



NEJVYŠŠÍ SPRÁVNÍ SOUD



Colloquium organized by Supreme Administrative Court of the Czech Republic and ACA-Europe

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

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Answers to Questionnaire: Croatia



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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?

Information commissioner supervises providing information, while Croatian Personal Data Protection Agency supervises protection of personal data.

Does the chosen model cause any application problems?

No.

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?

Croatian Act on the right of access to information makes differentiation among types of information which are excluded from providing. There are absolute and relative exclusions of providing information.

Public authority bodies shall restrict access to information relating to any procedures held by the competent authorities in preliminary and criminal procedures for the duration of such procedures.

Public authority bodies may restrict access to information:

- 1) if the information has been classified by a degree of secrecy, pursuant to the act governing classified information;*
- 2) if the information represents a trade or professional secret, pursuant to law;*
- 3) if the information represents a tax secret, pursuant to law;*
- 4) if the information is protected by the law governing the area of protection of personal information;*
- 5) if the information is protected by regulations governing intellectual property rights, except in the case of explicit written consent of the rights holder;*
- 6) if access to information has been restricted pursuant to international treaties, or pertains to information arising in procedures of concluding or acceding to international agreements or negotiations with other countries or international organisations, until the completion of such proceeding, or pertains to information arising in the area of diplomatic relations;*
- 7) in other cases specified by law.*

Public authority bodies may restrict access to information in the case of a reasonable doubt that its disclosure might:

- 1) prevent the efficient, independent and unbiased unfolding of court, administrative or other legally regulated proceedings, the execution of court orders or sentences,*
- 2) prevent the work of the bodies conducting administrative supervision, inspectional supervision, i.e. legal supervision.*

Public authorities may also restrict access to information when:

- 1) information on the procedure is developed within one or more high public authority bodies, and its disclosure prior to the completion of development of integral and final information could seriously threaten its development;*
- 2) information arising in the procedures of alignment in the adoption of regulations and other acts, and in the exchange of positions and opinions within one or more public authority bodies, and its disclosure could lead to an incorrect interpretation of the content of the information, threaten the process of adoption of the regulation or act, or freedom to give an opinion and express a position.*

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?

Legal entities established by the Republic of Croatia or the local and regional self-government units, legal entities engaged in public service, legal entities entirely funded by the state budget or the budget of the local and regional self-government units, as well as companies in which the Republic of Croatia or the local and regional self-government units hold individual or joint majority ownership, are obliged to provide an information.

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?

Information commissioner states that gross salaries are subject to the right to free access to information, while the elements of that salary are not (e.g. benefits, amount of credit, etc.). There was no administrative dispute of that issue yet.

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

Public authority bodies may restrict access to information if the information represents a trade or professional secret, pursuant to law.

6. Are documents that are subject of intellectual property excluded from the free access to information?

Public authority bodies may restrict access to information if the information is protected by regulations governing intellectual property rights, except in the case of explicit written consent of the rights holder.

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?

The right to free access to information does not cover the parts of an administrative file which contains data related to individuals. At the moment we are not aware of any specific problem related to that.

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?

The public authority bodies shall restrict access to information relating to any procedures held by the competent bodies in preliminary and criminal proceedings for the duration of the respective procedures. Public authority bodies may restrict access to information if the information has been classified by a degree of secrecy, in accordance with the law regulating classified information.

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.

Under the current law, administrative courts are obliged to publish only certain judgements (e. g. in the matters of electronic communications, judgements by which the general act is revoked, ...). Other decisions can be published in case law book or on the web site of the Court (see under 9.3.) depending on importance in legal argumentation.

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.)

Any third person can obtain Court's decision. No specific procedure neither any fee is required. The decision can be asked by an e-mail or written apply. The obtained decision is anonymized.

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?

High administrative court annually edits book of collected decisions. The book contains extracts of a selected decisions with digesta from decisions. All decisions are anonymized. Decisions are selected by presidents of Court's departments and Court's office for researching the case law.

The case law book is published by an independent publisher who publishes Croatian official gazette. The cooperation between the Court and publisher is based on a contract and publisher has got exclusive rights to the collection. The publisher makes only proofreading in the digesta, but not in the reasoning of the selected decisions.

The case law book is important for all administrative courts but also for general public (i. e. parties in administrative dispute).

10. Editing and anonymization of decisions

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.

Published decisions are anonymized, except published judgements by which the general act is revoked (according to Act on administrative disputes) or other decisions which must be published according to special laws. These judgements are published in Official gazette of the Republic of Croatia.

Anonymization is done by Court's advisors who are working in Court's office for researching the case law. Anonymization rules are proscribed by the President of the Supreme Court of the Republic of Croatia.

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)?

It depends on the provisional rules of the new act.

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.)

The problem can arise in anonymization of decisions regarding lawfulness of general act: i. e. local representative body is anonymized, while local official gazette is not. So, according to local official gazette, representative body can be recognized.

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).

As it is mentioned above, the case law book has been edited each year. For other answers please see point 9.3 of this questionnaire.

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?

No, the right to be forgotten was not considered in our jurisdiction with regards to the publication of court 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).

Only selected decisions concerning protection of subjective rights are available on-line while all decisions concerning lawfulness of general acts are available on-line. Decisions are selected by Court's office for researching the case law in cooperation with the presidents of Court's departments. Selection depends on the law argumentation in the decision.

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).

The decisions are published through the Court's website: <http://www.upravnisudrb.br/praksa/frames.php>

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.

The decisions are available in HTML file format. The Court systematically sticks to commonly accepted open data policy. Whole datasets of the Court are available to the public.

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.

Personal information about members of the Court is not published on-line. Only names of the judges and Court's advisors are available on-line.

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.

Except decisions, on-line are available legal interpretations adopted at a convention of all judges of the Court or a Court's department. They are published in an open data format:

<http://www.upravnisudrb.hr/frames.php?right=odluke.html>

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.)

Judges are allowed to write professional papers (articles) in law journals and participate in professional conferences on case-law.

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?

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.

An administrative court must ensure that these “clashed” rights are reached in proper procedure meaning that competent institutions didn’t overstep their competences. The substance of both rights can be reached only in proscribed procedure in order to protect public interest and rights of private persons.

The problem is not only to find a balance between a right to information and protection of privacy, but also to prevent abuse of both rights. In practise we can see particular persons using a right to information in an appropriate way and administrative courts are unable to stop permanent abusing.