 1 hospital to

11 See: <https://www.facebook.com/photo.php?fbid=2981601841883799&set=a.118774118166600&type=3&theater>

12 See: <https://www.balcanicaucaso.org/eng/Areas/Albania/Albania-public-information-becomes-a-casualty-of-COVID-19-202724>

13 See: <https://youtu.be/QXnGLRSEzdo>

the media for two days through his Facebook channel, but they are portraying one reality, that of ERTV. Euronews Albania chose not to broadcast the edited images with effects and music but to ask the Prime Minister why he did not leave the mission of informing the public to the media. The Head of Government's argument was the so-called "fake news".¹⁴

Both of these televisions, known as franchises of two internationally prestigious media outlets, have tried to set a standard in the Albanian media landscape, but have not been followed by other media, suggesting a systemic problem. It seems that they are ready to fight censorship and centralisation of information.

In the Reporters Without Borders 2019 World Press Freedom Index Report, Albania shows deteriorating media freedom ranked two places lower than a year ago.¹⁵ According to the report, the reasons for the decline are the laws against media freedom, specifically the government's Anti-Defamation Package aimed at closing down critical media. In 2020, Albania fell another two positions, now ranking 84th.¹⁶

The above examples are meant to provide an overview of the possibility of accurate and timely information during a state of emergency, while there is a wealth of unverified information that has polarised the public into opposing positions about the existence of risks and the effectiveness of government measures proposed by the scientific community or not, which in itself has displayed contradictions in facts and analysis. Such a situation has not contributed positively to the formation of a culture of tolerance and understanding between different groups in society

and to the relationship of trust between the public and the Government.

4.2. GUARANTEEING FREEDOM OF MOVEMENT AND JOURNALISTS' ACCESS TO CRISIS AREAS

In the case of the COVID-19 pandemic, journalists were unable to do their job because their movement was restricted and they were unable to go places, meet with officials, politicians, and provide first-hand information to the public.

One of the main problems reported is the inability of journalists to enter hospital facilities with patients treated for COVID-19.¹⁷ Journalists keep reporting based solely on figures and other data published by the Ministry of Health, without access to alternative sources to verify the official information. Moreover, after the suicide of a 29-year-old patient inside the premises of one of the hospitals where Covid-19 patients are being treated, even family members have not been allowed to enter,¹⁸ with fines in the amount of 500,000 ALL (approx. 4000 EUR) in case of violation.¹⁹

Obviously, journalists who report on these events of interest to the public have no information other than the official source that is published daily in a brief reporting of figures.

Although the Government banned the movement of citizens, journalists were allowed to move by obtaining a special permit through the e-Albania portal. But a journalists' job cannot be done if their sources of information are not allowed to move freely, even when they are.

14 See: <https://youtu.be/FJaiTDcoPvg>

15 See: <https://rsf.org/en/ranking/2019>

16 See: <https://rsf.org/en/ranking/2020>

17 See: <https://noa.al/lajmi/2020/07/2178025.html>

18 See: <https://top-channel.tv/video/pacientet-te-spitali-covid-2-nuk-lejohen-familjaret-te-kalojne-rrethimin/>

19 See: https://portavendore.al/wp-content/uploads/2020/03/Akt-normativ-2020-03-15-3_compressed.pdf

Emblematic is the non-disclosure of members of the Technical Committee of Experts, who decided on the measures that the Government took to cope with the crisis caused by COVID-19. Until 7 May 2020 (about two months after the start of the lockdown and almost daily measures imposed), Prime Minister Edi Rama announced the name of the chairwoman of this Committee.²⁰ Even the announcement did not come as an answer to a legitimate question, but rather as a condescending comment of the Prime Minister: "...Doctor Mira, since you are also the chairwoman of the Technical Committee... They drove us crazy, who is the chairman, who is the chairman. In fact, they wanted a man, but we have appointed a woman."

4.3. INFORMATION THROUGH STATEMENTS, PRESS CONFERENCES AND OTHER APPROPRIATE MEANS

One of the factors that characterised public information about the COVID-19 pandemic was that press conferences were not open to journalists.

While in many parts of the world health authorities communicated with the public through open press conferences for journalists (we recall here the case of Italy providing a daily communication at 18.00h of the Civil Protection Office and journalists) or directly from the field, these ways of communication were not applied in Albania. After 9 March, no press conferences were held by the Prime Minister or the Ministry of Health. Updated information was initially edited and broadcasted online. Although specialists from the Ministry of Health do inform about the spread of the virus every day, the information

they provide in the answers to journalists' questions sent hours in advance, is limited.²¹

4.4. INTIMIDATION OF JOURNALISTS THROUGH DISPROPORTIONATE SANCTIONS

During the state of natural disaster caused by the earthquake of 26 November 2019, alarming cases of intimidation of journalists and the media were reported.

The first significant case happened a few days after the earthquake. Two days after the earthquake, on 28 November 2019, the portal Joq.al stated that "Rama, Veliaj and Arta Marku are putting pressure on site administrators, asking them not to publish citizens' complaints about the earthquake." Immediately, the State Police issued a public statement, which read: "Following the continuous monitoring to detect and crack down any case of abuse of this situation of natural disaster, aiming not only at the physical safety of citizens, but also guaranteeing peace and a sense of security, we are taking measures to prevent and legally punish all persons who, through false announcements on social networks, spread panic with destabilising news." Thus, criminal reports were filed against E.D. (29) and G.Ç., (39), both residents of Tirana and administrators of the website Jeta Osht Qejf.²²

The case with this portal, however, did not end with the criminal prosecution. On 30 November 2019, the portal was not accessible. According to media reports, the Electronic and Postal Communications Authority (AKEP) closed JOQ.al inside Albania, so that the Albanian public did not have access to the site. This action came after the warning of the Prime Minister,

20 See: <https://www.vizionplus.tv/rama-zbulon-kush-drejton-komitetitnteknik-te-eksperteve-per-covid-19/>

21 See: <https://a2news.com/2020/05/07/media-ne-pandemi-informacioni-ne-karantine-por-cfare-ndodh-ne-bote/>

22 See: <https://gazetamapo.al/policia-procedohen-administratoret-e-joq-perhapen-lajme-te-rreme/>

Edi Rama, that the media and portals should not spread panic or false news about the 26 November earthquake.²³ The next day, a group of hackers called “Anonymous Albania” attacked several websites and claimed responsibility for the attack. Through a post on social networks, this group stated that they took this action in order for AKEP to restore the JOQ website within 24 hours, with a threat saying “we do not forgive”.²⁴

On 30 November, the Albanian Media Council (AMC, self-regulatory body) issued a press release stating that it was following with concern the Government’s relations with the media in the dire situation created by the consequences of the 26 November earthquake.²⁵ This statement identified three concerning cases that represented government interference with the freedom of expression and information.

