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## **FREEDOM OF EXPRESSION AND INFORMATION WITHIN THE RIGHT TO COMMUNICATE ACCORDING TO ALBANIAN LEGISLATION**

### **ABSTRACT**

Throughout history, mankind has been inclined to use an increasingly advanced technology to enhance communication skills between them. Communication already represents a need as essential as it is considered one of the fundamental human rights. This right of communication today translates, among others, as the right to freedom of expression, as well as the right to information. These rights are provided in the highest acts such as the Universal Declaration of Human Rights, the European Convention on Human Rights, the Constitution of the Republic of Albania as well as other laws or bylaws issued on the basis and implementation of the Constitution. The human right to express oneself, to be informed and at the same time to preserve privacy, is developing along with the great boom that has taken place in the development of communication technology, in an increasingly connected world, so much so that to look like a global village, where information spreads very quickly. The evolution that has taken place with the development of information technology and related digital communications in recent years has changed the communication practices around the world. But in addition to this, the legislation that regulates this field has undergone constant changes, due to the fact of direct implication for human rights.

**KEYWORDS:** *freedom of expression, freedom of information, communication, media, law, information technology*

## INTRODUCTION

Communication is already known to be a necessary social process to express oneself individually and to organize in social groups, business, etc. The ability to communicate is the very essence of being human, and in this sense, it is a fundamental right protected by both international and national laws. Freedom of thought and expression has been enshrined in documents such as the Charter of Rights of England of 1688, which emphasized the right to speech and debate in Parliament. This Charter even included a very important doctrine regarding the freedom of speech, or expression by the individual, of his own opinion or judgment, and of not being violated because of this judgment. This is because man can not express any judgment other than his own. Further, we can mention the French Declaration of Human and Citizenship<sup>[1]</sup> of 1789, which in Article 11 stated that the exchange of views and opinions is one of the most precious human rights and enables every citizen to speak, write or publish freely, and be liable for the misuse of this right<sup>[2]</sup>. The Universal Declaration of Human Rights<sup>[3]</sup> (UDHR) provides in Article 19 that: Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers. Through this article is recognized and declared what is very important for people, what they are completely free to create their thoughts and express them. Freedom of expression means that man has the opportunity to express his opinion or to say it freely so he is free to speak what he thinks, regardless of whether it is accepted by the rest who hear it. At the moment that this freedom of expression violates other interests protected by law then

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<sup>[1]</sup> [https://constitutionnet.org/sites/default/files/declaration\\_of\\_the\\_rights\\_of\\_man\\_1789.pdf](https://constitutionnet.org/sites/default/files/declaration_of_the_rights_of_man_1789.pdf). XI. The unrestrained communication of thoughts and opinions being one of the most precious rights of man, every citizen may speak, write, and publish freely, provided he is responsible for the abuse of this liberty, in cases determined by law. ;

<sup>[2]</sup> <https://mdhamo.files.wordpress.com/2010/01/unesco.pdf>;

<sup>[3]</sup> <https://www.un.org/en/about-us/universal-declaration-of-human-rights>;

this freedom can be restricted.<sup>[IV]</sup> Freedom of expression is not only important in itself, it also plays a key role in protecting other rights under the European Convention on Human Rights<sup>[V]</sup> (ECHR).

There is no free country, no democracy without a broad guarantee of the right to freedom of expression, guaranteed by independent and impartial courts. Freedom of expression is a right in itself as well as a component of other rights guaranteed by the ECHR, such as freedom of assembly. But freedom of expression can be in conflict with other rights guaranteed by the Convention such as the right to a fair trial, respect for private life, etc. When the European Court of Human Rights (ECtHR) encounters such a dispute in cases before it, it strikes a balance in order to distinguish one right from another.<sup>[VI]</sup> The scope of protection of freedom of expression in recent years has generally expanded both due to the treatment of other issues related to freedom of expression, and due to a broader understanding of the nature of this right, for which The ECtHR has expanded the understanding of Article 10 of the ECHR which now includes this right.<sup>[VII]</sup> The right to communicate includes, inter alia, the

