



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: ...



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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 Hungarian National Authority for Data Protection and Freedom of Information is responsible for supervising and defending the right to the protection of personal data and to the freedom of information in Hungary. The status and functioning of the National Authority for Data Protection and Freedom of Information are regulated by Act no. CXII of 2011 on Informational Self-determination and Freedom of Information. The Act has a comprehensive material scope, and covers all data controlling and data processing activities undertaken in Hungary. The Act defines these activities as those that concern the data of natural persons, as well as data of public interest and data made public on the grounds of being of public interest.

In comparison with the former system, the new regulation confers broader competencies on the Authority to pursue violations of informational rights.

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?

In its broadest sense, data is considered to be of public interest if controlled by anyone carrying out public duties. This definition includes pieces of legislation, acts, decisions, orders, proposals, statistics, public tenders, contracts, photos, videos, and personal or business information that have been made public by law.

“Data of public interest” shall mean information or data other than personal data, registered in any mode or form, controlled by a body or individual performing state or local government responsibilities, as well as other public tasks defined by legislation, concerning their activities or generated in the course of performing their public tasks, irrespective of the method or format in which it is recorded, its single or collective nature; in particular data concerning the scope of authority, competence, organisational structure, professional activities and the evaluation of such activities covering various aspects thereof, the type of data held and the regulations governing operations, as well as data concerning financial management and concluded contracts.

The Freedom of information Act has to strike a balance between someone’s right to know and the smooth functioning of governmental bodies and businesses, all the while defending

personal rights to privacy. As such, there are limitations regarding the type of data citizens can access. Examples of information which is restricted by law includes information that

- *qualifies as personal data (unless the personal data has been made public by law);*
- *qualifies as classified information;*
- *qualifies as business secrets (as defined in the Civil Code);*
- *qualifies as intellectual property;*
- *has been generated during the course of decision-making (such as meeting minutes and notes). Such data may only be accessed with the permission of the executive of the organisation that created the data. This exclusion is valid for 10 years from the time of the generation of the data.*

The right to access may also be restricted

- *in the interest of national security or defence;*
- *to prosecute or prevent offences;*
- *in the interest of environmental protection or nature preservation;*
- *in the interest of central financial and exchange-rate policy;*
- *with regard to foreign relations and relations with international organisations;*
- *with regard to legal or administrative proceedings.*

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?

Generally, personal data cannot be considered to be of public interest. However, there are some circumstances precisely defined by law when personal data may be made public on grounds of being of public interest. For example, details regarding certain employees acting on behalf of a processor performing a public function may be accessible. As regards business data, it may be possible to access information even though it is under the control of a private company, so long as it pertains to the use of public money or involves state budgetary issues, or if the company has a contract with the state or a local government.

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?

Pursuant to the Act on Civil Servants, principal data on civil servants (name, citizenship, classification and position at the institution, salary etc.) qualify as data made public on grounds of public interest – the same provisions apply in connection with advisors at local governments, administrators and notaries as well. Therefore, access to data pertaining to the above functionaries shall not be restricted or excluded, even a municipal council member may have access to them.

As regards public servants, their personal data also qualify as data made public on grounds of public interest, since they undertake tasks within the scope of responsibilities and authority of the body that employs them.

The Hungarian Civil Liberties Union recently won a case against five large state-owned companies: Hungarian Power Companies Ltd., Hungarian State Holding Company, Szerencsejáték Zrt. (a state-owned company having a monopoly over gambling and the lottery), the Hungarian Postal Service and the Hungarian Railways. The case started with an inquiry of a journalist who tried to find out the salaries of the chief executives and members of the executive boards of these companies. In this case, the executives refused to disclose the information requested. According to the Hungarian Data Protection Act, a person's salary qualifies as personal data, and, accordingly, shall not be made public unless the person concerned gives his consent or disclosure is ordered by an Act. However, personal data relating to the sphere of the tasks of a person exercising public tasks and powers is considered to be public because of "public interest". The proceeding court – in its final judgement – emphasised that a person's salary relates to the sphere of his tasks, and if a person is paid by the state - even if the nexus is not related to the classic administration – he has to accept some restrictions on his privacy.