The first case concerned a circular sent to online portals where AKEP states: “we URGENTLY request the publication of the attached information, as required by the letter of the Ministry of Defence (...) as an obligation under Law 45/2019 on Civil Protection. The AMC reminded the Government that the cited Law refers only to audiovisual media and did not include obligations for the global, public or online world media.

The second case was the blocking of an editorial *Gazeta Dita*. The AMC condemned the Government’s efforts to stop criticism against government, especially when it is grounded and even more so under the pretext of a state of emergency.

The third case was related to the illegal blocking of the JOQ.al portal in Albania. Not only was this preventing citizens from denouncing the mismanagement of the situation, but it was disproportionate as it blocked the entire portal for just one link. The closure of this portal by AKEP, without a court decision, was a restriction on freedom of expression and information in violation of the Constitution, which provides that these restrictions are made only by law and in a proportionate manner.

In addition to the above cases involving professional media, at that time, the media reported about the criminal prosecution of a citizen named Xh.A., who on 28 November 2019, two days after the main earthquake and while the ground was still shaking to a considerable magnitude, published a message on Facebook saying that she was afraid that a hydropower plant had been damaged and gas deposits in the Porto-Romano area could explode. The State Police used disproportionate and intimidating methods, going to her apartment with at least 5 cars and vans for a post that had received only 26 likes.

Balkan Insight raised concerns that “Albania’s police have been busy accusing journalists and citizens of ‘spreading panic’ about last year’s quakes and the coronavirus - which many suspect is deliberate intimidation of the media”.²⁶

An analysis of the Reporter.al portal (operated by BIRN Albania), encouraged the media to avoid the use of bombastic terminology such as “fear”, “horror”, “apocalyptic”, etc., i.e., terms that do not express facts but simply opinions of reporting journalists. But, on the other hand, according to this portal, the

23 See: <https://dosja.al/lajm-i-fundit-rama-mbyll-portalin-e-pare-joq-nuk-askesohet-brenda-shqiperise/>

24 See: <https://top-channel.tv/2019/12/01/riktheni-joq-ne-nuk-falim-anonymous-albania-mbyll-faqen-e-akep/>

25 See: <https://kshm.al/2019/11/30/deklarate-raporti-shqetesues-i-qeverise-me-mediat/>

26 See: <https://balkaninsight.com/2020/07/29/albanias-war-on-fear-mongers-leaves-rights-activists-uneasy/>

Government should not use the situation as a reason to exercise censorship on the media, as in the case of Gazeta Dita and the closure of JOQ. Reporter.al called on the Government to first disclose which office and what responsible persons were in charge of media relations in this situation and to avoid the use of the state of emergency selectively to block reporting or target the media.²⁷

In the case of the COVID-19 pandemic, the situation escalated further. Normative Act No. 3/2020 provided for measures to respect the safety distance in the television studios, followed by a fine in the amount of 1,000,000 ALL (about 8,000 EUR) in case of violation. In case of recurrence, the imposition of blocking, partial or complete, of the broadcast from audiovisual media, as well as blocking and/or stopping the operation of the equipment was added. This seemed to be a necessary measure to maintain health, but was accompanied by the risk of becoming a threatening instrument to freedom of expression and information.

On 14 May 2020, at critical moments when the demolition of the building of the National Theatre was expected every hour, Ora television (known for the conflict between its owner and the Mayor of Tirana²⁸) was fined 1,000,000 ALL by the State Health Inspectorate for violating COVID-19-related rules, as the number of guests in the studio exceeded the allowed number. A day later, on 15 May 2020, the administrative measure of closing the broadcast was imposed on ORA radio and television, accompanied by another fine of 1,000,000 ALL.

The case was reported on the *Platform to promote the protection of journalism and safety of journalists* of the Council of Europe. The report mentioned that media freedom organisations have disapproved the measures attempting to restrict the work of a TV channel whose output has shown criticism of Prime Minister Edi Rama and the Government.²⁹

Because Ora television suffered successive fines within two days and was threatened with closure, the President of the Republic of Albania reacted to the decision taken by the state institute of health to switch off the Ora television signal (according to them, two shows failed to respect the social distancing measures that required a maximum of two people in the studio), by writing on Facebook that “it is intolerable for the Government to use the situation of the coronavirus spread in Albania to impose censorship in the media, especially at a time when, according to reports by institutions that monitor freedom of expression and the media, Albania has regressed in the last year.”³⁰

Under national and international pressure, the Government took a step back by withdrawing from the extreme measures. The competent authorities responded on the Council of Europe’s platform saying that on 20 May 2020, the Tirana Regional Branch of State Health Inspectorate decided, pursuant to the Law on Inspection no. 10433 of 16 June 2011, to repeal the administrative “Interim decision on an urgent measure” dated 15 May 2020.³¹

27 See: <https://www.reporter.al/shperndarje-paniku-policia-perndoqi-gazetaret-pas-termetit-dhe-covid-19/>

28 See: <https://exit.al/ora-news-publikon-mesazhet-mes-kryebashkut-veliaj-dhe-ylli-ndroqit/>

29 See: https://www.coe.int/en/web/media-freedom/all-alerts?p_p_id=sojdashboard_WAR_coesoportlet&p_p_lifecycle=0&p_p_state=normal&p_p_mode=view&p_p_col_id=column-4&p_p_col_count=1&_sojdashboard_WAR_coesoportlet_selectedStringFilters=year.2020&_sojdashboard_WAR_coesoportlet_selectedCategories=11709474&_sojdashboard_WAR_coesoportlet_keywords=&_sojdashboard_WAR_coesoportlet_advancedSearch=false&_sojdashboard_WAR_coesoportlet_andOperator=true&_sojdashboard_WAR_coesoportlet_resetCur=false&_sojdashboard_WAR_coesoportlet_delta=75#fom-block-member-replies

