E-Government and the Freedom of Information Legislation

Ing. David Špaček[1]

Introduction

In relation to the development of the information technologies, there have appeared many ideas about the practical use of these technologies for the purposes of the activities of public administration and for more effective service to the public. Many of these ideas did not remain only in the world of ideas, in contrary they are gradually applied (or in accordance with the information politics they should be applied) with the aim to create and support the society based on knowledge. Information technologies can significantly influence also informing the public about the activities of public administration.

The connection of the process of making the public administration electronic and the freedom of information legislation is considered to be an important instrument that should help to solve the current crisis of the representative democracy (the called democratic deficit). The guarantee of the right to the access to information is an important presumption for fulfilment of the democratic principles. This paper will operate especially with the principle of openness and the principle of political transparency.

The proposed paper will deal with the selected problems of the practice of the e-government ideas in relation to access to information law (particularly with the practice of the above mentioned two principles). The paper will also try to explain the issue of the electronic democracy that is considered to be the ideal form of the e-government. The freedom of information can become an important instrument for merging of representative democracy with the form of direct democracy.

Legislation on freedom of information anchor many rights and duties both for subjects of public administration and for potential applicants for information. However, these legal documents may be a part of the factors that restrict the scale of the e-government in practice, in particular in relation to the disclosure of certain information to public.

1. The principle of openness and the principle of the political transparency in the information society

Before discussing the practical problems of the proposed issue, I would like to try to explain the content of two principles - the principle of openness and the principle of political transparency. These principles are often considered to be the theoretical essentials of the application of the ideas of the e-government and the e-democracy. They are also assumed to be the important part of the principles of the European Administrative Space.

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[1] Ing. David Špaček - student of the doctoral studying programme of the Masaryk University in Brno in the Czech Republic.

The significance of these principles has been emphasized in last few years also because of the problems that still remain in the practise of these principles. Factual observance of these principles might reduce the misuse of the authority of public administration and might also eliminate corruption. Realization of these principles also constitutes the preconditions of fulfilment of other principles, that should be inherited to modern public administration - notably the principle of rule of law, the principle of equality before law and the principle of accountability of public administration in relation to the addressee of public administration activities.

a) ***The principle of openness*** (of public administration) puts stress on the fact that public administration is at the disposal of the outer world that comprises mainly the objects (addressees) of the activities of public administration. Here the importance of simple and fair (impartial, equal) access to information is highlighted, because the access to information that has these mentioned features is one of the significant instruments for fulfilment of the individual principle of openness and for establishment of the open government.

b) In order to secure the true image of the openness of public administration ***the principle of political transparency*** has to function at the same time. I am using here the term of political transparency in the sense of the quality of public administration and the possibility to see through the processes inside the public administration as well as to reveal possible inaction of public administration.
The term of transparency is also used in information science. Here, it means the maintenance of an illusion of the cyberspace. The meaning of the transparency from the theory of informatics may not be understandably utilised in public administration. The illusion of the functioning of public administration should not be maintained, but the truthfulness of the situation should be secured. Here, the significance of internal and external controlling instruments within the sphere of public administration should be underlined.

2. Few notes about the term "E-Government"

Before dealing with the selected problems of practise of the e-government, the e-democracy and the freedom of information I would like to mention the attributes that are generally accepted to be typical to the e-government.

According to the United Kingdom document "*E-Government - A strategic Framework for Public Services in the Information Age*"[2] the following basic features are characteristic of the e-government focused on citizens (and also on other subjects):
a) establishing electronic and simultaneously high-quality services on the bases of needs and preferences of public administration addressees;
b) making government and its services more accessible;
c) social inclusion;
d) using information better.
In the "*E-Government: The Next American Revolution*"[3] the above mentioned principles are supplemented by following:
e) principle of privacy and security;

[2] The document „E-government - A strategic Framework for Public Services in the Information Age" from April 2000 was available on http://www.iagchampions.gov.uk.
[3] This document was available on http://www.publicus.net.

f) principle of the orientation on innovations and results (while using new information and telecommunication technologies),
g) principle of cost-effectiveness.

