AMENDMENT TO THE INFORMATION ACT IN THE SLOVAK REPUBLIC IN THE OPTICS OF LEGAL CERTAINTY: FEE CHARACTER?

Miroslava Dolíhalová,[*] Michal Úradník[**]

Abstract: *The article provides a legal analysis of the recent amendment to the Information Act, the adoption of which was preceded by a lengthy legislative process, including the use of the veto of the President of the Slovak Republic and considerable media coverage. The Information Act establishes the obligation for obliged persons to make information available on the basis of requests for information submitted by persons, or to publish certain information stipulated by law. With regard to the concept of the Information Act and the free access to information guaranteed by the Constitution of the Slovak Republic under Article 26 of the Constitution, which includes the free dissemination of the information, we are of the opinion that the information can be made available. The analysed amendment to the Information Act created space for questioning the legal certainty of authorised entities and introduced doubts to the public about the violation of the guaranteed right, namely by conditioning the payment of insufficiently regulated payments for the disclosure of information. The authors of the article also point to the application practice of some elements of the amendment in the Information Act in the Czech Republic, which also served as a model for the legislator of the Slovak Republic.*

Keywords: *free access to information, the information act, fee character, extremely extensive search for information, decision*

INTRODUCTION

In the conditions of the global space, there is also a discussion about the right of persons to information. The Slovak Republic is currently no exception.[1] A frequent argument of the discussants is the restriction of public access to information,[2] precisely as a result of the incurrence of a fee obligation associated with the request for information. By the amendment to Act No. 211/2000 Coll. on Free Access to Information and on the Amendment of Certain Acts (the Freedom of Information Act), as amended (hereinafter referred to as the "Information Act"), implemented by Act No. 401/2024 Coll. amending Act No. 211/2000 Coll. on Free Access to Information and on the Amendment of Certain Acts (the Freedom of Information Act), as amended (hereinafter also "Amendment No. 401/2024 Coll."), the legislator added to the Information Act introduced a "fee" for making information available. In this context, however, it is necessary to emphasize several important facts and point out the actual content of the amendment, as the obligation to pay the

[*] Doctor Mgr. Miroslava Dolíhalová, Ph.D., Matej Bel University in Banská Bystrica, Faculty of Law, the department of Civil and Labor Law, Banská Bystrica, Slovak Republic. ORCID:0000-0002-9900-7338.

[**] Michal Úradník, Ph.D., Matej Bel University in Banská Bystrica, Faculty of Law, the department of Commercial and Financial Law, Banská Bystrica, Slovak Republic, ORCID: 0000-0002-1748-6399.

[1] PIÑEIRO RODRÍGUEZ, R., MUÑOZ, P., ROSENBLATT, F., ROSSEL, C., SCROLLINI, F., TEALDE, E. How the exercise of the right to information (RTI) affects trust in political institutions. *Government Information* Quarterly. 2023,Vol. 40, Issue 4. In: *SicenceDirect* [online]. [2025-03-06]. Available at: <https://www.sciencedirect.com/science/article/pii/S0740624X23000382>.

[2] The Right to Information Act, 2005. (2017). Indian Journal of Public Administration, 55(3), 746-771. Original work published 2009.

costs associated with the provision of information is not a completely new institute in the Information Act.

I. METHODOLOGY

Using the decomposition method, we analyze the latest Amendment No. 401/2024 Coll. Particular attention is focused on the historical and legal analysis of the institute of reimbursement of costs for the provision of information by the obliged person to the applicant. In this context, the reimbursement is also examined in comparison with the institute of tax and fee. By examining the individual characteristics of taxes and fees, we have induced a general thesis about the partial similarity of the institute of reimbursement of purposefully incurred costs for an extremely extensive search for information with a fee. The scientific method of deduction was applied in particular in relation to the general content of the decision, in comparison with the institute of notifying the costs of a particularly extensive search for information. By abstracting the knowledge, it is possible to conclude about the material nature of this communication as a decision, within this method we have abstracted and concentrated our attention only on such features and connections that are significant and important from the point of view of this conclusion.[3] In addition to the already mentioned scientific methods, the basis of scientific research was the method of legal analysis and comparison, namely with the Czech legislation.

II. RESEARCH AND RESULTS

On the basis of the use of individual scientific methods, the authors' concentration of attention on partial issues, such as the legal and theoretical definition of the payment for making information available as a mandatory monetary payment and its comparison with the tax and fee, is also justified. This is related to other issues, namely the method of quantifying the reimbursement, the legal nature of the notice on the determination of the costs of making the information available, or the legal possibilities of using legal remedies when postponing the request for information for non-payment of costs.[4] In the conclusion of the above, it is justified to formulate a scientific hypothesis, *"Payment for disclosure of information is a fee, the non-payment of which leads to the postponement of the request for disclosure of information without more fundamental legal defence options"*.