30 See: <https://abc24.al/qeveria-kerkon-mbylljen-e-tv-ora-meta-pandemia-smund-te-perdoret-per-te-vendosur-censure/>

31 See: <https://rm.coe.int/albania-reply-en-heavy-fines-and-shutdown-threat-against-albanian-tv-c/16809efdd4>

The issuing of the fine, and especially the threat of closure of the transmission, constitute disproportionate measures to what the situation dictates. In the vast majority of cases before the European Court of Human Rights, the Court usually bypasses other elements of Article 10 of the European Convention on Human Rights and focuses its analysis on whether the intervention was necessary in a democratic society, i.e., in a society that respects and nurtures “pluralism, tolerance and an openness of the mind”. The ECtHR jurisprudence usually assesses whether, in the context of the case, the intervention could be considered “necessary”, in other words, if the intervention was intended to address an “urgent social need”, if the authorities’ reasons for imposing a restriction/sanction are reasons “relevant and sufficient” and whether the intervention is “proportionate to the legitimate aim pursued”. The imposition of the two fines in the given measure, here within a short time (in two consecutive days), is obviously not in line with the legitimate aim pursued and not necessary in a democratic society, resulting in a violation of the freedom of expression and information.

Violations of freedom of expression and information were also identified during the protests against the demolition of the National Theatre building on 17 May 2020, where journalists were prevented from doing their job by not being allowed to approach the scene. Some journalists were even physically assaulted by law enforcement officers. Journalist M.Z. of the media Sh. was fined and beaten while being escorted to the police station. He was filming when numerous police forces intervened around 4.30h in the morning of 17 May 2020 to remove the activists defending the National Theatre. A criminal report has been filed for

this incident in the Tirana District Prosecutor’s Office. Later, during protests on the same day, violence was also used against journalist A.L.³² The Ombudsman also reacted to these incidents.³³

4.5. ECONOMIC DIFFICULTIES RESULTING IN SELF-CENSORSHIP

The COVID-19 pandemic and the measures taken in relation to the natural disaster greatly affected the Albanian media. According to an article by Deutsche Welle,³⁴ on the one hand, the media faces the struggle for economic survival and, on the other, the contraction of their freedom of expression and information. Self-censorship has increased in terms of the risk of losing a job. On the one hand, journalists cannot fully do their job, because they are restricted in movement, cannot go to the scene, meet officials, politicians and give the public first-hand information. The role of the media in this case takes on special significance when we consider how social media, Facebook and Twitter are going through a “golden” period of increased attention, but are full of misleading and untrue information about the pandemic. On the other hand, journalists are being put in conditions of economic survival and under increasing pressure from media company owners that in Albania are mostly businessmen, with political ties and interests. Faced with the economic downturn, the rapid loss of revenue from lack of advertising due to the freezing of public life and economic activity, print and digital media owners are increasing the pressure on journalists and threatening

32 See: <https://exit.al/alfred-lela-do-te-padise-policine-per-dhunen-e-ushtuar-me-17-maj/>

33 See: <https://www.droni.al/2020/05/17/avokati-i-popullit-kishte-vrasje-ne-tentative-te-teatri/>

34 See: <https://www.dw.com/sq/n%C3%AB-shqip%C3%ABri-gazetar%C3%ABt-mund-t%C3%AB-pushohen-me-nj%C3%AB-sms/a-53278560>

them with job loss, cutting their salaries in half or postponing them indefinitely. The immediate consequence is the increase of self-censorship and reduction of media freedom.

Koloreto Cukali, chairman of the Albanian Media Council and co-founder of the Alliance for Ethical Media, told DW that “journalists live in an environment where one can be fired even through an SMS. The most exposed are those journalists and media workers who do not have contracts. They are silent because they risk becoming unable to access jobs in the media sector in the future. There is an unofficial alliance between media owners – when someone denounces the lack of contract or undeclared work, he/she can no longer access the market.”

Enton Abilekaj, director of the online portal Dosja.al considers the situation of journalists during the pandemic very serious, where in addition to closing public spaces, journalists of print and digital media get fired just like the employees of private production companies.

According to an article published on the Portavendore.al portal, power and finances have caused a crisis in the local media during this period.³⁵ This problem was also raised by Aleksandër Çipa, President of the Union of Journalists, who told Euronews that: “We are concerned because we see that in the entire media landscape of the country there will be a strong negative impact from the financial point of view... about 6120 employees currently in the media, who have been numerically reduced...”³⁶

4.6. EFFORTS BY OFFICIALS TO MANIPULATE AND EXPLOIT THE WEAKNESSES OF THE PUBLIC IN CASE OF CRISIS

During the pandemic, almost the entire weight of communication with the public was carried by the Prime Minister, Edi Rama, through the social network Facebook and his personal online television, ERTV. In his communication, there were moments when the information was expressed in a panic-inducing manner and/or with the purpose of exploiting the weaknesses of the public. During the first months of the COVID-19 pandemic, the rhetoric of the Head of Government was reminiscent of war³⁷ against an invisible enemy,³⁸ with the projection of 18,000 deaths,³⁹ with mass graves being opened in Iran for the deceased from COVID-19, etc., and combined with the army pulling out heavy armoured vehicles on the roads.⁴⁰ In one case, he was even forced to apologise for publishing a fake (misleading) video of citizens being beaten by Spanish police for violating quarantine rules.⁴¹

Earlier, on 29 July 2019, before the earthquake of 26 November 2019, a letter from the President of the Republic was sent to the Ministry of Defence for possible measures to be taken since a Greek seismologist had predicted an earthquake 30 times stronger than the one that struck Athens a while ago.⁴² The President’s letter was commented on by various exponents of the government. Instead of reading correctly the predicted magnitude of the earthquake (30 times higher on the Richter scale means 1 degree higher in magnitude) – that would be a magnitude 6 on the Richter scale (that of Athens

35 See: <https://portavendore.al/2020/05/03/pushteti-dhe-financat-mbyllin-gojen-e-televizioneve-lokale/>

36 See: <https://kohajone.com/cipa-pandemia-po-ndikon-ne-financat-e-medias-shqiptare/>

37 See: <https://euronews.al/al/vendi/2020/03/10/mbledhja-e-qeverise-per-coronavirusin-rama-kjo-eshte-nje-kohe-lufte-shmangni-maksimalisht-kontaktet-fizike>