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<sup>[IV]</sup> [https://www.un.org/en/udhrbook/pdf/udhr\\_booklet\\_en\\_web.pdf](https://www.un.org/en/udhrbook/pdf/udhr_booklet_en_web.pdf). Article 29:1. Everyone has duties to the community in which alone the free and full development of his personality is possible. 2. In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society. 3. These rights and freedoms may in no case be exercised contrary to the purposes and principles of the United Nations.;

<sup>[V]</sup> [https://www.echr.coe.int/documents/convention\\_sqi.pdf](https://www.echr.coe.int/documents/convention_sqi.pdf). Article 10, Freedom of expression: 1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises. 2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary;

<sup>[VI]</sup> <https://rm.coe.int/168007ff48>. Freedom of expression, Human rights handbooks, No. 2, Council Of Europe Conseil De L'europe, A guide to the implementation of Article 10 of the European Convention on Human Rights Monica Macovei;

<sup>[VII]</sup> <http://jus.igjk.rks-gov.net/434/1/Liria-e-shprehjes-Toby%20Mendel.pdf>. Freedom of expression: Toby Mendel. Guide to the interpretation and meaning of Article 10 of the European Convention on Human Rights;

right to inform and to be informed, the right to actively participate in the process of interaction between people or groups, ie to express and be heard by others. The right to communicate is participatory, interactive so it applies to both groups and individuals.<sup>[VIII]</sup> Freedom of expression is of particular importance, especially to us Albanians. In Albania, for almost half a century (1945-1990), the individual not only did not have the freedom to express himself, but also to think against the dictatorial system in power. Expressing an opinion against the system in power could have serious consequences, such as imprisonment, internment, and this not only for the individual who had dared to express himself, but for all his family members.

## FREEDOM OF EXPRESSION AND INFORMATION

Freedom of expression or information is recognized in all countries with a developed democracy, so much so that a democratic legal order in the rule of law cannot be conceived without first exercising these freedoms. If we respect this freedom, it means that we value personal freedom, freedom to join, freedom to believe, freedom to participate in any organization, gathering, etc. The Constitution of the Republic of Albania<sup>[IX]</sup> provides in Article 22 that:

1. Freedom of expression is guaranteed.
2. Freedom of the press, radio and television is guaranteed.
3. Preliminary censorship of the media is prohibited.
4. The law may require the authorization of the operation of radio or television stations.

This right is placed immediately after the right to live<sup>[X]</sup>, making us realize how important is the right to express oneself freely in our democratic system.<sup>[XI]</sup>

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<sup>[VIII]</sup> <https://firstmonday.org/article/view/1102/1022>. The Internet and the right to communicate by William J. McIver, Jr., William F. Birdsall, and Merrilee Rasmussen;

<sup>[IX]</sup> Constitution of the Republic of Albania, Publication of the Center for Official Publications, Tirana 2021;

<sup>[X]</sup> Ibid Article 21: The life of the person is protected by law. ;

<sup>[XI]</sup> Omari L., Anastasi A., 2010, Constitutional Law, ABC, Tirana, page.124;

Article 22 of the Constitution has accompanied the freedom of expression with some other freedoms guaranteed by it, such as the freedom of the press, radio or television, as a means of expressing the opinion of the individual. Communication technology has advanced so much that these tools provided by the Constitution do not seem to fully cover this right. However, it is the ECtHR<sup>[XII]</sup> that gives an extended interpretation to Article 10 of the ECHR, stating that this article does not apply only to certain types of information, ideas or forms of expression, especially those of a political nature, but also includes the artistic expression of the individual, in a painting, production of a play, commercial information, publication of photographs, photomontages, etc. The ECtHR has also considered that Article 10 is applicable to forms of human behavior, dress code, or food exposure, etc. And all this is done through mass media, such as mobile telephony, internet, email, radio, television, Facebook, Twitter, Insta, AirBNB, Google home MINI or Amazon Echo Dot, etc. The latter are the newest platforms invented by mankind, whose first function is to meet the needs of the public for communication, interaction, opinions, shopping, socialization, etc.<sup>[XIII]</sup>

Referring to freedom of expression each of us has the right to freely express what we think, being in conditions of equality before the law, however not all of us can be users of some means of communication, and at the same time disseminators of word or press. The laws and bylaws related to electronic communication provide the necessary rules and modalities for the use of electronic means, their special characteristics, as well as the cases of restrictions on the exercise of this right. The implementation of the right to freedom of expression must be placed in the context of striking a proper balance between the right and its limitations. If we were to refer to the freedom of the press, at its center is the freedom from censorship that can be exercised by political power, but not only. Freedom of the press can mean the freedom to express oneself through publications in a newspaper, publication of books, of course

