



NEJVYŠŠÍ SPRÁVNÍ SOUD



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

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Answers to Questionnaire: Croatia



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

(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.

Free access to information

In the Republic of Croatia free access to information is regulated by Act on the free access to information. The requests for information are being dealt with by the addressed authorities themselves. Each public body must have a legally bound official responsible for that subject and this is the first instance.

The second instance is addressed in case when the applicant does not receive the requested information or when he is not satisfied with the obtained answer in a different way. The second instance competent body is Information commissioner who is elected by a Croatian parliament as an independent body responsible to a Parliament.

Only after none of these authorities satisfied the applicant's request, the High administrative court of the Republic of Croatia can be addressed with an action. The first instance public body is also entitled for filing an action against decision of the Information commissioner.

Free access to information is one of the matters laid down by law in direct jurisdiction of the High administrative court of the Republic of Croatia as a supreme administrative jurisdiction. In that matter the High administrative court of the Republic of Croatia is the first and the last instance of administrative dispute. The first instance administrative courts have got no competence in that matter.

Protection of personal data

Regarding the agenda of protection of personal data there is an administrative authority protecting personal data and fulfilling conditions of the directive 95/46/EC of the European Parliament and of the Council on the protection of individuals with regard to the processing of personal data and on the free movement of such data, and this is Croatian Personal Data Protection Agency (hereinafter „the Agency“) – a central and independent body set up to: supervise observance of the legal obligations laid down for processing of personal data, maintain the register of notified data processing operations, deal with initiatives and complaints from citizens concerning breach of law, provide consultancy in personal data protection etc. The Agency is responsible to a Croatian parliament and the Director of the Agency is appointed by a Parliament.

The activities of this Agency are based on the Act on personal data protection.

Both Acts (Act on the free access to information and Act on personal data protection) provide fines for breaching their provisions, and fines are pronounced by misdemeanour courts.

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.

At first it needs to be stressed that when requesting the information the applicant always addresses their request directly to the public body that is in the possession of this information. If all conditions anticipated by the law are fulfilled, the legally bound person provides the information - this does not happen by issuing a decision, but only by the mere act of sending the information to the applicant. On the contrary, if the legally bound person comes to conclusion not to provide the information, it delivers a decision denying the request.

If the applicant is not provided with requested information or a decision within the fixed time limit (15 days from submitting the request; the period can be extended), the applicant may file an appeal to the Information commissioner, after the expiration of the prescribed time limit.

If the legally bound person does not comply with the request, it shall, within the time for compliance, issue a decision on the denial of the request. In this case the applicant may file an appeal against the decision of the legally bound person. The appeal is delivered to the Information commissioner within 15 days from the receipt of the decision. The Information commissioner shall issue a decision on the appeal within 30 days from the day the appeal was submitted. The period cannot be extended.

According to the Act on the free access to information, the Information commissioner administrative decision can be challenged before the High administrative court of the Republic of Croatia. Exhaustion of all ordinary remedies in the proceeding before the administrative authority is an obligatory general precondition. The complaint as such can be in general challenge of violation of administrative procedure rules, erroneously or incompletely established state of facts, or erroneous application of the substantive law in the procedure before the administrative bodies. The complaint must be filed within 30 days from the service of the disputed individual decision. The Court has to issue a decision within 90 days. As the High administrative court of the Republic of Croatia is a supreme administrative jurisdiction, there is no ordinary judicial remedy being permissible. But an action before the Constitutional court of the Republic of Croatia regarding infringement of constitutional rights is possible.

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

As already mentioned above, the Agency is the central public authority dealing with the agenda of protection of personal data. According to the Act on personal data protection, the Agency is empowered to pronounce administrative measures regarding the protection of personal data.

This is the first instance and final administrative body decision which can be challenged before administrative courts. The first instance administrative court decision is appealable before The High administrative court of the Republic of Croatia.

Although there is difference between this type of proceedings and the free access to information proceedings from the procedural point of view (in free access to information we have two instances of administrative procedure and one instance of the administrative dispute, while in the protection of personal data proceeding we have one instance administrative procedure and two instances of the administrative dispute), in merits these proceedings are not substantially different.

An action before the Constitutional court of the Republic of Croatia regarding infringement of constitutional rights is possible.

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.

The first act dealing with the access to information rights within the Croatian law order was the European Convention on human rights which has become part of Croatian legislation by accessing the Republic of Croatia to Council of Europe (1997). It has become a constitutional right by Constitution amendment in year 2010.

The first Act on free access to information had been issued in year 2003 and it had been amended for several times. It was abolished by actual Act on free access to information which was issued in year 2013 implementing Directive 2003/98 on the re-use of public sector information and it is compatible with the 1049/2001 Regulation. The last one Act came into force at the 8th March 2013 and from that day access to information rights has become the exclusive competence of the High administrative court of the Republic of Croatia (before that day, the first instance administrative courts had been competent for the subject, with the possibility of challenging their judgement before the High administrative court of the Republic of Croatia).