38 See: <https://www.vizionplus.tv/rama-po-luftojme-me-nje-armik-te-padukshem-mos-rrini-ne-kafe/>

39 See: <https://abcnews.al/pa-mua-mund-te-kishim-18-mije-vdekje-rama-flet-per-deklaraten-qe-beri-zhurme/>

40 See: <https://www.youtube.com/watch?v=XrX3v6BjbJ4>

41 See: <https://faktoje.al/si-mund-ta-shmangte-kryeministri-rama-dezinformimin-dhe-perhapjen-e-panikut/>

42 See: <https://top-channel.tv/2019/07/29/termet-apokaliptik-ne-ballkan-meta-leter-institucioneve/>

was 5) – the members of Government misread that the earthquake would be 150 magnitude (30 x 5). Seismologists were even interviewed and asked a direct question of whether a 150-magnitude earthquake could strike; they categorically denied this. However, after the earthquakes of 21 September 2019 and 26 November 2019, the panic in the population increased significantly, because a good part of it expected to be hit by the “apocalyptic” earthquake predicted by the seismologist mentioned by the President. The way in which the Government managed this information, the tendency of making fun of the President for the ridiculous forecast because they did not understand the actual one (6 degrees),⁴³ led to information being released to the public that, unfortunately, caused panic after the earthquake.

In no case has any disciplinary action or criminal prosecution been initiated for these leaks of information, expressions or posts that fed on the weaknesses of the public by terrorising it.

In general, other officials were reserved during both natural disasters, not causing panic, except for the Minister of Tourism and Environment who, in an attempt to explain the measure taken by the Government to ban music in bars after 22:00h, said that it is scientifically proven that the spread of the virus in places where the music is very loud, because the virus spreads through music waves.⁴⁴ This statement was received with surprise by the interviewing journalist and a part of the public welcomed it with humour; however, it remains unclear how many others have truly believed the minister’s controversial theory.

4.7. GOVERNMENT-NGOS-MEDIA COOPERATION IN VOLUNTARY FORA; SUPPORT FROM GOVERNMENT DONORS

In addition to what is required by the above standards of the Council of Europe, the Albanian legislation also provides in Law no. 45/2019 on Civil Protection the obligation of state bodies to cooperate with civil society organisations. According to this law and its explanatory report,⁴⁵ it is clear that the legislator sees the importance of cooperating with the organisations to which it grants the permanent right to be informed and updated about the risks from disasters, as well as the necessary measures undertaken for their management.

The above examples show a lack of cooperation between the Government and other actors, as well as that the Government has monopolised all activities to resolve the crisis, including communication with the public by not applying the principles of the aforementioned law.

During the situation caused by the earthquake of 26 November 2019, we have seen the start of cooperation between the authorities and other bodies, such as the Reconstruction Committee. Although the initial meetings of this committee have been made public, there has been no further cooperation with the public. According to the Res Publica Centre, the reconstruction projects are not transparent and different interest groups, such as civil society activists in the Kombinat neighbourhood in Tirana interested in the reconstruction of “Sami Frashëri” Gymnasium, are not receiving answers to their requests for information. Residents of Valias, Kamza⁴⁶ face the same situation.

43 See: <https://shqiptarja.com/lajm/nxirr-nje-dekret-dhe-shtyje-termetin-spiropali-komenton-alarmin-e-metes-per-apokalips>

44 See: https://www.youtube.com/watch?v=T-qalTY2fwY&feature=emb_logo

45 See: <https://parlament.al/Files/ProjektLigje/20190610101549RELACION%20-%20MBROJTA%20CIVILE.pdf>

46 See: <https://portavendore.al/2020/08/27/kamza-pjese-e-projektit-te-rindertimit-bashkia-ende-nuk-ka-hartuar-planin-e-detyruar-ven-dor-per-zonen-e-re-te-valiasit/>

Even worse is the situation with the COVID-19 pandemic, where such cooperation never existed at all. The media and organisations did not cooperate with the authorities, except in cases of aid provision.

Regarding the support of the media and organisations for reporting issues, there is no support from state donors. We emphasise that the main body for the support of civil society is the Agency for the Support of Civil Society, which did publish calls for support due to COVID-19 effects. However, the winning projects do not include issues of freedom of information, the media, etc.⁴⁷

4.8. CONFUSION OF REGULATORY ACTS ON THE PANDEMIC

In emergency situations, it is expected that there will be urgent approval of numerous normative acts, orders, instructions, which may need to be revised. But, if such regulatory acts change very often and without a concrete medium-term plan, this causes anomalies in their understanding and implementation by the public.

During the COVID-19 pandemic, the government passed a record number of acts in a short time. About 250 acts were adopted in just two months,⁴⁸ first announced on the personal Facebook account of Prime Minister Edi Rama and then published in the Official Gazette.

At first glance, it seems that the right to information on legal acts is guaranteed, because, despite some delays, the acts were published in the Official Gazette. However, an element that makes information valuable is not only its

accessibility, but also its comprehensibility. Therefore, with a heap of laws and regulations that were changed very often, the information on legal acts in the time of the crisis caused by COVID-19 was incomprehensible, causing great confusion not only in the public, but also among legal professionals, thus jeopardizing legal certainty.

4.9. INFORMATION ON THE ACTIVITY OF THE COURTS

A pronounced problem during the period of the natural disaster caused by COVID-19 was not allowing journalists and the public to attend court hearings. With Normative Act no. 9, dated 26 March 2020 on taking special measures in judicial activity, throughout the duration of the epidemic situation caused by COVID-19, the courts were closed for about 2 months, until 29 May 2020. However, even after their reopening, court hearings are taking place without the presence of persons who are not parties to the proceedings. Journalists, activists, and the general public are thus excluded from courtrooms.

