

## **FREE ACCESS TO INFORMATION IN THE FRAMEWORK OF EU REGARDING CZECH REPUBLIC**

JAN DUDA

Masaryk University, Faculty of Law, the Czech Republic

### **Abstract in original language:**

The orientation of this work is to look at the institute of the right to information and free access to information in the European Union. The core work lays in the analysis of free access to information in the EU and its institutions, as well as in national adjustments of individual Member States. Basic legal context and summary of the laws are here described in a simple and concise form in order to make a brief overview upon this legal institute.

### **Key words in original language:**

The European Union; information; Regulation; journalist; responsibility of the media; public authorities; the right to information; free access to information.

### **Introduction**

Information, the right to information and to guarantee free access to information is the basis of public aim. Due to the upcoming geopolitical trends, European integration and the mechanism of our Presidency of the Council of the EU, I have decided to handle this issue not only for its timeliness, but also for its usefulness. Journalist, civic society and wide public representatives in their work needs to know how to use their rights, where are the limits of free access to information and what is the practical use. Not only in the domestic environment, but in all Member States of the European Union. In each chapter I would try to bring the clear concept of right to information and public access to information. I am convinced that both terms are closely linked to the work of journalists and are necessary in a complex use.

### **Brief adjustment in Czech legal system with journalist outlook**

Right to information is a constitutionally enshrined right within the meaning of Article 17 Charter of Rights and Freedoms (hereinafter referred to as LZPS), respectively, in the case of environmental information and the meaning of Article 35 LZPS. It is the law of qualified and thus enforceable entitlement to use a specific information by a public authority to the applicant for the payment of necessary expenses. Diction pursuant to Article 2, paragraph 3 of the Czech Constitution, which explicitly states that "state power serves to all citizens" is evident here that an applicant will be able to rely on the public authority the necessary information. In addition, the Czech legal system in this way does not provide any specific advantages to journalist profession compared to other citizens Favor of it because it does adjust journalist in this case.

Journalist is therefore regardless of his orientation. He has the same status as any other applicant for information. In accordance with Article 41 of the Charter of fundamental rights and freedoms there must exist certain provisions of the current legal standard for such

statements in order to could be enforced or performable. Mainly because, in this context, I would like to suggest this site link to the Law on Free Access to Information (Act No. 106/1999 Coll., as applicable legislation), Press Law (Law No 46/2002 Coll., as applicable legislation ) in general as well as the Civil Code (Law No 40/1964 Coll., as amended by the legislation, the OZ). There are also some of the provisions of article 11 or article 12 par.3 OZ with journalistic practice, to access to information.

### **Todays importance of free access to information**

In today's post-information society is information valued commodity. The society is hungry for information related to entertainment. "*Infotainment is now an inevitable trend. The relevant information is hidden in the peel.*"<sup>1</sup> " In the current postmodern paradigm of our culture is one of becoming important skills to understand the method of verified facts and assigning importance to each of them. Since the content is often switching to form. What is, therefore, postmodern society? Technical progress and employment center of gravity shift from industry to services caused by the Second World War crisis of collective identities and links people to major institutions, which were a nation, state or class. Their interests and desires began split, the company began to crumble in an increasingly smaller units, and its place in the sun began to report various minorities. Collective identity in thinking began to replace individual identity. The development of communication technology has enabled rapid and mainly individual orientation in the world, and everyone began to seek their own path. Post modern society is still young, still evolving, and its appearance is still variable.

So what can be understood by the term called information society? "*The information society is a society in which production, distribution, dissemination, use, integration and handling of information is an important , political and cultural activity.*"<sup>2</sup> "Information has come to be considered as a commodity and filtering of information, access to and quality distinction in today's information society becomes more than essential. Absorb all the knowledge in today's volume has ceased to be possible for an individual entity. Therefore, there is a tendency in education to teaching in the school curriculum to include issues of handling and retrieval of information, including their processing.

Another important role in obtaining information plays media and journalists. Responsible media and public focus is a de facto targeting toward promoting the public interest. The responsibility for the content of media communications, if not explicitly disclosed in the press law is the responsibility of the issuer itself. Since many of the facts for the current user rather difficult to verify, then the media itself has, on the basis of voluntary decisions to some degree of self through different codes. Responsible media and press, freedom of speech, expression and access to information is legally guaranteed by the states, thinking in democratic discourse. "*Freedom of information is a fundamental right of man and constitute a cornerstone of all freedoms, which are faithful to the United Nations, and this freedom stands for the right to collect, transmit and publish reports anywhere without restriction*"<sup>3</sup>. (Sociologist Jiří Příbáň)

---

<sup>1</sup> Bauman Z., *Úvahy o Postmoderní době*, 2.vydání Slon, Praha, 2006

<sup>2</sup> Webster F., *Theories of the information society*, 2. Edition, Routledge, Oxford, 2002,

<sup>3</sup> Příbáň, J., *Dissidents of Law*, Ashgate, Dartmouth, 2002.

