



NEJVYŠŠÍ SPRÁVNÍ SOUD



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Provide or Protect? Administrative courts between Scylla of freedom of information and Charybdis of protection of privacy.

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Answers to Questionnaire: Bulgaria



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Provide or Protect? Administrative courts between Scylla of freedom of information and Charybdis of protection of privacy

(questionnaire)

Part I

1. Is the central administrative supervision over providing information and protection of personal data carried out by one administrative authority or are there specialized authorities for each of these fields or is there an absence of such an authority in any of these areas? Does the chosen model cause any application problems?

Under the Access to Public Information Act “Public information” shall be any information related to the public life in the Republic of Bulgaria, and enabling the citizens to form their own opinion on the activity of the bodies obliged according to the law. The information shall be public regardless of the type of its material carrier. This Act shall apply to access to the public information created or kept by the state bodies, their territorial units and the bodies of the local independent government in the Republic of Bulgaria, also apply to access to public information created and kept by public entities including the public sector institutions, natural and legal persons only regarding their activity financed by resources of the consolidated state budget and resources from European Union Funds or provided from projects and programmes of the European Union. The public sector organisations shall be obliged to provide public sector information for re-use, except in the cases provided for in this Act. Access to Public Information Act does not provide administrative supervision by the administrative authorities.

Protection of Personal Data Act shall regulate the protection of the rights of natural persons with regard to processing of their personal data. The objective of the Act is to guarantee the inviolability of the individual and the personal life by providing protection of the individuals in illegal processing of personal data related to them in the process of free movement of the data. In event of violation of the rights every natural person shall have the rights to approach the Commission for Protection of the Personal Data within a period of one year from learning about the violation, but not later than five year from its occurrence. The Commission for protection of the personal data is an independent state body carrying out protection of the individuals in processing their personal data and in providing the access to these data, as well as the control over the observance of this Act.

2. What types of information are excluded from providing? Is there one regime regarding all exclusions or is there any differentiation – e.g. absolute exclusion and relative exclusion?

Any restriction on the right to access to public information and of reuse of public sector information, except where the said information it is classified information or another protected secret in the cases provided for by law, shall not be permitted.

3. Are there any types of subjects governed by private law that have duty to provide information? If the answer is affirmative, what kind of subjects and what kind of information?

Private individuals are not required to provide public information. They do not fall within the scope of responsible persons - a central or local authority. Issues related to data entry in the Commercial Register in the register of Registered Pledges and other commercial information are regulated by special laws. Employers as private entities also have obligations to provide information to public authorities and trade unions.

4. Are the salaries of the employees of the public sector subject to the right to free access to information as well? Does this cause any application problems regarding the personal data protection?

Public information created or kept by the bodies and their administrations shall be either official or administrative information. In the cases provided for by law certain official or administrative information may be declared classified information constituting state or official secret. Official shall be any information contained in the acts of state bodies and of bodies of the local self-government in the course of performance of their powers. Administrative is the information which is collected, created and stored in connection with the official information, as well as on occasion of the activity of the bodies and their administrations. Salaries of civil servants are regarded rather as administrative information. So far not subject of proceedings for refusing access to information about the amount of salaries of civil servants

5. Is the trade secret excluded from the free access to information?

According to §1 of Additional provisions of Protection of Competition Act trade secret are facts, information, decisions and data connected with the business activity, and keeping in secret of which is in the interest of the entitled persons, for which they have taken appropriate measures. The concept of trade secret is broad and includes various ideas, inventions and business information. As patents trade secrets is a form of intellectual property. Trade secrets generally is a set of valuable business ideas. There is no trade secret where the information is public or can be obtained by means permissible by persons who can provide it.

6. Are documents that are subject of intellectual property excluded from the free access to information? According to Art. 17 of Access to Public Information Act access to any public information, which is created, received or stored in relation to the activity of the obliged bodies under art. 3, shall be unrestricted. The information constituting a business secret the presentation or dissemination of which would lead to unfair competition between entrepreneurs shall not be subject to disclosure, except in case of prevailing public interest. When denying access to public information on the grounds of Para 2, the bodies obliged under Art. 3 shall indicate the circumstances leading to unfair competition between the merchants.

7. Does the right to free access to information cover as well the parts of an administrative file that contain data related to individuals or are these data protected? In which areas of public administration does this cause problems ?