It is also useful to mention the factors that were taken into account while projecting the S*wedish 24/7 Agency*.[4] This agency should have the ability to function and offer electronically accessible services 24 hours a day 7 days a week. Its quality should be constantly developed with the main aim
- to focus on the citizen,
- to enable a dialogue with the citizen,
- not to lose the ability to adapt itself to constant development of electronic public administration ideas.
The development of this project should also be subordinated to the request, that the choice of the utilised technology should support the activities of the whole public administration.
The side of demand and the side of supply should be taken into consideration as well.
a) The service and the level of technology in particular characterize *the side of demand*. The main aim here is to achieve the appropriate technological level of public administration that enables a high-quality service to the public. To determine the high-quality of this service the following criteria are stipulated:
- *availability*: the public and businesses can obtain information, ask questions and carry out transactions when it suits them;
- *participation*: the public and businesses know the scale and form of services that are offered. They are also able to select services and they have the opportunity for dialogue and for expressing their views on the activity they are affected by.
- *collaboration*: an individual transactions, the public and businesses need to contact only one agency. This requires the agencies to collaborate and make use of all the scope offered by information technology in order to carry out various tasks together.
- *inspection*: every member of the public can by simple means inspect the agency's work and study public documents.
- *individual responsibility*: every member of the public can by simple means obtain a clear picture of who is responsible for what at an agency.
b) The document differentiates the following stages of the supply-side criteria:
- Stage 1: Website providing „packaged" information about the agency and its services.
- Stage 2: Website providing „interactive" information about the agency and its services.
- Stage 3: Website and communication functions allowing the visitor to hand in and retrieve personal information.
- (The highest) Stage 4: Website and network functions for proactive and joined-up services involving several agencies and institutions.

The above mentioned standards can be utilised to describe and compare the situation in the individual states. Development of the mentioned efforts should converge to a creation of the *informed democracy*. The important questions still remain: Do the parts of the government's information policy serve only ideological demagogy, dissemination of the not truthful information or creation of the information labyrinth, new forms of lobbying, corruption, etc.? This all depends mostly on the political culture of the country.

3. The E-Democracy and the principle of accessibility

The scientific development leads to many discussions about the up-coming models of the democratic systems and the democratic forms of a state. At the present time of information, the following fact is often emphasized: "*representative democracy has its origins in geography and technology ... Technological progress, particularly with the ICTs, has diminished these spatial and temporal obstacles."*[5] Some theoreticians even claim "*it is not an exaggeration to say that the meaning and organisation of democracy is beginning to undergo fundamental change -- some argue a rebirth."*[6]

The main goal of the new forms of democracy is "*to break down the virtual Berlin Wall which has traditionally existed in constitutional democracies between the represented and their representative."*[7] Generally speaking, the e-democracy should represent the connection of the two forms of democracy that are distinguishes by the science of the state or the political science - direct and indirect (representative) democracy (while using the theories of these sciences we can also talk e. g. about the electronic aristocracy or about the electronic monocracy). The e-democracy should diminish the actual democratic deficit. The e-democracy instruments should enable to bring the state authorities closer to citizens in order to fulfil the democratic principle of sovereignty of citizens, to ensure the multilateral communication among the representatives and the represented as well as the communication inside these groups. The cooperation and the feedback in decision-making should be stressed.

To ensure the legitimacy of the electronic democracy the guarantee of the right to equal access to information technologies is one of the main important as well as most difficult tasks while attempting to achieve the ideas of „social / digital inclusion" principle and to create the "*information society for al"*. The situations in countries vary and according to the researches from this field a certain level of „social / digital divide" still remains even in the countries that are used by many states as models for installation of information politics (e. g. USA, United Kingdom, Sweden, European Communities institutions etc.). There are still two extreme poles even in the „Western world": those, who have access to information technologies and those, who have not. This makes one of the biggest barriers in achieving the ideas of e-democracy.

