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# ACCESS TO INFORMATION AS ONE OF THE MEANS OF FIGHT AGAINST CORRUPTION IN PUBLIC ADMINISTRATION IN SLOVAK REPUBLIC

## Abstract

Corruption is as old as the human race itself. During the history it has evolved and acquired various forms and degrees of severity depending on the circumstances. Today, according to public opinion survey, it is a social issue because it halts the economic and democratic development of all states in the world as it occurs more or less in all of them. To solve the problem of corruption radically, it is necessary to adopt and duly perform efficient anticorruption measures which would eliminate or completely remove the corruption. One of the possible and efficient tools to fight the corruption are, besides the criminal, economic and administrative measures, also the information means. These are based on one of the basic human rights - right for information. It started to be fully applied in the Slovak Republic since effectivity of the Act on Free Acces to Information in 2001 by which the rule that everything that is not classified is public has been adopted. The paper addresses the issue of corruption, its occurrence in the Slovak Republic and fight against the corruption through application of the right for information.

**KEY WORDS:** corruption, fight, information, law, public administration

## INTRODUCTION

Slovakia is increasingly being warned about the growing problem of corruption not only by several domestic activists (see, for example, Truban et al., 2017) or research workers (see, for example, Goliaš, Hajko, Piško, 2017), as well as foreign experts and

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respected non-profit organizations. Evidence of this is also its recent infamous location in Transparency International's most priced world-wide corruption scene, where it ended in the 54th place among the rated countries in 2016. This is a worsening of four places compared to 2015, with the number of countries scaled up from 168 to 176 countries. Slovakia has taken the seventh worst place in the European Union, with only Croatia, Hungary, Romania, Italy, Greece and Bulgaria ending behind (Šípoš, 2017). The prestigious international organization The World Economic Forum in its latest annual report on Global Competitiveness 2017 also identified corruption as the most serious problem for entrepreneurship in Slovakia (Schwab, 2017).

One of the possibilities how to successfully fight against corruption is, in addition to criminal, economic and administrative means, to use information means. They are based on one of the fundamental human rights - the right for information. The information itself, also referred to as the "oxygen of democracy" (see, for example, Kamenec, Pirošik, 2000; Wilfling, 2012), is of great importance. It allows citizens to create an opinion on the functioning of the state, public bodies and authorities as well as the individuals involved. At the same time, access to information contributes to the good and responsible functioning of public administration, reduces the risk of corruption, and at the same time strengthens citizens' confidence in the state and its authorities (Wilfling, 2012).

In Slovakia, the practical exercise of the right for information is the so called Information act (Act No. 211/2000 Coll. on Free Access to Information), which definitively ceased to apply the principle of confidentiality of public administration in the Slovak Republic. This legislation, effective as of January 1, 2001, in its wording, regulated the right for access to information held by public authorities and other public institutions. However, despite the multiannual existence of this Act, according to several studies, public authorities not always make public information accessible (see, for example, Sloboda, Dostál, 2013, Dubéci, 2013). This state is undesirable, so it is essential to look for mechanisms to ensure that access to information is not hindered by the discretion of those who are required to make information about their activities available by law.

In the article we focus on the issue of corruption, on the impact of access to information on its reduction, as well as on recommendations to improve the availability of information in practice.

## 1 CORRUPTION

The word corruption comes from Latin *corruptio*, which is a noun derived from the verb *co* (-m) *rumpo*, *corrumpere*. The basis of the word is a protoindoeuropean word *reup*, meaning, to tear, break something. In Latin, the word has the following meanings: 1. to completely destroy, break; (2) to disable, perish, harm, violate, abolish; 3. to defile, hurt, disfigure (name, reputation); 4. to falsify (documents); 5. to perish, seduce (character, morals) 6. to bribe (Špaňár-Hrabovský, 2012 in Szeghy, 2011).

Opinions on what corruption is have gradually evolved, depending on how society

and its values have changed. The term “corruption” was used in the past relatively freely, “rather than one of the attributes (often synonymously interchangeable) which characterized morally undesirable phenomena, behavior or the person who participated in such activities” (Szeghyová, 2011, s.199). As Vörös rightly states (2011, p. 1), corruption is “a phenomenon that has been present everywhere where more complex forms of society have been developed, where shared (public) resources were decided by delegated individuals.”

