

A Few Notes on the Right to Information Access

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<https://doi.org/10.33542/VSS2026-1-3>

Abstract

Right to Information Access is one of the basic means to guarantee public administration transparency and the power execution democratic control as well. Moreover, it helps citizens to obtain data that the public power bodies have in disposal, and in this way to support openness, trust and the public participation in public administration matters. The presented contribution tries to offer several notes regarding the legal framework of the mentioned right concerning its frame tie on the constitutional and legal levels anchoring. Besides that, it pays attention to some restrictions to information access mainly as regards personal data protection and they might abuse law regarding the access to information right. Furthermore, the aim of the article tries not only to point to the importance of information right as a means of strengthening democratic values, but likewise to point out the practical problems concerning its implementation within the context of the selected restriction conditions.

Keywords: SR Constitution, political law, right to information accesses, restriction of the right to information access.

Introduction

In the Slovak Republic 25 years have passed in 2025 since the endorsement of Act on the Free Access to Information, it was Act No. 211/2000 Coll., as amended. In the further text besides the term Act on the Free Admission to Information, other similar terms are used, there are the following ones: the Free Information Access Act, the Act on the Free Admission to Information or the abbreviation Act on Free Information.

Act on the Right to Free Information Access was approved on the 17th of May 2000; the passed act has brought the principle of public participation and the public control of the public administration bodies. By the Explanatory Report concerning the Act on the Free Admission to Information, it is clear that even if the Slovak Republic Constitution guarantees the right to information, by the sub-constitutional law and the secondary legislation, the legal regulation is missing concerning the specific conditions which would appropriately define the public right to demand the public administration bodies for data or the individuals who are obliged to give the public the proper information.

It is evident that nowadays society is overloaded with information by the existence of social networks and AI technologies, and consequently it can hardly be properly selected. On the other

hand, the ongoing and persistent bureaucracy in public administration constantly generates the new information bulk, and thus hand-in hand the public necessity is created to provide the more extensive and accurate control of public administration bodies and the public institutions. Therefore, the Right to Free Access to Information Act application must constantly be up-to-date, and that's why it wants its continual attention. Finally, at present the legal proceeding is hold on the Slovak Republic Constitutional Court concerning the compliance of the Right on the Free Access to Information with the relevant constitutional norms and in this way to demonstrate that the mentioned Act still remains valid and up to date, the proceeding is led by the file ref. PL. ÚS 6/2025. Nota bene, the Slovak Republic Constitution Court has applicated the special extraordinary institute to put on hold coming into the force the statement regarding the payments in case of the purposefully incurred for the exceptionally information searching as it is stated by paragraph 14 section 6 and 7 and the paragraph 21 section 1 second sentence of the Act on the Right to Free Access to Information. Perhaps, in connection with what has been mentioned before, it can be pronounced that the right to access information extensively resonates in our society, and therefore, it is suitable and needful to pay attention to the stated right, even in scientific and academic works.

Considering the mentioned facts, the authors in their contribution try to do their best to deal with the Free Access to Information Act contents within its constitutional frame ties, and subsequently they try to put their attention on the problem of right to information abuse within the context of the Access to Information Act. Further on, the authors will put their attention on the right of information access restriction problem in connection with personal data protection. Further on, the authors come out predominantly from the stable judicial practice completed by legal theory. Moreover, the authors have decided to pursue more closely the mentioned problem- areas regarding the information accessing due to its up-to-datedness combined by the unruly abusing right which appears more frequently in both areas, the legal theory and practice as well. Besides that, the mentioned challenging problem areas are closely inter-connected with the increasing guarantee of personal data protection, and what's more in connection with the growing public administration having been under the closed public microscope.

On the basis of the collected and the subsequently analyzed legal theory together with the stabled judicature, the aim of the submitted scientific article rests in the highlighting of the fundamental constitutional legal way-out sources of the right to information access that is based on the legal foundation including its conceivable limitations. The right to information access limitation is demonstrated by authors by means of the chosen sections, and further on, it is presented how the found-out limitation is perceived by the stable judicature practice.