In order to confirm or negate the hypothesis, it is necessary to partially examine several scientific questions:

1. Does the obligation to pay the costs associated with the provision of information constitute a fee?
2. Is the notification of the amount of reimbursement of the costs of an extraordinarily extensive search for information a decision?

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[3] OCHRANA, F. *Methodology, Methods and Methodology of Scientific Research*. Prague: Charles University, 2019, p. 31

[4] KHANWALKER, Varsha. The Right To Information Act In India: Its Connotations And Implementation. *The Indian Journal of Political Science*. 2011, Vol. 72, Issue 2, pp. 387–93. In: [online]. [2025-03-06]. Available at: <http://www.jstor.org/stable/42761423>.

3. Is it possible to appeal in the event of non-disclosure of information?

III. TAX, FEE AND REIMBURSEMENT OF COSTS

In the context of the "fee obligation", it is necessary to draw attention to several basic theoretical and legal differences. The reimbursement of the costs of making information available does not have the characteristics of a tax, because the tax *in abstracto* is a financial and legal institute through which a part of the pensions of natural persons and legal entities is taken away by power, which is aimed at ensuring the payment of state and other public monetary needs.[5] Legal theory defines a tax as a mandatory, non-refundable, enforceable and, as a rule, non-purpose and recurring monetary payment of natural and legal persons, collected on the basis of the law by the state and local government bodies for the benefit of public budgets and special purpose funds to cover public expenditures in a predetermined amount and with a precisely determined due date.[6] The essential feature of the tax is its irreversibility and ineffectiveness.

As far as the fee is concerned, it is necessary to emphasize the fact that there is no uniform legal definition of this term in the legal system of the Slovak Republic, which also applies to the uniform definition of tax, the definition of which can be found in Section 2 (b) of Act No. 563/2009 Coll. on Tax Administration (Tax Code) and on the Amendment of Certain Acts, as amended, However, this is exclusively a tax definition for the purposes of the tax code, and therefore individual taxes (and fees) must be interpreted in the context of the relevant legislation.

According to legal theory, a fee is a public benefit (compulsory cash payment) imposed by the State or local authorities on other persons, and thus on obliged entities. The fee payable is a natural person, legal entity or state that has triggered the activity of a certain institution. The fee thus serves to reduce the costs incurred by the initiative of a certain entity.[7] In other words, the fee can only exist in monetary form under the applicable and effective legislation. The fee is imposed by law or on the basis of the law, usually in the amount determined in advance in the relevant legislation. The fee is paid within predetermined deadlines, which are also to some extent conditional on the activity of the public authority, whose activity usually depends on the payment of the fee.[8]

Ipso facto, despite the fact that both the tax and the levy are compulsory monetary payments imposed by law, or on the basis of the law, enforceable and paid for the benefit of public budgets in a precisely determined amount, the basic difference between a tax and a fee is the immediate consideration following such payment. While in the case of taxes, the return occurs only with a delay, after payment of the fee, the consideration

[5] ÚRADNÍK, M. Fee Obligation and Correct Determination of the Taxpayer in the Intentions of the Act on Local Taxes and Local Fee for Municipal Waste and Small Construction Waste. In: Dominika Cevárová – Tomáš Beňuška (eds.). et al. *Interpolis ,20*. Banská Bystrica: Matej Bel University Publishing House – Belianum, 2020. p. 311.

[6] KUBINCOVÁ, S. *Taxes, Fees, Customs and Other Mandatory Payments*: (Definitions and Legislation). Banská Bystrica : Matej Bel University, 2009, p. 39.

[7] SIDAK, M., DURAČINSKÁ. M. et al. *Financial Law*. Bratislava: C. H. Beck , 2014, pp. 269–272.

[8] BABČÁK, V. et al. *Tax Law in Slovakia and the EU*. Bratislava: Epos, 2019, pp. 24–25.

takes place immediately, in the form of the performance of an act by the public authority[9] for whose benefit the fee was paid. Typical examples are court fees, administrative fees or the local fee for municipal waste and small construction waste.

At this point, in comparison with the examined area of the Information Act, it is necessary to ask whether the obligation to pay the costs associated with the provision of information constitutes a fee, or whether it has some of its features.

By means of a historical-legal analysis, it must be stated that the Information Act has regulated the provision of information free of charge since the beginning of its entry into force, in the diction of Section 21 (1*), "with the exception of payment in an amount that may not exceed the amount of material costs associated with making copies, with the acquisition of technical media and with sending the information to the applicant.*", whereby pursuant to Section 21 (2) of the Information Act, the obliged person may waive the payment of such payment. Thus, the Information Act has always included the possibility for the obliged person to request information from the applicant for information the costs associated with the provision of information and related to the making of copies, the acquisition of technical media and postage when sending information to the applicant. Similarly, pursuant to Section 21k (1) of the Information Act, information for the purpose of re-use is made available free of charge and the obliged person may only demand payment, which includes material costs associated with making a copy of the information, providing and disseminating the information, as well as with the anonymization of personal data and measures for the protection of confidential business information. If the amount of reimbursement was not determined in this way, it was a ground for dismissal under Section 21j (2) of the Information Act.