These rights stresses the responsibility of the media towards the society (so-called . accountability). Finally, the first international panel, which first draws attention to the important role of media is the responsibility of the Commission report for the freedom of the press from the years immediately following after the Second World War (Comission on the freedom of the press). This report draws attention to the issue of linking public and private folders in the media, as a socio-cultural platform for mass communication. Therefore might be distinguished. Certain differences in accountability and access to information can be found in the commercial media vs. the media of public service. *"The public nature of the media, for example, refers to the political function of the media in a democratic society and the fact that the monopolization of information and ideas from private persons is regarded as unacceptable<sup>4</sup>."*

Issues of conflict of media and the public was solved by the Constitutional Court in 2003 in its findings. *"Public affairs agenda, all state institutions, as well as the activities of persons involved in public life, such as activities of local and national politicians, officials, judges, lawyers, or. candidates or waiting for these features, are a public affairs and journalistic activities, including arts and performances are together those, which catches the public attention. The public affairs, respectively. public activities of individuals, may be publicly examined. When criticism of public affairs carried out by public entities operating in constitutional terms of true presumption are considered constitutionally with conformal criticism. It is an expression of the principle of democracy, the term participation of members of civil society in public matters.<sup>5</sup>"* Here, therefore, can assume that the values of freedom of expression, access to information and freedom of expression are the values in the forefront-Their goal stand in promoting the public interest, rather than the emphasis on supervision by public authorities.

### **International anchoring of the right to information**

Among the documents I have included the Universal Declaration of Human Rights in its sixtieth anniversary, the International Covenant on Civil and Political Rights, the Council of Europe recommendations and, finally, the Convention for the Protection of Fundamental Rights and Freedoms.

Universal Declaration of Human Rights (the Declaration) was adopted by the UN General Assembly 10th December 1948. Since then symbolically began to celebrate the international day for human rights. This is the first universal document, which is referred to freedom of expression and right to information. Article 19 of the Declaration reads:

*"Everyone has the right to freedom of opinion and expression, the right not to suffer injury to someone for their beliefs, and includes the right to seek, receive and impart information and ideas by any means and regardless of frontiers."*

---

<sup>4</sup> McQuail, D., *Úvod do teorie masové komunikace*, Portál. Praha, 1999

<sup>5</sup> I. ÚS 453/03 [Nález]

The main problem of the Declaration is its enforceability. As from its name suggests, its strength lies mainly in the declaration of a commitment of international policy nature, than from its legal obligation. Just after previous year, in the sixtieth anniversary of the adoption of this document is more than obvious that this was the first major step in defining the right to information. Although this right includes very vague and general definition, it is certain that it involves many aspects of political information through the right economic, social and cultural to religious. Also in response to the Declaration of the Human Rights codes to extend the national level and through the inspiration of this document has been set up. The right to information thereafter enshrined in other international source of law.

International Covenant on Civil and Political Rights (the Covenant) was launched by the UN General Assembly in New York on the 16th December 1966. Right to information in this document is regulated in Article 19 as follows:

- 1. Everyone has the right to hold their views without barriers.*
- 2. Everyone has the right to freedom of expression, this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, through art or through any other means of their own choice.*
- 3. The use of the rights referred to in paragraph 2 of this article carries special duties and responsibilities. It may therefore be subject to restrictions, but these shall only be such as those established by law and are necessary:*
  - a) For respect of the rights or reputation of others;*
  - b) to protect national security or public order or public health or morals.*

Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter the Convention) also inherently belongs to the international instruments governing the right to information. Convention have their nature and the contracting parties (members of the Council of Europe) lacks a universal level of acceptance within the United Nations. On the contrary, already in its preamble, it reported included values for the Declaration. Its contribution, therefore, is primarily to highlight the rights at European level. Its specialty is the definition not only for physical, but also for legal persons. The Convention was adopted on 3 March 1953 at the core of Council of Europe. The former CSFR adopted this dokument into its national legal systems in 18 March 1992 as Act No. 209/1992 Coll.

