



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.**

Prague, 29-31 May 2016

**Answers to Questionnaire: Slovakia**



Colloquium co-funded by the "Justice" programme of the European Union

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

(questionnaire)

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## 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 central administrative supervision over the protection of personal data is carried out by the **Office for Personal Data Protection of the Slovak Republic**. There is no such authority in the field of providing information. Supervision over the lawfulness in general in the area of public administration is conducted by the prosecution, which performs inspections regarding the compliance with the Act on Free Access to Information. We are not aware of any application problems arising from the non-existence of the central supervisory body.

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?*

See the respective provisions of the Act on Free Access to Information below:

### **Limitations of the Access to Information**

#### **§ 8**

#### **Protection of Classified Facts**

(1) If the requested information forms part of the classified fact under a special act or is subject to banking or tax secrecy under a special act and the applicant has no authorization, the Obligee shall not provide such information, but shall reference to the appropriate legal statute.

(2) The bank secrecy shall not be deemed to be breached or compromised by disclosure of the contract under the provision of Section 5a of the Act on Free Access to Information (*Note: this provision concerns the mandatory disclosure of a contract*).

#### **§ 9**

#### **Protection of Person and Personal Data**

(1) Information relating to person and privacy of a natural person, personal letters, pictures and representations, as well as any image and sound recordings relating to a natural person or its personal expressions, shall be provided by the Obligee only if so stipulated in a special act or with a prior consent of the person affected. Should the affected person be dead, consent may be given by a close person. Provisions of special regulations shall not be hereby affected.

(2) Information on personal data of a natural person that is processed by information system under the conditions set by a special act shall be provided by the Obligee only if it is stipulated by an act or upon prior written consent of the person affected. Should the person affected not have legal capacity, the consent may be given by an appropriate legal representative. Should the affected person be dead, consent may be given by a close person.

(3) In order to inform the public, the Obligee shall disclose the personal data of a natural person processed in the information system under the conditions stipulated by a special act about a natural person being a public officer, member of a Municipal Council, Civil Service superior, an expert performing tasks for the member of the Slovak government, President of the Slovak Republic, the Chairman and Vice-Chairman of the National Council of the Slovak Republic, managerial personnel performing work in public interest, managerial personnel of an employee being a public authority, a superior in service or a member of an evaluation committee or a similar body, which participates in the decision making process concerning use of public funds. Pursuant to the first sentence, the following personal data shall be disclosed:

- a) Title,
- b) First name,
- c) Surname,
- d) Function and the date of appointment to the function,
- e) Job title and the date of commencement of work performance,
- f) Place of performance of function or work and the body in which the function or work is performed,
- g) Salary, wage or emoluments and other financial contributions for performance of function or work, provided that these are borne by the state budget or other public budget.

(4) The personal data of a person being a Civil Service superior shall be disclosed by the Obligee in the extent and for the purpose under paragraph 3 only if the disclosure is not in conflict with the confidentiality rules under special acts and the disclosure of such information does not jeopardise security and defense of the Slovak Republic, public policy and performance of tasks of these person or body in which it performs its work; the provision of Section 13 shall not be applied in this case (*Note: § 13: Disclosure of information under this Act shall not be deemed as a violation of confidentiality rules stipulated in special act*).

## **§ 10**

### **Protection of trade secret**

(1) The Obligee shall not disclose any information classified as a trade secret.

(2) Disclosure of the following information shall not be deemed as a violation or jeopardizing a trade secret:

- a) information related to a significant impact on health of the population, world cultural and natural heritage, environment, including biological diversity and ecological stability,
- b) information on environmental pollution,
- c) information obtained through public funds or relating to the use of public funds, disposal of the state property, municipal property, property of a higher territorial unit or the property of legal entities established under law, on the basis of law or relating to disposal of the European Union funds,

- d) information on state assistance and information under provision of Section §3, paragraph 2.

(3) The trade secret shall not be deemed to be breached or compromised by disclosure of the contract under the provision of Section 5a of the Act on Free Access to Information.