According to Protection of Personal Data Act the administrator of personal data shall undertake the necessary technical and organisational measures for the protection of the data against accidental or illegal destruction or accidental loss, unlawful access, change or dissemination, as well as against other illegal forms of processing. The administrator of personal data shall determine the time limits for carrying out periodical assessment of the need of data processing and deletion of personal data. The administrator shall undertake special measures for protection when the processing includes transmitting of the data by electronic way. The measures shall be coordinated with the contemporary technological achievements and shall provide a level of protection, which is relevant to the risks, connected with the processing and to the nature of the data which shall be protected.

8. Are data related to criminal proceedings or administrative delict proceedings or any data of quasi-criminal nature (typically files of secret police departments from the times of anti-democratic past) excluded from the right to free access to information?

When the requested public information pertains to a third party and their consent is required for disclosure thereof. Then the respective body shall be obliged to request the explicit written consent of the third party. In its decision the respective body shall be obliged to comply strictly with the conditions under which the third party has given consent to disclose the information regarding the said third party

Part II

9. Public availability of decisions

9.1 Are there any sorts of decisions in your jurisdiction that are not published at all (e.g. decisions with classified status or other decisions with restricted access)? If so, please describe typical cases and give indicative statistic that can illustrate the frequency and relevance of such cases.

According to Protection of Classified Information Act the documentary security shall consist in a system of measures, techniques and means for protection of the classified information at the creating, the processing and the preservation of documents, as well as at the organising and the work of registries for classified information. The system of measures, techniques and means for documentary security, the conditions and the order for using them shall be determined with the regulation for implementation of the law. For ensuring protection of the classified information the chiefs of the organisational units shall determine additional special procedures and requirements within their competence. Within the organisational unit shall be created separate organisational section – registry for classified information, responsible for the due creating, processing, preservation and submitting to authorised persons of materials, containing classified information. The registries for classified information shall be directly subordinated to the employee for the security of the information.

9.2 If a third person (not a party of respective case) wants to obtain your decision, what is the procedure? On-line availability of decisions is to be discussed below, so kindly describe here only other options (e.g. whether it is possible to ask for a decision by snail-mail, whether any fee apply etc.)

All judgments of the Supreme Administrative Court, and all other judicial acts enacted by the courts in Bulgaria are published on the website of the respective court. These are accessible through the website of the Supreme Judicial Council

9.3 Is there any official collection of selected decisions of you instance (apart on-line publication of decisions – see below)? If so, please describe in detail the procedure of its issue. In particular, please focus on the selection process of decisions that are to be published, the frequency of publication and the form of publication. Indicate, whether the collection is published directly by your instance, by some other public body or by an independent publisher. If the collection is published by an independent publisher, please describe the form of cooperation (i.e. whether the publisher has exclusive rights to publish the collection, whether the publisher does any editing of published decisions etc.) Are decisions that are chosen for the publication regarded more relevant by your instance or by general public?

The Supreme Administrative Court issued a magazine with case law of the Court. Any judge who wishes to publish a decision with his participation may request that this be published. In the magazine published interpretative practice court and legal articles judges and law professors.

10. Editing and anonymization of decisions

In the website of the court accessible to all citizens personal data of the parties shall be not published. this is done by a special computer program created and maintained by a special department in court.

10.1 Do you anonymize published decisions? If so, please describe in detail the procedure. In particular, please describe who is in charge of anonymization, whether there are any particular statutory or other rules governing anonymization (apart general privacy/data protection rules) and what data are anonymized.

10.2 If anonymization practice changes, does it affect already published decisions (i.e. are past decisions subsequently anonymized/de-anonymized with every change of anonymization rules)?

10.3 Describe any subsequent problematic issues that you noted in your jurisdiction regarding the anonymization (e.g. different practices of different supreme instances, strong public debates, impact of de-anonymization of decisions by media etc.)

10.4 Do you edit published decisions? If so, please describe in detail the procedure. In particular, please describe who is in charge of editing, what information is added/removed in the process of editing (incl. metadata).

In Bulgarian practice are not observed cases of editing of published court decisions. In cases provided by Procedure Code, court decisions can be corrected or supplemented which is carried out by a further decision. Then it also be published as a a separate decision.

10.5 Has the development of the right to be forgotten affected in any way the anonymization or publication of your decisions? If not, is it a topic that is being considered in your jurisdiction with regards to the publication of court decisions?

Right to be forgotten has not been discussed so far in connection with the publication of judicial decisions.

