

## CASE STUDIES

### The right to information: Whether or not to publish information on salaries of employees paid from public funds

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*Abstract:* The right to information is an important instrument for a control of public authority in any democratic state. Occasionally, however, there may be a conflict between this right and the right to privacy. In this context, the Czech Supreme Administrative Court was tasked with solving the question of whether information on the salaries of employees who are paid from public funds can be published.

*Keywords:* right to information; right to privacy; recipient of public funds; information on salaries

Ensuring access to information is essential for the proper functioning of any democratic society, and the exercise of public power in a democratic legal state should be open to public debate and control. These principles of publicity, transparency, and openness in the exercise of public authority is recognized and consistently applied in the Czech Republic. And the institute of the right to information significantly contributes to the fulfillment of these principles. ‘The right to information is a constitutionally guaranteed right’, (Article 17, Czech Charter of fundamental rights and freedoms states [hereinafter ‘Charter’[1](#)]). This clearly states that the freedom of expression and the right to information are guaranteed, and that state bodies and territorial self-governing bodies are obliged, in an appropriate manner, to provide information on their activities. Conditions therefore, and the implementation thereof, are provided for by law – namely by Act no. 106/1999 Coll., Free Access to Information. This Act is based on the presumption that all information must be published, unless the law provides an exception.

From this Act, a highly discussed and controversial issue emerged: whether information shall be provided (i.e. published) on the salaries and other benefits of employees who are paid from public funds. Regarding this issue, the Czech Supreme Administrative Court was very clear in judgment no. 8 As 55/2012-

62, dated 22 October 2014.<sup>2</sup> The respective case concerned whether information on the salary of the director of an elementary school should be published. While this was one specific case the judgment is essential, because it provides generalizing (general) conclusions on whether and why such information should be published by employers (those represented by state and local authorities, and various public institutions) if citizens request this information under the Act.

The Supreme Administrative Court dealt primarily with the apparent conflict between the right to free access of information, and the right to privacy. Both are guaranteed by the Charter, as Article 10 provides that anyone has the right to be protected from the unauthorized gathering, public revelation, or other misuse of his/her personal data. According to Article 7 of the Charter, the protection of the person and of his/her privacy is guaranteed, and this may only be altered in cases provided for by law. However the Act on Free Access to Information states that there will be personal data provided on those individuals who receive public finance (a so-called recipient of public funds), to this extent: name, surname, date of birth, municipality where the recipient has a permanent residence, amount, and purpose and terms of provided public funds. A public administration employee receives a salary for his/her work, which is paid from public funds. He/she is therefore considered (by the Act on Free Access to Information), 'a recipient of public funds'. Therefore, the amount of a salary and other financial benefits in connection with the name and surname of the person is personal data that should be published.

How does one reconcile the conflict of these constitutionally guaranteed rights? There is no doubt that the right to obtain information on the recipients of public funds represents a not insignificant interference with the recipients' privacy. Such information is certainly at odds with personal data protections outlined in Article 10 of the Charter, and also in Article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms. In a situation which contradicts two fundamental rights, the legislator (the state – i.e. the Czech Republic) must carefully weigh which of them will be given priority; to what extent and under what conditions. The legislator must consider whether the solution to this conflict can be determined on a general level, or whether discretion should be given to the administrative authorities, or courts, for the consideration of individual cases. It should be noted that the

conflict between the right to information and the right to privacy requires (to a certain extent) the prioritizing of one basic right over the other.

The Supreme Administrative Court, after a thorough analysis of the law (including aspects of EU law), concluded that the Act on Free Access to Information does not allow the court to determine which right should supersede the other (ie. to apply the principle of proportionality). While the legislator did favor the right to information of recipients of public funds, the legislator noted that certain information should be completely eliminated (for example, information regarding recipients of pensions or unemployment benefits) and in all other cases only a limited amount of personal data shall be provided, in an effort to provide some privacy to recipients.