If this lack of real-time information, intended to protect public health, had been addressed through the publication of information on court websites, the situation would have been less aggravated. However, many of the courts in the country have not developed websites, while the busiest court in the country, that of Tirana, has long applied the anonymisation of data, with the consequent non-publication of information due to the inability to process all decisions. The minutes of the hearings are also not public. This situation is created due to an order of the Ministry of Justice no. 4059/2, dated 7 June 2016 on the anonymisation of personal data of court decisions that are published on the electronic

47 See: <http://www.amshc.gov.al/web/thirrje/13/Lista%20e%20projekteve%20fituese%20-%20Th13.pdf>

48 See: <https://portavendore.al/dhomaeligjit/librari-ligjore/legjislacioni-per-situaten-e-krijuar-nga-covid-19/>

portal of courts. This instruction is also based on the instructions of the Commissioner for the Right to Information and Personal Data Protection.

For these combined reasons, the information on judicial activity during the COVID-19 pandemic has been significantly affected, especially from 29 May 2020 onwards.

4.10. OBSTACLES TO THE RAPID REVIEW OF LAWSUITS FOR OBTAINING INFORMATION

As discussed above, during the period from 25 March 2020 to 29 May 2020, the courts, including the Administrative Court, did not hold court hearings, affecting dozens of cases related to the right to information, initiated mainly by various journalists, such as A.R. (5 lawsuits), M.D. (11 lawsuits), L.Ç, etc., and civil society activists, such as the Alliance for the Protection of the Theatre and Res Publica Centre.

In some of these cases, after the resumption of activity and the end of the period of the state of emergency, some judges acted in accordance with the Council of Europe Guidelines and accepted the provisional decision (special procedure based on Article 317 of the Civil Procedure Code), which ensures the execution of the decision of the first instance court, despite the fact that it has not become final and has been appealed). This approach by the courts was a very good solution, but one that worked in only 4 cases. All other cases have suffered delays due to court closure and dysfunction even after their opening, since the backlog has increased significantly.

**5. QUALITATIVE AND QUANTITATIVE
ASSESSMENT OF THE
IMPLEMENTATION OF THE LAW
ON THE RIGHT TO INFORMATION
DURING PERIODS OF NATURAL
DISASTER COMPARED TO THE
NORMAL SITUATION**

The following section is based on quantitative data, measured by the methodology applied in the normal situation and evaluating routine indicators. However, the assessment was accompanied by qualitative elements that are relevant to the crisis situation.

As presented below, quantitative indicators do not fluctuate significantly in statistical terms, but it is important to note that the dysfunction of the law in times of crisis has affected investigative journalists the hardest, who testify to serious barriers to access to public information.

During the period of crisis caused by the COVID-19 pandemic and according to the register of complaints submitted to the Commissioner for the Right to Information, the higher number refers to the ministries and institutions under them, as well as the Municipality of Tirana. Some journalists confirm that during this time they requested information, but did not receive a response in the vast majority of cases. In addition to investigative journalist L.Ç. who contacted directly the Res Publica Centre in this respect, there are also cases made public in the media. For example, in the case of the Faktoje Centre (fact-checking organisation), the right to information was hampered during the COVID-19 pandemic.⁴⁹

In some of the most important sectors that are first to face the pandemic, primarily the health sector and public funds allocated for the emergency, the lack of information is pronounced in the way the local government reacts and acts, bureaucracy in the classic sense of the word is not only obstructive, but also confusing, and the required information is not given or made available – the president of the Union of Albanian Journalists, Aleksandër Çipa, said.

According to Flutura Kusari, a legal adviser at the German-based European Centre for Freedom of the Press, the Government was less transparent during the pandemic. Instead of holding regular press conferences, offering journalists the opportunity to ask questions, as well as providing documents proving how the pandemic is managed, we have seen the opposite. We have seen that the documents requested by non-governmental organisations, including Faktoje, have not been provided, often using either administrative silence or giving no answer at all – Ms. Kusari says.

Out of 35 requests for information sent by the media organisation Faktoje, the institutions responded within the legal deadline in only 6 cases; whereas in 2 cases they did so after the complaint to the Commissioner for the Right to Information.

According to Faktoje.com, the Commissioner for the Right to Information, Mr. Besnik Dervishi, says that his office received many complaints about the right to information.

There have been complaints not only from organisations or journalists using the right to information to collect information, but also from other civil society organisations who have sought information from the Ministry of Health on aspects of the pandemic or the health system that were directly related to their response to the COVID-19 pandemic. There have been complaints from the Patients' Rights Organisation that the Ministry of Health did not provide information on the number of ventilators in the country at the beginning of the pandemic – Besar Likmeta from the BIRN investigative network said.

At the peak of the need for transparency and, at the same time, the legal obligation, public

⁴⁹ See: <https://faktoje.al/e-drejta-per-informim-veshtiresohet-gjate-pandemise-covid-19/>

institutions in Albania seem to be using the state of health crisis to not provide information - organisation Faktoje said.⁵⁰

On 28 October 2020, the President of the Republic of Albania requested information from the Ministry of Health and Social Protection on various aspects related to the pandemic management. Among other things, the President requested information on testing, the capacity of medical and support staff to track cases, and additional funding to deal with the COVID-19 pandemic. In response to this request submitted by the Head of State, the Prime Minister decided not to inform the President, stating that he has no authority to interfere in the work of experts in managing the medical situation and continued with offensive and mocking political rhetoric, deviating from the fact that the President was seeking information lawfully.

This example shows that even the President of the Republic, as a constitutional authority, and at the same time the person symbolically considered to be the first citizen of the Republic, faces obstacles in accessing the information about the pandemic. This fact suggests that journalists or ordinary citizens have little to no chance to be treated better in relation to requests for information about this topic.⁵¹

5.1. INDICATORS OF PROACTIVE TRANSPARENCY OF INSTITUTIONS

For the purposes of this report, the 100 most important public authorities in the country were monitored, divided into five categories:

- (1) constitutional and independent institutions;
- (2) central institutions of executive power;
- (3) institutions subordinate to the executive

branch; (4) local government institutions; (5) justice institutions. Monitoring took place throughout the period of the crisis caused by the COVID-19 pandemic. The findings were compared to those of 2019.

The monitoring shows that during 2020 there have been no changes in the quality of completion of the transparency programmes. The situation has been very problematic even before the state of natural disaster caused by the earthquake of 26 November 2019 and has continued during the situation created by COVID-19 from March 2020 onwards. 25 % of the main institutions are without a transparency programme. The vast majority of them have partially completed the transparency programmes (with less than half of the information required by law) and only 1/5 of the institutions have completed the transparency programmes somewhat better by publishing over 50% of the information.