Also the practice of the *principle of accessibility* is very important. For example, in the United States, plenty of candidates for president used the information technologies for their propaganda. The question, whether they remain on-line after being elected and whether they use the information technologies to communicate faster (etc.) with people they represent, is still relevant and topical.

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[4] The Swedish Agency for Administrative Development: The 24/7 Agency - Criteria for 24/7 Agencies in the Networked Public Administration. This document was available on http://ww.statskontoret.se.

[5] Report of PUMA (OECD Public Management Service) Impact of the emerging information society on the policy development process and democratic quality. OECD 1998. Paragraph 175. This document was available on http://www.oecd.org.

[6] Édes, B. W.: The Role of Public Administration in Providing Information, p. 1. This document was available on http:/www.oecd.org.

4. The right to information and the E-Government

4.1 Importance of the right to information

In most of the countries, passing the freedom of information legislation (in short "FOI legislation") was conditioned by negative critics of the governance secrecy, by non-openness and non-transparency of the governance processes. The FOI legislation was passed in order to create a legal duty to inform that should increase the legitimacy of public administration.

Although the freedom of information is not only an instrument for eliminating the forms of the democratic deficit, the right to information can become an important creator of informed debate in matters of public interest. However, making information accessible should not (in accordance with the mentioned principles of openness and transparency) produce and maintain an illusion about operations within the authority that has the duty to inform. Confidence among the representatives and the represented should be based on the truthfulness of the real state. That is also why it is so important to underline the ideas of the introduced principles and the mechanism of control (not only) in public administration.

Law on the freedom of information is a phenomenon that is nowise old. Though the right to access to documents of a government was regulated for the first time in Sweden in 1766 (*Freedom of the Press Act*), new (and today quite modern) trend to open a government by way of making certain information accessible has been realized in Western democracies since the last few decades in 20th century (with the exception of Finland that was a part of Sweden at the time of passing the Swedish act).

Although the right to information is considered to be one of the most significant rights in permanently developing democracies, because of its novelty, it is not often expressis verbis comprised in provisions of fundamental acts (constitutions) of countries that abstractly proclaim democratic principles. However, the constitutions that I have selected for the working-out of my diploma work[8] contain e.g. the freedom of expression right that is related to the right to information. They also anchor an important right of impartial and independent judicial protection of rights, the right to protection of privacy, the prohibition of any type of discrimination etc.

Afterwards, the democratic principles are concretised by individual acts that have to specify the duty to inform. Clarity, precision, no contradictions and other principles of legislation methods should be stressed.

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[7] Coleman, S.: UK Citizens Online Democracy: An experiment in government-supported online public space - available from www.ukonline.gov.uk.

[8] In my diploma work I dealt with the constitutional situation of the EU countries, the Czech Republic, Bulgary, Hungary, Bosnia and Herzegovina, Switzerland, Iceland, Canada, the Republic of South Africa, Hong-Kong and USA. Among the selected normal acts were those of the Czech Republic, Bulgary, Hungary, Bosnia and Herzegovina, Finland, Sweden, Ireland, regulation of the European Parliament and the Council, Canada, USA, the Republic of South Africa and Hong-Kong.

4.2 Connection of the right to information with the e-government ideas

In practice, the connection of the right to information with the ideas of the e-government is ensured by means of the governmental information politics. This connection is sometimes presumed in the freedom of information legislation.

For example, in section 3 of the Finish *Act on the Openness of Government Activities*[9] that defines the official documents that should be in the public domain also stipulates a duty to promote openness and good practice on information management in government. At the age of information the utilisation of the information technologies is an important part of the "good practice on information management" without any doubt. For improving the smoothness and rapidity of the service in administration, as well as data security, by promoting the use of electronic data interchange, the *Act on electronic service in the administration* was accepted in Finland. This act contains provisions on rights, duties and accountability of authorities and their "customers" in relation with providing electronic services. According to this act that is available on http://www.om.fi, the Finish authorities should ensure that their electronic data interchange equipment is in working order and that their electronic data interchange equipment is accessible, in so far as possible, also outside office hours.