The reasoning which led to this conclusion was summarized by the Supreme Administrative Court as follows: 'The basic purpose is to control public power through access to information on the spending of public funds.' It is generally known that the modern state manages a large amount of money, and through public budgets passes almost half of the gross domestic product. These funds are redistributed and used for a variety of purposes, from pensions and other social spending, to a variety of grants and subsidies, to salaries of public sector employees and operating expenses. And there is a strong public interest that these funds be effectively managed and spent in accordance with the law. Besides control through public authorities, a direct control of management of public funds by the citizens is very important because each citizen should be informed of how public power manages public finances. Each power, even democratic, corrupts, and the less it is monitored, the greater the risk of its misuse is. The control of public authorities significantly prevents the abuse of public power and strengthens the democratic legitimacy of the political system. Another purpose is that the findings obtained through the Act on Free Access to Information can be used to effectively reflect of public authority itself. If a fault is detected, there should follow a correction of the behavior and management of public authorities.

Finally, we cannot underestimate the preventive effect of this Act. The fact that the public authority may be exposed to questions from the public which it is required to answer, usually leads to more proper behavior of public power authorities. But it is also beyond doubt that public control can have negative consequences and that this institute could be abused by citizens. However, the court adds that the positives certainly outweigh the negatives.

The inclusion of employees among the recipients of public funds, on which such information must be provided, is legitimized by the intense public interest in controlling public authority and the efficiency and effectiveness of its activities in the areas of employment and remuneration. It is suitable and in a modern state is a very useful instrument in controlling the public sphere. The costs for salaries (wages) and other financial benefits to employees are an important item of public expenditure, and the public power has a relatively high degree of discretion. Therefore, there must be a broad, general, and effective public control. The control mechanisms which are available to the public sphere itself, without public participation, would not be sufficiently effective. The Supreme Administrative Court stated that publishing salaries does not represent, for someone who is paid from public funds, any material injury. Information on salaries cannot be considered information that would have shamed the recipient or otherwise reduced their human dignity. Arguments that this information can lead to envy and discord among the staff, or the unrest in their personal lives, must be rejected. The individual who determines the salary is obliged to follow the law, and must be able to justify his/her decision and defend their authority, which underlies his/her discretionary authority. Furthermore, the Supreme Administrative Court adds that neither fear nor envy can be considered relevant. Envy is a human trait stemming from the pettiness of the soul and we cannot face it by legal means.

Despite the above findings, however, the Supreme Administrative Court accepts that the employer is not obliged to provide salary information relating to recipients of public funds –only for certain exceptions. If the employee participates in the activities of the employer only indirectly and in an insignificant way, concurrently there is no doubt that public funds are spent efficiently. This will apply in particular to employees who perform ancillary and service jobs (e.g. maintenance, cleaning, catering, etc.). In relation to these employees, a publishing of the information about their salaries may be denied (on the principle of proportionality), even if they are paid from public funds. If there are doubts, a preference should be given to provide information.

The judgment of the Supreme Administrative Court thus provides the following general conclusions for practice in the publishing of data on the salaries of employees who are paid from public funds:

1. Information on the salaries of employees paid from public funds must be provided according to the Law on Free Access to Information.

2. The employer does not provide information on employee's salary. Only rarely – in cases when such a person participates in activities only indirectly and in an insignificant way, and concurrently there is no doubt that public funds are spent efficiently.

This decision of the Supreme Administrative Court can be undoubtedly evaluated positively. Although the publishing of information on employee salaries may bring some negatives or may be abused, this author believes that it is a necessary and effective instrument in controlling public authority. Citizens have the right to exercise control over the management of state public funds, which consist largely of taxes that are paid by citizens. Consequently, the judgment is a significant step towards fulfilling the principle of publicity and transparency in the exercise of public authority in the Czech Republic.

## References

1. Resolution of the Presidium of the Czech National Council of 16 December 1992 on the declaration of the Charter of fundamental rights and freedoms as a part of the constitutional order of the Czech Republic, No. 2/1993 Coll.
2. Available at [www.nssoud.cz](http://www.nssoud.cz).