The overall measured level of the proactive transparency index (measured by Res Publica Centre during 2019) remains at 25.4%, unaffected by natural disaster conditions.

Regarding the acts that are important for the state of natural disaster, apart from the publication of laws and secondary legislation on the websites of the Ministry of Health and Social Protection and the publication of daily figures on number of infections and deaths, no other valuable document has been published. It is also noted that the model of the transparency programme does not meet the information needs in case of crisis.

⁵⁰ Ibid.

⁵¹ See: <https://a2news.com/video/situata-e-covid-19-meta-kerkon-llogari-rama-mos-i-fut-hundet-te-puna-e-eksperteve/>

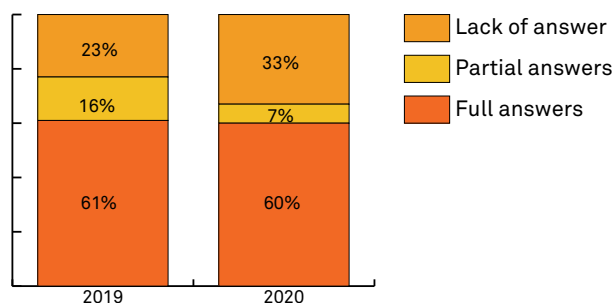
5.2. AUTHORITIES' RESPONSE TO REQUESTS FOR INFORMATION

In order to provide sufficient data for testing the behaviour of institutions towards information requests, 83 requests for information submitted by the Res Publica Centre for 13 different categories of information were considered, which followed the complete cycle of the administrative process.

a. Authorities' response to initial requests

The situation of the institutions' attitude towards the initial requests for 2020, compared to the previous year, is presented as follows:

Fig. 1 – Responses to the initial request



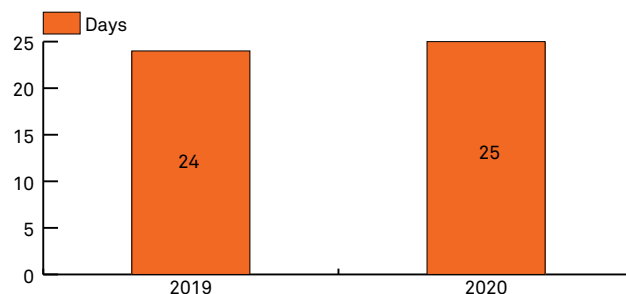
During the pandemic (March 2020 onwards), there is a general decline in responses within the legal deadline. This decrease did not affect the number of full responses, but the number of partial responses decreased significantly. It should be noted that partial answers are characteristic for questions from investigative journalists, often difficult and complex.

It is noteworthy, however, that the number of responses does not necessarily indicate transparency and accountability. As shown by the qualitative analysis above, there is reason to believe that the non-responses were mainly in relation to high-sensitivity information required by journalists regarding the current crises.

b. Time needed for responses to initial requests

Regarding the time needed to respond to the initial request, the situation is as follows:

Fig. 2 – Time needed for responses to initial requests



The results under this indicator have not changed compared to last year (the normal time) and it seems that the state of natural disaster did not affect the time needed for a response. However, it is worth noting that Res Publica is an organisation known for insisting on information and using all administrative and judicial means available – this fact may have influenced it being prioritised over journalists. According to the Faktoje Centre, only a small percentage of requests for information were answered during the COVID-19 pandemic, which indicates a different approach.

We also emphasise that the legal deadline of 10 working days (usually 14 calendar days) is the maximum time. Even in the past two years, the situation has been far from optimal, as the response time even under normal circumstances exceeded the legal deadline (26 days in 2018 and 24 days in 2019). The pandemic did not make the response time longer, because the year it was compared to was in itself beyond reasonable duration.

The only effective means that would ensure the

observance of the legal deadline by the institutions is in the competence of the Commissioner for the Right to Information, who even in previous years failed to take measures to this end.

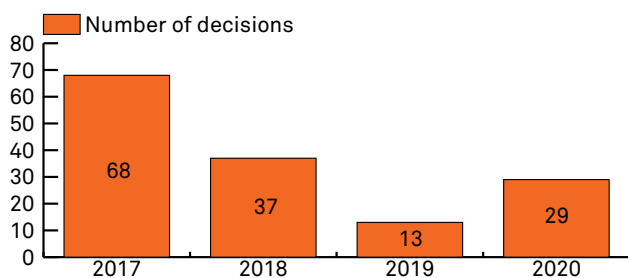
c. The work of the Commissioner for the Right to Information

During 2019, the Commissioner for the Right to Information received an average of about 65 complaints per month. During the COVID-19 pandemic, the Commissioner received nearly 50 complaints per month, demonstrating that the interest of journalists and activists remained high, despite the situation. About 15% of complaints related to direct information on the medical management of the pandemic, addressing the Ministry of Health and Social Welfare, the Institute of Public Health and various hospitals.

This year, given the situation created from natural disasters, the Commissioner increased the volume of work, compared to a year ago, although the number of cases handled resulting in the Commissioner's decision still remain at a low figure of about 7%.

The data presented below are in part taken from the Commissioner's website, while the rest come from responses to requests for information addressed to his office.

Fig. 3 - Number of Commissioner's decisions in 2019 - 2020



As the chart shows, after a continuous decrease in the number of decisions taken by the Commissioner in the last three years, this year the number of decisions has increased. Out of a total of 29 decisions, 24 of them fall under the COVID-19 pandemic period. It remains worrying that again over 90% of complaints are not translated into Commissioner's decision, despite the fact that it is reported that to a large extent cases are resolved without the need for a decision.

The Commissioner must take a decision within 15 working days. During 2019, before the natural disaster caused by the earthquake of 26 November, the Commissioner took the decisions within the legal deadline in 77% of cases. During the period of natural disasters until the day of compiling this report, the Commissioner respected the legal deadline in only 45% of cases.

It might seem that the natural disaster had a negative impact on decisions by the Commissioner in terms of the speed of handling complaints, however, if we consider that the number of decisions taken has doubled, then we conclude that the negative impact is not so considerable.