1 Constitutional and Legal Right Entrenchment to Information Access-Chosen Facts

Under the Slovak republic conditions the right to information, respectively Right to Information Free Access has its foundation in the Slovak Republic Constitution. If we look-in the Slovak Republic

Constitution, then it is found out that the right to information as the political right is stated by Article 26 section 1 of the Slovak Republic Constitution declaring that the right to information is guaranteed together with the freedom of expression. Additionally, the SR Constitution goes further in section 4 of the mentioned Article that *“the freedom of expression and the right to search and spread information can be only restricted by law in cases such as; where the necessary provisions are needed in democratic society in connection with the individual protection of rights and freedoms, state security, public order, protection of public health and morality.”* Thereafter, Article 26 section 5 of the Slovak Republic Constitution added that the public power bodies are responsible to provide an acceptable information regarding their activities presented by the state language, conditions and the proper legal ways as it is declared by law. In this way, the SR Constitution guarantees the basic explanatory keys of the right to information that within the bounds of the Slovak Republic Constitution amendment are further on applied by the right connected with the free information access, and by the judicature that mainly concerns the administrative courts and the Slovak Republic Constitution Court.

Consequently, the Slovak republic Constitution declares the freedom of expression as the political right of the most fundamental dominance, and as regards the right to information, it is included in the SR Constitution by two forms; the negative one meaning to accept information without any interference by the public power, and the positive form resting in the right to demand public power bodies to provide information concerning their activities. According to the mentioned SR Constitution Articles, the public power bodies are obliged in an appropriate way to provide their accomplished information regarding their doings and activities. Besides the public power bodies obligation to provide adequate information about their actions and measures, it is necessary to assure citizenry knowledgeability about their work and justification, and in this way to enable citizens participation in public matters. Moreover, thus the public administration power can be effectively controlled by means of the relevant information (Finding of the Czech Republic Constitution Court file ref. IV CC 2375/24, dated 18th June 2025). The basic right to information does not serve only for the obtaining information and the information handling, but first of all, it serves as the means of the qualified public participation in decision-making on the administration public matters (Drgonec,2019).

From the constitutional and systematic points of view, the right to information can be submitted under the category of basic rights and freedoms having been of the first generation, and according to the constitutional law, they are included into the third part of the Slovak Republic Constitution with the letterhead as the political rights. By the interpretation of the Slovak Republic Constitution Court file ref. PL. CC 1/09 dated 19th January 2011, the basic right to information by Article 26 of the SR Constitution is necessary to interpret within the context of the democratic and lawful state that is one of the basic principles formulated by Article 1 section 1 of the Slovak Republic Constitution. The mentioned basic right together with the right to freedom of speech stand for the constitutional guarantee as regards the existence of the free notions creation, and the free exchange

of views, ideas, knowledge or information without taking into consideration their meaning, purposefulness or contents (Hodás, 2016). In this way, the considered purpose of the basic right to information is not only evidently reflected on the level of the free creation and intermediate opinions that are related to public matters where the interconnection with the democratic state values is apparent, thus it has evidently the broader scope affecting the various spheres of individuals' personal life as well as the whole society.

It can be agreed with the opinion (Ikrényi, Balko, 2023) that the free access to information of public bodies has the fundamental meaning for the democratic systems functioning and their effectiveness as well. There are based on the principle that in democratic system the people should have access to broader information radius, and they can accordingly provide more effective participation in public life, and additionally they might help to support the better functioning of democracy. Subsequently, the access to information enables expanding of the public information discussion, supporting the electorate to control the elected public dignitaries, and in this way considerably influence the public electorate decisions during the next elections. In case the results of control have found some type of inaccuracy or discovering some breach of obligation including the corruption of the concerned dignitaries, then afterwards the information access can lead not only to the disclosure of negligence, but indirectly it might lead to the consequential sanction. Furthermore, gaining access to information strengthens not only public legitimacy but at the same time the confidence to state. The decisions are better accepted by the general public when the pronounced decisions are the results of an exposed open process. When the public dignitaries decisions and behavior are under the close public microscope, the reach adds up finally are in the public bodies motivation to higher proficiency and more precise following law. In this way, the free access to information and the public power bodies transparency are conclusively becoming the key factors of the good governance of public affairs. In addition to what was said, they are the characteristic features for recognizing whether society is really democratic and pluralistic in comparison to all other forms of corruption, and at the same time, it helps to recognize if society is capable of criticizing those who lead it. Having in mind the aim of reaching a real transparency in public life, it is more than needed for democratic society to have a legal system that would promote free information access from all public bodies and to make them at disposal for everybody.