Administrative jurisdiction reform which was going on in year 2012 also has had consequences on access to information rights, because from 1st January 2012, administrative courts and the High administrative court of the Republic of Croatia have become a full jurisdiction courts. The administrative court's competence regarding establishing the facts, oral hearing as a rule, etc., has got impact on the subject matter.

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.

Generally speaking the free access to information is considered as a very important right what is confirmed by proclaiming it as a constitutional right.

It is so because every citizen has got the opportunity to be informed about the issue he or she is interested about and the right gives an opportunity of the citizens and NGO's for controlling the work of public bodies.

Free access to information can also be used for an effective self-reflection of the public authorities. If these findings indicate that the public authority behaves in a way that is inappropriate, it can cause a reaction of the public and the relevant authorities, and consequently an appropriate correction in the invalid behaviour of public authorities.

The preventive effect of the Act should not be underestimated either. The mere fact that a public authority may be exposed to questions from citizens will generally lead to more proper behaviour than if they would have nothing to worry about.

Without a doubt, this control can temporarily and under specific circumstances have certain negative impacts, especially because the possibility of being asked about the purposes and effectiveness of their activities may lead to formalism and action that would not be for the common good but only for the effect, that something is being done.

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.

In several cases which had been processed before the High administrative court of the Republic of Croatia, some abuses of that right have been noticed. Usually there were cases of the specific complainants who are so called "constant complainer". In most of the cases the request for an access to information was ungrounded because the subject of the request was not "an information" as it is defined by the law, but rather complaints about the specific treatment of the public body, disappointment or request about the data which is content of other court or administrative procedure. There were also cases of a petitioner who did address several public authorities and courts repeatedly and continuously, but only because he was not able to obtain justice.

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 exceptions laid down in Article 7(e), Article 8(4) and 8(5) of the Directive 95/46/EC were implemented mainly in Article 7 and 8 Act on personal data protection.

Article 7 paragraph 1 provides that personal data shall be collected and subsequently processed exclusively: - with consent of the data subject solely for the purpose for which the data subject provided his/her consent, or - in cases determined by law, or - for the purpose of fulfilling legal obligations of the personal data filing system controller, or - for the purpose of concluding and executing contracts which the data subject is a party to, or - for the purpose of protecting the life or physical integrity of the data subject or another person, when the data subject is physically or legally unable to provide his/her consent; or - when the data processing is necessary to complete tasks executed for public interest or in the exercise of official authority vested in the personal data filing system controller, or a third party to whom data is delivered, or - when data processing is necessary for the purpose of a legal interest of the personal data filing system controller or a

third party to whom data is disclosed, except when interests of protecting the fundamental rights and freedoms of data subjects from Article 1 paragraph 2 herein prevail, or - when the data subject personally publishes this data.

In cases referred to in paragraph 1, subparagraphs 1 and 8 of this Article, the data subject has the right to revoke his/her consent at any time, and request the termination of further processing of his/her data, unless this data is processed for statistical purposes when personal data can no longer lead to the identification of the person it relates to.

Personal data pertaining to underage persons may be collected and subsequently processed in accordance with this Act by applying special protection measures prescribed by special acts.

Processing special categories of personal data are regulated by Article 8 which provides:

It shall be prohibited to collect and subsequently process personal data pertaining to racial or ethnic origin, political opinions, religious or other beliefs, trade union membership, health or sexual orientation, as well as personal data regarding criminal and misdemeanour proceedings.

By way of derogation, data referred to in paragraph 1 of this Article may be collected and subsequently processed: - upon consent of the data subject, or - if the data processing is necessary to exercise the rights and obligations of the personal data filing system controller based on special regulations, or - if the processing is necessary for the protection of life or physical integrity of another person, when the data subject is unable to provide his/her consent for physical or legal reasons, or - if the processing is carried out within the scope of legal activity of an institution, association or any other non-profit entity with political, religious or other aim, provided that such processing relates solely to the members of this entity, and that the data obtained is not disclosed to a third party without prior consent of the data subject, - if data processing is necessary to establish, obtain or protect claims prescribed by law, or - when the data subject personally published this data, or - if data processing is necessary for the purpose of preventive medicine, medical diagnosis, health care or management of health institutions, on the condition that the data is processed by a health official based on rules and regulations adopted by competent authorities.

In cases from paragraph 2 of this Article, data processing shall be specially marked and protected. A government regulation, upon prior approval of the Personal Data Protection Agency, shall prescribe the manner in which the data from paragraph 2 of this Article shall be stored, as well as special measures of technical protection.

If data from paragraph 2 of this Article is classified, the manner of storing and technical protection of such data shall be conducted in accordance with special regulations governing the field of information security.

Personal data pertaining to misdemeanour and criminal records may be processed exclusively under control of the competent authorities.

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.

There have been only a few cases concerning the processing of personal data. In 2014 year there were only 9 cases before first instance administrative courts of that subject and only one appeal

case before the High administrative court of the Republic of Croatia. In that circumstances some specific issues were not extracted.