The right to information and the embedding is defined in Article 10 of the Convention as follows:

- 1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the granting of permits broadcasting, television or film companies.*
- 2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society in the interests of national security, territorial integrity or public safety, prevention of disorder and crime, health or morals, protection of the*

*reputation or rights of others, prevent the disclosure of confidential information or for maintaining the authority and impartiality of the judiciary.*

It added that in terms of the Convention shall be decided in proceedings conducted before the European Court of Human Rights in Strasbourg. *"The Article 10 of the Convention is connected rich case law of the European Court of Human Rights in Strasbourg. This court consistently emphasizes that freedom of expression (including the right to information) is one of the most important foundations of a democratic society."*<sup>6</sup>

Council of Europe recommendation is exactly rather called recommendation of the Committee of Ministers of the Council of Europe Member States No. R/81/19 on access to information held by public authorities. Here are described the recommendation for anchoring the principles of freedom of information and right to information. This recommendation will largely be carried out by individual national laws of Member States. One of those recommendations follows:

Any person subject to the jurisdiction of a Member State has the right to obtain information held by state or public authorities.

State authorities have to provide information to use effective and appropriate means.

The applicant need not demonstrate special interest.

Access to information must be ensured on the basis of equality.

Permitted are only those limitations which are necessary in a democratic society to protect legitimate public interests (eg national security) and protection of privacy and other legitimate private interests.

Each application must be decided within a reasonable time.

For each refusal must be set the reasons for such refusal.

Refusal of the court may be reviewed in accordance with Article 247 and seq. Act No. 99/1963 Coll., Code of Civil Procedure.

## **EU right to information analysis**

The regulation of access to information includes only access to documents in the agenda European institutions (and the range of their powers). This change has an impact on national legislation. If a Member State publish such a document, in case of doubt, is obliged to consult its publication with the institution before the issue of that. These obligations may lead to a number of additions, amendments and implementing regulations in national legislation.

---

<sup>6</sup> Korbel, F. et al.: *Právo na informace*, 2. Edition, Linde, Praha, 2005, p. 26

On the other hand, if it is to be a document originating from a Member State carried out by one of the institutions, then the State may ask the institution not to issue it or used without his permission. With Community law problematics itself it is somewhat complicated. Now falls under the first pillar of the European Union, the European Community law. After the possible adoption of the Lisbon Treaty by the structure of all three pillars will be included under a single legal framework of institutionalized European Union. "*Community law or the right to the European Communities as a whole is not even in international law, nor by the Member States. Together with the law arose in the context of intergovernmental cooperation between Member States represents a distinctive system of justice, which is called the right of the European Union.*"<sup>7</sup> "

One of the significant features of this work is a comparison between the national adaptation of the right to information and the adjustment of the European Communities. The basic sources of regulation include Article 1 of the Treaty on European Union (now in the consolidated text of the Treaty of Lisbon), together with Article 255 of the Treaty establishing the European Community. Another source of adjustments right to information and free access to information at European level is the European Parliament and Council Regulation (EC) No 1049/2001 on public access to information from the European Parliament, Council and Commission documents (the Regulation) as well as Article 42 of the Charter of Fundamental Rights of the European Union.

Now in more detail to each source of adjustment. Article 1 of the EU Treaty provides that decisions given by the European Union on the grounds are freely accessible to the greatest extent. The above detail is governed by Article 255 of the EC Treaty as amended by the current actual adjustment (the Treaty of Nice) as follows:

*1. Every citizen of the Union and any natural person resident or legal person established in a Member State has the right of access to European Parliament, Council and Commission, without prejudice to the principles and conditions laid down in accordance with paragraphs 2 and 3*

*2. General principles and limits on grounds of public or private interest governing this right of access to documents laid down by the Council within two years after the Amsterdam Treaty entered into force as laid down in Article 251*

*3. Each of the above bodies down in its Rules of Procedure specific provisions regarding access to its documents.*

European Parliament and Council Regulation (EC) No 1049/2001 on public access to information from the European Parliament, Council and Commission documents is based on Article 255 of the EC Treaty. There is a wide debate on whether access to documents is one of the fundamental rights in the EU. Applicants before the European Courts are based on the fundamental nature of access to documents and claimed that certain provisions of the Regulation must be in accordance with applicable law. Although the ECJ recognized the importance of the public's right of access to documents, the court hasn't interpreted it as a basic. Legal theorists also pushed for the vital nature of the right of access to documents.

