

Avosetta Annual Meeting on 29/30 May 2015 in Bremen

Free Access to environmental information

Questionnaire for the national reports

Czech Republic
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1) *Constitutional frame, constitutionally guaranteed right of access to (environmental) information? Access to information as a fundamental (democratic) right?*

The right of access to environmental information was established by the Charter of fundamental rights and freedoms (Constitutional Act No. 2/1993 Coll., as amended). This right is listed among economic, social and cultural rights (Chapter IV, Article 35 (2)), while the right to information in general and the obligation of public authorities to disseminate information on their activities are guaranteed as political rights in Chapter II – Human rights and fundamental freedoms – section Political rights, Article 17).

Regarding to the right to environmental information, a substantial restriction can be seen in Art. 41 of the Charter setting limitation to this constitutional right; it is enforceable as a constitutional right only indirectly through the ordinary statutes – e.g. if the law – (for example the Environmental Information Act) enables that. This limitation, however, does not relate to political rights.

Jurisprudence:

Constitutional Court 30. 5. 2014, sp. zn. I. ÚS 59/14

In its previous finding of 6. 1. 1998 sp. zn. I. ÚS 282/97 the Constitutional Court held that rights related to environment (e.g. the right to the favourable environment and the right to environmental information) belong only to natural (physical) persons. This opinion was changed recently and the Constitutional Court ruled that „in a democratic state, environment is the asset which is to be protected and the public including NGOs (legal persons) should participate in its protection.“ This direction was followed by the Supreme Administrative Court in its decision of 26. 6. 2014, č. j. 5 AOs 3/2012-70.

2) *Other (national) legal acts providing access to information held by public authorities. Relationship with laws transposing Dir 2003/98 on re-use of public sector information*

Act No. 123/1998 Coll. on the right to environmental information, as amended (Environmental Information Act)

Act No. 106/1999 Coll. on free access to information, as amended

Directive 2003/98 was implemented by amendment No. 61/2006 Coll. to the Act 106/1999 Coll. and to other laws (Administrative Code, Copyright law and others))

3) *National legal situation before Dir 90/313/EC: has the EC/EU legislation had a major impact on the national law on access to information?*

No specific law on access to environmental information was in force before 1998. Rather rare rules on access to information were scattered in different laws with different regimes, for example in the Act No. 17/1992 Coll. on the environment.

Environmental Information Act was drafted to comply with Directive 90/313 .

4) *Statistical information about the use of the access-right including types of users if known (eg NGOs, competitive industry, general public, environmental consultants, etc). Difficulties of the administration handling the number and/or the scope of applications.*

Information regarding to

- a) number of applications and number of decisions/refusals to provide required information
- b) number of appeals against those decisions
- c) substantial parts of judicial decisions related to access to information
- d) other information

can be found in the end of year reports which must be elaborated by public authorities in the field of access to information. (For example the Czech Environmental Inspectorate, Ministry of Environment etc.). These reports must be made public.

5) *Significant national law and jurisprudence on the definition of “environmental information” (Art. 1 para 1 Dir 2003/4/EC*

The “environmental information” in national law is defined in Environmental Information Act as follows:

a) information on the state of the environment and natural resources (hereinafter the “information”) means information in written, video or audio forms, computer data carries or in another technically feasible form containing evidence of, especially

1. the state and development of the environment, of the causes and consequences of this state,
2. activities in preparation which could lead to a change of the state of the environment and information about the measures taken by the authorities responsible for environmental protection or by other persons in preventing or remedying damage to the environment,
3. the state of water, the atmosphere, soil, living organisms and ecosystems, further, the information about the effects of activities on the environment, about any substances, noise and radiation emitted into the environment and about the consequences of such emissions,
4. the utilization of the natural resources and its consequences on the environment and also the data necessary for the evaluation of the causes and consequences of this utilization and its effects on living organisms and on society,
5. the effects of constructions, activities, technologies and products on the environment,
6. administrative proceedings in environmental matters, environmental impact assessments, petitions and complaints relating to these matters and attending to them and also the information included in written documents relating, especially, to the protected parts of nature and other parts of the environment protected according to special regulations,
7. economic and financial analyses used in decision making in matters relating to the environment, if they were provided from public means,
8. the state of a public health and conditions of human life if they are or can be affected by the state of the environmental components or emissions or activities in the sense of 2.)
9. the state of cultural and architectural heritage if they are or can be affected by the state of the environmental components or emissions or activities in the sense of 2.)

