



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.**

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**Questionnaire**



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# 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.**

This question is aimed to provide for a general overview of institutions that are directly involved in the protection of personal data and free access to information. In particular, we are interested to learn about the nature of such institutions (whether they are administrative, judicial or other bodies), about their roles and also about eventual concentrations of their competences. This is namely to distinguish between countries where powers in both areas are jointly administered by institutions such as information commissioners and countries where they are treated distinctively.

**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.**

Free access to information is (apart from INSPIRE Directive, access to environmental information and re-use of public sector information) not harmonised among the EU Member States, so the answer to this question should give basic information on the very nature and functioning of the administrative and court procedure. Answers provided upon this question will be used for very general comparison of what we expect can be of highly diverse nature among the respective jurisdictions.

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

Unlike the previous question, the protection of personal data is to a large extent harmonised by the EU law. Consequently, the answer to this question should particularly explain the procedural options in this agenda that are available at your instance. Apart from explaining the procedure, please give also eventual note as to whether and eventually which of decisions of your instance in this agenda are final (i.e. whether it is possible to appeal them further or to challenge them in your jurisdiction by e.g. a constitutional complaint or a similar instrument).

**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 main aim of this question is to compare the historical development of free access to information with regards to the key actors. In particular, we would like to compare the participating jurisdictions namely as to what extent the progress was driven rather by proactive approach of administrative bodies, by legislative changes, by the activity of courts or by other factors (e.g. by the pressure of NGOs, international organisations etc.)

**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.**

This question is not aimed to provide for any precise or structured analysis. Its purpose is rather to give basic orientation as to how free access to information is perceived in different jurisdictions. Extreme positions between which we expect to receive most of answers might include utter unimportance of legal backing of free access to information (e.g. due to the fact that public sector bodies act totally transparently even without any legal need or other incentives). Another extreme might include jurisdictions where the judicial enforcement of access rights acts as most important defence against corruption, inactivity, discrimination etc.

**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.**

Similarly to the previous case, this answer should not provide for any detailed empirical analysis, but rather just for basic orientation as to whether and to what extent free access rights can be understood obtrusive by public sector bodies. This question is based on the assumption that some legal instruments that provide for free access to information might also represent a useful tool for notorious (or even pathological) petitioners.

**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.**

Armed forces as well as intelligence agencies are among institutions that can benefit from the above exceptions, whereas the extent and regime of their powers to process personal data are not harmonised by the EU legislation. The question uses the indication “security institutions” namely in the sense of intelligence and secret services or various security agencies and authorities (e.g. those that administer the agenda of classified information). “Law enforcement” might include institutions that, apart from protection of general public order act in criminal or similar

proceedings such as police forces (federal, local, municipal etc.), gendarmerie or public prosecution services. Defence institutions shall include the armed forces whose primary aim is to defend the sovereignty of respective jurisdictions (e.g. the army, air force, navy etc.) The purpose of this question is not to provide for any comprehensive or exhaustive structure of aforementioned institutions but rather to generally compare national rules that outline their most important powers to gather and process personal data.

**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.**

This question aims to point to particular problematic issues that arise in your jurisdiction from processing of personal data by security, law enforcement and/or defence institutions, such as data retention, wiretapping, profiling etc. Examples might include cases decided by your supreme administrative instance or by other judicial bodies as well as issues raised in political discourse.