It is necessary to bring forward that the public administration has an enormous amount of information at disposal, and that it constitutes a huge mechanism of decision-making procedures, such as; the delegation of powers and the processes covering dignitaries who are paid by all taxpayers. All those processes are interconnected with the transparency principle connected with the public administration whose main purpose is to make access of information to general public, especially those ones which are at disposal of the public power bodies except those that are excluded by the legal order (Košičiarová, 2022 or Hodás, 2011). As regards the right to free information access, the public administration bodies must fulfill two liabilities; the first one is passive

access to information based on the application, and the second one resting on the one's own initiative made by the public administration bodies, in this case it is commonly considered to be active information access without any previous application laid down. The subject of the legal amendment on the free information access regards both cases, the passive one as well as an active one (Andraško, Mesarčík, 2019).

Active information access which is at disposal to public administration bodies have several advantages, not only for the public administration bodies themselves, but at the same time for the general public as well. In the first place, by means of active access, the admission to rules of law and the decision-making are safeguarded, and that finally leads to the positive influence on citizenry participation during the decision-making processes and the creation of the political conception, too. By means of the information access which characterizes a public administration body and its activities, it lastly helps citizens more simply to use its provided services. Another benefit of active access rests in decreasing bureaucratic burden connected with the handling applications asking for the possibility of information access. The more information is released by the public administration bodies, then less applications asking for the information access might be laid down (Andraško, Mesarčík, 2019).

In relation to information Access Right the following basic starting points can be defined:

- the basic information access principle – the publicity principle, openness,
- the right to information – data that are “reposed” and with which the public administration body works,
- the right to information – interconnection with the already existed occurrences and events,
- prevailing public interest,
- counterbalancing constitutional rights – reciprocally collided,
- the purpose of intervention, respectively the purpose of accepting information- the so-called common control tool,
- limitation of the right to information are applied in such a way that required information after their exclusion are made accessible as it is stated by law- the so-called selection and anonymization,
- the congest of the administrative body by applications- the so-called filibustering,
- forbidding the right to information abuse – the so-called mobbing of the right execution (Sotolář, Klinger, 2020).

The mentioned basic starting points can be interconnected with the principles creating the foundation of the Act on Free Information Access (Horvat, 2023):

- public administration transparency principle,
- minimalization of the interference into the basic rights,
- the dominance of the public interest principle, e.g., paragraph 9 section 3 of the Right to Free Information Access,
- the selection principle, parts not accessible are “blacken” or they are made anonymized,
- the principle of forbiddance to abuse the law,
- the principle of “no payment”, payment only for costs,
- the principle of informality,
- the principle of contents dominance over form,
- the principle of the procedure speed.

2 Legal Restriction of the Right to Information Access Enforcement

The Right to Information Access has to be interpreted extensively meaning to appreciate it as a way leading towards the extension of the so-called obligatory person to make access to information as the restrictive appreciation following from the demand to minimize any intrusion into the basic rights and freedoms which part is likewise the right to information access.

In spite what has been just mentioned, the Right to Information Access comprises the regulations in which the legislator has directly presumed cases in which the restriction of the right to information access might become reality. In spite of the legal exceptions regarding information access, it is still valid to interpret the relevant law provision of the right to free information access applied within the sense that the limitation of the required information access by the obliged person must be provided to the most minimal extent. The information non-access for the obliged person has to constitute a possibility “*ultima ratio*”, whereby in such an extreme solution, the higher requirements are in place concerning the statement of reasons given to the obliged person on the non- information access, the reasoning must be rationale and equivalent in connection with the extent of inaccessibleness. Finally, it can be stated that the free information access right is based on the fundamental principle “what is not confidential, then it is public“, expressed by other words the required information must be made available except those ones which are excluded by the law (Wilfing, 2012).

The mentioned regulation comes mainly from the reality that the obliged persons are the public power executor, and they are closely attached to the public administration budget, mostly to the state budget (it is meant the public power bodies but not the foundations, by the way, nowadays they are defined by the right on free access to information as the obliged persons as well, remark made by the authors). It is evident that as the public power bodies, they are paid by the public funds

covering all their task accomplishment, their posts as well as their competences, in conclusion it means that every taxpayer is sharing in payment of all their costs. The taxpayer, as an individual, whose money is participating in creating the public administration budget, has the right to know how his money has been used, and not only by the public administration. Just considering this reality, besides other factors, the right to information has been formed, and from that reason every obliged person must approach responsibly and dutifully to ask any information access (Horvat, 2016).