The precise definition of “corruption” is very complex, given that its definition differs from the point of view of social science as well as from the point of view of the time horizon. Thus, a unified view of defining corruption currently does not exist.

David and Nett (2007, p. 27) define corruption as “behavior motivated by an attempt to profit of a corrupt person who violates a legal norm by providing for a corruptible person or group of persons benefits of any kind and who may also harm third parties directly in the illegal trade of commodities. “

The current Short Dictionary of the Slovak language refers to corruption as synonymous with bribery. From a theoretical point of view, however, corruption is defined as “unlawful action aimed to gain inappropriate benefits by influencing a person in a position that effectively allows for the benefit to be claimed provided that he or she is in breach of an obligation in the performance of his or her duties” (Report on the Bill on the Protection, Promotion and Remuneration of Persons Active in the Fight Against Corruption, page 9). Generally speaking, corruption serves to obviate formally existing rules, respectively, decisions made in order to achieve profit for individuals or a group of people who are not entitled under other circumstances.

Under the current Slovak criminal law, various types of corruption are included under the concept of corruption - bribery, indirect corruption, electoral corruption and sports corruption (for details, see Part Three of the eighth chapter of Act No. 300/2005 Coll., § 328 § 336b).

Corruption is no doubt perceived as a negative social phenomenon. Various scientific analyzes show that corruption has the effect of weakening the legitimacy of political regimes, particularly democracies (e.g. Seligson, 2002), or the depreciation of the rule of law (Warren, 2004). From the economic point of view, the negative consequences of corruption include, in particular, high costs associated with commercial transactions, which are reflected in the wastage of public resources and the creation of investment barriers (Olteanu, 2011).

Corruption, according to some research, is firmly ranked among the main problems of the world, while the problems of global warming or different inequalities are not paid such attention. (Šípoš, 2014).

Therefore it is logical that the fight against corruption is among the priorities of policies at both national and international level. This is evidenced by several relevant international initiatives and documents to which the Slovak Republic is a signatory - among the most important of which are the United Nations Convention Against Corruption (New York

2003), the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, the Criminal Law Convention (1999), the Council of Europe Convention on Corruption (Strasbourg, 1999) (370/2003 Coll.), The Convention on the fight against corruption involving officials of the European Communities or officials of the Member States of the European Union (Brussels, 1997 ) or Resolution Res (97) 24 on 20 Anti-Corruption Guidelines (Explanatory Report to the Bill on the Protection, Promotion and Remuneration of Persons Active in the Fight Against Corruption, page 9). Within the Slovak Republic, the National Anti-Corruption Program, which was approved by the Government of the Slovak Republic in 2000, is one of the most important anti-corruption materials. However, the National Anti-Corruption Program was updated in 2011 and named the Fight against Corruption in the Slovak Republic - update of the National Anti-Corruption Program. This material was the basis for the elaboration of the Strategic Anti-Corruption Plan in the Slovak Republic, which replaces the National Anti-Corruption Program in the Slovak Republic. The aim of the Strategic Plan is to reduce corruption in Slovakia, primarily in public life and in the use of public resources while increasing transparency in the whole society. It is designed to develop the objectives and specific tasks for the individual ministries (Strategic Plan to Fight Corruption in the Slovak Republic, pp. 3-4). In 2011 an inter-ministerial working group of monitoring experts was set up for monitoring and evaluating the fulfillment of the tasks resulting from the strategic plan.

At present, an amendment to the Act on Notification Activities (Act No. 307/2014 on certain measures related to the reporting of anti-social activities) is being prepared at the Government of the Slovak Republic. The current law on crime notifiers, according to the Prime Minister of the Slovak Republic Róbert Fico, has rather a character of labour law, as it is aimed at protecting employees from possible penalties for reporting crimes or other anti-social activities and the obligations of employers to receive and handle such filings while the government wants to broaden this protection also at other levels (Fico before the OECD praised the Slovak fight against corruption. “It is a cancer” he declared, 2017).