Regulation (EC) No 1049/2001 of the European Parliament and of the Council[10] of 2001 regarding public access to European Parliament, Council and Commission documents is quite similar to the Finish act on the openness of government activities. This regulation was adopted in order to (according to the article 1 that defines the purposes and aims of the regulation) ensure the widest possible access to documents, to establish rules ensuring the easiest possible exercise of the right to access to documents and to promote good administrative practice on access to documents. To facilitate the exercise of the right of access the institutions shall develop good administrative practice. To examine the best practice, to address possible conflicts and to discuss future developments on public access to documents, the institutions shall establish an inter-institutional committee (article 15).

Act on promotion of access to information of the Republic of South Africa (No. 20852) of 2000 sets itself a task (similarly to Bulgarian *Access to Public Information Act of 2000*) to promote transparency, accountability and effective governance of all public (and also private) bodies by establishing voluntary and mandatory mechanisms or procedures to give effect to the right of access to information in a manner which enables persons to obtain access to records of bodies as swiftly, inexpensively and effortlessly as reasonably possible. [11] Here again, we can say that the use of the information technologies can become a useful instrument to reach the named goals.

4.3 Selected problems and their solutions

The power of law (and consequently the institutions of judicature) can facilitate making information of public administration accessible. On the other hand, provisions of acts

[9] This act is in force since December 1999 and is in English available on http://www.om.fi.
[10] The document of the Republic of South African is available in English on http://register.consilium.eu.int. The Bulgarian act is available in English on http://www.aip-bg.org.
[11] This act is available in English on http://www.gov.za

as well as other legal documents can also create barriers that are counter to the ideas of freedom of information acts that follow from the aims of principles of openness and transparency, e-government and e-democracy. In this chapter I would like to introduce some imperfections of legislation that I consider to be most significant.

Formality (and sometimes we can say also over-formality) of an access to information can entail big suffers to practice of the above mentioned principles. It often leads to refusal of an access to information because of lack of request necessities. Due to the lack of requisites, the process of making information available can be long and applicants can lose their desire for information. An instrument for eliminating this problem is anchored in the *Code on Access to Information* in Hong-Kong.[12] This act of 1995 prescribes a precious and clear form of applications for information. In my opinion, this form may significantly serve as a model for unifying requests for public information in other countries.

In relation to the electronic applications for information a ***duty of an authority to inform about receiving the application*** must be stressed. Plenty of countries forget to include this duty among the provisions of their legislation. The Czech Republic is one of them as well.

Also ***observing time limits for handling requests for information*** by authorities may be a big obstacle to the principles of openness and transparency. This places emphasis on effective mechanism of control of authorities.

Also ***fees*** that are requested for information can cause grand barriers. Some acts speak generally about fees for information without specifying them. This legal situation may lead to reality with very various amounts of fees that can differ authority by authority. The unification, adequacy and reasonability are necessary for implementing the principle of "social/digital inclusion", although the adequacy and reasonability might be an object of many discussions.

We can also find legal documents that speak generally about information without defining them. A ***clear definition of public information*** would also obviate many conflicts that can lead to refusing an access to information. Without any definition of information that should be accessible to public we have to consider the accessibility in relation with the large group of information that are exempted from the freedom of information. This way of finding a ***negative definition of the public information*** can be very long, laborious and exhausting, owing to the fact that exemptions from the freedom of information can be fragmented among many acts. That is also why the area of exemptions from freedom of information is often chaotic (I will not discuss the intentionality of such a state nor an appropriate level of secrecy) and sometimes even mutually contradictory. Although some freedom of information acts try to codify these exemptions (e. g. Ireland, Canada, Finland), all of these acts enable other modifications of exceptions by other acts.