In relation to the limitation conditions, it is always necessary to consider the contents of paragraph 12 section 1 of the Free Information Access Act. Here it is declared that all restrictions of the right to information are provided by the obliged person in such a way that required information access including the accompanying information are accessed only after excluding that information which is stated by the law. The authorization to refuse information access remains until the inaccessibility reason lasts. According to the Free Information Access Act paragraph 12, the legislator established the so-called selection principle. By means of the mentioned regulation the material substance of the information access restriction is investigated. By the Supreme Court of the Slovak Republic file ref. 2Sžik/6/2019 dated 18th December 2019, the contents substance includes the requirement to provide the legitimate right to information restriction in a minimal extension in order to meet the guaranteed demand to minimize an intrusion into the basic human rights and freedoms. In connection with the mentioned substantive matter, we can point to the judgement of the Supreme Court of the Czech Republic file ref. 1As/98/2008 dated 29th September 2009, its contents declare that

“... Without any doubt as regards the any information assortment, the requester has the right to ask for information- that means, for instance to ask the photocopy of the whole administrative file. However, it is the duty of the obligatory subject to investigate whether the requested material does not comprise information that are connected with the lawful restriction, then further on it is necessary to examine individual component parts of the provided file having in mind its compatibility with the legal limits stated by the right to information.”

3 The Information Access Right Constraint within the Context of Personal Data Protection

At present civilization that is largely influenced by globalization and the social networking resulted in reality that the contemporary society and law are more and more concentrated at the personal data protection. Similarly, the Act on Free Access to Information and the relevant judicature are not of any kind of exception. The question comes to the fore when personal data protection is relevant. The Free Information Access Act by paragraph 9 section 1 declares that information regarding personality and privacy of the natural person connected with the personal papers and documents, personal portrait, visual snapshots, pictures and audio recordings concerning natural person or natural person's individual expressions, the obliged person makes accessible information only in case as it is stated by a special law or by the preceding written agreement of the affected

person. In case, when the affected person does not live, then the approval might be given by the close person, the approval is not needed to make access to the personal data of the deceased person if they are used for the scientific or academic purposes. Further on, the data can be used for statistical purpose, documentary purpose, historical research, or in case of burial grounds, location of memorials, placement of the commemorative plaques, pursuance of reminiscent events and reverence within the acceptable range.

Information gain accessibility affecting the person is conditioned explicitly by the following reasons:

- (i) if it is stated by the special act, or
- (ii) if it is given previous approval of the affected person.

The Act on the Free Information Access considers the mentioned access likewise to personal data information of the natural person processed by the information systems. The mentioned information is accessed by the obliged person as it is stated by the law or on the basis of the previously written approval of the affected person (paragraph 9 section 2 Act on the Free Information Access).

However, in practice such cases appear where the obliged person refuses to access information, for instance the cases connected with the police force members, persons accused or any other similar cases reflecting the non-existence of the before-handwritten approval.

The question is how judicature is capable of finding out the solution in such a situation? In addition to that, it is necessary what to understand under the notion “personal protection”. In the context of paragraph 11 of the Civil Code personal protection is declared as the protection of life, health, civic honor and human dignity, and besides that, it includes the protection of privacy, one`s own name and personal freedom of expression. Concluding, personal protection includes honor and dignity, right to have name, the right to expression presented by the written form, audio recordings, portraits and snapshot pictures, further on the right to body integrity (right to life protection and health safety), right to personal privacy, family life, affective relationship towards another person.

The content of the right to honor and dignity expressed by the law as “civic honor” , and in addition by the explanatory report, the citizen honor is reflected in many social relations, on the one hand it is the relation towards society, and on the other side it is reflected in relationship to other fellow citizens. The subject of the citizen`s protection considers to be in connection with his/her honor in the professional circles where citizen is known by his/her work and activities (Lazar, 2006). Judicature has concluded that as regards the protection, it can be included the citizen protection concerning the labor-law relations, and as the case may be the state-labor relations (Judgement of the Slovak Republic Supreme Administrative Court file ref. 6Svk/5/2025 dated 30th April 2025).