---

<sup>7</sup> Týč V., *Základy práva Evropské unie pro ekonomy*, 4. Edition, Linde, Praha, 2004,

When the Treaty establishing a Constitution for Europe (Constitutional Treaty now in the consolidated text of the Treaty of Lisbon) becomes law, the discourse on the fundamental nature of the right of access to documents may be closed.

In view de lege ferenda can ensure that the EU Charter of Fundamental Rights will be an integral part of the Constitution, and therefore will be legally binding. Article 42 of the Charter of fundamental rights and freedoms of the EU (the Charter) - which should become Article II-102 of the Treaty of Lisbon - includes the right of access to documents. Currently, Charter is not legally binding because it has only been solemnly proclaimed in Nice in December 2000. For its entry into force should be the ratification by Member States, respectively; figuratively is required unanimous ratification of the Treaty of Lisbon in order to the Charter be legally binding. Also to support this right here will be introduced in Article I-50, which is de facto equivalent of Article 255 of the EC Treaty. Article 255 is located in the fifth part of the EC Treaty (as the 'Community institutions') as "provisions common to several institutions." Treaty of Lisbon and the contrary is equivalent to the article located on the first part of the Constitutional Treaty, under the heading "The democratic life of the European Union."

As can be derived from Article 255, the right of access to documents is limited to documents held by the European Parliament, Council and Commission. In practice, however, most other institutions governed by the rules Regulation. An important exception is the Court. Text of the Treaty of Lisbon provides for the above outlined practice by extending the right of access to documents held by "the EU institutions, bodies, offices and agencies." Under Article III-399 of Lisbon treaty, the Court should also apply the provisions of Article I-50 (but only as regards the documents relating to the exercise of its administrative tasks). It is here defined as any content whatever its medium (written on paper or stored in electronic form or as a sound, visual or audiovisual recording), affecting or dealing with matters relating to the policies, activities and decisions falling within the powers relevant European institutions. Right of access to information will be provided every citizen of the Union and any natural or legal person resident in another Member State. Institutions are able to provide access to all natural or legal persons who do not reside in a Member State, all three institutions use this option. In principle, all documents are accessible to the public authorities. However, exceptions apply to the protection of certain public and private interests.

### **Exeptions from european legislation of law to information**

The main exceptions to the rules are set out in Article 4 of Regulation. This article includes all the exceptions (absolute or on a discretionary basis). There are three types of exceptions. The first type is the so-called mandatory exceptions, which regulate the conflict with the procedural rules (Article 4, paragraph 1). Access shall be refused where disclosure would undermine the protection of public interest, in cases of threats:

- Public safety,
- Defense and military matters,
- International relations,

- Financial, monetary or economic policy or the Member State;
- Privacy and integrity of individuals, in particular in accordance with Community legislation regarding the protection of personal data.

The second type of exceptions are those in detention to the public interest as a protected interest, if the disclosure of certain information would undermine the protection of the EU treaties, then there is no overriding public interest in disclosure (Article 4, paragraph 2). On the contrary, there still is the rule of so-called exceptions to the exceptions where it may be access to the documents provided. In practical application, the Court of First Instance that the overriding public interest, must be something more than the normal public interest in disclosure of information. Here, therefore, gets compared to the forefront two qualitatively very similar values. Now the question of priority protected interests, such as:

- Commercial interests of a natural or legal person, including intellectual property,
- Court proceedings and legal advice
- The objectives of inspections, investigations and audits.

The third type of exceptions concerns internal documents. It is required stricter regulation of access rights (in relation to the possible misuse of information) to the documents. Access shall be denied to internal documents where disclosure could seriously impair the functioning of institutions and decision-making process. Information on internal documents are not provided.

Different rules apply for information from third parties. Once the request is routed to a third party document, the institution must consult with a third party provision of the information in order to assess whether it is the exception, as set out in the Regulations (see Article 4, paragraph 4 Regulation). Member States have a specific position of third parties. They may ask the institution to the disclosure document to be linked to their prior consent (Article 4, paragraph 5 of Regulation). Once a Member State institution (providing access to a document) prohibit dissemination of certain information, this institution is bound by the decision of the Member State.

Member State of the institution are not required to state reasons for their refusal. Other than the Member State concerned, once again not to agree to their publication. With respect to documents originating in other third-party entities, or documents, which are not subject to any prior agreement, approval of the Member States, respectively from institutions is not required. The Member State is not bound by the opinions of a third party or another Member State as an individual. In practice, this means that the institutions respect the majority opinion, although they were not bound.

