

Where are the boundaries of the right to access public information?

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In one of its recent judgements¹, the Administrative Court of the Republic of Slovenia has clearly and explicitly stated that the right to access public information is not unlimited. The Court has therefore confirmed the decision of the Information Commissioner that in exceptional cases this right may be limited with the rights of others. According to the Court, the abuse of the right to access begins when a subject of the rights interferes or threatens the rights of others and thus oversteps the boundaries of a legally protected right. Rights should not be implemented contrary to their purpose.

The present judgment is particularly interesting as the principle of free access² - the primary guidance of decision-making in the field of access to public information, enables everyone to freely access the information regardless of their legal interest. Consequently, the Access to Public Information Act (APIA)³ does not allow public bodies to assess whether the applicant's interests to access the information are justified. APIA also does not limit the applicant on the number of the requests lodged or the scope of the requested information. In accordance with the purpose of APIA⁴, all the information, except for the specifically enlisted exceptions⁵, is freely accessible. Therefore, anyone can request any public document from any public body, and the public bodies are obliged to examine the application substantively.

However, ever since the APIA came into force, there is a pressing question of whether applicants can in some way "abuse" their right to access to public information. Sometimes, the applicants file (too) many applications or requests for a large quantity of documents which results in a heavy workload for public bodies. However, we should not accept such a simplistic explanation that the abuse of the right to access is conditioned only upon the number of documents the applicant requests or the public body's capabilities (or readiness) to fulfil the request. Such an interpretation results in a complete ignorance of the fact and principle that the right to access to public information is a basic human right, which can only be limited in exceptional circumstances. It should therefore be stressed that the applicant cannot be said to abuse his/her right to access just because (s)he requests information from the same public body several times or (s)he requests a large quantity of information.

The idea that the threshold for defining an abuse of right to access should be set very high is supported in legal theory.⁶ Such a viewpoint has been taken by the Information Commissioner on several occasions⁷ and has also been confirmed by the Administrative Court. In its 2007 judgment,⁸ the Court rejected the argument that access to public information may be rejected because the applicant requested a vast number of documents requested, which would supposedly cause serious disturbances for the activities of the public body, as it would not be able to perform its duties.

¹ Judgment of the Administrative Court of the Republic of Slovenia, No. III U 240/2012-15 of 7. 11. 2013.

² See Para. 1 and 2, Art. 5 APIA.

³ OJ RS, no. 51/2006 – official consolidated text and no. 117/2006 – ZDavP2.

⁴ See Art. 2 APIA, which provides that the purpose of this act is to

⁵ See para. 1, Art. 6 APIA, which provides eleven exceptions to free access to PSI.

⁶ See e.g. article »Zloraba pravice« (»Abuse of right«) by dr. Andrej Berden (Legal Practice, no. 26/00, Attachment, page 1) or article titled »Zloraba pravice dostopa do informacij javnega značaja« (»Abuse of right to access Public Sector Information) by Jasna Rupnik (Legal Practice, no. 6-7/2010).

⁷ See e. g. decisions of the Information Commissioner No. 021-40/2005/5 of 17. 1. 2006, no. 090-26/2009 of 31. 8. 2009, No. 090-28/2009 of 21. 9. 2009 and No. 090-18/2009 of 18. 11. 2009.

⁸ Judgment of the Administrative Court of the Republic of Slovenia, No. U 92/2006-8 of 4. 10. 2007.

Why is then the present case, subject to the newest judgment⁹ of the Administrative Court, different from the former cases? The case is specific from several points of view. Firstly, the applicant filed a high number of requests to the public body (the applicant filed 66 written requests and sent 322 e-mails to the public body) and requested a large scope of information (the applicant requested a very high number of documents, e.g. all the correspondence between the relevant public body and Public Administration Inspectorate). The problem was also the manner, in which the requests were filed (the applicant often asked the public body questions, although he was explained that public bodies are not obliged to answer questions, they are only obliged to enable access to documents, which they already possess). On top of that, the applicant's requests were also very offensive to public officials and his communication was inappropriate. **According to the Court and the Information Commissioner, all these circumstances put together undoubtedly prove that the goal of the applicant was in contradiction with the statutory purpose, provided by APIA.** The applicant's purpose was not just to access the information, he intentionally overburdened the public body with the way he filed requests and consequently impeded the public body's work, not only in the access to information field but also in all other fields of its activities. In addition, the Court stressed the fact that the right to access is recognized not only in the interest of the applicant but also in the wider interest of the society. **The interest of the society is to enable as much as possible the democratic and the control functions of this right. However this right should not be exercised in a manner that excessively impedes a public body's work, or a manner that is offensive to public officials and the public body and interferes with their dignity.** According to the Court, the applicant's right to request public information has come in conflict with the duty of the public body to perform its activities independently within and on the basis of the Constitution and legislation¹⁰ and, consequently, in conflict with the rights of those, who are parties to other public body procedures. The Court has also found that the limitation to the right to access is in accordance with the proportionality principle. Namely, the benefits that the undisturbed course of other administrative procedures of the public body bring for the protection of other parties' rights, outweigh the burden of interfering with the applicant's right to access to public information.

Conclusion

The present decision will undoubtedly have an important influence to the practice in the field of access to public information, but only in excess cases. Ever since the APIA was adopted, terms such as "excessive request", "abuse of right", "disproportionate effort and additional work" have been mostly unfoundedly used by public bodies in connection with access requests. Let us stress one more time that the threshold at which we can determine a specific request as abuse of right, must be set extremely high. In our opinion, the public body must explain specifically, with which actions the applicant has crossed the limitations to his legally protected right, and must demonstrate actual circumstances with which the public body's and third persons' rights were compromised or interfered with.

⁹ Judgment of the Administrative Court of Justice of Republic of Slovenia, No. III U 240/2012-15 of 7. 11. 2013.

¹⁰ As provided by Art. 120 of the Constitution of Republic of Slovenia (OJ RS, No. 33/91, as amended) and Art. 2 of the Public Administration Act (OJ RS, No. 51/02, as amended).