Regarding the affected person, the judicature finally concluded by the Cassation Court (Judgement by the Slovak Republic Supreme Court file ref. 6Sžo/162/2015 dated 23rd August 2017) in the deduction that “ *if the applicant claims to access the information connected with privacy or*

personal data, according to the paragraph 9[InfZ] the obliged person makes the access only under the conditions when it is accepted and stated by the special law or on the base of the aforementioned written consent of the affected person, the person whose information on privacy or personal data are concerned. Forasmuch as these provisions do not impose duty to the obliged person to ask for the affected person written approval, then the obliged person must not request the approval by the concerned person, respectively its close person or the legal representative. In case when the applicant claiming on information cannot present the mentioned approval of the affected person, or in case if the approval is not filed in the official document, then the obliged person does not make access to information. Consequently, the approval is not provided by the obliged person, but in this case, it must be acquired by the applicant himself”.

The question is, what to do if the applicant does not know the affected person whose information is concerned ?

The answer has been given by Judicature which in its reaction has specified that the mentioned question has nothing to do with any mistake or the legal amendment deficiency, but it is the matter that follows up making the balance among the collided constitutional principles as regards the legal adjustment. The judicature has not casted doubt on the applicant right to information as declared by Article 26 section 1,4 and 5 of the Slovak Republic Constitution, but on the other hand, it must be respected the natural person right to privacy, and at the same time to safeguard the protection of the natural person data to make public that is equally important as it is stated by Article 19 section 2 and 3 of the Slovak Republic Constitution.

In this way the legislator has made a balance between the collided interests, personal data and the data on natural person privacy which cannot be accessed without their approval as stated by paragraph 9 section 1 and 2 of the Act on Free Information Access. The exception can be made accessible in case of the public interest in connection with the natural person standing posture and tasks that are linked to their public power execution, anyway it does not surpass the protection of natural person privacy and the personal data following paragraph 9 section3 of the Act on Free Access to Information. At the same time, regarding the natural persons, who are different from other persons as it is stated in paragraph 9 section 3 of the Act on Free Information Access, the legal amendment presumes the situation when natural persons do not give the antecedent general approval to make information accessible having an interest in protecting their personal and private data. Considering the brevity of the term to make an access to information and the protection of natural persons privacy, and added by an extremely overburden work caused by the plenty of demands asking for information concerning somebody's privacy without any lawful reason, and that's why the legislator does not impose a duty to the obliged persons to initiate the acquired approval as stated by paragraph 9 section 1 and 2 of the Act on Free Information.

Besides that, such a procedure cannot be considered unconstitutional as the substance of the right to privacy and the right to the protection of personal data according to Article 19 section 2 and 3 of the Slovak Republic Constitution, it is the right that protects data within the range of the so-called identification data or any other natural person private data which were given to the public administration bodies but they would not be accessible to the general public. In aliis verbis, the access of the personal data and data concerned privacy of the natural person is “the exception” and not the rule alone. The exception is applicable either in case when the affected person shows initiatively one’s own content with the accessibility by giving the beforehand comprehensive approval, or when it is in interest of the natural person motivated by the various reasons leading to give requester one’s own permission to provide the accessibility. Finally, it means that the protection of privacy and personal data prevails over the general public right to information. Only in case where the asked information has become the base for execution of public power, proceeding participants are available to become familiar with the related information but within the intention of the relevant legal amendment of the administrative or criminal proceeding. In this way, the impossibility to acquire consent is not the result of unconstitutionality evidence or the unconstitutionality of the legal amendment, but on the other hand, it is the legitimate demonstration of the private protection of the affected person as it is stated by the Slovak Republic Supreme Administrative Court file ref. 8Svk/12/2025 dated 29th May 2025). Connected with the mentioned, it can be added that *“purpose of the provision paragraph 9 Act No. 211 /2000 Coll. means to protect information regarding privacy and the personal data of natural person. The right to private protection is the person right to decide by his own consideration in what ways and to what extent personal private facts have to be made accessible to others. It is without any doubt that personal data protection is an inseparable part of privacy protection. But on the other hand, the right to privacy encompasses the right to information and the factual realities, and therefore there are some presented data that can be hardly qualified as personal ones. Additionally, the right to protection of privacy and the expression of personal character create a component part of the protection of personal identity as it is stated according to paragraph 11 of the Civil Code (Judgement of the Slovak Republic Supreme Court 6Sžo/250/2008 dated 25th November 2009).*

Furthermore, such cases might appear when the claimant asks for information on a person who is identified by some personal data laid down in the application, for instance stating person’s first name and surname, and as the case may be, the person employment status or professional designation without having at disposal the affected person consent to make public the required information.

The question appears; what does the obliged person have to do regarding the above-mentioned case?