From the indicated context, the question arises whether in the event of non-payment of costs under Section 21 (1) of the Information Act, the obliged person is entitled to refuse to provide information. Based on the literal interpretation of Section 14 (5) in conjunction with Section 21 of the Information Act in the version effective until 28 February 2025, the obliged person shall confirm the submission of the request in writing on the basis of the request and announce the expected amount of payment for the disclosure of the information, while the details of the payment of the costs of disclosure shall be laid down in a generally binding legal regulation issued by the Ministry of Finance of the Slovak Republic, and that is the Decree of the Ministry of Finance of the Slovak Republic No. 481/2000 Coll. on the details of the reimbursement of costs for making information available, as amended, which regulates the method of quantification and reimbursement of costs, but does not contain a sanction for their non-payment. In general, therefore, it can be concluded that, in the event of non-payment of the costs associated with disclosure of information, it depended to a large extent on the debtor's own discretion whether to disclose or refuse to disclose the information. However, in terms of interpretation, it is possible to lean towards the opinion on the obligation of the obliged person to disclose the requested information, even in the case of non-payment under Section 21 (1) of the Information Act effective until 28 February 2025, because the Information Act did not

[9] KUBINCOVÁ, T. Local Taxes and Local Fees. In: Martin Píry – Tatiana Kubincová *Municipal Establishment: Selected Issues*. Banská Bystrica : Matej Bel University Publishing House - Belianum, 2020. p. 98.

recognize the institute of refusal to provide information due to non-payment of such payment. On the other hand, in the case of quantification of the reimbursement of such costs and the absence of their payment, the obliged person could either proceed to their waiver under Section 21 (2) of the Information Act or to enforce them, or it is also possible to incur misdemeanor liability under Section 21a (1) (c) of the Information Act. Even after the amendment to the Information Act, it can still be assumed that a person is obliged to provide information if the applicant has not paid the costs quantified in this way, because the possibility of postponing the information request is associated with the so-called second category of costs, namely payment for *"exceptionally extensive search for information"* according to the second sentence of Section 21 (1) of the Information Act.

As regards the answer to the first scientific question, namely whether the reimbursement of the costs of disclosure constitutes a fee, this conclusion must be rejected, taking into account the legislation of the Information Act in force until 28 February 2025. In addition, in this regard, it is also necessary to refer to Section 4(3)(c) of Act No. 145/1995 Coll. on Administrative Fees, as amended, according to which acts related to the implementation of generally binding legal regulations on free access to information are exempt from fees.

The stated conclusion is partially disturbed by the above-mentioned amendment to the Information Act. According to the second sentence of Section 21 (1) of the Information Act, the obliged person is also entitled to demand reimbursement of purposefully incurred costs for an exceptionally extensive search for information. In such a case, the applicant shall be notified of this fact in writing, together with the amount of payment, within five working days. In the event that the applicant for information does not pay the payment within seven days from the date of delivery of this notification and does not file an objection at the same time, the obliged person shall postpone his request for the provision of information. At the same time, the deadline for processing the application does not run from the date of sending this notification by the obliged person to the applicant until the date of crediting the payment to the account of the obliged person. This leads to a considerable approximation, even to the identification of the institute of reimbursement of purposefully incurred costs for an exceptionally extensive search for information with a fee, since in the event of non-payment, there will be no activity of the obliged person, and thus no disclosure of information, which can be compared to the most common consequence of non-payment of the fee, consisting in the failure to perform a fee act by the competent public authority.

IV. LACK OF LEGISLATIVE PRECISION

The first shortcoming of the amendment to the Information Act is the unclear wording of the obligation of the obliged person to notify the applicant of the amount of purposefully incurred costs for an extremely extensive search for information, as the legislator, in the wording of Section 14 (6) of the Information Act effective until 28 March 2025, used only a period of five working days, but did not specify the beginning of its run. Taking into account the time-limited procedure for access to information, within the so-called basic period of 12 working days from the date of submission of the request or from the date of removal of deficiencies in the application, or within 15 working days, if the information

is made available to a blind person in an accessible form pursuant to Section 16 (2) (a) of the Information Act, it can be assumed that the 5-day period runs from the delivery of the information request.

V. LACK OF LEGISLATIVE PRECISION AND "EXTREMELY EXTENSIVE SEARCH FOR INFORMATION"

Questions of interpretation arise in particular from the wording of the legislation *"extremely extensive search for information"* contained in the second sentence of Section 21(1) of the Information Act in force until 28 March 2025. However, the legislator no longer offers a legal definition of the phrase used, and the explanatory memorandum according to which *"An extremely extensive search for information includes situations in which the collection of information will represent a time-consuming activity for the obliged person in his specific conditions, which objectively goes beyond the normal provision of information by this obliged person. The proposal is not only a case where a single request will constitute a demanding activity that objectively goes beyond the normal provision of information by the obliged person, but also cases where one applicant requests access to information within 30 days that shows all the signs of a vexatious exercise of the right of access to information (e.g. overloading the obliged person with a large number of requests within the framework of information filibustering) or which, as a whole, constitute a demanding activity, which objectively goes beyond the normal provision of information."* It is not only the relative substantive vagueness of the definition of the term *"particularly extensive search for information"* in the explanatory memorandum that can be perceived insufficiently, but especially the fact that, in the context of the legislative process, the proposed legislation on cases where an exceptionally extensive search for information was associated with the submission of one or more applications by the same applicant within 30 days has been deleted.