11. On-line publication of decisions

11.1 Are decisions of your instance available on-line? If so, please indicate whether on-line all or only selected decisions are published on-line (if only selected decisions are published, please describe the procedure of their selection).

All decisions of the Supreme Administrative Court are published on the website of the court

11.2 Describe the form of on-line publication of you decisions. In particular, indicate whether your decisions are published through your own website or whether it is done through some different on-line service (e.g. through a common platform operated by a ministry of justice, by a judicial council etc.) Kindly add also sample screenshot(s) or link(s).

www.sac.government.bg/pages/bg/reports

<https://legalacts.justice.bg>

In addition to its own website, the decisions of the Supreme Administrative Court are available on the website of the Supreme Judicial Council

11.3 What are available file formats in which your decisions are available on-line? Apart enumerating particular file formats, kindly indicate whether your instance systematically sticks to any commonly accepted open data policy. Also, please indicate whether your instance publishes on-line only individual decisions or whether whole datasets are available to the public for further re-use. If datasets are available for further re-use but not publically, please describe to whom and under what conditions such datasets are made available.

Registration of incoming documents and papers, which will formed cases or cases that are going through the establishment of an electronic file by completing registration card containing the following data: a) registration number (automatically generated); b) date of receipt; c) the sender and address; d) type of the received document - an appeal protest cassation, cassation protest, a private complaint, protest, request for annulment request to determine the time at slowness, asking for sanctions by APC or by failing to define the nature of the received document, it is determined after consultation with judicial assistant; e) the challenged administrative act and administrative authority or case number and previous court; f) distribution: to the composition of the College or the division; g) number of accompanying letter, which was sent to work; h) clerk registering the received document.

SAC can accept electronic documents. Electronic documents should be signed by FEC and are attached files in email addressed to email The mail of SAC is given on the official website of

the court. The acceptance and the original processing e-mails containing electronic documents is carried out by structural unit at specific order of the Chairman of SAC

12. Public availability of other documents

12.1 Are there published on-line personal information about members of your instance? In particular, please describe whether there are CVs available, in which length and form (e.g. on a court website) and eventually what information is regularly published (e.g. education, memberships, political beliefs, marital status etc.) Also, please indicate whether the publication of information about members of your instance is compulsory, whether the members of your instance are free to decide about the structure and content of such information and whether you noted any issues in that regards (e.g. there was a big debate in the Czech Republic over the publication of past membership of the judges in the communist party). Please add a sample link or a screenshot of how such personal information about a member of your instance looks like.

On the website of the Supreme Administrative Court has published data and information on the court president and the two deputy chairmen of the court - photos of the three of them and details of their professional biography.

12.2 Which case-related documents other than decisions of your instance are published on-line (e.g. dissenting opinions, advocate general submissions, submissions of parties, records of chamber deliberations etc.)? Please, describe how these documents are published, i.e. where and in which format (e.g. on a website through a search form, in open data formats, etc.). If your instance publishes these documents in open formats, kindly provide a sample link to a particular dataset.

On the website of the court could be seen the minutes of the oral proceedings and opinion given by the parties, including the opinions of the public prosecutors involved in the case. Separate opinions of judges are part of the decisions and are published together with the decisions.

12.3 Are the members of your instance allowed to publically comment or annotate on their own decisions or other decisions of your instance? If so, please describe common forms in which this is done (e.g. in law journal articles, in public debates on case-law organized by the respective instance etc.)

There is no practice in which judges may discuss their judicial acts in isolation from the judgments.

Part III

13. What trends, threats and challenges do you foresee to come in the field of freedom of information and protection of privacy during the next decade? What should be the role of supreme administrative jurisdictions in facing these trends, threats and challenges?

An important trend in the development of society is finding a balance between competing and protected by law interests. Right of access to information and the right to protection of personal data should find protection in reasonable balance of interests. Right to be forgotten will also find

an appropriate form of legal protection, the same applies to the right to private and family life on the one hand and the right to broad access to information of public figures.

This kind of question seems to be too broad for answering it with concrete data. Therefore our aim is not to pursue you to fill it with some concrete and clear statement but what we intend is to know your opinion on what trends could or will influence this scope of decision-making of your jurisdiction. Your answer will serve as the basics for further discussion during the third part of the Colloquium and we hope that this “look into the future” will be pleasant and useful ending of the meeting.

We would very appreciate if the presidents of the Supreme Administrative Courts/Councils of States could provide us with answers to this question.