As regards the mentioned case, the established judicial practice exists presented by the judgement of the Slovak Republic Supreme Court file reference 3Sžik/3/2019 dated 17th October 2019 or the

judgement made by the Slovak Republic Supreme Court file ref. 3SŽi/40/2014 dated 28th January 2015. The established judicial practice rests in the proceeding that “ *the application on the information with its contents must not touch the particular natural person (other than applicant) and it must not be interconnection between the information and the natural person identified in the laid down application. That concerns limitation by paragraph 9 section 1 Act No. 211/2000 Coll. on freedom of information. If an obliged person meets the application where the particular natural person is aforesaid then it would be clear that it concerns the information – data relevant to that particular person. Taking into consideration the prosecutor’s application requesting the information that contains the forename and surname of the particular natural person having a close bound to the information, then the application is not acceptable by reason of respecting the personal data protection. It is necessary to accentuate that generally within the legal mode by Act No. 211/2000 Coll., the requester inquiring about information access is not in a procedural position regarding the offence, and therefore the requester cannot have at disposal the offence procedure particular participant data. When the prosecutor is injured by misdemeanor, then the prosecutor has the right to look into the file for the purpose of securing one’s own rights.* ”

In case, when the subject of the presented application contents is the information concerning the particular natural persons, then it is without any doubt that their private personal data might be affected by their infringement. In this connection, in their judgement the Slovak Republic Supreme Court have adjudged that the application contents must not aim to a particular natural person, different than the applicant is, and further on, it must not be the inter- link between the requested information and the natural person identified in the presented application (the Slovak Republic Supreme Court, judgement file ref. 3SŽik/3/2019 dated 17th. October 2019 and by judgement file ref. 3SŽi/40/2014 dated 28th January 2015). The mentioned restriction of information is applied following paragraph 9 section 1 Act on Information Freedom. If the obliged person provides information to application in which the particular person is mentioned, then it is understood as the validation that the presented information-data is considered to be relevant to that particular person. In view of the mentioned information request with the first name and last name of the particular person, even with the additional person identification related to the asked information, such an application is not acceptable considering the personal data protection. It is needed to emphasize that under the lawful regime defined by the Act on the Free Access to Information, it is generally valid if the requestor asks for accessibility and not being able in the position of the participant of any kind of procedure, respectively in the stance defined by other relevant legal regulations, for instance criminal proceeding, administrative violation proceeding, misdemeanor proceeding, court proceeding, and therefore the requestor cannot deal with the particular person data in the standing proceeding. If the administrative bodies have met the application and made the access in such cases, for instance when the required criminal decision of the particular person is provided in its anonymized form, then the requester obtains information- data related to that particular person, and

in this way, by an indirect version the information would be accessible resulted from a lawsuit runs against that particular person, and what's more the mentioned person has been legally rightful found guilty. The mentioned advanced procedure of the administrative bodies would be in contradiction with the regulation paragraph 9 section 1 of the Act on Free Access to Information, and therefore the administrative bodies have judged the matter rightfully, in case did not make the information accessible to the applicant on the base of not regularly formulated application would not be acceptable (decision made by the Administrative Court in Bratislava file ref. BA-6S/187/2021 dated 5th February 2025).

4 The Right to Information Access Restriction in the Context of the Law Abuse

Under certain circumstances when the obliged person can restrict accessing information is the victimized law exercise regarding information access, in other words defined as the legal malice of this right or labelled as the information filibustering. The Act on Free Information Access in its provisions does not precisely define the " victimized law execution" , "law abuse, or information filibustering", but however, the law comprehends the mentioned concepts and workings with them.

It can be asserted that the inhibition legal base is stated by Article1 section 1 of the Slovak Republic Constitution settled the obligation for all state bodies to interpret and applicate the constitutional laws, acts and other generally bound legal provisions to be obligatorily in compliance with the Slovak Republic Constitution, that means in amenability with the principles guaranteed by Article 1 section 1 of the SR Constitution. In this way, the prohibition of abusing law constitutes an integral part of the lawful state. As it is declared by the stable stabilized judicature in relation to the stable legal theory, under the law abused concept it must be understood the apparently and seemingly acceptable behavior by which the unacceptable result has to be achieved (The Slovak Republic Supreme Court Ruling file ref. 7Sžik/3/2017 dated 31st July 2018). Regarding its fulfillment, it must be brought forward, that facts of the case conclusion of the law abuse is finally confirmed by the court or the public administration body in its individual case decision-making as the result of the legal assessment of the accomplished actual state of the case facts (The Slovak Republic Constitution Court resolution file ref. III. ÚS 357/2016 dated 7th June 2016). Law abusing stands for the situation when somebody causes unjustified harm to another subject by exercising his own subjective law, consequently such a behavior of achieving the unauthorized results is only apparently allowed. Enforcement of law, which is in fact its abusing, and therefore, for that reason the court would not provide any protection (Verdict of the Czech Republic Supreme Court file ref. 1AFs/107/2004 dated 10th November 2005). The abuse of law is absolutely legal category while its own conceptual descriptions show that final conclusion cannot be exclusively the result of the explanation of the facts regarding the case under consideration, but it is the result of the lawful assessment of the stable factual circumstances. Therefore, issuing from the given powers to court