Exceptions apply only to the periods in which protection is justified on the basis of a document (Article 4, paragraph 7 Regulation). The maximum term is 30 years. This period may be extended in the case of documents relating to privacy or commercial interests and also in case of sensitive documents.

If the request relates to a very long document or to a large number of documents, the competent authority may consult informally with the applicant and to agree with him in order to find a satisfactory solution (Article 6, paragraph 3). If a fair solution can not be found, the

institution may simply deny access to information or limit the scope of the examination, which is usually necessary for the implementation in response to a request for access to information.

If only part of the document is covered by any of the exceptions, rest of the document must be made available according to the classical determination mentioned above.

### **Sensitive documents**

The Regulation contains a separate regime for sensitive documents (see Article 9 of the Regulation). These documents are classified as "TRÈS SECRET / TOP SECRET", "SECRET" or "CONFIDENTIAL" in accordance with the rules of the institution. This mode exists independently for the protection of fundamental interests of the European Union or of one or more Member States in areas covered by Article 4, paragraph 1 (a), in particular matters relating to public security, defense and military matters. Requests for access to those documents are handled explicitly by authorized persons (Article 9, paragraph 2 of the Regulation). The internal rules can be found in Council decision 2001/264 and Commission Decision 2001/844. These decisions, which contain detailed rules on safety, are carried out, without prejudice to Article 255 of the EC Treaty and Regulation. The rules are not directed only to the Council and Commission, but also to the responsible security authorities of the Member States. The Council also makes use of decentralized agencies. Classification of documents, as regards the rules relating to security, differ slightly from those in the Regulation.

The rules distinguish four categories:

"TRES SECRET UE / EU TOP SECRET", "EU SECRET", "EU CONFIDENTIAL" or "EU RESTRICTED".

The first category applies only to information, the access type is marked so that unauthorized disclosure could cause exceptionally grave damage to the fundamental interests of the European Union or of one or more Member States. The second category relates to information whose disclosure could seriously harm the essential interests of the European Union or of one or more Member States. Information that is classified as ' CONFIDENTIAL EU ' will mean that the unauthorized disclosure could harm the essential interests of the European Union or of one or more Member States. Finally, The fourth category relates to information whose unauthorized disclosure could be disadvantageous to the interests of the European Union or of one or more Member States.

The information is categorized only if necessary. Article 5, paragraph III of the Council Decision (the Decision) stresses the importance of use of the classification correctly and consistently. Creator of the information is responsible for the correct classification of the document. Access to classified information, is provided in accordance with the principle of the urgency and necessity. Only persons who need to know certain information in order to fulfill its obligations, or to the exercise of their missions and representation of others; are authorized to have access to this information. Determination of the urgency and necessity is the responsibility of the General Secretary of the Council, decentralized agencies and with the consent of the Member State, respectively. its organizational units or body in which the

person concerned is employed. Enabling permission to a person is carried out through safety certification. The decision of the Council and Commission Decision also contains detailed rules for the preparation, distribution, transmission, storage and destruction of EU classified material. In the Annex attached to the two decisions, gives an overview of terminology used in the classification of the individual Member States. These annexes have been amended after the signing of an agreement between the EU and NATO in March 2003.

## **Procedural Rules**

Request for access to a document must be stated in writing form and must be sufficiently precise, that the competent authority to identify the document (Article 6, paragraph 1, Regulation). Applicants need not specify the reasons for their request (Article 6, paragraph 1, Regulation). If the authority or organizational security within states finds that the application is not sufficiently precise, may require an explanation (Article 6, paragraph 2 of the Regulation). Where possible, the authority is obliged to assist the applicant in the process of applying. Applications should be addressed promptly (Article 7, paragraph 1, Regulation). The authority must issue a receipt. Within 15 working days must either be granted access to information. In case of refusal to provide information or a negative written response shall indicate the reasons for refusal. In exceptional cases this limit may be extended by a further 15 days (Article 7, paragraph 3 Regulation). In case of refusal of access to information, the applicant may, within 15 working days to lodge an application, which require the authority to reconsider its position (Article 7, paragraph 2 of the Regulation). This authority must give a reply within 15 working days and give reasons for refusal and inform the applicant of the remedies (Article 8, paragraph 1, Regulation). As with regard to the original application is not able to respond within the prescribed time limit, the applicant may submit a new application (Article 7, paragraph 4 Regulation). If the authority fails to respond to the expiry of the deadline for procedural deficiencies, the lack of deemed is considered to be refusal (Article 8, paragraph 3 Regulation).

