

***APPLICATION OF THE RIGHT TO THE PROTECTION OF PERSONAL
DATA IN THE RIGHT OF ACCESS TO INFORMATION***

Synopsis:

In the article we describe one of the questions regarding the application of the relationship between the right to personal data protection and the right to access information. This relationship we declared based on a new judgment of the European Court of Justice from April 2025.

Keywords: Protection of personal data, the right to access information, GDPR.

**REGULATION OF DATA PROTECTION IN RELATION TO THE
RIGHT TO INFORMATION**

To define the subject of the right to information, it is necessary to understand the positive obligation of the state as a duty to make the requested information available to the applicant. At the same time, it is necessary to place this right in the context of the broader rights and obligations of the state regarding the flow of information toward individuals and legal entities under its jurisdiction. Constitutional law, through the right to information, establishes three groups of information.

1. The first group consists of information that obligated persons must make available to entitled persons.
2. The second group includes information that obligated persons (state authorities or other bodies of public authority) do not have to provide to entitled persons but must tolerate access to if entitled persons exercise their

right to information. The normative basis for fulfilling the state's positive obligation is the constitutional law of the state¹ and international treaty law².

3. The third group includes information that cannot be published because it is subject to regulation that restricts publication.³

The Constitution, therefore, does not limit the right to information in terms of the subject of this right, meaning it does not establish a positive enumeration of information that an authorized person may seek, request, receive, and disseminate, nor does it establish a negative enumeration of information that cannot be sought, requested, received, and disseminated. The subject of the right to information can be all information unless it concerns information subject to constitutional restriction.

From the perspective of the General Data Protection Regulation (hereinafter referred to as „GDPR“), this article focuses on the second group of data, namely that in which authorized persons request information based on an individual request with the specification that the requested data also include personal data of the affected individuals, i.e., natural persons.

The GDPR does not explicitly regulate the questions mentioned and leaves them to the national regulation of each member state. Point 4 of the Recital expresses the relationship between these two rights by declaring that the right to personal data protection is not an absolute right. At the same time, it respects all fundamental rights and adheres to the freedoms and principles recognized in the Charter, as enshrined in the treaties, including the right to information.

At the same time, in point no. 154 of the Recital (considerations), it states that in the legal regulations concerning the provision of information through the application of the principle of public access to official documents containing personal data of individuals, public access to official documents should be reconciled with the right to personal data protection.

¹ Article 26, paragraph 2 of the Constitution of the Slovak republic.

² Article 10, paragraph 1 of the Vienna Convention on the Law of Treaties.

³ Article 26 paragraph 4 of the Constitution of the Slovak Republic.

JURISPRUDENCE IN THE CONTEXT OF APPLICATION OF LAW

A significant ruling of the European Court of Justice on April 3, 2025, is L.H. against the Ministry of Health of the Czech Republic in the case C-710/23. The dispute concerned a request for information aimed at identifying individuals who signed contracts for the purchase of screening tests for Covid-19 concluded with the Ministry of Health of the Czech Republic, as well as certificates related to these tests that demonstrate the possibility of using them within the territory of the Union. The Ministry of Health of the Czech Republic partially complied with L.H.'s request and provided him with certificates regarding the mentioned tests while anonymizing (blacking out) information concerning the natural persons who signed these certificates on behalf of legal entities, including their first names, last names, signatures, and positions held by the managing directors - natural persons, as well as in certain cases their email addresses, phone numbers, and the website of these legal entities. The anonymization (blacking out) of this information was justified by the protection of the personal data of the individuals mentioned in these certificates in accordance with the requirements of the GDPR.

The dispute contains an international element - in the subject, which is the controller, represented by the managing directors, affected - natural persons (their personal data has been anonymized on the certificates by blacking out). The controller/supplier/legal entity and the managing directors/affected/natural persons who issued the certificates operate and have their registered office in the territory of the People's Republic of China, the United Kingdom of Great Britain and Northern Ireland. The Ministry of Health of the Czech Republic, as the defendant, when handling the request for information in the decision regarding partial non-disclosure of information, claimed that it did not have contacts for these natural persons available.