The average duration this year is 24 calendar days, very similar to last year, which was 22 calendar days, compared to 57 days in 2018. During periods of natural disasters, the Commissioner for the Right to Information did not impose any fines.

5.3. COURT CASES

The courts get involved only when the complaint to the Commissioner for the Right to

Information is not effective. In most cases, requests for information are answered up to this stage, but some remain to be addressed in court. Usually, these cases relate to sensitive information requested by investigative journalists. It should be noted that courts, as a last resort, have shown relatively good quality of jurisprudence, but the delay of the trial is against the interest of access to information within a reasonable period of time. For the purpose of this report, we present some aspects that are essential to case law, as follows:

a. Issuance of decisions with temporary execution

According to the European Court of Human Rights, information is a “perishable good” and access to it must be done in a timely manner. Court proceedings in Albania for access to information usually take a long time because in any case, the authorities, after losing the trial in the first instance, appeal to the Administrative Court of Appeal. This court delays the trial by 3-4 years and the relevance of the information is lost. However, a special provision in the Code of Civil Procedure stipulates that in special cases, the court of first instance may order that the decision be executed immediately, regardless of whether an appeal is filed. This aspect has so far been used in cases of alimony obligation in family court cases, as well as in cases of non-payment of salary by employers. But, starting with a case of 2019, the Administrative Court of First Instance in Tirana ordered the use of this provision to access information requested by investigative journalist Artan Rama. This case was defended in court by the Res Publica Centre that requested in 2020 the implementation of this special provision in 10 other cases. In four cases, at the request of journalists from the Faktoje Centre (fact-checking organisation), the court accepted it, making it a new practice that is moving towards consolidation.

This procedural innovation in case law is making it possible to access information relatively fast, despite the fact that appeals procedures in the court of second instance take a long time. Res Publica has also encouraged other organisations to use this new case law, with the aim of consolidating courts’ position on the need for expedited process to access public information.

b. Compensation for damages from obstruction of access to information

Albania regulated this issue in theory under Law no. 8503 dated 30 June 1999 on the Right to Information in Official Documents. According to Article 17 of this Law, any person who had suffered damage due to violation of the right to information has the right to seek compensation for the damage. Even the new Law no. 119/2014 on the Right to Information provides for such an option in Article 26. Although this right has been theoretically recognised for over 20 years, there have been no compensation claims in Albanian courts, because there are no modalities to consider the completion of all elements to prove the existence of the damage, its quantification and chain of causation.

For the first time, in the case of journalist Artan Rama v. the National Agency of Natural Resources, the administrative court accepted, in principle, that damage has been caused and that the responsibility lies with both the National Agency of Natural Resources and the Commissioner for the Right to Information. The court accepted that, since it was the first time to award a punitive compensation, it will be in the symbolic amount of 1 ALL, but with the premise that this action should not be repeated. The court also awarded all court fees and expenses to state bodies, in the amount of 180,000 ALL (approx. 1500 EUR) for the psychologist, the damage assessment expert and the costs of the lawyer.

This is the first practice which recognises the damage and serves as a warning to the state administration, which will in case of recurrence pay serious compensation amounts.

c. Denied access because of state secret

A problematic aspect is the declaration by the authorities of confidential documents without reference to any legal provision or administrative investigation by the Commissioner for the Right to Information. A culminating case is that of journalist Lindita Çela, a journalist with the OCCRP (Organised Crime and Corruption Reporting Project), who asked the Council of Ministers for a copy of the Decision of the Council of Ministers no. 115, dated 23 February 2018 and a copy of the contract between the Ministry for Europe and Foreign Affairs and the company APCO World Wide. The Council of Ministers refused to provide the information, claiming that the DCM was a state secret. Following the complaint to the Commissioner for the Right to Information, the journalist received the same answer, without any administrative investigation being made into whether the information was classified or not. The case was referred to trial, but the court rejected it due to misinterpretation of the deadlines for filing a lawsuit, contrary to previous practice. In order to continue the effort, the same information was requested by the Res Publica Centre, that received the same refusal and is preparing to start an administrative dispute, already avoiding the obstacles of the above trial and increasing the chances for a victory. In practice, this is the first time that a DCM is declared state secret, as the law stipulates that these acts must be published in the Official Gazette.

6. CONCLUSIONS



image: Freepik.com

In conclusion, we can say that freedom of information has been affected in general, but in the technical sense, the implementation of the Law on the Right to Information did not result in significant changes, except for the fact that no sanctions were applied during the pandemic caused by COVID-19. More precisely:

- There have been attempts to censor online media, by removing articles or closing portals without a court order. Civil society organisations have called on the Government to inform the public about the competent office and people in charge of media relations, and not to selectively block articles or target the media.
- There has been a lack of effective and open Government communication with the media, with the Government monopolizing the information by allowing only their sources or, even further, the personal sources of Prime Minister Edi Rama (ERTV and his personal Facebook account). Communication monopolisation has raised concerns about government accountability for crisis management and media freedom. Organisations have raised concerns that the Government allowed only ERTV cameras to report on Government meetings, blocking media access to accurate and factual reporting. Blocking information and replacing it with propaganda had a detrimental effect on calming the public and managing panic, forcing citizens to look everywhere for information since the Government has not allowed them access to it.
- The government took an extremely harsh rhetorical approach to the virus, using phrases such as “war-like situation” and “invisible enemy”, and pulling out armoured vehicles and imposing heavy fines. There was confusion among the population about the measures adopted, as well as mistrust

and negative perceptions about Albania’s ability to handle the situation properly. A Technical Committee of Experts was set up to make decisions to contain the epidemic, but the work of the Committee was accompanied by limited public information on its competencies and the extent to which its recommendations were translated into political decisions. The pandemic situation was used for propaganda by Prime Minister Edi Rama, who took over the direction of public communication with a constant presence on social networks and his personal online broadcaster ERTV. The Prime Minister monopolised the content and wording and the way the media received the information. The decisions were first published on the Prime Minister’s Facebook account and later in the Official Gazette. Press conferences were not actually open to journalists. After 9 March 2020, updated information was initially edited and broadcasted online. Although specialists from the Ministry of Health do inform about the situation of the spread of the virus every day, the information they provide in the answers to journalists’ questions sent to them hours in advance, is limited. In summary it can be said that there was a centralisation of information, not allowing journalists to cross-reference information with alternative sources.