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[XII] [https://www.echr.coe.int/documents/guide\\_art\\_10\\_eng.pdf](https://www.echr.coe.int/documents/guide_art_10_eng.pdf). Guide on Article 10 of the European Convention on Human Rights, Freedom of expression, Updated – 30 April 2021;

[XIII] <http://avokatia.al/revista/avokatia-6/item/37-mbi-formimin-e-se-drejte-kushtetuese-si-disipline-aplikative-shkencore-juridiko-politike>. Brikena Kasmi, Technology Development and Personal Data Protection, Law No. 28;

some criteria must be met for this. Audiovisual communication is part of the right to express oneself, of the freedom of information, so it is the freedom to create audiovisual enterprises, the freedom to disseminate information through television shows, etc., which has a specific legal regulation that needs for changes. However, the OSCE Representative on Freedom of the Media in Albania, Harlem Désir, has stated that legislative changes in this area should not impede freedom of expression and freedom of the media, but should provide for further legal adjustments and improvements to ensure their compliance with international standards and OSCE commitments.<sup>[XIV]</sup>

The Constitution<sup>[XV]</sup> also sanctions the right to be informed as one of the fundamental rights in a democratic society, by the acts issued by each state body during the exercise of their functions<sup>[XVI]</sup>. We mentioned above that these rights are interrelated and here the right to information can not be separated from the freedom of the media, as we as individuals receive the main information from television, radio, internet, etc. This right is closely related to the constitutional obligation of public authorities to inform their citizens, to serve citizens and to contribute to the respect of their freedoms and rights. Thus, every state body, according to the Code of Administrative Procedures<sup>[XVII]</sup>, has

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<sup>[XIV]</sup> <https://www.osce.org/representative-on-freedom-of-media/443719>, OSCE Media Freedom Representative expresses readiness to continue working with Albanian authorities to improve media legislation, VIENNA 13 January 2020;

<sup>[XV]</sup> Constitution of the Republic of Albania, Publication of the Center for Official Publications, Tirana 2021, Article 23: 1. The right to information is guaranteed. 2. Everyone has the right, in accordance with the law, to receive information on the activities of state bodies, as well as on persons exercising state functions. 3. Everyone is given the opportunity to attend meetings of collectively elected bodies;

<sup>[XVI]</sup> Law no. 9920, dated 19.5.2008, On tax procedures in the Republic of Albania, as amended, Article 69, Notification of tax assessment and request for payment of tax liability: 1. Tax administration, within 10 calendar days from the date of calculation of its assessment, sends to the taxpayer the tax assessment notice and the request for payment of the tax liability: a) electronically, in accordance with the legislation of electronic communications and when the taxpayer has given consent to receive the notice electronically, and;... ;

<sup>[XVII]</sup> Code of Administrative Procedures of the Republic of Albania, Publication of the Center for Official Publications, Tirana, 2021. Article 6, Principle of information: 1. Every person has the right to request public information related to the activity of the public body, without being obliged to explain the motives, in accordance with the legislation in force that regulates the right to information. 2. In cases when the requested information is rejected, the public body takes a reasoned decision in writing, which also contains instructions for exercising the right to appeal and is immediately notified to the parties in the process;

the obligation to provide any individual or other organization, such as the organization “Faktoje”<sup>[XVIII]</sup>, with the required information, or to inform it on issues related to its interests. The right to information mentioned above, is one of the fundamental rights and freedoms sanctioned in the Constitution, the implementation of which is realized by effective cooperation between citizens, public authorities and the Office of the Commissioner<sup>[XIX]</sup>.