## § 11

### **Other Limitations on the Right to Information**

- (1) The Obligees shall limit disclosure of information or not provide information, if
  - a) information was obtained from a person not required by law to provide information, who upon notification of the Obligees instructed the Obligees in writing not to disclose information. If the person authorized to give consent for disclosure of information fails to reply within 7 days upon notification, it shall be deemed that the person consented to disclosure of information. The person must be informed of the consequences in the notification,
  - b) information is to be disclosed under an act; and if it is to be disclosed under such law within a period set in advance; and not later than such period,
  - c) it may violate intellectual property rights under a special law, except if the person entitled under these special laws consented to the disclosure of information upon notification of the Obligees,
  - d) it concerns the decision-making power of the courts including international judicial bodies or the law enforcement bodies except for the information disclosed under special act, decisions of a policeman in the preparatory proceedings under the part two, chapter two, title five of the Criminal Procedure Code and the information on filing of charges including the brief description of the act, provided that such disclosure is not prohibited by law and does not compromise the rights and interests protected by law,
  - e) it concerns conciliation proceedings or arbitration proceedings besides the information on decision or the outcome of the proceedings, provided that its disclosure is not prohibited by special acts,
  - f) it concerns the place of habitat of endangered species of plants and animals, minerals and fossils and there is a threat of inappropriate destruction, damage or disturbance,
  - g) it would run contrary to the legally binding acts of the European Union or an international treaty the Slovak Republic is bound by,
  - h) it concerns the exercise of control, supervision or surveillance by a public authority under special acts besides information on decision or other outcome of the control, supervision or surveillance, provided that its disclosure is not prohibited by special acts,
  - i) it involves the documentation containing information the disclosure of which could be used for planning and performance of activities aiming to disrupt or damage a nuclear facility or objects of significant importance and other important objects under special acts.

(2) The provision of subsection a) shall not apply with respect to information obtained through public funds or information concerning use of public funds, disposal of state property, municipal property, property of a higher territorial unit or the property of legal entities established under law, on the basis of law or relating to disposal of the European Union funds.

(3) If in order to carry out tasks under special act the Obligee obtained information from a third party which is subject to non-disclosure rules or other limitations protecting information from being publicized or abused but the information may be provided under this Act, the Obligee shall provide only that information which is directly connected with its tasks.

The majority of the restrictions constitute an absolute exclusion. There are, however, some exceptions enabling to break the statutory prohibition of disclosure (see the provision of Section 9 and 11, paragraph 1, letter c) of the Act on Free Access to Information), which allows to disclose certain categories of data, should the person concerned grant its approval thereof.

*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?*

Under the Act on Free Access to Information the state agencies, municipalities, as well as legal entities and natural persons that have been given the power by law to make decisions on the rights and responsibilities of natural persons or legal entities in the area of public administration, and that only within the scope of their decision-making power are primary obliged to provide access to information. Obligees are further the legal entities established by other Obligees, as well as the legal entities established under an act and legal entities established by a state agency, higher territorial unit and a municipality.

A special act may stipulate that other legal entities or natural persons are obliged to disclose 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?*

In order to inform the public the Obligee shall disclose the personal data of natural person processed in the information system under conditions stipulated by a special law about a natural person being a public officer, member of a Municipal Council, Civil Service superior, an expert performing tasks for the member of the Slovak government, President of the Slovak Republic, the Chairman and Vice-Chairman of the National Council of the Slovak Republic, managerial personnel performing work in public interest, managerial personnel of an employee being a public authority, a superior in service or a member of an evaluation committee or a similar body, which participates in the decision making process concerning use of public funds. Pursuant to the first sentence the following personal data shall be disclosed:

- a) Title,
- b) First name,
- c) Surname,
- d) Function and the date of appointment to the function,
- e) Job title and the date of commencement of work performance,

- f) Place of performance of function or work and the body in which the function or work is performed,
- g) Salary, wage or emoluments and other financial contributions for performance of function or work, provided that these are borne by the state budget or other public budget.**

The judicial practise is of the opinion that such information is linked to the function itself regardless of the person performing the function and therefore it does not constitute personal data.

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

Yes, it is. See the respective provisions of the Act on Free Access to Information below:

### **§ 10 Protection of trade secret**

- (1) The Obligee shall not disclose any information classified as a trade secret.
- (2) Disclosure of the following information shall not be deemed as a violation or jeopardizing a trade secret:
  - a) information related to a significant impact on health of the population, world cultural and natural heritage, environment, including biological diversity and ecological stability,
  - b) information on environmental pollution,
  - c) information obtained through public funds or relating to the use of public funds, disposal of the state property, municipal property, property of a higher territorial unit or the property of legal entities established under law, on the basis of law or relating to disposal of the European Union funds,
  - d) information on state assistance and information under provision of Section §3 paragraph 2.
- (3) The trade secret shall not be deemed to be breached or compromised by disclosure of the contract under the provision of Section 5a of the Act on Free Access to Information.

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

Yes, they are. See the provision of Section 11, paragraph 1, letter c) of the Act on Free Access to Information:

- (1) The Obligee shall limit disclosure of information or not provide information, if
  - c) it may violate intellectual property rights under a special law, except if the person entitled under these special laws consented to the disclosure of information upon notification of the Obligee.