## **2 ACCESS TO INFORMATION IN THE CONTEXT OF THE SLOVAK REPUBLIC**

Until 2001 there was no legal regulation of the universal access to information in the Slovak Republic, which would precisely define the range of information that everyone has the right to access. While it was possible to claim access to information on the basis of the Constitution of the Slovak Republic, which enshrines the right for information, the public authorities did not or mostly could not apply the provisions of these regulations. The change took place after the adoption of the Act on free access to information (Wilfling, Babiak, 2006).

## 2.1 Characteristics of relevant legal provisions of the Act on Free Access to Information

The basic concept of the Act on Free Access to Information is the term “information”. The Act itself did not originally contain an explicit definition of this term, only the amendment No 341/2012 of 2012 introduced its legal definition. The information is thus in the sense of the provision of § 21b par. (2) of the Act on Free Access to Information “any content or part thereof, in particular the content of a record in a paper form, a record in an electronic form, in the form of a phonogram, sound or pictorial record or audiovisual work, in any form, recorded on any medium”.

According to the Information Act, there are so called obligated persons who have an obligation to make information available. These are institutions, respectively organizations and, in certain cases, natural persons carrying out public administration, which decide on the rights and obligations of citizens, public funds or public interest activities (Wilfling, 2012). The Information act precisely defines the categories of subjects obliged to make information available under § 2. Most mandatory persons have a full disclosure obligation, which means that the range of information from which the information is to be provided is all the information that they have at their disposal or which they should have available. However, the law also refers to obligated persons who make information available only to a limited extent (Wilfling, 2012).

In addition to the obligated persons, there are also so-called authorized persons. The Constitution of the Slovak Republic as well as the Information act states that “everyone” has the right to information, which means that all natural and legal entities have this right. It concerns not only citizens of the Slovak Republic but also foreign citizens (Wilfling, 2012).

Categories of information that can not be made available because it is protected are defined in § 8 to § 11 of the Information act. This information is excluded by the act itself, but it is often explicitly protected by special laws. However, some information is excluded from the disclosure only by special laws.

In addition to the definition of information that is not available, some of the provisions of the Information act include the principle of the so-called prevailing public interest. The law defines certain situations (exceptions) when it is necessary in the public interest to make available information that is otherwise legally protected (Wilfling, 2012).

The Act on Free Access to Information provides two ways of accessing information. The first is the so-called mandatory disclosure of information (active disclosure of information), when the obligated person must disclose information without any prior request for it, and the second is the disclosure of information at the request of the applicants.

Pursuant to the provisions of §14 par. 1 the Information Act the information may be requested not only in writing (letter), orally, by fax, by e-mail, but also by other means which are technically feasible for the obliged person (e.g. by telephone). The Information Act in the provision of § 14 par. 2 explicitly states that it must be clear from the application

to whom the complaint is addressed, the complaint must contain the identification data of the applicant as well as it must be clear what information relates to the application and also what means of access to information the applicant proposes.

The request for information shall, in accordance with the provisions of Article 14 (3), be deemed to have been filed on the day on which it was notified to the person responsible for the proceedings. Pursuant to the provisions of § 15 of the Information Act, if the obligated person requested by the applicant does not have the required information available, but knows where the requested information can be obtained, he or she sends the request to the obligated person who has the requested information available. If he or she does not know, according to Wilfling (2012), he or she rejects the request for information by a written decision because he or she does not have the requested information.

Information in the context of Section 16 1 of the Information Act may be made available orally, by file inspection, including the possibility of making a duplicate or copy, copying the information to a technical data carrier, making available copies with the required information, by telephone, fax or mail.

Pursuant to § 17 of the Information Act, the obliged person must deal with the request for information without undue delay, but not later than 8 working days after the submission of the application. A blind person with a request for access to information should be provided a reply in Braille within 15 working days. Information that is simple and whose search and assembly do not take much time must be made available without undue delay. For serious and specified reasons, the liable entity may extend the time limit for handling the request, but not more than eight working days. In the context of the provision of § 18 of the Information Act, the provision of the information request means either the provision of the required information within the statutory time limit or the issuance of a written decision not to disclose information within the statutory time limit.