10. reports on implementation of environmental legislation
11. international, state, regional and local strategies and programs, plans of action, etc., in which the Czech Republic participates and reports on their fulfilment,
12. international obligations relating to the environment and the fulfilment of commitments ensuing from international treaties by which the Czech Republic is bound,
13. sources of information about the state of the environment and the natural resources;

Act No. 123/1998 Coll. on the right to environmental information as amended provides with similar (in some aspects more detailed) definition of environmental information comparing to the Directive. Moreover, the list of environmental information is not exhaustive and the definition is to be interpreted extensively. In practice, courts and public authorities tend to interpret it in a broad sense. If the request is not identified as the request for environmental information, the required information can be usually made public under the general information act No 106/1999 Coll., as amended (if it is not restricted by the law as a secret information).¹

Jurisprudence:

Decision of the Regional Court in Ostrava 22Ca 442/2003:

Information on the amount of deer in individual hunting areas do not have character of a statistical information in sense of the Act No. 89/1995 Coll. on statistical information. It is information on the use of natural resources which is not related to ownership rights and therefore the access to this information must not be refused according to § 8 of the Act No. 12/1998 Coll., on the right to environmental information, otherwise the Art. 35.2 of the Charter of basic human rights would be breached.

6) Significant national law and jurisprudence on determining the access right holder (“without having to state an interest”, Art. 3 para 1 Dir 2003/4/EC)

Anybody has the right to environmental information without regard to his age, nationality, and without having to state the interest.

As mentioned above, the Constitutional Court held that rights related to environment (e.g. the right to the favourable environment and the right to environmental information) belong only to natural (physical) persons as biological organisms.

7) Significant national law and jurisprudence on the realm and obligations of private persons as defined by Art. 2 No. 2 b and c 4/EC. (see ECJ 279/11 (Fish Legal))

Environmental Information Act determines the environmental information providers (eg. public authority) similarly to the directive, eg. state administration bodies, municipal authorities and legal persons established, controlled or empowered by them. These private persons are obligated to provide the information similarly (in position of public authorities), even though they are not entitled to decide on the refusal.

Other private persons may be obligated to provide information by specific laws – for example, the previous Air Act (Act No. 86/2002 Coll.) obliged polluters to inform the public in case of accidental release of air polluting substances without any delay. The Air Act (Act No. 201/2012 Coll.) currently in force abandoned this approach. The legal basis for private persons' obligation to provide environmental information was established by the Act on the

¹<http://www.mzp.cz> (29.5.2015)

Environment (Act No. 17/1992 Coll.) declaring the duty of all entrepreneurs to provide the information on the impact of their activities to the environment in the scope and terms defined by special laws. Similar possibility is also envisaged in the Environmental Information Act, however to my knowledge, no special environmental law contains a specific provision of this kind, since usually these laws establish registers and reporting requirements, including PRTR, which are accessible for the public. For emergency situations, informing of the public is regulated under the integrated rescue system legislation.

Jurisprudence:

Decision of the Supreme Administrative Court 7A-109/2001 of 13.4.2004:

State enterprise is not a state or regional public authority nor legal person established, controlled or empowered by them. Therefore it is not obligated to provide the information according to environmental information act.

