



NEJVYŠŠÍ SPRÁVNÍ SOUD



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

**Supreme administrative courts and evolution of the right to publicity, privacy and information.**

Brno, 18 May 2015

**Answers to Questionnaire: Cyprus**



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

## **Supreme Administrative Courts and evolution of the right to publicity, privacy and information**

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(Questionnaire)

**1. Briefly describe the administrative institutional backing of free access to information and of the protection of personal data. Whenever those agendas are institutionally linked, provide for a brief description of such relations.**

Protection of personal data is governed by the **Processing of Personal Data (Protection of Individuals) Law of 2001** which incorporated Directive 95/46 on the protection of individuals with regard to the processing of personal data and on the free movement of such data.

Article 5 of the Law provides that the processing of personal data is permitted when consent is unambiguously given. But it is also permitted without consent when processing is necessary for compliance with a legal obligation or for the performance of a contract, or for the protection of vital interests, or for purposes of public interest or for the legitimate interests pursued by a controller or a third party, on condition that these interests override the rights, interests and fundamental freedoms of the data subject.

As regards sensitive data Article 6 of the Law provides that the processing of sensitive data is prohibited.

There are some exemptions, however that allow the processing of sensitive personal data, for example, when the data subject has given his explicit consent, or for the fulfilment of obligations in the employment sector, or for the protection of vital interests, or in the context of the activities of an organization or union the data subject is a member of or the processing relates to data made public by the data subject or medical data processed by professionals bound by the rules, on condition that the processing is necessary for the purposes of preventive medicine, medical diagnosis, the provision of care or the management of health care services or for grounds of national or public security, or for statistical, research and scientific purposes or for journalistic purposes.

The Cyprus Constitution also provides protection on the privacy of personal data. **Article 15** states that every person has the right to respect for his private and family life and that there shall be no interference with the exercise of this right, except such as is in accordance with the law and is necessary in the interests of the security of the Republic, constitutional order, public safety, public order, public

health, public morals or the protection of the rights and liberties guaranteed by the Constitution to any person.

**Article 17 of** the Constitution provides that every person has the right to respect for, and to the secrecy of, his correspondence and other communication, if such other communication is made through means not prohibited by law.

The Office of the Commissioner for Personal Data Protection in Cyprus for the time being is only a Data Protection Authority. The Commissioner is an independent officer responsible for the monitoring of the application of the Data Protection Law relating to the protection of individuals with regard to the processing of personal data. We do not have an access to information law.

A draft bill prepared by the Ministry of Justice and Public Order which endorses free access to information is being legally drafted by the Office of the Attorney General. When this process is completed it will be put before the Cyprus House of Representatives for adoption.

**2. Describe in general terms the regular administrative and court procedure in a typical disputable case of free access to information. Describe also the procedural role of your supreme administrative instance.**

As stated above we do not have a Law on free access to information.

However according to **Article 12 of the Processing of Personal Data (Protection of Individuals) Law 2001, L. 138(I)/2001**, as amended:

12. Every person has the right to know whether the personal data relating to him/her are or were processed. To this end, the controller is obliged to reply in written form and provide him/her with a copy with his/her personal data, if it doesn't require disproportionate efforts.

The data subject should apply in writing and the controller should reply within 4 weeks. The controller should delete any other person's data before communicating the information to the data subject.

According to Regulation 538/2002, 8.11.2002:

The right of access shall be exercised after the payment of euro 17.00 to the controller.

The data subject has the right to ask for and receive from the controller without excessive delay and expense -

(a) Information about:

(i) all the personal data relating to him which have undergone processing, as well as any available information as to their source;

(ii) the purposes of the processing, the recipients or the categories of recipients, as well as the categories of data which are or are to be processed;

(iii) the progress of the processing since his previous briefing;

(iv) the logic which every automated process of data in relation to the data subject, is based, in cases of decisions taken by virtue of section 16(1).

(b) The rectification, erasure or blocking of the data, the processing of which has not been performed in accordance with the provisions of this Law, especially due to inaccuracies or shortages.

(c) The notification to third parties, to whom the data have been communicated, of every rectification, erasure or blocking which is done by virtue of paragraph (b), unless this is impossible or it requires disproportionate efforts

(3) If the controller does not reply within four weeks from the submission of the application or if his reply is not satisfactory, the data subject has the right to appeal to the Commissioner.

The Supreme Court as the only administrative court in the country, has exclusive jurisdiction to adjudicate on any recourse filed against a decision, act or omission of any organ, authority or person exercising any executive or administrative authority on the ground that it violates the provisions of the Constitution or any law or it is in excess or in abuse of any power vested in such organ, authority or person. Recourses can be filed against decisions of the Commissioner for Data Protection.

The recourse may assert lack of competence, infringement of an essential procedural requirement, substantive violation of the law, contravention of the Constitution, excess or abuse of discretionary power.

In the exercise of its administrative jurisdiction, the Supreme Court may confirm an administrative act or decision or declare it as null and void. In the case of omissions, it may declare that such omissions ought not to have taken place and that whatever has been omitted should have been performed. Any decision given is binding on all courts, organs or authority and must be acted upon by those concerned.

The Supreme Court has no jurisdiction to award damages to any person aggrieved by any decision or act declared to be void. This jurisdiction rests on the District Court.

It must be noted that the jurisdiction of the Supreme Court is limited to the review of the legality of the act and cannot go into the merits of the decision under review and substitute the decision of the administrative organ with its own decision. Such an act would violate the strict separation of powers safeguarded by the Constitution. Decision making in the field of administration rests entirely within the province of the executive branch of the government.