*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?*

Yes, the data of individuals included in an administrative file are protected. The administrative proceeding is in principle of non-public nature. The data in the administrative files shall not be publicly accessible or disclosed. Should any of the proceedings be public, the special acts relating thereto regulate the conditions of disposal of the personal data. In case someone requests an information from an administrative file (for instance an instigation by a prosecutor), the Obligee is obliged to anonymize the personal data of the persons concerned. However, there are publicly available information systems in the Slovak Republic containing personal data of individuals (e. g. name and surname, date of birth and permanent residence of real estate owners). The Act on Personal Data Protection defines in detail to what extent the personal data being part of such databases can be publicized and which of them cannot be publicized in no case.

*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?*

Yes, they are. See the provision of Section 11, paragraph 1, letter d) of the Act on Free Access to Information:

(1) The Obligee shall limit disclosure of information or not provide information, if

d) it concerns the decision-making power of the courts including international judicial bodies or the law enforcement bodies except for the information disclosed under special act, decisions of a policeman in the preparatory proceedings under the part two, chapter two, title five of the Criminal Procedure Code and the information on filing of charges including the brief description of the act, provided that such disclosure is not prohibited by law and does not compromise the rights and interests protected by law.

See also the provisions of Section 6 of the Criminal Procedure Code:

### **Section 6 Public Information on Criminal Proceedings**

(1) The bodies involved in criminal proceedings and the court shall inform the public on criminal proceedings under this Act through the mass media. However, such provision of information shall have to be without prejudice to the duty to maintain the confidentiality of classified data, business secrecy, bank secrecy, tax secrecy, postal secrecy or the secrecy of telecommunications.

(2) When providing information, the bodies involved in criminal proceedings and the court shall be entitled not to disclose such facts that could frustrate or obstruct the clearing up and investigation of the case, and not to violate the principle of presumption of innocence. They shall take care not to disclose protected personal information or facts of private nature, in particular those related to family life, dwelling and correspondence that are not directly connected with the criminal act. Special care shall be taken by them to preserve the interests of minors, juveniles and the injured parties whose personal data shall not be disclosed.

(3) At court hearing, the scope of provided information shall be based on the principle of public nature of a trial. During court hearing, the participants may not be prohibited to take handwritten notes or make drawings, unless such activity interferes with the course of the hearing.

(4) Where the provision of information interferes with or endangers the interests referred to in paragraphs 1 or 2, the body involved in criminal proceedings and the court shall refuse to provide the information.

In the Slovak Republic there is no special legal regulation governing the access to information in administrative delict proceedings or to any files including data of quasi-criminal nature. In case someone requests an information from an administrative file (for instance an instigation by a prosecutor), the Obligee is obliged to anonymize the personal data of the persons concerned.

## **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.*

Yes, there are. These are typically the cases of requests from other courts, other states' bodies, determination of paternity, inheritance procedure, decisions within the pre-trial proceedings in criminal matters (custody decisions), information and technical means in criminal law. However, the courts are obliged to adopt measures for the protection of rights and interests protected by law and the law makes a reference to the limitations of the free access to information, which are specified in the answer to the question no. 1.

*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.)*

In order to obtain a decision, a request under the Act on Free Access to Information shall be submitted. Any of them can be disclosed. The request may be filed in writing, orally, by telephone, fax, e-mail or any other technically reasonable way. Only the costs incurred by the court in relation to the disclosure of information shall be reimbursed.

*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 Court of the Slovak Republic (“Supreme Court”) issues the Collection of the Opinions of the Supreme Court and the Decisions of the Courts of the Slovak Republic. Selected

decisions are published in online form at the Supreme Court's website. Until 2011 they were issued in printed version only. The decisions are published by the Supreme Court itself. There are four divisions at the Supreme Court – Civil, Criminal, Commercial and Administrative Division. There are judges at each of the division, who besides their decision-making and other activities prepare the materials for sessions of the divisions, mainly the proposals of final decisions of the courts of the Slovak Republic to be published in the Collection of the Opinions of the Supreme Court and the Decisions of the Courts of the Slovak Republic and the proposals of the opinions. These judges propose for the division's session (usually twice) the decisions to be published in the Collection in cooperation with the chairman of a particular division. The publication of the proposed decisions is decided on through the majority vote of judges of the particular division, to which the decision belongs to in terms of field of law. Based on this voting the decision is published in the Collection.