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<sup>[XVIII]</sup> <https://faktoje.al/en/who-we-are/>. Faktoje, a fact-checking media service that promotes accountability based on the right to information and transparency, was launched in Albania in May 2018 with full technical support from the USAID-funded Justice for All project (JfA), implemented by EWMI. The overarching goal of Faktoje is to improve public performance standards in Albania and, in less than two years, the platform has become a reliable source of information and set an example of responsible and ethical journalism. Since its establishment, Faktoje has also been acknowledged as the first fact-checking organization in Albania by a Tirana Court decision and become the first media organization in Albania to become a signatory member of the International Fact-Checking Network. In the news posted on their official website, entitled “Faktoje wins the legal battle with most state institutions for ‘Invoices’”, they stated that: The Administrative Court decided that the 8 highest state institutions, the Presidency, the Albanian Parliament and some ministries, made available to Faktoje, invoices for travel expenses abroad of the incumbents. The decisions were made in record time, despite the challenges posed by the pandemic across the system, but the legal battle still continues for the prime minister. Faktoje’s unprecedented initiative to simultaneously prosecute all executive and legislative institutions that violated the Law on the Right to Information consolidates a previously initiated practice. These institutions had previously refused to provide the documents required by Faktoje on travel expenses abroad for the period January 2018-June 2019, or sent the answer unaccompanied by illustrative documents (invoices);

<sup>[XIX]</sup> <https://www.idp.al/wp-content/uploads/2016/10/RAPORTI-VJETOR-2021.pdf>. Commissioner for the Right to Information and Personal Data Protection, Annual Report 2021;

## LEGAL REGULATIONS ON FREEDOM OF EXPRESSION AND INFORMATION

The legal regulation of these rights in principle has as its primary function the restriction of the arbitrary exercise of the governing bodies, through well-defined laws and approved in advance by the Albanian legislator. This poses a challenge to the legislature for the fact of adapting legislation to the requirements of different evolving technological systems. Law No. 9918<sup>[XX]</sup> on electronic communications contains some regulations regarding the obligations of operators for the protection of human rights, which include personal data. The purpose of this law is through the principle of technological neutrality to promote competition and efficient infrastructure in electronic communications and to guarantee proper and appropriate services in the territory of the Republic of Albania. The Electronic and Postal Communications Authority (EPCA) exercises its functions in accordance with the principle of legality, according to this law and other normative acts, as well as in accordance with national sectoral policies for the development of electronic communications and international agreements in the field of electronic communications, where the Republic of Albania is a party. EPCA takes into account the relevant recommendations and decisions of the European Commission and BEREC.<sup>[XXI]</sup> EPCA, among others, has the competence to supervise, control and monitor the activities of entrepreneurs of electronic communications networks and electronic communications services, in accordance with the law and other acts implementing this law, undertakes and determines protective measures against network entrepreneurs of electronic communications and electronic communications services, to prevent anti-competitive practices, issues individual authorizations for the use of frequencies<sup>[XXII]</sup>, takes

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[XX] Law No. 9918, dated 19.5.2008, On Electronic Communications in the Republic of Albania (amended by Law No. 102/2012, dated 24.10.2012, No. 107/2018, dated 20.12.2018; No. 92/2019, date 18.12.2019);

[XXI] <https://www.parlament.al/Files/Kerkese/20210521143547akepraportim2020.pdf>, Electronic and Postal Communications Authority, Annual Report 2020, Tirana 2021;

[XXII] Electronic and Postal Communications Authority, Decision no. 6, dated 31.03.2022, For the approval of the document: "Frequency use plan";



administrative measures, in accordance with the law, in case of legal violations, cooperates with national and international organizations in the field of electronic communications, etc. The public electronic communications network is built to support public electronic communications services and operates as a nationwide network, without distinction, for all users, open to all entrepreneurs and integrated into the international network, in accordance with international standards<sup>[XXIII]</sup>. When the EPCA certifies that the entities of the networks and services of public electronic communications or any other natural or legal person operating in the field of electronic communications, has violated the law and regulations adopted, may impose fines on violators of the law or revoke the right to use frequencies and services of networks electronic communications.