After the disclosure of the information, one of the defendants – the Hungarian State Holding Company, which is responsible for managing state assets – declared it would disclose the salary of the executives of every state-held company that it managed. Regarding the salary of public officials, a legal obligation exists to make public proactively the salaries of members of the cabinet and under-secretaries of state. This information is published on the website of the Office of the Prime Minister.

Members of parliament and representatives of local governments have to make a declaration on their financial situation, including all their income, property, debts, etc. The declarations of the MPs are available on the website of the National Assembly.

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

See above the answer given under point 2.

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

See above the answer given under point 2.

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, these data are protected. See above the answer given under point 2.

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?

See above the answer given under point 2.

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.

Regulation no. 3 of 2007 of the National Council of Justice, the predecessor of the National Office for the Judiciary sets forth the duties of Hungarian courts in respect of the electronic publication of their decisions in the Database of Court Decisions on the basis of Act no. XC of 2005 on the Electronic Freedom of Information. As a general rule, all on-the-merits decisions (judgements and procedural orders) are accessible to the public through the above electronic database, however, the publication of decisions rendered in family law cases necessitates the prior approval of the parties concerned, in addition, the party or victim concerned is entitled to request the removal or non-inclusion of the decision in question.

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.)

Interested members of the public are given the possibility to freely access and search in the electronic Database of Court Decisions operated by the National Office for the Judiciary (<http://birosag.hu/ugyfelkapcsolati-portal/anonim-hatarozatok-tara>).

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 Curia's uniformity decisions, departmental opinions, edited and anonymised decisions of principle and guiding decisions are published in the Hungarian supreme judicial body's monthly periodical entitled Curia Decisions (edited by Chief Justice Mr. Peter Darak) and they can also be accessed on the Curia's website (www.lb.hu) and in legal databases as well (e.g. www.uj.jogtar.hu).

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.

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.)

10.1-3

Only anonymised court decisions can be published according to the provisions of Regulation no. 3. of 2007 of the National Council of Justice. The anonymisation of court decisions is carried out by the judiciary, there is no extra-judicial organisation entrusted with the task of anonymisation. The most important data to be anonymised (such as the parties' name, address, real estate, ethnicity, religious beliefs, or the name and address of the parties' economic partners etc.) are enumerated by Act no. CXII of 2011 on Informational Self-determination and Freedom of Information. No re-anonymisation is required in case of an eventual modification of the relevant legal provisions.

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).

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?

10.4-5

The Database of Court Decisions includes the full version of the published decisions, while their edited (abridged) version can be accessed in the Curia Decisions periodical and in legal databases. Abridging is carried out by the members of the Editorial Board.

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).

11.2 Describe the form of on-line publication of your 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).

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.

11.1-3

See above the answers given under points 9.2 and 9.3 for the on-line availability of court decisions. They are published in rich text (rtf) format.

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-line personal information about Hungarian judges are published only in a limited range. The websites of the Curia, the regional courts of appeal and the tribunals contain the name, position and field of specialisation of the judges who administer justice at the aforementioned instances (e.g. www.lb.hu; www.kaposvaritorvenyszek.birosag.hu). In addition, the Curia's website provides information (photograph and CV) on its leaders as well.

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.

Case-related documents (such as the parties' legal argumentation) other than on-the-merits court decisions are not accessible to the public.

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.)

The relevant Hungarian legislation in force does not allow for a judge to publicly annotate on his own decisions or to publicly comment on other court decisions. On the other hand, judges are authorised to refer to their own decisions in their study papers published in legal periodicals (such as Hungarian Law, the legal review of the Hungarian Lawyers' Society).

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.

As an important task for the future, a fair balance should be struck between the freedom of information and the protection of privacy, and it should be essential to avoid an over-emphasis on any of these principles.

Hungarian court leaders and judges strive towards strengthening the transparency of the functioning of the judiciary. An increasing number of data of public interest are published on the courts' websites. As an important means of information, the "Open Courts" programme provides an excellent opportunity for secondary school students to get an insight into the courts' tasks and functioning and to be advised on their rights and obligations as citizens.