Due to this fragmented situation, ***higher requirements*** on education of civil servants. It can also bind procedures of making information accessible to public too many as well as prolong them. It can also influence the legality of administrative decisions or negatively influence the creation of metadata.

[12] This legal document is available on http://www.info.gov.hk.

The duty to create metadata (information about information) is also an issue that is often forgotten to be comprised in the text of acts, although such information facilitates orientation in the "information labyrinth" providing registries of public information, their summary, etc.).

The public itself can represent a great barrier in attempts to realize the ideas of the principle of openness and the principle transparency. ***Lack of interest to participate on matters of public interest*** can have various forms and may reflect the low number of applications for information that is characteristic even of the Western democracies. Similarly ***the acquaintance of the freedom of information issue*** of the members of public is needed to be included. Enlightenment of the freedom of information is often forgotten, although it could be beneficial and increase the public demand for information.

The public indifference may be caused also by the practice of public administration activities and ***public administration unwillingness to reform according to the modern democratic principles*** that can become just a farce. Also still existing (and maybe everlasting) corruption may slow down the process of democratization.

4.4 Case Study I: Canada

Some problems of the freedom of information practice in relation with the e-government can be discovered in the annual report of Canadian information commissioner.[13] This document informs about his monitoring in the period of 1. 4. 2000 to 31. 3. 2001. On the cover of this document open, however also closed doors are wittily depicted.

Despite the Canadian federal *Access to Information Act* has been in force since 1983, the spirit of secrecy and civil service loyalty to government of the day could be still perceived in 2001. This report emphasises a difficulty of the right of access to information realization while criticising the nature of politicians that they are not willing to reform and to cooperate in order to create a situation, when the Canadian parliament and public have a possibility to see, how governmental institutions really work.

This report is also against the traditional unwillingness of senior public servants to preserve records about regulation of ministers as well as about deliberations that contain reasons of the decision. We can see that the principle of openness and the principle of political transparency do not function properly here. According to the report all of these facts reflect a low quality of records and the impropriate information management.

The practice of Canadian public administration can be also reflected in the fact that in 18 years of having the freedom of legislation in force, only a modest demand for information has been noticed. Before passing the mentioned act, the Canadian government reckoned to handle 50 000 of applications for information a year. However, this number has been reached almost in ten years. Most of the applications were submitted within the period of 1999 - 2000 in a number of 19 000.

The Canadian information commissioner discovered also another barrier of the practice of the right of access to information. During the enforcement of the Canadian act,

[13] This report is available on http://canada.justice.gc.ca.

a number of applications have revealed "gold mines" to government that could try to utilize information economically. To eliminate such a problem, it is necessary to unify fees for providing information.

The report itself sums up the following problems that still remained in Canada:
a) delays in handling requests for information;
b) excessive secrecy;
c) other improprieties (e.g. improper record-handling practices, using fees and extensions as a barrier to access, inadequate searches, political interference).

It also names the following causes of the mentioned problems:
a) inadequate resources;
b) absence of targeted educational programmes;
c) poor procedures and practices, including the matter of poor information management;
d) inadequate to, and classification of, Access Coordinators;
e) slowness of ministers or deputy ministers to change the culture of secrecy by force of leadership.

To eliminate such negative reality, the Canadian commissioner stipulates an aim to create and realize a programme for repairing the crumbling foundations of accountability in government and to eliminate the political interference in civil service. For redressing the situation that is not in accordance with the ideas of the principle of openness and political transparency, he would also like to realize the following changes:
a) to create a legal duty to document an institution's organization, functions, policies, procedures and transactions and to include such records within institutional record system - this should also apply to electronic records;
b) to create a legal duty to preserve records for a period of time that is adequate to their purpose and their content;
c) to create a legislative accountability framework governing essential recordkeeping and reporting requirements and procedures.[14]

4.5 Case Study II: Czech Republic

The *Czech constitution* (act no. 1/1993 of the Collection of Law - "CoL") contains no provisions on the freedom of information, however, this issue is constitutionally enacted in article 17 of the *Charter of fundamental rights and freedoms* (act no. 2/1993 CoL). In the paragraph 1 of this article, it is proclaimed that the freedom of expression and the right to information are guaranteed. Afterwards, the paragraph 5 of this article anchors the duty of organs of the State and local self-government to provide in "an appropriate manner" information on their activity. Conditions and the form of implementation of this duty shall be set by law. However, provisions of the Charter do not define the appropriateness that can be debatable.