In this context, it is possible to identify with the opinion of the President of the Slovak[10] Republic expressed in his sentence to the adopted amendment to the Information Act, when he emphasized that the extent of the search for information is not sufficient for the possibility of requesting payment, but it must be extraordinary, but the Information Act does not even approximately determine the extent of the scope or the degree of extraordinary scope. Pursuant to Section 3(2) of Act No. 400/2015 Coll. on the Creation of Legal Regulations and on the Collection of Laws of the Slovak Republic and on the Amendment of Certain Acts, as amended, it is only exceptionally possible to use terms in a legal regulation that do not correspond to the codified form of the state language, provided that they are part of the established legal terminology and have a stable meaning in the legal system. Primarily, a legal regulation must be terminologically correct, precise and generally understandable. Only correct and established legal terms are used.

[10] For more information, see the Act of 7 November 2024 amending Act No. 211/2000 Coll. on Free Access to Information and on Amendments and Additions to Certain Acts (Freedom of Information Act), as amended, returned by the President of the Slovak Republic for renegotiation by the National Council of the Slovak Republic. In: *National Council of the Slovak Republic* [online]. [2025-03-30]. Available at: <https://www.nrsr.sk/web/Default.aspx?sid=zakony/zakon&MasterID=10095>.

At the same time, it is justified to partially agree with the legislator, who in the explanatory memorandum identified the problems of obliged entities, who are often forced to make information available without the right to reimbursement of costs, which may lead to inefficient use of public resources, while excessive requests for information can lead to such a burden on the administrative capacities of obliged entities that it negatively affects their ability to perform other tasks stipulated by law. According to the legislator, the concept of the possibility of charging the costs of an exceptionally extensive search for information is designed to protect obliged persons from the abuse of the right to information in the form of requests that require a disproportionately large amount of effort and time for processing. On the other hand, however, the question logically arises whether the introduction of the obligation to pay for *"Extremely extensive search for information"* They are also not supposed to cover the costs of wages and salaries of employees of obliged entities, since according to the opinion of the legislator expressed in the explanatory report to the amendment to the Information Act, sometimes instead of fulfilling their agenda, employees of obliged entities have to process documents for processing the request for the provision of information.

At the same time, when quantifying the payment for *"Extremely extensive search for information"* refers to a special regulation of the Ministry, which is the Decree of the Ministry of Finance of the Slovak Republic No. 481/2000 Coll. on the details of the reimbursement of costs for making information available, as amended, but this does not contain a legal regulation that would be applicable to such a quantification of costs associated with an exceptionally extensive search for information. This does not make it clear what costs can be demanded from the applicant for information at all.

Apart from the amended wording of the Information Act and the introduction of payment for *"Extremely extensive search for information"* also calls for reference to relatively recent case-law,[11] According to which a request for access to information cannot be perceived as vexatious just because it is submitted by a person, even though he or she would probably have access to the information in a different way than under the Information Act. According to the Supreme Administrative Court of the Slovak Republic, the obliged person is not entitled to examine the reason for filing a request for information or to conclude on the vexatious exercise of the right of access to information when the submitted requests bother him or do not make sense to him at first glance, or the motivation of the applicant is not obvious to him. At this point, the Court of Cassation reminded that if the obliged person wanted to accept a conclusion on the vexatious exercise of the constitutional right to information, he would have to proceed in accordance with its case law and at the same time strictly casusistically. Finally, as the Court of Cassation has repeatedly ruled and stated, the regime of the Information Act governing the information obligation for public authorities and the right of access to information are mutually complementary and not mutually exclusive. Thus, if the applicant proceeds according to the Information Act, the application of this Act is not excluded by the fact that he or she would be entitled to proceed under another legal regulation.[12]

[11] From the period before the amendment to the Information Act.
[12] Judgment of the Supreme Administrative Court of the Slovak Republic, file No. 5Svk/6/2022 of 30. 5. 2023.