In addition to making information available on request, the Act on free access to information also introduced the obligation for the authorities to publish a certain set of data mandatory (active), that is, without a specific request. This is the so-called mandatory disclosure of information regulated in the provisions of § 5, § 5a, § 5ba § 6 of the Act on Free Access to Information.

The Information act in Section 5 defines the scope of information that must be disclosed by the statutory bodies (except obligated persons according to § 2, paragraph 3 of the Information Act). This basic information must be published at the registered office of the liable entity and at all its workplaces in a publicly accessible place.

By means of the Act no. 546/2010 Coll., supplementing Act no. 40/1964 Coll. (Civil Code) and amending certain other acts, which entered into force on January 1, 2011, mandatory disclosure of contracts, orders and invoices was also included in the Act on Free Access to Information. The regulation of this issue is contained in the provisions of § 5a and § 5b of the Information Act.

## 2.2 Influence of free access to information on corruption reduction

Since its establishment, the Slovak Republic has overcome the rapid development of becoming an independent and largely decentralized country with a largely privatized and market-oriented economy from a centrally managed state with a command economy and a dominant public ownership. However, the functions, structure and way of work of the state administration, in particular, did not reflect the changes, which resulted in its low efficiency, high cost and considerable bureaucracy. And these features of the functioning of the state administration in Slovakia provide a fertile ground for corrupt behaviour and justify its rigorous control by the public. According to Imrovič (2015) the very success of the democratic governance principle is closely linked to the culture of openness and dialogue that takes place between the public office and the citizen.

Despite the fact that the impact of the acts allowing free access to information on the level of corruption is still unambiguously proven (Láštík, 2008), their existence and applicability in practice gives a clear premise to perceive them as a tool to combat it.

The direct influence of the Act on free access to information on the level of corruption is reflected in the disclosure of a range of information that was not publicly accessible until the law was effective and access to them was greatly limited. The indirect influence of the information act on the level of corruption may include disclosure of information that after analysis by the applicant can reveal corruption behavior. As Láštík (2008) states “these revelations have a double impact. They point to suspicions of corrupt behavior in a particular case, while at the same time increase the public sensitivity to similar behaviors of other obliged persons and can have a preventive effect in view of the possible future corrupt behavior of other obliged entities. “

## 2.3 Recommendations for easier access to information

The Act on Free Access to Information is an important code by which public authorities must make available, in legitimate terms, the information provided. Many, however, regard the extent of free access to information as an obstacle to the exercise of their activity, whether in the form of redundant work they have to carry out in the office, in an attempt to conceal their own corrupt behavior or in the form of feedback they receive in the case that the proposed solutions are considered unjustified, poor or contrary to the public interest (Láštík, 2007).

Transparency International Slovakia has prepared 150 anti-corruption measures (Transparency International Slovakia, 2015) designed for a wide range of people to prevent corruption in Slovakia. The measures also concern access to information understood as a presumption of transparency of decision-making, which should bring about the removal of existing problems when applying the Information Act in practice.

In particular, Transparency International Slovakia proposes to extend the range of liable persons, both to state-owned joint stock companies and to companies set up by

liable persons. Changes to the Information Act should also affect the scope of mandatory information provided by the police and the authorities. According to the current act, the public does not have the right to request police decisions on refusals and thus to check whether the police have indeed acted in accordance with the relevant law. It would also be desirable to incorporate provisions in the new version of the Information Act on disclosure of infringing information, as currently information in the record of offenses is excluded from disclosure. Transparency International Slovakia also proposes to establish an institution to supervise compliance with the Information Act that could impose sanctions and actively promote the use of this act by citizens. Another recommendation is to establish a central site as a collection of public data where public authorities would disclose all relevant information about their activities. The latest proposal is to introduce the availability of information in electronic form as a minimum and to introduce standards for the publication of documents in electronic form.

## CONCLUSION

A state where the rate of corruption is significantly reduced or completely eliminated can be effectively achieved in particular by complex systemic measures, which should have the character of both public and private regulatory methods. Anti-corruption tools can also include quick access to information, which is legislatively defined in the so-called Information Act which gave usable content to the constitutional right to information and formally guaranteed that free access to information would be available to everyone. However, any law will never be applicable in practice unless it finds those who will exercise it and follow it responsibly.

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