- The economic consequences caused by the pandemic also affect the media, especially the small or local ones, which faced the struggle for economic survival, in parallel with the shrinking of their freedom of expression and information. The economic downturn and rapid loss of revenue from the lack of advertising due to the freezing of public life and economic activity raised concern that some print and digital media owners increased pressure on journalists and threatened them with losing their jobs, cutting their salaries in half or postponing them indefinitely. According to the organisations,

journalists live in an environment where they can be fired even with an SMS and they risk being cast out of the media market because there is an unofficial alliance between media owners – when someone denounces the lack of a contract or undeclared work, he/she can no longer access the market.

- Journalists cannot fully perform their work due to general mobility restrictions. Despite the fact that journalists employed in traditional media were excluded from movement, other journalists, independent or with contractual relations other than the employment contract, were not able to take advantage of this opportunity. In general, journalists could not go to hospitals or other locations, easily meet officials, politicians, and give the public first-hand information. Journalists were not able to enter hospital premises where COVID-19 patients were treated. They reported cases based solely on figures and data published by the Ministry of Health.
- In the 2020 World Press Freedom Index Report by Reporters Without Borders, Albania ranks two places lower compared to 2019 and 4 places lower compared to 2018.
- Disproportionate and intimidating sanctions were imposed, as in the case of Ora TV. During the state of natural disaster caused by the earthquake of 26 November 2019, concerning cases of intimidation of journalists and media were reported, such as the case of criminal prosecution against two administrators of the site Joq.al. The measures were unnecessary in a democratic society, and disproportionate to the legitimate aim pursued. Other violations of freedom of expression and information were identified during the protests against the demolition of the National Theatre building on 17 May 2020, where journalists were prevented from doing their job, as they were not allowed to approach the scene. Some journalists were even physically assaulted by law enforcement officers, like journalists M.Z. and A.L.
- During the pandemic, almost the entire weight of communication with the public was carried by the Prime Minister, Edi Rama, through the social network Facebook and his personal online television, ERTV. In his communication, there were moments when the information was expressed in a panic-inducing manner and/or with the purpose of exploiting the weaknesses of the public, 18,000 dead were expected, mass graves opened in Iran for COVID-19 victims were displayed, etc. A fake (misleading) video was even published of the Spanish police allegedly beating citizens for violation of quarantine rules, for which the Prime Minister later apologised. Earlier, a technical misunderstanding of the prediction of a Greek seismologist, led to a leak of confidential correspondence between the President of the Republic and the Ministry of Defence being used to spread panic about an apocalyptic earthquake. In no case has any measure been taken for these expressions and posts that have fed on the weaknesses of the public by terrorizing it.
- During the situation caused by COVID-19 there was no cooperation between the media and the government, even according to the provisions of Law no. 45/2019 on Civil Protection. Government donors do not appear to have supported the media or transparency-related processes for the situation created and its management.
- The high number of pandemic-related regulatory acts and their frequent amendments made the legal information in the time of the crisis caused by COVID-19 incomprehensible, causing great confusion not only in the public, but also among legal professionals.

- A severe problem during the period of natural disaster caused by COVID-19 was not allowing journalists and the public to attend court hearings. The combination of the above problem with that of the anonymisation of court decisions and data made it impossible to process data and therefore publish information during the COVID-19 pandemic; therefore, information about judicial activity was significantly compromised.
- Some statistical data do not show significant changes in the level of enforcement on the right to information law in times of crisis compared to other periods, but qualitative indicators show problems specifically for investigative journalists regarding the most sensitive information.
- Transparency programmes continue to be largely unfulfilled and it is especially noticeable that the programme model is not appropriate for proactive information management in crisis situations.
- The number of responses to requests for information decreased by 15%.
- The average time to receive responses to initial requests for information continues to be longer than the legal deadline, but unchanged in the natural disaster situation, remaining at the average of 25 calendar days.
- The Commissioner for the Right to Information made more decisions during the crisis period, but it is still a low number compared to the number of complaints received. The time needed for the Commissioner to make the decision is almost the same as in the previous year, with an additional 2 calendar days.
- The suspension of judicial activity during the period 23 March 2020 to 29 May 2020 has delayed the issuance of court decisions in dozens of cases related to the right to information initiated by investigative journalists; now the increased backlog delays these legal processes further.
- There are good signs coming from the courts. They are developing a good line of jurisprudence by allowing the temporary execution of decisions, to ensure faster access to information in cases of investigative journalists.

7. RECOMMENDATIONS

Based on the above findings and following other reports from civil society organisations, the following is recommended:

Recommendation no. 1

The public authorities managing the crisis must guarantee journalists' access to information, wherever the journalists see fit. If the need arises to ensure the safety of journalists, security protocols should be developed to ensure that journalists are not hindered in the performance of their duties.

Recommendation no. 2

Crisis management authorities should provide regular information to all journalists, giving them the opportunity to ask questions in real time at press conferences or by any other appropriate means.

Recommendation no. 3

The government should take measures to revise the disproportionate sanctions against journalists, while measures should be taken to hold accountable any official who tries to manipulate public opinion, exploiting the weaknesses of the public in times of crisis.

Recommendation no. 4

Under the conditions where the activity of the Commissioner's office is critical, it is recommended that the Assembly and its committees also take into account, in addition to the Commissioner's reports, reports made by non-profit organisations; we recommend that these organisations are invited to participate with the media organisations in the sessions where the work of the Commissioner for the Right to Information is being presented and evaluated. These organisations should even be invited to provide written assessments regarding the activity of the Commissioner.

Recommendation no. 5

The Commissioner for the Right to Information can and should develop an

appropriate model of transparency programme for the institutions managing the crisis caused by the COVID-19 pandemic.

Recommendation no. 6

The recommendation given on the anonymisation of data in the courts needs to be revised. Moreover, in the current situation where persons who are not parties to the trial are not allowed to participate in the hearings, an immediate intervention is needed.

Recommendation no. 7

The government should encourage subordinate bodies and the media to establish a mechanism of continuous cooperation, creating a forum with non-governmental organisations, the media, the independent journalists to exercise freedom of expression and information in the time of crisis through dialogue. State agencies that have the function of supporting civil society and/or the media should explore opportunities to support the media as part of the crisis resolution strategy.

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