According to the Collection Decision of the Supreme Administrative Court of the Slovak Republic, in concreto of the judgment file no. 5Sžik/5/2020 of 31 March 2022, published in the Collection of Opinions and Decisions of the Supreme Administrative Court of the Slovak Republic under No. 15/2022 of the ZNSS, the refusal to disclose information with reference to abuse of law must be understood as a solution ultima ratio. An obliged person refusing access to information due to abuse of rights is obliged to prove beyond any reasonable doubt that the applicant did not intend to fulfil the legitimate purpose of the Information Act, but on the contrary to cause harm to the obliged person. The mere large number of applications made by the same operator, without any further evidence, is not sufficient to conclude that there has been an abuse of rights. It is also necessary to take into account other circumstances of submitting the requests, in particular the content and quality of the requested information, the manner of formulation and the degree of specificity of the requested information, the level of difficulty of making it available in relation to the statutory deadlines for its processing and its ability to cause disproportionate harm to the obliged person in the event of its disclosure, or the meaning and value of the requested information for the applicant and the exercise of social control. Therefore, according to the Supreme Administrative Court of the Slovak Republic, a sufficient number of clues or evidence must be present for a finding of abuse of law, and the decision of the obliged person to refuse access to information must be thoroughly reasoned with reference to the aforementioned indications and evidence.

VI. LACK OF LEGISLATIVE PRECISION AND NOTIFICATION OF THE AMOUNT OF REIMBURSEMENT

The lack of legislative precision is also reflected in other institutes, such as the so-called notification, by which the obliged person, pursuant to Section 14 (6) of the Information Act effective until 28 March 2025, informs the applicant about the amount of payment for an *"extremely extensive search for information"*. The second scientific question of legal analysis remains whether the notification can be equated with the decision. It must be clear from the notification on the basis of which facts and in what manner the amount of payment by the obliged person was calculated. Although the notification in question is not marked as a decision in the Information Act, it shows the characteristics of a decision from the material point of view. This conclusion is justified precisely by the content of the notification, because the provision on the amount of reimbursement can be qualified as a so-called operative part and the indication of the circumstance of its quantification de facto constitutes a justification. This is also supported by the fact that the applicant for information may (or could) file an objection against the calculation of the reimbursement until the intervention of the Constitutional Court of the Slovak Republic, which will be decided by the appellate body by either confirming or reducing the calculation of the reimbursement, if the obliged person himself has not previously complied with the objection as part of the self-determination. This also presupposes the third characteristic feature of the decision, in the form of a notice of appeal. The Communication therefore has the characteristics of a decision.

In the event that the applicant for information does not pay the payment within seven days from the date of delivery of such notification and does not file an objection at the

same time, the obliged person shall postpone his request for the provision of information. Failure to pay the payment therefore means failure to disclose the requested information and thus the failure to perform or complete the already initiated procedure (activity) of the obliged person in handling the request for information. Therefore, in comparison with the fee, the payment of which is also associated with the subsequent activity of the public authority, the payment for an *"exceptionally extensive search for information"* is of an equivalent nature, i.e. common to such a payment and fee is that only after their payment is a procedure carried out, in this case the information is made available to the applicant.

A lack of legislative precision is also characteristic of the legal regulation, according to which if the applicant for information does not pay and does not file an objection within seven days from the date of delivery of the notice of payment, the obliged person shall postpone his request for the provision of information. The third scientific question of legal assessment remains how and whether it is possible to appeal against such a "decision" at all. In the case of postponement of the case, the obliged person does not issue a decision only if the request for the provision of information has been postponed pursuant to Section 14 (3) of the Information Act, i.e. when the applicant for information has not remedied the defects of his request even within the additional period provided by the obliged person[13] and it is not possible to make the information available due to this deficiency. However, the case in question does not apply to the case when the obliged person postpones the request for the provision of information due to non-payment of the payment, or its non-payment, or the failure to file a complaint against the notification of the calculation of the payment, as this leads to the non-disclosure of information. In such a case, however, two eventualities must be taken into account. One follows from Section 18 (2) of the Information Act, according to which if the obliged person does not comply with the request even in part, he or she shall issue a written decision within the statutory deadline. The second alternative is related to the so-called fictitious decision associated with the presumption of refusal to provide information. The fiction of issuing a decision within the meaning of Section 18 (3) of the Information Act therefore occurs if the obliged person fails to provide information, does not issue a decision or does not make the information available within the deadline for processing the request. Thus, it follows from the cited provision that the fiction of the decision occurs if the obliged person is inactive within the statutory time limit.[14, 15] From a legal qualitative point of view, a fictitious decision is of the same nature as an ordinary decision. By its very nature, it is unreviewable for lack of reasons. However, it creates a formal legal obstacle to further decision-making activities of the public administration body, which must be removed by annulling the decision.[16]

[13] The requirements of the information request are regulated by Section 14 (2) of the Information Act.
[14] Judgment of the Supreme Court of the Slovak Republic, file no. 3 Sži/7/2011 of 1. 8.2012.
[15] The purpose of the provision of the institute of a fictitious decision within the meaning of Section 18 (3) of the Information Act was not to legalize the inactivity of obliged persons when deciding on applications under this Act, but to provide protection to the person who turned to the obliged person with a request in the event of his inactivity. - Judgment of the Supreme Court of the Slovak Republic, file No. 3 Sži/3/2011 of 3. 5.2011.
[16] Judgment of the Supreme Court of the Slovak Republic, file No. 3Sžik/3/2019 of 17.10.2019.