Access to information must be enforced by means of consultation on the spot or by providing a copy of the document. Costs may be charged, if not higher than the actual cost of producing and sending copies (Article 10, paragraph 1, Regulation). These documents must be supplied in an existing version and format with full regard to their preferences (Article 10, paragraph 3).

## **Legal Remedies**

If an applicant receives a negative response to its request for information, are the two remedies. Applicants may submit a proposal to initiate court proceedings against the competent authority under Article 230 of the EC Treaty. The meaning of that provision is, that the court may annul the decision previously issued by the certain authority. Possible decision to cancel the refusal of information, the Court of First Instance does not mean that access to documents shall be granted automatically. This means only that the authority must reconsider its position. In order to give well-founded decision, Court may, and often do so, let the required inspection made a correction of documents in matters of disputes, particularly relating to the problematic documents and parts. So far, according to case law is not entirely clear whether the same is true for sensitive documents. Applicants also may submit a complaint to the European Ombudsman in accordance with Article 195 of the EC Treaty. The opinions of the Ombudsman are not binding for the authorities. They have only appellate nature.

## Other provisions

Under Article 12 of the Regulation authorities must, as far as possible make access of public documents in electronic form or through the register. This applies in particular to the documents covered by the provisions contained in Article 4 and 9 of Regulation, in particular with regard to legislative documents, ie documents drawn up or received during the process of adoption of acts which are legally binding for the Community or Member States (Article 12 § 2 of the Regulation). Where direct access is not given through the register, then it must be shown where the document is located (Article 12, paragraph 4 Regulation). Sensitive documents are only recorded in the register and only with the consent of the originator (Article 9, paragraph 3 Regulation).

Each institution shall annually publish a report for the previous year. Article 5 of Regulation contains rules on access to documents originating from Member States or coming from one of the EU institutions. Where it is evident that the document may or may not be published, Member States shall consult the competent authorities so as to not endanger the objectives set out by Regulation. Activities of the institutions, and not only European in the area of transparency are discussed in various non-governmental organizations.

## Relation of legal Community adjustment and national arrangements

European Union or the European Community currently has no competence for the unification and harmonization of national rules and legal provisions for access to information and right to information. Access to information is vital in all Member States to support the democratic basis of society. *"The principle of the right to information and free access to information is a multidisciplinary discipline. Right to information law establishes the public right to know and sometimes, in some cases, undertake public administration and the executive to inform the public."*<sup>8</sup>

Legal certainty and the entrenchment of the right to information and legal obligation to provide the information on the other hand, lead to greater transparency and reinforce the role of democracy as such. While anchored in law, the law allows citizens and itself through the media to participate in the better and more effectively to the "policy making" and also may be better to enter the so-called "government decisions". This is used primarily by some NGOs, which have their specific focus areas in which they are interested in the public interest. On the contrary, the State expressed its willingness and openness of communication by providing requested information. *"Similarly, the transparency allows better control and influence the actions and decisions by public administration and reduce corruption and other anomalies. In this case, transparency can contribute to greater legitimacy of government policies and decisions."*<sup>9</sup>

---

<sup>8</sup> Kranenborg H., Voermas W., *Access to information in the European Union*, Europa Law Publishing, Groningen, 2005

<sup>9</sup> Kranenborg H., Voermas W., *Access to information in the European Union*, Europa Law Publishing, Groningen, 2005

## **European law to information – ideas de lege ferenda**

The European Union has been needed to resolve citizens' access to documents and information on two levels:

Access to information offices of the EU

Access to information in the Member States

### **Access to information offices of the EU**

Access to information held by the authority is governed by EU Regulation No 1049/2001 of the European Parliament and the Council of 30 May 2001 regarding public access to European Parliament, the Council of the European Union and the European Commission. More about this Regulation has been said above. Another relevant, which is performed at the level of national policy, Directive 2003/4/EC of the number of 28 January 2003 on public access to environmental information, which provides some cushions for the legislation in the Member States. This Directive is the individual States have the task of bringing in the issue of national laws. Finally, it is very crucial and European Parliament and Council Directive 2003/98/EC of 17.11.2003 on the reuse of public sector information, which then form the framework for the re-disclosure of such information in the Member States.