Constitutional Court I ÚS 260/06

The state enterprise Letiště Praha (Airport Prague) is considered as public institution because (beside others) it is financed by public financial resources and as such it has a duty to provide the information according to Act No. 106/1999 Coll. on freedom of access to information. Designation of this institution as the public or private one must come out of prevailing characteristic features which are typical either for public or private institution.

Supreme Administrative Court 2 Ans 4/2009-93

Prevailing features of the state enterprise CEZ (establishment, state control, public purpose) designate CEZ as person obligated to provide information according to Environmental Information Act.

Supreme Administrative Court 1 As 114/2011-121

Dopravní podnik hl.m.Prahy, a.s. (Public transportation Company) is considered as public institution in the sense of the Act 106/1999 Coll., on freedom of access to information.

8) National law and jurisprudence on the public authorities to be addressed ("information held by or for them") (Art. 3 para 1 Dir 2003/4/EC)

The facultative exceptions under Art. 2. 2 Dir 2003/4/EC: "Member States may provide that this definition shall not include bodies or institutions when acting in a judicial or legislative capacity" has not been included in the Environmental Information Act. The law establishes the duty to provide environmental information for administrative bodies and other organizational structures of the state, as well as for authorities of self-governing regional or local bodies. This rule is generally interpreted that the Parliament and courts are exempted from the definition of "public authority".

9) Significant national law and jurisprudence on practices on access conditions (terms, "practical arrangements" (see Art. 3 paras 3 – 5 Dir 2003/4/EC)

The access conditions under the Czech national law comply with the Directive.

For the purpose of obtaining information about the environment the applicant can ask the body to make the information about the environment accessible. No grounds for the request are required. The request can be made in the oral, written, telephone, telegraph, fax or other technically feasible form. It must be obvious from the application what should the information which is to be provided relate to. The applicant must be clearly identified.

In case the request is obscure (unintelligible) or formulated in too general manner, within 15 days from the receipt of the request the applicant is invited to make his request more specific.

The invitation must specify in what direction the application is to be made more specific. The applicant is obliged to specify this application without needless delay, at the latest within 15 days. Unless the applicant submits a specification of his request in the required direction within 15 days of the delivery of the invitation, it is understood as he has withdrawn his request.

In the case of an application submitted by telephone, unless it can be discharged without delay, the authority is entitled to require it to be sent in written form. The provision on making the request more specific applies to this case in the pertinent manner.

In case a request is submitted to a public authority which does not hold the information requested, it is its duty to inform the applicant as promptly as possible, at the latest within 15 days from the receipt of the request, that it cannot provide the required information for to this reason. If possible, it will also inform the applicant about the correct place where to submit the request.

If the request is directed towards providing released information, the public authority can first, but at the latest within 15 days, instead of providing information, give the applicant information enabling him to look up and obtain the released information. This does not apply, if the applicant stated that he had no possibility of obtaining released information in another way. If the applicant insists on the released information to be provided directly, the public authority shall give him the information.

In the request the applicant can suggest a form, or way which are to be used for providing access to the information. If he requests information to be made accessible on a technical data carrier, he is obliged to cover the cost or to enclose with the request a technically usable data carrier. Unless the applicant specifies the form or if such form or way cannot be used for serious reasons, such way and form of making the information accessible will be selected taking account of the fulfillment of the purpose of the application for making the information accessible and making the optimum use of it by the applicant. If there are doubts, first of all, the form and way are used which the applicant made use of for submitting the application.

The information shall be made available as soon as possible, at the latest within 30 days of the request, unless special circumstances justify an extension of this period, in the extreme case up to 60 days.. The applicant shall be informed about such circumstances and about any extension of the period before the expiration of the 30-day period .

Access to information may be restricted. The Environmental Information Act differentiates 2 kind of reasons for the refusal. Mandatory reasons for the refusal are explicitly:

- a) information that are to be kept secret
- b) personal or individual data (protection of personality),
- c) protection of intellectual property,
- d) protection of trade secrets.