In response to the third scientific question, we are of the opinion that in both cases, whether the issuance of a decision not to disclose information or a fictitious decision, the right of the applicant for the provision of information to file an appeal under Section 19 of the Information Act is possible, within 15 days of the delivery of the decision or the expiry of the deadline for a decision on the request under Section 17 of the Information Act.

In this context, it is also justified to refer to the resolution of the Supreme Court of the Slovak Republic, file no. 8Sžik/1/2020 of 27 January 2021, according to which the obliged entity must *issue an administrative decision on the rejection (de facto* non-compliance) of the request for the provision of information, with reference to the provision of Section 18 (2) of the Information Act. Such a decision should contain all the elements of a decision pursuant to the wording of Sections 46 and 47 of Act No. 71/1967 Coll. on Administrative Procedure (Administrative Procedure Code), as amended, which, according to Section 22 of the Information Act, is also applicable to proceedings in matters of free access to information. According to the legal opinion of the Court of Cassation, it is not a decision within the meaning of Section 18 (2) of the Information Act in conjunction with Section 47 of the Code of Administrative Procedure if the obliged person notifies the applicant by e-mail (e-mail or telephone) that he will not make the information available to him or her and, if necessary, states the reasons for not making the information available. A decision is characterised by the fact that it is contained in a document. In such a case, this answer is not taken into account and it is assumed that the obliged person has not issued a written decision pursuant to Section 18 (2) of the Information Act, as a result of which the fiction of a negative decision under Section 18 (3) of the Information Act arises after the expiry of the statutory deadline for providing information.

VII. LACK OF LEGISLATIVE PRECISION AND SUSPENSION OF LEGISLATION

In connection with the above-mentioned amendment to the InofoAct, a group of deputies of the National Council of the Slovak Republic, as well as the Public Defender of Rights of the Slovak Republic, turned to the Constitutional Court of the Slovak Republic in connection with the initiation of proceedings on the compliance of legal regulations pursuant to Article 125 (1) (a) of the Constitution of the Slovak Republic. As part of the preliminary discussion of the motions to initiate proceedings on the compliance of legal regulations, the Constitutional Court agreed with the petitioners in their perception of the possible negative consequences of the new legislation consisting in the introduction of new legal institutes into the Information Act, the interpretation and application of which can be considered as long-established by the practice of obliged entities and the decision-making activities of the highest judicial authorities. On the contrary, the introduction of a new legal institute of reimbursement of costs using the relatively vague term *"extraordinarily extensive search for information"* in the hypothesis of Section 21(1) of this Act, while there is no limitation on the amount of reimbursement requested, substantially interferes with the existing legal certainty of applicants for the provision of information. At the same time, it leaves the interpretation of the newly introduced terms to each obliged person. The consequence of the application of the new legislation will be either the postponement of the request for information (in the event of non-payment of payment) or the incurrence of payment by the applicant without the possibility of its re-

fund in the event of a satisfactory finding of the Constitutional Court in the procedure on the compliance of legal regulations. The Constitutional Court of the Slovak Republic does not take into account the possible amount of compensation, but the very nature of the restriction of access to information. Both consequences can be considered irreparable for the addressees of the legal regulation (PL. ÚS 95/2011). Although the Constitutional Court does not rule out that the legislator would take into account the possible non-compliance of this law with the reference criteria in its legislative activity, such a solution cannot be assumed with absolute certainty. In other words, in the event of a declaration of non-compliance of the legislation with the reference standards, it could be difficult to return the lost property to the persons affected by the law (PL. ÚS 18/2014). In conclusion, the Constitutional Court of the Slovak Republic concluded that the threat of adverse impacts on the sphere of the addressees of the Act is real, direct and specific, and therefore, by Resolution No. k. PL. ÚS 6/2025-18 of 12 March 2025, it suspended the effectiveness of Section 14(6) and (7) and Section 21(1) of the second sentence of the Information Act, as amended by Act No. 401/2024 Coll., amending Act No. 211/2000 Coll. on Free Access to Information and on Amendments to Certain Acts (Freedom of Information Act), as amended. The suspension took place on 28 March 2025, when the Constitutional Court's resolution was published in the Collection of Laws of the Slovak Republic.