or the public administration body, law abusing cannot be qualified as the subject of taking the evidence as the legal institute. The facts of the case, which is the result of probation process, then only afterwards can its final accomplishment be assessed that its facts of case law abuse have been consecutive (the Slovak Republic Constitution Court Resolution file ref. III. ÚS 357/2016 dated 7th June 2016).

The right abuse forbiddance is a private law principle which corrects the boundless private rights execution. If the legal order consigns the subject law certain rights, it must be evident that those rights should be provided in accordance with the purpose prearranged to the definite right, and at the same time it must be accepted rule that one subject right is over where another subject right begins. Besides, it must be pointed to the fact that every legally relevant proceeding has a certain social purpose and social assigning. From the ensued, further attached premise pointing out to the subject execution which must be provided considering the interests of other social subjects. *Argumentum a contrario* is evident, if it is not like that, then it is law abuse. The right abuse forbiddance functions as the general correcting mechanism of the limitless subjective rights execution connected with the private law and public law that should be the main principle of the legal order capable to sanction willful and intentional act of the law subject with the aim to obtain right counter the interference into the rights and justified interests of the third persons, and at the expense of their status; commercial corporations, state, natural entities etc. In conclusion we can express our opinion that everybody's execution of their right is obliged not to make impossible or interference of other subjects right execution. The principle of right execution and obligation comprises the forbiddance principle of law abuse, and the so- called impossibility to provide protection of such an exercise right causing some other subject to lose the right. Other cases of abusing the right include the unjustified, inappropriate and ex-parte favor preferences in relation to another subject, respectively gaining the beneficial interests while in regard to the up-to-date behavior and presented carrying out, it cannot be qualified as properly correct (Judgement of the Regional Court in Prešov file ref. 5Cob/4/2020 dated 3rd.June 2021).

In terms of the practical experience, we would like to point to the judicial practice when the Administrative Court in Bratislava in their resolution file ref. 1S/25/2024 dated 31st January 2025 have judged that the right abuse can be identified with the dishonest subjects' conduct understood as the law subjects behavior which is in one side in concord with the valid law, but on the other hand, the hard exercising of such rights cannot be considered polite related to the other addressees and recipients stated by the legal amendment. Nevertheless, the law forbiddance consists of the corrective material opposing the overwhelming exercise formalistic interpretation of the legal text which would finally obstruct rights or the substantial vested goods of other recipients. As stated by the cassation court in their annual judgement, in case of the refusal of the administrative lawsuit caused by the right abuse, further on the administrative court must review and ascertain the following facts:

- the character of the applied right and its purpose,
- the procedure participant advancement based on the view of the applied right,
- damage/harm considering rights of other natural persons, legal entities or society within the whole context of the exceptional factual circumstance of the fact. In case of any doubts, it cannot be applied the procedure of refusal lawsuit connected with the right abuse.

As has been mentioned before, the Free Information Access Act does not define the concepts of the law abuse or the victimize law enforcement. Therefore, there is nothing explicitly stated in the Act on Free Information Access, nevertheless it is followed by the constitutional principles. It seems to be apparently allowed proceeding by means not allowed result is achieved. It can be information filibustering, numerous applications or even one senseless application.

The question is: What is the stance of the Supreme Administrative Court of the Slovak Republic and earlier The Slovak Republic Supreme Court regarding the right abuse?