The main principles enshrined in the law are the principles of openness, which are enshrined in the Treaty of Lisbon and the EU Charter of Fundamental Rights. Putting this concept from theory into practice often proves certain pitfalls. European Union is in this context often criticized for so-called "democratic deficit". This is not just due to the absence of the principle of openness, but also lack of clarity of the information and a proactive approach towards the citizens of the community. However, in this respect has a number of initiatives such as the introduction of Internet debate with citizens, which led, inter alia, the introduction of the Internet channel in the European Parliament EuroParlTV. Other positive initiatives in the field of information to citizens and bringing awareness and acceptance is the so-called White Paper on European Communication Policy, adopted by the Commission on 1.2.2006. Here in Part II. Section 1 is entitled to the information contained in the definition of common principles as follows:

*"The right to information and freedom of expression, the heart of democracy in Europe. Links to these principles are included in the EU Treaty and the European Charter of Fundamental Rights. This must be the starting point in a process aimed at defining common principles and a shared vision for an EU Communication Policy."<sup>10</sup>*

The White Paper also proposes the creation of a common instrument in the field of communication at the European level. The objective here is placed on awareness of European issues. And information it seeks to anchor and enhance the transparency of democracy, which is one of the main objectives of the EU. *"It is clear that if the European Union seen as a*

---

<sup>10</sup> Eur-Lex, *White book about European communication policy*, Czech text version accesible at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2006:0035:FIN:CS:PDF>

democratic community, respecting the values common to all European countries, can not think of a significant overrun of the economic level of the integration process or to strengthen its position in the international arena.<sup>11</sup>" Also, according to the current working version of the study Commission should be entitled to information about Europe in different languages become a fundamental right of individuals. The Commission also makes several proposals to get the understanding and agreement of EU citizens before the European elections to the European Parliament in 2009. This task is also to the Swedish politician and Commissioner for communication Margot Wallström. Its vision is realized in the framework of Plan D - for democracy, dialogue and debate. One of its main objectives is to address communication policy direction from the inner circles of the vacuum Brussels and the citizen at the local level. Agenda for the citizens communicated with Europe (A Citizen's Agenda for Communicating Europe), aims to strengthen the citizens to give their views and provide them with relevant information about the functioning of the EU and its policies at all levels. In "Communicating Europe in partnership: EU information priorities" also stresses the importance that the access to information about the EU became a fundamental right of individuals with a discussion led by the national, regional and local level. Another important point is mentioned here as well as access information to citizens in the language of their choice. The fulfillment of these objectives are the aims in which the Commission should assist; ie: make the creation of a European public sphere. Communication policy of the European Union implies the active participation of Member States to provide the basic right to information, as identified by the European Commission. In addition to official efforts, there is also a range of governmental activities, seeking to openness and transparency, in particular on strengthening the right to information.

### **Access to information in the Czech Republic and the Member States**

In the final summary, I would like to first pay more attention to the example of the Czech Republic and then to make comparison of the right to information in the Member States. Applicants themselves may be in the Czech legislation invoked by the provisions of the Law on free access to information, which is implementing regulations to the provisions of Article 17, paragraph 5 Charter. This guarantees the right to change any information without distinction, the principle of equality of diction. In this, however, the question arises whether a journalist or NGOs who uses the information on daily basis and needs it to their daily work, not be excluded from this set and get some "privileges". Also, this was in the previous adjustment of the current press law in 2000, where journalists in Section 13 confers the right to request information not for publication, but respectively for its own use. Journalist won here the possibility of faster and easier access to information. This possibility has already de lege lata repealed. Now, all journalists possess equality in relation to the right of information. On the one hand, a journalist, has lost some privileges from the press law, but on the other hand, they received law *lex specialis* for free access to information. This was amended in 2006 and new arrangements are currently just in decision making procedure. „*Right to Know is a*

---

<sup>11</sup> See. Bendová, H., *Princip otevřenosti a průhlednosti v rozhodovacím procesu Evropské unie a jeho odraz v informační politice Evropské unie*, Czech text version accessible at:

[http://www.integrace.cz/integrace/katalog/soubory/Helena\\_Bendova.pdf](http://www.integrace.cz/integrace/katalog/soubory/Helena_Bendova.pdf)

*prerequisite for any discussion on civil society.*<sup>12</sup>" In the Czech Republic, as well as in other European countries, there are two approaches to inform the public authorities:

ensuring the rights of the citizen to answer by certain office

independent information and publication activities of the authorities to the citizens.