Furthermore, the request for information may be refused, if

- a) it was submitted to the public authority by a person who was not legally mandated to do so and who did not give prior written consent to making this information accessible,
- b) by making information accessible on the place of occurrence of especially protected species of plants, animals or minerals where there was a threat of their undue endangerment, damage or disturbance,
- c) the applicant demands the information provided within a preparatory proceedings (investigation) in criminal matters, or the information relates to unfinished proceedings and decisions on offences and other administrative misdemeanors which are not in force yet,
- d) the application was formulated indistinctly or too generally and the applicant, although called upon to do so, did not complete it or it is an anonymous application.

The application of these “non-mandatory” reasons for refusal is dependent on the authority’s discretion, e.g. the information can be provided or refused. The public authority may also refuse the information if

- a) it relates to data not yet processed or not yet assessed,
- b) the application is formulated in an evidently provocative or obstructive way,
- c) the applicant has demonstrably the required information at his disposal already.

Making accessible information marked as trade secret is not a breach of a trade secret, if

- a) the required information relates to the effect of the entrepreneur's operational activity on the environment,
- b) there is an imminent danger to human health and the environment,
- c) the required information was obtained from the means of public budgets.

Providing information on the originator of an activity polluting or otherwise endangering or damaging the environment, included in a valid decision about an offence or criminal act, does not constitute a breach of the right to the protection of the personality.

If possible, the required information is released after excluding secret facts. ²

10) Law and practices/jurisprudence on charges for access (copying? administrative time?)

The environmental information is made accessible, as the rule, free of charge. However, the authorities are entitled to charge costs related to copying, providing technical data carriers and sending the data to the applicant.

11) Do any public authorities claim copyright in the material supplied, and impose conditions relating to use of information under copyright law (such as due acknowledgement and user fees in case of re-publication)?

Copyright law (Act No. 121/2000 Coll.) sets exemptions from the protection and conditions for providing the access to information covered by copyright. Specific conditions are set by the Act No. 106/1999 Coll. The Act on Environmental Information does not contain any provisions related to protection of intellectual property rights.

12) National law and jurisprudence on the role of affected third parties in access procedures esp. concerning trade secrets and personal data (designation of trade secrets, consultation prior to release of information, etc)

No consultation prior to release is required by the Act on Environmental Information. However, the duty to consult the matter with person concerned is kept in practice.

Jurisprudence:

Supreme Administrative Court 1 As 189/2014-50

The person required to make the information available to the public (mostly public authority) is obligated to notify the person that might be affected by it.

Regional Court in Brno 29 Ca 339/2006

Based on the consultation prior to release the information, Pegas Company did not agree with making the required information, which the company has marked as a trade secret,

²<http://www.mzp.cz> (29.5.2015)

accessible. The Court ruled that the public authority acted correctly if it decided to refuse the access to this particular information.

13) Significant national law and jurisprudence on exceptions (Art. 4 Dir 2003/4/EC)

More specifically:

a. Confidentiality of commercial or industrial information

As mentioned above, the release of information marked as trade secret is not a breach of a trade secret if

- a) the required information relates to the effect of the operational activity to the environment
- b) there is an imminent danger to human health and to the environment
- c) the required information was obtained from the means of public budget.

However, the biggest problem for public authorities represents interpretation of definition of a “trade secret” which is contained in the Civil Code, because administrative authorities are usually lacking experience and expertise in this field.

Jurisprudence:

Supreme Administrative Court 6 A 136/2002-35

The Court repealed the negative decision of the administrative authority on the access to information because there was no evidence that the entrepreneur had marked this information as a trade secret at the time of decision on the request.

Regional Court in Hradec Králové 31 Ca 189/2000-7

Information on the amount of financial costs provided from the municipal budget nor the information on costs of projected activity must not be considered as trade secret. Expenses of municipalities are public matter and the access to this information must not be denied.

b. Confidentiality of the proceedings of public authorities / internal communications /

c. Approach to the disclosure of:

- “raw data” (Aarhus Compliance Committee case ACC/53/ Uk – see AC Implementation Guide 2014 p 85)
- “material in the course of completion” vs “unfinished documents” see AC Implementation Guide 2014 p 85

The Environmental Information Act enables the public authorities to refuse to make information ad b) and c) public. The release is thus depending on their consideration.