Law No. 9157<sup>[XXIV]</sup> “On interception of electronic communications” provides some rules that oblige operators of dissemination of information on the Internet to cooperate with state bodies. This law defines the procedures to be followed for the preventive interception of electronic communications by state information institutions established by law to carry out their duties, as well as the procedures to be followed by the persons in charge of interception. The purpose of this law is to increase the effectiveness of the work of state intelligence institutions to detect unconstitutional, criminal and wrongdoing activity, as well as to prevent the consequences that may come from this activity. However, this legal provision cannot be abused. The Code of Criminal Procedure<sup>[XXV]</sup> stipulates the limits of permitting wiretapping and specifically: Interception of communications by telephone, video or other means of communication to persons, in secret is allowed only when prosecuted for crimes committed intentionally for which there is a sentence of imprisonment of not less than seven years for any intentional criminal offense when committed by

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[XXIII] Law No. 9918, dated 19.5.2008, On Electronic Communications in the Republic of Albania (amended by Law No. 102/2012, dated 24.10.2012, No. 107/2018, dated 20.12.2018; No. 92/2019, date 18.12.2019). Article 91;

[XXIV] Law No. 9157, dated 4.12.2003, On the interception of electronic communications, (Amended by laws no. 9885/2008, 10 172/2009, 116/2012, 69/2017;

[XXV] Criminal Procedure Code of the Republic of Albania, Publication of the Center for Official Publications, Tirana 2017, article 221;

means of telecommunications or the use of information or telematics technologies or for specific offenses provided by the Criminal Code<sup>[XXVI]</sup>.

Law No. 10128<sup>[XXVII]</sup> “On electronic commerce” has in its object the establishment of rules for conducting commercial transactions electronically, through services provided by the information society, for the protection of participating persons, legal protection of consumer<sup>[XXVIII]</sup> confidentiality or confidential data of its participants, as well as to ensure the free movement of information services, defining the responsibilities of the information society service provider. According to this law, the Consumer Protection Commission<sup>[XXIX]</sup> and the structure responsible for consumer protection, defined in law no. 9902<sup>[XXX]</sup> on consumer protection, are in charge of following and implementing these regulations. Although this law is almost entirely aligned with Directive<sup>[XXXI]</sup> 2000/31/ EC of the European Parliament, coordination between public institutions to guarantee personal data on the individual has gaps that I think should be filled through legal acts or bylaws.

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<sup>[XXVI]</sup> Criminal Code of the Republic of Albania, Publication of the Center for Official Publications, Tirana 2017, articles 230, 230 / a, 230 / b, 230 / c, 230 / ç, 231, 232, 232 / a, 232 / b, 233, 234, 234 / a, 234 / b, 244, paragraph 2, 244 / a, 245, 245/1, paragraphs 2 and 4, 257, 258, paragraph 2, 259, paragraph 2, 259 / a, 260, 312, 319, 319 / a, 319 / b, 319 / c, 319 / ç, 319 / d, 319 / dh, 319 / e, 328 and 328 / b;

<sup>[XXVII]</sup> Law No. 10 128, dated 11.5.2009, On electronic commerce, amended by Law no. 135/2013;

<sup>[XXVIII]</sup> Regulation on “Protection of consumers and subscribers of public electronic communications services”, Approved by Decision of the Steering Council of EPCA with No. 2, dated 11.03.2021;

<sup>[XXIX]</sup> Consumer Protection Commission, Decision no. 89, dated 18.02.2022;

<sup>[XXX]</sup> Law no. 9902, dated 17.4.2008, On consumer protection, amended by laws No. 10444/2011, 15/2013 71/2018;

<sup>[XXXI]</sup> <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=celex%3A32000L0031>, Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market (‘Directive on electronic commerce’)

## CONCLUSIONS

The scope of protection of freedom of expression in recent years has generally expanded both due to the treatment of other issues related to freedom of expression, and due to a broader understanding of the nature of this right, for which The ECtHR has expanded the understanding of Article 10 of the ECHR which now includes this right.

Freedom of expression and information, freedom of the press or media may be restricted if it violates the interests of national security, foreign policy, economic and financial interests of the state, prevention and prosecution of criminal offenses, etc., according to applicable law. Regarding the audiovisual media, the Albanian legislation provides mostly detailed regulations regarding the advertising for marketing purposes or the election campaigns of political parties. What is noticed today is that television is coming and is being replaced by social networks, so the Albanian legislator is tasked to adopt rules related to receiving and disseminating information via the Internet, and this especially to protect minor children.

The ever-increasing rapid developments that technology has received, the access of the individual with technological equipment requires even more detailed legal regulation in this area. The revision of a legislative package remains a task of the Albanian legislature, supported by the OSCE recommendations.

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