

**The Registrar
European Court of Human Rights
Council of Europe
67075, Strasbourg, CEDEX
France**

Subject: Request to deal as a matter of priority the application *AIS v Albania* and to examine the merits of this case for breach of article 6, article 10 and article 13 of the European Convention of Human Rights.

Dear Registrar.

On 9 June 2015, during the local electoral campaign, the Albanian Institute of Science (AIS)¹ – an Albanian NGO - sent an official request to the three main electoral subjects, i.e. the Socialist Party (SP), the Democratic Party (DP), and the Socialist Movement for Integration (SMI) asking them for the following information:

1. list of donors of non-public funds, from whom they had benefitted since 21 May 2015 amounts above 100 000 (one hundred thousand) ALL or the equivalent value in services or goods;
2. list of every expense made since 21 May 2015 using the annual funds benefitted from the state budget in 2015.

The above electoral subjects did not respond to our request. Therefore, pursuant to Article 24 of Law no. 119/2014 “On the right (access) to information”, AIS filed a complaint with the Commissioner for the Right to Information and Protection of Personal Data on 7 July 2015.

The Commissioner for the Right to Information and Protection of Personal Data informed us on 25 July 2015 of its decision no. 44, dated 22.07.2015 on “Rejection of complaint”. The Commissioner rejected our request no. 675, dated 9.07.2015, arguing that *“the requested information is to be administered by the organizations foreseen by this law and it’s Article 2, which are not defined as public authorities in terms of how they are organized, how they operate, and their regulatory legal framework”*.

Pursuant to Article 25 of Law no. 119/2014 “On the right to information”, the Albanian Institute of Science filed a lawsuit with the Administrative Court of First Instance of Tirana.

Upon completion of the court hearings, the Administrative Court of First Instance of Tirana delivered the decision no. 5687, dated 10.11.2015 according to which: “The court rejects the lawsuit of the Albanian Institute of Science against the Commissioner for the Right to Information and Protection of Personal Data, the

¹ Albanian Institute of Science (AIS) is an Albanian registered NGO. Its mission is to promote scientific activity and applied research in Albania to solve socio-economic problems, increase transparency, and strengthen civic engagement and respect for human rights. Financing of political parties during electoral campaigns and informing the public in a capacity as a public or social watchdog has been for many years one of the main activities by AIS.

Socialist Party of Albania, the Democratic Party of Albania, and the Socialist Movement for Integration of Albania, which claims the “Abrogation of decision no. 44, dated 22.07.2015 of the Commissioner of the Right to Information and Protection of Personal Data as a lawsuit not based on evidence or law. The court forces the political parties (electoral subjects), i.e. the Socialist Party, the Democratic Party, and the Socialist Movement for Integration to provide the Albanian Institute of Science with the information requested about the financing of their electoral campaigns as per its (AIS’) request dated 9 June 2015.”

The Albanian Institute of Science complained against the decision of the Administrative Court of First Instance by addressing the Administrative Court of Appeal on 25 November 2015. The Administrative Court of Appeal by decision no 5236, date 22.11.2017 decided to uphold the decision of Tirana First Instance Administrative Court.

The case now is pending before the Supreme Court of Albania.

AIS addressed the European Court of Human Rights on 18 May 2016, asking this Court to express itself on this adjudication process, and whether they constitute a violation of Articles 6 and article 13 of the European Convention of Human Rights.

As you may know on July 22, 2016, the Parliament of Albania approved 17 constitutional amendments required to reform the justice system, aspiring to change its image by making it more independent, accountable and efficient. These constitutional amendments, *inter alia* represent the implementation of the Vetting Law, known as the temporary re-evaluation of the judges and prosecutors of the Republic of Albania.

The process of reassessing members of the judiciary system, otherwise known as the vetting process, started in November 2017 and will include over 800 judges and prosecutors, as well as a number of other employees of the justice system.

Up to nowadays the results of the vetting process are for the Supreme Court only 4 judges passed the vetting, and two of them are still under review procedures at the Appeal Chamber.

So far, the Constitutional Court is the institution that has been hit hardest by the vetting process. Out of nine members, only two have successfully passed the verdict and one of them is in the appeal process before the Appeal Chamber.

No one in Albania is able to predict when there will be established and become functional, both the Supreme Court and the Constitutional Court. Consequently no one in Albania can give an answer when the AIS appeal in the Supreme Court and eventually in the Constitutional Court will be judged. Meanwhile the topic of the request and of the whole thing loses the actuality because the request for the transparency of the finances of the political parties in the elections was made in 2015, still has no final answer from the Administrative College of the Supreme Court/ Constitutional Court and meanwhile there are also next local elections to be held in June 2019.

Furthermore we want to add in the AIS application the legal arguments and request to consider the claim for breach of article 10 of the European Court of Human Rights by Albania.

The European Court of Human Rights in the case *Magyar Helsinki Bizottsag v Hungary* did recognize that such a right to information or obligation to provide information may arise in two categories of cases: (1) where disclosure of the information has been imposed by an enforceable judicial order, and (2) in circumstances where access to the information is instrumental for an individual's exercise of their right to freedom of expression, and where its denial constitutes an interference with that right.

The Court went on to set out four principles, drawn from its more recent case law relating to access to information, that could be relied on to determine whether a denial of access falls within the second category of case.

- ***The purpose of the information request***: it is a requirement, before Article 10 can come into play, for the information sought to be necessary for the exercise of the right to freedom of expression. The right to vote can be considered as freedom of expression and knowing in advance before the election date the financing of political parties is a precondition for free and fair election. This can be demonstrated where the denial of the information would hinder or impair and individual's exercise of the right.

- ***The nature of the information sought***: the information to which access is sought must generally meet a "public-interest test" for the disclosure to be necessary under Article 10.

- ***The role of the applicant***: where the individual is seeking access to the information with a view to informing the public in a capacity as a public or social watchdog, this will be an important consideration in determining whether Article 10 applies.

- ***Ready and available information***: the extent to which the information being sought is ready and available will also be an important criterion when determining whether Article 10 is applicable to a case where an individual has been denied access to information.

Based on these conditions, please consider our request to examine also the merits of the case in the application *AIS v Albania* at the European Court of Human Rights submitted on 18 May 2016 regarding the breach of article 6, article 10 and article 13 of European Convention, and please consider as well the possibility of expediting the procedure for AIS application examination in Strasbourg, as soon as it is possible.

Hoping that our request will be taken into consideration.

Aranita Brahaj

Executive Director of AIS

Legal representative Viktor Gumi Attorney at Law