



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: Serbia



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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?

The supervision over providing right to free access to information of public importance is performed by the Commissioner for Information of Public Importance and Personal Data Protection of the Republic of Serbia, as an autonomous public authority, who exercises his/her powers independently.

The supervision over the legality of work of six public authorities (General Assembly, President of the Republic of Serbia, Government of the Republic of Serbia, Supreme Administrative Court, Constitutional Court and Republic Public Prosecutor (when there is no appeal allowed against decisions before Commissioner), shall be made in the administrative dispute upon lawsuit submitted before the Administrative Court.

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?

Preclusion and limitations of free access of information of public importance is prescribed by the provision of Article 9 of the Law on Free Access to Information of Public Importance, when the seeker is subject to limitations of access to information of public importance, if it would thereby:

Article 9

A public authority shall not allow an applicant to exercise the right to access information of public importance if it would thereby:

- 1) Expose to risk the life, health, safety or another vital interest of a person;**
- 2) Jeopardize, obstruct or impede the prevention or detection of criminal offence, indictment of a criminal offence, pretrial proceedings, trial, execution of a sentence or enforcement of punishment, any other legal proceeding, or unbiased treatment and a fair trial;**
- 3) Seriously threaten national defense, national and public safety or international relations;**

4) Substantially undermine the government's ability to manage the national economic processes or significantly impede the achievement of justified economic interests;

5) Make available information or a document qualified by regulations or an official document based on the law as state, official, commercial or other secret, i.e. if such a document is accessible only to a specific group of persons and its disclosure could seriously legally or otherwise prejudice the interests that are protected by the law and override the access to information interest.

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?

The public authority will allow the exercise of rights to access to information in all cases, if the requested information can be extracted from other information in the document that authority is not obliged to allow access to the plaintiff. The public authority will provide access to the document containing only the extracted information and will inform him/her that other content of documents is not available.

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?

The salaries of public sector employees are not subject to preclusion or limitations of free access to information of public importance, taking into consideration that public sector employees enjoy a lower level of privacy protection compared to „so called“ ordinary citizens and that information regarding the position and amount of salary of public sector employees is information that is related to the exercise of public functions, or public work, and not related to his/her private life. The basis for publishing this information stems from Article 14 Paragraph 1 point 2 of the Law on Free Access to Information of Public Importance.

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

The access to trade secret is possible in the manner and under conditions prescribed by Data Secrecy Law and Law on Access to Information of Public Importance, with the assessment of the public authority whether in each specific case the public interest prevails in relation to the restriction of access to data.

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

In cases of intellectual property, the public authority can separate information in terms of violation of rights to privacy, rights to reputation or any other person's rights to which the requested information relates personally, while the other data from cases may be

accessible to the seeker. The Assessment of prevailing interest for allowing access, making a copy, the public authority shall establish in each specific case.

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 ?

All data from case file in the administrative procedure and administrative dispute relating to parties in the administrative proceedings, whose rights are being decided, must be protected in respect of persons who were not parties in the procedure before the administrative authority.

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 above mentioned question does not fall within jurisdiction of the Administrative Court.

Part II

9. Public availability of decisions

Case Law of the Administrative Court (decisions of the Administrative Court) is available on the website of the Court (www.up.sud.rs/sudska-praksa).

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.

The Administrative Court until now does not have decision with classified status or other decisions with restricted access.

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.)

If the party who has not participated in the administrative dispute wants to obtain decision, he/she may file a request directly at the reception desk, by registered mail, via e-mail or by filing a request for free access to information of public importance.

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?

One of the basic principle underlying the regulation of the Administrative Court is transparency in work of the Court. In this regards, the Administrative Court publishes its decisions on the official website presentation of the Court, while the selections of those decisions is performed by judges from the Case Law Department of the Administrative Court, which are in charge of that task.

Also, determined legal attitudes and opinions of the Administrative Court is published annually in the Bulletin of the Case Law of the Administrative Court, that the Court publishes in cooperation with the chosen publisher.

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.

Administrative Court decisions shall be anonymized in accordance with the Rules on substitution and omission (anonymization) of data in court decisions of the Administrative Court.

Administrative Court decisions shall be published in its entirety, but information on parties (name and surname, date and place of birth, ID and personal number, passport number and other personal documents, e-mail and other contact details; the evidence indicated by the level of secrecy and evidence which is subject to privacy of the participants in the process) shall be anonymized by excluding some parts from the reasoning of the judicial decisions and excluded parts are marked with points or are covered with black colour.

Based on the decision of the President of the Court, one person delas with the anonymization of data in court decisions.

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)?

Bearing in mind that anonymization in judicial decisions and decisions of other state authorities is not specifically regulated by any law, the Administrative Court regulates this area applying its aforementioned Rules, which are adjusted according to the new legislation.

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.)

Bearing in mind the objective of the publishing of court decisions (introduction of professional and general public about the conduct of the court in each individual case in assessing the legality of these acts do not affect the changes of Case Law of the Administrative Court in anonymization of this kind of cases.

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).

No.

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?

We have not had experience with the problem in the Republic of Serbia so far.

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).

Administrative Court decisions shall be published on the official website presentation of the Administrative Court, and taking into consideration the fact that this Court adjudicates in more than 80 various subject matters, it publishes only selected decisions.

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).

Administrative Court decisions shall be published on the official website presentation of the Administrative Court.

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 Administrative Court possess internal Case Law Data Base, which was established for the purpose of using only by judges and judicial assistants of the Administrative Court, that contains decisions given by the Court from its establishment (01 January 2010). This Case Law Data Base is not available to third parties out of the Court.

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.

Administrative Court on its website presentation did not publish biographies of judges neither is prescribed by law to do it. There is biography of the President of the Administrative Court, judge Jelena Ivanovic on the website presentation within the Information Bulletin on work of the Court, which is also available in English language.

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.

Documents that are available and published periodically are: composition of Chamber of judges, trial schedule, Annual Calendar of Tasks, Monthly, Quarterly and Annual Reports on work of the Court, Program of Resolving of Old Cases, Electronic Bulletin Board and many others.

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.)

Their opinions on the implementation of regulations in each specific case, judges firstly consider during the Session of all judges managed by the President of the Court and convened on his/her own initiative, which is convened when necessary or at the request of the Case Law Department of the Administrative Court, the Department outside the Seat of the Court or at the request of at least one third of all judges.

Also, Administrative Court judges may participate in professional conferences, they can also be authors of professional papers in professional journals with no special restrictions.

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.

The harmonization of the national legislation with the EU law and jurisprudence of the European Court of Human Rights in the field of free access to information of public importance and personal data protection is a necessary condition for providing better judicial protection, taking into account firstly the speed of development of innovative technologies of modern society (security checks, biometrics, video monitoring and others) on the one hand and the increasing need of privacy protection on the other.

The scope of initiating administrative procedure, which subject dispute is information of public importance and personal data protection, primarily affected by:

- **broader and clearer defining of field of the application of law, which regulates the area of public information regarding the conduct of the entity entrusted with the exercise of public power (for instance regarding public notaries);**
- **more transparent work of the authority and access to all important information, as well as strengthening of the proactive publication of information;**
- **affirmation of rights to personal data protection, etc.**