In the case under consideration regarding the first preliminary question, the court decided that providing the name, surname, signature, and contact information of a natural person representing a legal entity constitutes the processing of personal data. The fact that this provision is made solely for the purpose of enabling the

identification of the natural person authorized to act on behalf of that legal entity is irrelevant in this context.⁴

The second preliminary question, in which the Supreme Administrative Court of the Czech Republic asks whether national law can condition the application of GDPR and thus extend the level of protection for the data subjects, specifically the obligation of a public authority to inform the data subject in advance about the request made for the provision of their personal data to a third party, is also relevant for the Slovak legal environment.⁵ A similar state of the Slovak legal regulation, as well as the application practice on the Freedom of Information Act of 2000, is governed by par. 9(2) in connection with par. 11(1). For this reason, we expected that the European Court of Justice (hereinafter referred to as „CJEU“) would provide a more substantive justification for its decision. Thus, the legal basis for providing personal data directly derives from Article 6(1)(c) of the GDPR in connection with the Freedom of Information Act.

The Czech Republic does not have specific provisions regarding the provision of personal data regulated by legal regulations, and the method of their provision is governed by the case law of national courts, which establishes specific conditions. In this context, the CJEU stated in paragraph 44 that such case law can be part of the legal basis for processing in accordance with Article 6(3) in conjunction with Article 6(1)(c) and (e) of the GDPR.

In response to the second preliminary question, it states that the objective pursued by GDPR is primarily to ensure a high level of protection of fundamental rights and freedoms of individuals, in particular their right to privacy in relation to the processing of personal data enshrined in Article 8(1) of the Charter of Fundamental Rights of the European Union and in Article 16(1) of the Treaty on the Functioning of the European Union⁶, and that Member States, in accordance with

⁴ Judgment of April 3, 2025, L.H/Ministry of Health, C-710/23, ECLI:EU:C:2025:231, paragraph 47, [online] [cit. May 14, 2025]. Available at:

<<https://curia.europa.eu/juris/document/document.jsf?jsessionid=C54AEF06AE01D90B8A0311C7485144A9?text=&docid=297537&pageIndex=0&doclang=SK&mode=req&dir=&occ=first&part=1&cid=2020339>>.

⁵ There as well. Point 17.

⁶ There as well. Points 42 to 44.

the principle of proportionality, must ensure that the practical consequences, especially of an organizational nature, caused by the additional requirements they impose are not disproportionate.⁷

In this context, it was decided that Article 6(1)(c) and Article 6(1)(e) in conjunction with Article 86 of GDPR are to be interpreted in such a way that they do not prevent national case law from imposing an obligation on a controller, which is a public authority responsible for aligning public access to official documents with the right to personal data protection, to inform and consult the affected individual before providing official documents containing such data, provided that such an obligation is not impossible to fulfill or does not require disproportionate effort, and therefore does not lead to an unreasonable restriction of the public's right to access these documents.

CONCLUSION

It is significant for practical application that the court has clearly ruled that the provision of the name, surname, signature, and contact details of a natural person representing a legal person constitutes processing of personal data.

At the same time, the court ruled that the controller, in this case a public authority, which discloses information in accordance with the law on the protection of personal data, has to inform and consult the data subject about the scope of the personal data to be disclosed with the data subject before responding or making a decision. This is provided that such an obligation is not impossible to fulfill or requires disproportionate effort and therefore does not lead to an unreasonable restriction of the public's right of access.

The question still remains regarding the practical aspect of the impossibility of operations carried out for the purpose of obtaining the consent of a natural person acting for a legal entity from a third country. Is it sufficient to obtain consent via email as an informal means of communication?

⁷ Judgment of January 9, 2025, Mousse, C 394/23. EU:C:2025:2, paragraph 21, [online] [cit. 14.5.2025]. Available at: <<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:62023CJ0394>>.

Can the method of sending a call for consent be considered a reasonable effort made by the controller (a public authority)? Is there a secure method of communication between a subject from a member state and a subject from a third country, so that the expression of will can be considered clear, certain, comprehensible, free, and genuine? Because altering the content of an email 'on the way', for example, through the 'man in the middle' method, is currently technically quite simple and not demanding. In the context of the outlined considerations, questions about the form of digitalization of the exercise of fundamental human rights and the realization of international digital constitutionalism are already arising.⁸

REFERENCES:

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5. Vienna Convention on the Law of Treaties adopted on May 23, 1969, and entered into force on January 27, 1980.

⁸ SVÁK, J., MAREČEK, L. et al. International public law and introduction to public international law. Prague: Wolters Kluwer, a.s., 2024, pp. 930-938.

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Національний університет біоресурсів і природокористування України
Юридичний факультет
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**АКТУАЛЬНІ ПИТАННЯ ПРИВАТНОПРАВОВОГО РЕГУЛЮВАННЯ
В УМОВАХ ЄВРОІНТЕГРАЦІЇ**

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