Although the Cyprus legal system is adversarial, the Supreme Court in the exercise of its revisional jurisdiction follows the inquisitorial system.

At first instance, cases are heard by one judge and following an appeal by a bench of at least five. Where the case involves issues of particular importance, it is heard by all of the Supreme Court judges. Among such cases are those in which the Supreme Court is called upon to decide on constitutional matters.

**3. Describe the procedural role of your supreme administrative instance in the agenda of protection of personal data.**

See Question 2 above

**4. Provide for a general overview of historical development of access to information rights in your jurisdiction while focusing on most important legislative and judicial milestones. Also, please try to generally describe the main driving forces behind the development of these rights.**

Eventhough we do not have an access to information law there are other laws in the Republic of Cyprus that might grant access to some classes of information, such as environmental information or archives.

Article 19 of the Constitution provides that:

- 1. Every person has the right to freedom of speech and expression in any form.*
- 2. This right includes freedom to hold opinions and receive and impart information and ideas without interference by any public authority and regardless of frontiers.*
- 3. The exercise of the rights provided in paragraphs 1 and 2 of this Article may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary only in the interests of the security of the Republic or the constitutional order or the public safety or the public order or the public health or the public morals or for the protection of the reputation or rights of others or for preventing*

*the disclosure of information received in confidence or for maintaining the authority and impartiality of the judiciary*

The legal framework grants journalists, **under Article 7 of the Press Freedom Law (L.145(I)/1989)**, a general right of access to all information held by public bodies.

The right to information also applies to information held in archives. The **State Archives Law, L. 119(I)/2004**, does not grant the general public access before the expiry of a thirty-year period except in some limited cases determined by the responsible Minister (Article 8.1). The only exceptions to this are if the public records had already been accessible before their transfer to the State Archive or if special permission is granted (Article 8.4).

The **Re-Use of Public Sector Information Law 2006, L.132(I)/2006** which implemented Directive 98/2003 on Re-Use (EC/98/2003) ensures that when permission is granted by an administrative authority to one user to make use of a large volume of information (such as a statistical database, or meteorological or geographical information), it must grant other users access on the same terms.

The only Law in the Republic of Cyprus which clearly grants access to information on a non-discriminatory basis is the **Public Access to Environmental Information Law, L. 119(I)/2004**.

The **Charter of Citizen's Rights**, although non-binding makes a commitment to provide citizens with information.

The aim of free access to information is to promote transparency and efficiency in the public sector based on the demand of the public to know how the public funds and the state power are utilized. Access to information is essential for public participation in decision making. It also eliminates manipulation of information by a certain group of people, thereby depriving them of access to knowledge leading to the exercise of dominant power.

The case no.595/10 Dias Publishing House Ltd v. Commissioner for Data Protection,24.1.2013 involved disclosure by a newspaper of sensitive personal data, in violation of the right of proportionality. In a recourse filed against the decision of the Commissioner by which it imposed a fine on the applicants for violation of the right to privacy, the Supreme Court after analyzing the law, annulled the decision of the commissioner. It

held that the processing of information for journalistic purposes was only a reproduction of what was stated in the judgment of the court.

In the case 1720/10 Mikelides v. Commissioner for Data Protection, 30.3.12 , a complaint had been filed to the Commissioner by a patient against his doctor alleging that the doctor had published in one of his articles sensitive data of the patient. The commissioner found that there was a violation of the law and imposed a fine on the applicant. A recourse was filed in the Supreme Court which dismissed it. In its judgment the Court stated that Article 4 of the Law provides the requirements for legal processing of data by the controller.

The controller shall ensure that the personal data are processed fairly and lawfully, are collected for legitimate purposes, are not further processed in a way which is not compatible with those purposes and are kept in a form which permits identification of the data subject for no longer than is necessary. It also stated that according to Article 6 processing of sensitive data is permitted subject to the condition that the processing is necessary for the purposes of preventive medicine, medical diagnosis, the provision of care or the management of health care services. It rejected the allegation of the applicant that the name is

not considered as personal data. The name is considered part of the identity of a person and it is protected.

**5. Give basic subjective observation as to the role and importance of free access to information in political system of your country. In particular, focus on how the importance of freedom of information is perceived by general public and by non-governmental sector.**

Most of the population in Cyprus believes that they have a right of access to information. However there is an understanding that the right of access to information when exercised should not violate the rights of others.

**6. Give subjective general observation as to whether and eventually how free access to information rights are in practice abused or misused by the petitioners.**

Since we do not have a law on the subject, we are in no position to provide an answer as to whether these rights are abused or misused.

**7. Give a list and brief explanation of security, law enforcement and/or defence institutions that can benefit in your country from the exceptions laid down in Art. 7(e), Art. 8(4) and 8(5) of the Directive 95/46/EC.**

The Processing of Personal Data (Protection of Individuals) Law 2001 as amended is the national Law transposing Directive 95/46/EU into national Law. One of the requirements/conditions for lawful data processing in our Law is section 5(1)(d) according to which “processing is necessary for the performance of a task carried out in the public interest or in the exercise of public authority vested in the controller”. This provision covers all public authorities under certain circumstances. The other two provisions referred to in the question relate to sensitive personal data and are meant to cover all Law Enforcement Authorities/ National Security Authorities/ Criminal and Reform policy Services/ Public Order Authorities/ Police, Defence Services and others.

**8. Subjectively identify most emerging actual problems that arise from processing of personal data by aforementioned security, law enforcement and/or defence institutions. Whenever appropriate, demonstrate them on particular examples.**

The Office of Data Protection retains a high level of cooperation especially with the Cyprus Police. No problems have been identified in relation to the processing of personal data by these institutions.