#### *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.*

Yes, we do anonymize the published decisions. They are anonymized by the panel's registrars and the judicial assistants in mutual cooperation. The judicial assistants, who hold a degree in law, are responsible for the anonymization. The anonymization is regulated by the decree of the Ministry of Justice of the Slovak Republic and the measure of the President of the Supreme Court. The following data is subject to the anonymization: birth number, date of birth, identity card number, number of a travel document or other document proving the person's identity, permanent residence, phone number, fax number, e-mail address, internet protocol address, URL address, name and code of the bank or foreign bank's branch, bank account number, account name, IBAN, number of the client, cadastral area, number of the ownership certificate, classified facts and trade secret, name and surname of a natural person, names and surnames of legal representatives of the participants and parties to the proceedings and guardians of the participants and parties to the proceedings and other persons participating in the proceedings.

*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)?*

So far the changes did not affect already anonymized decisions. It is because the extent of the undisclosed data has been narrowing.

*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.)*

It is mainly the problematic data retrieval system of the Ministry of Justice and the Supreme Court. Not all of the decisions are published or the publication is delayed.

*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, we do not edit published decisions. Besides the anonymization, the decisions are identical to their written form.

*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 no knowledge on any essential events in this area in the Slovak Republic.

### *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).*

In principle, all final decisions of the Supreme Court are available online. There are certain exceptions regarding the pre-trial proceedings in criminal law (mainly custody decisions) and classified facts.

*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 of the Supreme Court of the Slovak Republic are published on its website: <http://www.nsud.sk/rozhodnutia/> and the decisions of all of the Slovak courts including the Supreme Court of the Slovak Republic are published on the website of the Ministry of Justice of the Slovak Republic: [www.rozhodnutia.sk](http://www.rozhodnutia.sk)

*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 of the Supreme Court of the Slovak Republic are available in pdf format. The open data policy is currently only being considered at the Supreme Court. Only the individual decisions and the Collection of the Opinions of the Supreme Court and the Decisions of the Courts of the Slovak Republic are published.

### *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 CV's 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.*

No, there are no personal information published online about the members of ours instance. Only the work schedule containing the names and the job titles of the members of our instance is published. The CVs of the judges are compulsorily disclosed during the selection procedure concerning the promotion of judges (for instance from a regional court to the Supreme Court)  
<https://www.justice.gov.sk/Stranky/Sudy/Vyberove-konania-na-sudoch/Detail-uchadzaca-vyberoveho-konania.aspx?Ic=21394>

*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.*

There are no case-related documents other than decisions of our instance published online in the Slovak Republic.

*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.)*

Under the provision of Section 30 paragraph 11 of the Act no. 385/2000 Coll. on Judges and Judges Sitting as Assessors, the judge is obliged to refrain from publicly expressing its opinion on pending cases before the courts that are not completed by issuance of a final decision.

Pursuant to the Article 2 paragraph 3 of the Instruction of the President of the Supreme Court of the Slovak Republic, which determines the manner of informing the public on the court's activities through the press and other mass media, the judges and other employees of the Supreme Court shall without delay inform the Spokesperson or the Office Director about each request of the media for provision of information.

In cases other than the abovementioned the freedom of expression is not restricted whatsoever. The members of our instance usually express their opinions through vocational articles or lectures. The freedom to express their opinion within common publicism resources is not limited anyhow.

### **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.

Broadening of the extent of published information represents a significant trend nowadays, which we approve of, since the necessity to disclose information upon request is diminishing.

In the Slovak Republic all the contracts concluded by an Obligee (i. e. state bodies, municipalities, higher territorial units, as well as legal entities and natural persons that have been given the power by law to make decisions on the rights and responsibilities of natural persons or legal entities in the area of public administration, and that only within the scope of their decision-making power, legal entities established by law and legal entities established by a state body, higher territorial unit or municipality under a special act and the legal entities established by these Obligees), which contain information obtained for funds managed by legal entities in the area of public administration, including the non-state dedicated funds, or relating to use of such funds, disposal of the state property, municipal property, property of a higher territorial unit or the property of legal entities established under the law, on the basis of law or relating to disposal of the European Union funds, are compulsorily published. If such contract is not published, it cannot become effective. Such mandatory disclosure was enacted in the Slovak Republic in 2011 and further broadening of the disclosure of contracts is planned.

In terms of freedom of access to information, the courts shall maintain the balance between the transparent exercise of public authority and the right of public to information on one side and the effective exercise of public authority on the other, so that the Obligees are not prevented from duly performing their activities and their administrative staff is not piled with inadmissible disclosure of information requests. It should be mentioned that the Supreme Court of the Slovak Republic promotes extending the manner of communication with the public and it commenced publishing a newsletter, the purpose of which is to provide the general (not only professional) public with information about functioning of the Supreme Court and any happenings taking place thereat.