In connection with the mentioned, the following examples can be quoted: the Judgement of the Slovak Republic Supreme Court file ref. 3SŽi/4/2014 dated 12th March 2014 and the Judgement of the Slovak Republic Supreme Administrative Court file ref. 5SŽik/5/2020 dated 31st March 2022):

- the typical example of right abuse connected with the information rests in the instance when the applicant on information requests “the whole lot” , then the information quality moves back in comparison with the scope application. The actual fact distortion consists in the problem of the information right execution as it is not the subject of the payment obligation. But on the other hand, the payment obligation does not mean that the right is not executed in a reliable way. The further typical characteristic application is the requested information concerning the operational organization data and its activities that have nothing to do with direct relevance to a certain section of state administration where the obliged person is active. Besides that, such required information searching and administration can overwhelm and extraordinarily engage the public administration body, and what’s more, such activities are capable of personal staff evoking feelings that mentioned required doings are not rational, but in spite of that they must be fulfilled.
- Refusal of access information pointing to the fact of the right abuse must be understood as the result *ultra ratio*. Beyond a reasonable doubt, the obliged person refusing information access due to the law abuse is obliged to state that the applicant has no intention to accomplish legitimate purpose of act on the free information access or to make the obliged person harm. A big number of the applications submitted on the same subject in order to draw a conclusion on the right abuse is not sufficient. It is necessary to take into consideration further conditions of laying down an application, mainly the content and the quality required information, further on the

formulation mode and the degree of required information factuality, then the level of difficultness of their access in custody regarding the eligible due-time to its administration as well as the ability making an inappropriate harm to the obliged person. In case of its accessibility, it must be considered the sense and value of the required information for the applicant and the execution of the social control. Regarding the right abuse, it is needed a sufficient number of indications or evidences together with the decisions of the obliged person concerned with the information access rejection. The presented evidences must be accomplished by highlighting the registered indications and the proofs with the detailed justification.

Conclusion

In the Slovak Republic Legal Order, the Right to Information Access is firmly embedded in the Slovak Republic Constitution being guaranteed as an integral part of the basic rights and freedoms. The constitutional fixed embedding of the mentioned right underlines the standing significance of its meaning necessarily needed for the functioning of a democratic lawful state, and at the same time it is needed for strengthening of the public administration transparency. However, the application of this right cannot be absolutely understood, the legislator has specified the clear boundaries in order to protect the additional legitimate values. These are mostly evident in the area of personal data protection where it is inevitable to obstruct the unjust treatment with the information encroaching into the individual private sphere. Similarly, it is important to prevent the abuse of the right to information which might lead to the undue administrative burden of the public power bodies or purposely impede their activities.

The right to access information belongs to the most fundamental characteristics of the democratic lawful state, and at the same time its constitutional anchoring reflects the necessity of public administration transparency, and the effective control of public power implementation accompanied by the citizens participation. Besides that, the mentioned right is not an absolute one; its realization must be counterbalanced by another protection values, mainly by the basic rights and freedoms of the third ones including the right to personal data. The presented contribution properly identifies tensions between them and displays the growing relevant problem matters of the right misused within the context of asking for information and data protection.

As it is interpreted by authors in the presented scientific article, in case of the restriction of the right to information access, it is mainly the responsibility of the obliged persons to apply the ultima ratio whereby trying always to make an access to information even in a partially way. In that manner, the limitation of the right to access information has to be the last final choice.

Proceeding from the beforehand facts and the analysis made by the judicial practice and the legal theory, the following practical solutions can be recommended for the obliged persons: (1) elaboration of the public bodies clear internal guidelines in order to recognize the characteristic

features of the misusing of law and practices of the requests that are repeated or inappropriate; (2) consistently applied the tests covering the proportionality concerning the collision with the protection of personal data vis-a-vis the investigation of public interest and the probable likelihood of editorial revision as well; (3) the improvement of the procedure guarantees for requesters and the aggrieved persons, e.g. applying speedily and reasonable decision-making, and accessible ordinary remedies; (4) the enlightenment and the intensification of the educational activities concerning both parties, general public and the data administrators regarding boundaries between the responsibilities assumed from the right to information access and the protection of personal data.

Generally, it is valid that the effective implementation of the right to information access requires not only the dynamic approach, but at the same time the protection of transparency and the prevention of abuse combined with the respect of private protection. The balance between those values must be solved by solving individual cases supported by clear regulations and judicial protection in order to save the circumstances that the right to information access will still remain the tool of the public interest, and not the means of irrational or mischievous action.

In the future the challenge remains in making the précised boundaries between openness and the protection of the endangered values and simultaneously promotes responsible transparency culture. Only in this way the right to information can fulfill its constitutional aim to become an effective tool of citizenry control and thus strengthen the trust in democratic institutions.

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