VIII. COMPARISON WITH THE LEGAL STATUS AND LEGAL PRACTICE IN THE CZECH REPUBLIC

Taking into account the common legislative history with the Czech Republic, it is not possible to neglect the legal regulation on free access to information and its dealing with not only the material but especially the time burden of an extremely extensive search for information by obliged entities. Act No. 106/1999 Coll. on Free Access to Information, as amended (hereinafter referred to as the "Czech Information Act"), obliges obliged entities, which are, inter alia, municipalities, to provide information relating to their competence. Information is provided upon request. Pursuant to the provision of Section 17(1) of the Czech Information Act, obliged entities are entitled to demand reimbursement for the costs associated with finding and providing information. The second sentence of the provision in question then states that obliged entities are also entitled to claim payment for a particularly extensive search for information. Due to the fact that this is a term that is largely vague and is not clearly defined by law, in practice many cities and municipalities there are significant differences in the requirements for reimbursement of costs for an extremely extensive search for information. In order to be able to get closer to the concept of an extremely extensive search for information, it is necessary to determine what is actually contained in the search for information itself. It is not only about identifying and finding the required information, it is also about collecting more information and then processing the response to the request. In principle, this term cannot include the investigation where the requested information is located, nor the possible making of copies, which is expressly provided for by law in the first sentence of Section 17(1). So when will it really be an extremely extensive search for information? We assume that it will be an extremely extensive search for information if, objectively speaking, the time spent on the above-mentioned activities will go beyond the normal handling of requests for informa-

tion. Thus, the interpretation that often appears in practice that an extremely extensive search for information is "automatic" when the search for information takes more than one or more hours cannot be accepted. Each case should be assessed on a case-by-case basis, i.e. *ad hoc*.[17]

On the basis of the provision of Section 21 (2) of the Czech Information Act, the Government of the Czech Republic issued Regulation No. 173/2006 Coll. on the determination of payments and royalties for the provision of information. The regulation thus regulates the obligation of the obliged entity to set the rates for individual costs in the price list of reimbursements. Since the publication of the Schedule of Reimbursements is obligatory under Section 5(1)(e) of the Czech Information Act, it is necessary to interpret the publication of this Schedule of Reimbursements as a condition for the possibility of claiming reimbursement of costs from the applicant. In the price list, the obliged entity determines the rates for the acquisition of 1 copy, 1 piece of each type of technical data carrier, the costs of sending information consisting of packaging and postal services, or the amount of the license fee. As regards the cost of a particularly large search, the rate is derived from the cost of salaries or wages and other personnel costs associated with such a search.

The concept of an exceptionally extensive search is not defined in the Czech Information Act, and before the amendment of the provision, payment for any such search for information could have been required. According to the judgment of the Supreme Court of the Czech Republic of 13 April 2016, file no. 6 As 211/2015: *"From the point of view of the theory of administrative law, the term "extraordinarily extensive search for the requested information is a typical so-called indeterminate term, which or which must always be interpreted with regard to the specific factual circumstances of the case under consideration, in accordance with the purpose that is always pursued by the given legislation"* [18] Thus, when requesting reimbursement for an exceptionally extensive search, the obliged entity must justify why it is such a search, not a regular search, how the reimbursement was quantified and on the basis of what facts and what the extent of the search consisted of.

Despite the fact that, in accordance with the adopted amendment to the Information Act in the conditions of the Slovak Republic, its explanatory report is based, among other things, on the fact that the currently approved legislative step is based on positive Czech practice[19], where a similar legal regulation has been reflected in the elimination of abuse of the Act on Free Access to Information, from the point of view of Czech practice, we do not perceive a one-off elimination of the disparate interpretation of the concept of extremely extensive searches.

This fact is also evidenced by the recent decision of the Constitutional Court of the Czech Republic of 8 July 2021, judgment file no. III ÚS 3339/20. The biggest problem in this matter

[17] FUREK, A., ROTHANZL, L., JIROVEC, T. *Act on Free Access to Information. Commentary.* Prague: C. H. Beck, 2016, pp. 1264.

[18] Judgment of the Supreme Administrative Court of 13.4.2016, file No. 6 As 211/2015.

[19] For more information, see the Explanatory Report on the adopted and effective amendment of Information Act [online]., which literally states *The proposed legislative step is based on positive Czech practice, where a similar legal regulation has resulted in the elimination of abuse of the Freedom of Information Act.* In: *National Council of the Slovak Republic* [online]. [2025-03-06]. Available at: <https://www.nrsr.sk/web/Dynamic/DocumentPreview.aspx?DocID=547971>.

is the scope of paid information. Although it has been repeatedly stated in the grounds of the decision and in the observations of the administrative authorities and courts that the selection of data cannot be carried out by machine, that all the information requested must be examined individually in the context of other data and other circumstances of each case and only then can it be separated from the data that must be refused to the applicant in accordance with the law, Those conclusions are not supported by documents and cannot be used to justify the compensation granted. The administrative authorities unjustifiably chose probably the most complicated possible way of handling the application, and therefore the Constitutional Court considered its procedure in determining compensation not only unreviewable, but also highly irrational. The statement of the obliged person itself shows that it has an information system from which it is possible to obtain a set of 7 out of 8 required data in a simple procedure. The Constitutional Court considers it clear that some of the required data, which can be easily and quickly obtained, do not have the potential to impede an effective investigation or jeopardise the rights of third parties, at least on their own. After further consideration, also in cooperation with the complainant and according to his preferences, the obliged entity was able to compile the optimal "secure" combination of data to be provided to the complainant without further restrictions. The essence of the legal opinion of the Constitutional Court lies in the fact that in the procedure for the provision of information under Article 17(5) of the Czech Information Act, the obliged entity should be a professional knowledgeable of the law, who should guide the applicant through the process of providing information in such a way that they are satisfied to the maximum extent; activities of administrative bodies, it is the administrative body that is active. The obliged entity should look for ways to comply with the submitted request as much as possible and not reasons to prevent it from being granted. In the light of the requirements of Article 4 ods. ods.4 of the Charter of Fundamental Rights and Freedoms[20], care should be taken to review the justification for determining the remuneration for the provision of information, not only in terms of its amount, but also in terms of its effectiveness and rationality.