This argument may seem odd when comparing domestic arrangements right to information, which many authorities behave as impregnable fortress, and it is practically impossible to obtain information from them. Amendments to the Law on Free Access to Information Act 2006, which should improve the situation, help too. An extensive amendment to the Act No. 106/1999 Coll., On free access to information, which came into force in March 2006 (Act No 61/2006 Coll.), has brought substantial changes to the way in which the citizens can prevent the illegal withholding of information offices or to express their inaction. The amendment introduced by the institution of complaints which must be submitted within thirty days. After settlement of these complaints can appeal against a failure to provide information or legal proceedings in the case of idle office. Overall, it has extended the path to legal actions, on the other hand, the courts have acquired a significant tool to protect citizens – now, the court may order, that office shall provide specific information to an applicant. Until 2006 the courts could interfere only bad decision authorities, and where the Authority has ignored the judgment litigation is still no outcome recurred. *"A major problem is that current legislation does not, even after the last amendment of any effective mechanism, how the people can defend against the arbitrariness of officials. When the officer simply decide that certain information not citizens, not the person or authority to punish as a whole. While there is a possibility of lodging a complaint or legal action, in practice, however, does not work. The complaint of the office generally doesn't hear like appeal. Then it remains to judicial action. The case is thus but stretched to two years.*<sup>13</sup>"

Only the introduction of penalties in the law on free access to information may, according to NGO officials to deter violations of the law. This requirement may also promote the upcoming draft amendment which is currently at the Ministry of the Interior Affairs. According to some legal views upon the Czech Republic, there may become the sorry of law enforcement penalties ordered by the European Commission, due to the breach of the Directive on the re-use of information in the public sector.

In principle, however, many errors in the field of free access to information and right to information directs from average are, compared to other States of the European Union, they are not so different. The main criticism of current status is based on our current non approximation of the rights in relation to the implementation of equal access (so-called anti-discrimination law). This is outlined within the agenda of European communication only as a part of the agenda. As we look forward to direction and taking into account the considerations de lege ferenda, than our thoughts will be directed to a document of the Treaty of Lisbon and its components - Charter of Fundamental Rights. It added that even in the words of the Dutch expert on access to information prof. Herk Kranenberg, the eventual

---

<sup>12</sup> Korbek, F. et al.: *Právo na informace*, 2. Edition, Linde, Praha, 2005

<sup>13</sup> Arnika – Press Release, *Svoboda informací v Česku pokulhává, nepomohla ani novela zákona*, Czech text version accessible at: <http://www.arnika.org/tz.shtml?x=2120353>

adoption of the Lisbon Treaty, will not change much among Member States. Current state will become more institutionalized and enshrined in the current status quo, but also a new official *de iure* status will be made on the basis of a common document.

Access to information will be still divided into two categories. The first will include information concerning the activities of European institutions and the other will always be upon the Member States. The future approach and simplify access to information, among other things, also seeks international network of NGO Freedom of Information Advocates Network (Network FIA), which launched on the 28th September International Day of the right to information. The purpose of this activity is to raise awareness about the right of each person to access information held by government authorities - the right to know how to handle politicians and officials with the powers entrusted to them, and how they used public sources from taxpayers'. FIA uses this day to promote ideas, strategies and success stories of development of laws on freedom of information and open government. Hopefully, this activity will help not only to greater transparency between Member States. In the current postmodern globalized information society is the ability to obtain any of the information for public, one of the key building blocks.

#### **Literature:**

- Bauman Z., *Úvahy o Postmoderní době*, Praha, Slon, 2006, 2.edition, 163 p., ISBN 9788085850123
- Korbel, F. et al.: *Právo na informace*, 2. Praha, Linde, 2005, 2.edition, 295 p., ISBN 9788072014651
- Kranenborg H., Voermas W., *Access to information in the European Union*, Groningen, Europa Law Publishing, 2005, 129 p., ISBN 9789076871462
- McQuail, D., *Úvod do teorie masové komunikace*, Praha, Portál, 1999, 447 p., ISBN 9788071787143
- Přibáň, J., *Dissidents of Law*, Michigan, Ashgate, Dartmouth, 2002, 236 p., ISBN 9780754622840
- Týč V., *Základy práva Evropské unie pro ekonomy*, Praha, Linde, 2004, 4. edition, 335 p., ISBN 9788072012961
- Webster F., *Theories of the information society*, Oxford, Routledge, 2002, 2. edition, 304 p., ISBN 9780415282000

**Reviewer:**  
**Martin Škop**

**Contact – email:**  
*j.duda@centrum.cz*