Jurisprudence:

Municipal Court in Prague 10A 251/2011-38

Guidance documents regulate procedures relevant only for interior affairs. If the regulation is affecting rights of persons outside the authority, it cannot be considered as internal regulation.

Supreme Administrative Court 8As 55/2012-62

Information on wages of employees provided from public resources is accessible to the public.

Jurisprudence:

Decision of the Municipal Court in Prague (11 A 149/2012-63)

The possibility to restrict access to information according to the Act No. 106/1999 Coll. is related only to very specific time period when the decision/document is being prepared. If the decision has already been taken, it can be anticipated that the preparation has been finished and there is no reason to refuse the required information (based on the ground of raw data or unfinished documents).

d. "Information on emissions into the environment" (Art. 4 para 2 subpara 2 Dir 2003/4/EC, see T-545/11)

In case of the request for information on emissions emitted into the environment, reasons for refusal to provide the information set in § 8 of the Act on environmental Information are not applicable.

e. International relations, public security, national defence (see T-301/10 Sophie t' Veldt)

f. Weighing of interests in every particular case (Art. 4 para 2 subpara 2 Dir 2003/4/EC)

The Administrative Court ruled that the request to provide judicial decisions (which are already in force) focused on specific matter cannot be generally refused based on the reason that this information is related to judicial decision making. Such interpretation of § 11.4 (Act No. 106/1999 Coll.) is too large. The necessity and a specific reason for restriction of the right to information must be identified in each particular case and the possible threat to interests protected by other laws must be assessed as well as possible threats posed to rights of other persons.

The Environmental Information Act sets clearly the priority of secret information over the public interest on their publication. With regards to other "non-mandatory" reasons for the refusal, when the public authority "may refuse" the release, the public interest served by disclosure is to be weighed against the interest served by the refusal in every particular case.

14) Judicial control of access-decisions

a. Have specialised administrative appeal bodies (information officer etc) been set up? How do they work? Are their opinions respected?

There are no specialized administrative appeal bodies. If the access to environmental information is to be denied, the public authority will issue the decision on the refusal. (This decision is issued by the authority which has the required information or by the authority which is in control of the legal person which was obligated to provide environmental information and refused to do that).

The administrative appeal is to be lodged to the second level (superior) administrative authority according to general rules contained in the Administrative Code. However, the Act on Environmental Information introduced a special procedure applicable to situations, when the public authority did not release the required information, nor issued the decision on the refusal. Unless the authority provided the information within the set period of time or issued the decision, it is understood that it decided to refuse the information. This "fictive decision" can be appealed.

The final administrative decision on refusal/partial refusal to provide the environmental information can be challenged at the administrative court.

Jurisprudence:

Municipal Court in Prague 28 Ca 370/99-26

The decision on the refusal to provide the environmental information and the fictive decision (anticipating the refusal) can be appealed. The action can be filed only in respect to decision which was actually issued and which is in force.

b. Court review: "in-camera"-control? Standing of parties affected by decisions denying or granting access?

Parties affected by decisions regarding access to information have the right of access to courts. These persons usually sue the public authority for damages caused by unauthorized release of information.

15) How do states fulfill the duty to make information actively available?

According to the Environmental Information Act, public authorities have a duty to establish and to administer electronic databases containing information related to the field of their activities. These databases must be accessible by remote access.

Other laws (for example the EIA Act) set explicitly the duty to make all the information (produced in their scope) public.

Ministry of Environment administers Geoportal (information system of public administration). Public authorities make the information available (beside others) through this geoportal (active dissemination). Geoportal is accessible for the public, however, not all data are accessible for free.