We believe that this view, supported by the judgment of the Czech Constitutional Court, cannot be ignored when identifying with the explanatory memorandum to the adopted amendment to the Slovak Information Act, which almost glorifies the Czech positive practice for the identified cases. It is obvious that the application of the concept of an extremely extensive search for information also causes significant problems in application practice in the Czech Republic, which makes the question all the more why the proponents of the amendment to the Information Act in the Slovak Republic did not take it into account, for example, as an experience for its refinement in order to reduce possible interpretation problems. *A contrario,* the amendment to the Information Act was adopted with the imprecise terminology of "extremely extensive search for information", which leads us to the incompetent conclusion of the adoption of the amendment in this wording and, from our point of view, almost certainly the expected interpretation and application problems of obliged entities. It is also worth thinking about whether the time spent by the obliged entity to assess and justify the costs incurred in this way will

[20] Constitutional Act No. 23/1191 Coll., which introduces the Charter Of Fundamental Rights And Freedoms as a constitutional law of the Federal Assembly of the Czech and Slovak Federative Republic.

not represent a higher time and personnel burden than the extremely extensive search for information in a particular application.

CONCLUSION

Recently, the discussion on the right to information in the conditions of the Slovak Republic has been widely discussed not only in the group of law firms, but also in the relatively strong media coverage of the issues of uncertainty in charging for the right to information towards the lay public[21] They also provoked the media, including certain representatives of elected political representatives. The authors of this article, with a detail on consistency despite the scientific questions asked, legally analyzed the timeline of the adopted amendment to the Information Act and continuously answered and stated the expressed opinions through scientific methods,[22] which reflect the conclusions of the already adopted and effective amendment to Act No. 211/2000 Coll. Taking into account the established hypothesis: *"Payment for disclosure of information is a fee, the non-payment of which leads to the postponement of the request for disclosure of information without more fundamental legal defence options."* it can be concluded that **The hypothesis was confirmed**. The justification in question is also supported by the relevant case law and the expert opinions of the authors. The analysed amendment to the Information Act has also sparked a stimulating discussion in other non-governmental institutions,[23] whose activities actively influence the opinions of local governments and their activation in expressing their opinion on legislative activities with an overlap with local governments. Taking into account the "difficult path to effectiveness" of the amendment to the Information Act, we would like to express the opinion that the employees of the obliged entity can arbitrarily evaluate on their own, without any criteria, in which case it is an extremely extensive search for information, which creates a huge space for arbitrariness of the authorities. No less important is the extension of the basic deadline for providing information from eight to twelve working days. According to them, such a change is not supported by any data, which represents a violation of legal certainty[24] for the addressees of this information law. The analyzed legal situation is as of March 2025, and we point to the fact that the Constitutional Court of the Slovak Republic by Resolution No. k. PL. ÚS 6/2025-18 of 12 March 2025 has suspended the effectiveness of Section 14 (6) and (7) and Section 21 (1) of the second sentence of Act No. 211/2000 Coll. on Free Access to Information and on Amendments to Certain Acts, as amended by Act No. 401/2024 Coll., amending the Information Act[25].

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[21] SAKTOROVÁ, Ľ. Is There a Private Life Free from Forms of Social Control? *Hungarian Journal of Legal Studies*. 2019, Vol. 60, No. 1, pp. 86–94.

[22] BASHIR, M., NISAR, M. A. Expectation versus Reality: Political Expediency and Implementation of Right to Information Laws. *Public Administration Quarterly*. 2020, Vol. 44, No. 1, pp. 3–30.

[23] See, for example, the Union of Towns of Slovakia- The Union of Towns of Slovakia is a voluntary interest association of towns, which currently consists of more than 22 members. In: *SME Domov* [online]. [2025-03-06] Available at: <https://domov.sme.sk/c/3705777/unii-miest-slovenska-sa-nepaci-novela-infozakona.html>.

[24] LAURENT, J., CHMIEL, N., HANSEZ, I. Personality and safety citizenship: the role of safety motivation and safety knowledge. *Heliyon*. 2020, Vol. 6, Issue 1.

[25] For more details, see: Constitutional Court of the Slovak Republic, Press Release No. 14/2025 of 12 March 2025. Closed session of the plenary session of the Constitutional Court.