The *act no. 106/1999 CoL* on free access to information tries to specify the provisions of the mentioned Charter. This act represents a lex generalis of the freedom of information legislation in the Czech Republic. It means that special acts on freedom of information have

[14] The aim mentioned in a) may be assessed because of the fact, that on the Internet you can sometimes find a reference to a document, however after clicking this link you will not succeed to reach it because it does not exist any more.

in certain cases the priority to be applied. The following text will try to introduce provisions of this act and to discuss some of its problems.

a) Purpose of the act no. 106/1999 CoL

Although the provision on the purpose of the act creates a spirit of the whole act, it has a normative force and other provisions of the act should not be in contrary with such a purpose provision, in comparison with the legal documents that I selected for my diploma work (e. g. with the Irish or Bulgarian acts) the Czech act no. 106/1999 CoL curtly enacts its purpose, while, in § 1, it says, that it regulates conditions of the right of free access to information and specifies basic prerequisites for providing information.

We do not find any vision of the open and transparent public administration that should support the process of democratization. The aim of this act should be considered in relation to the above mentioned article 17 of the Charter of fundamental rights and freedoms, although in the act no. 106/1999 CoL, the set of subjects that have the duty to inform is larger.[15]

b) Definition of subjects with the duty to inform

In the § 2, the act no. 106/1999 CoL enacts the following subjects that have the duty to provide information related to their sphere of action:
a) bodies of the State;
b) bodies of the self-government;
c) public institutions that husband with public resources; and
d) subjects that were authorised by an act to decide rights, interests protected by law or duties of individuals or corporate bodies in the sphere of public administration and only in the scope of this decision-making activities.

However, this act does not define these categories as most of the foreign acts do. Such definitions would eliminate potential conflicts and may speed up the access to information process without burden institutions of judicature. For example, nowadays there is no legal definition of the body of the State in the law of the Czech Republic. Such bodies are defined while ad hoc judging concrete cases by courts.

c) Definition of public information

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[15] For example, in article 6 the Bulgarian *Access to Public Information Act* enacts basic principles that should govern the practice of access to public information (1. openness, correctness and comprehensiveness of information; 2. securing equal conditions for access to public information; 3. securing conformity with the law in seeking and receiving public information; 4. protection of the access to information right; 5. protection of personal information; 6. guarantees for public and state security).
The Irish Freedom of Information Act was passed (according to its preamble) to enable members of the public to obtain access, to the greatest extent possible consistent with the public interest and the right to privacy, to information in the possession of public bodies and to enable persons to have personal information relating to them in the possession of such bodies corrected and, accordingly, to provide for a right of access to records held by such bodies, for necessary exceptions to that right and for assistance to persons to enable them to exercise it, to provide for the independent review both of decisions of such bodies relating to that right and of the operation of this act generally (including the proceedings of such bodies pursuant to this act) and, for those purposes, to provide for the establishment of the office of information commissioner and to define its functions, to provide for the publication by such bodies of certain information about them relevant to the purposes of this act, to amend the Official Secret Act, 1963, and to provide for related matters.

The Czech act on free access to information lacks also the expressed definition of information as well as the public information, although such definition may facilitate the access to information.

In relation to provisions on subjects with the duty to inform, we can say that public information is the information that is related to the sphere of action of an authority. In the theory of law, the sphere of action and the legal instruments for this action are distinguished. According to this theory, both of these elements create a legal status of a state authority. The Czech legislator forgot to comprise these instruments within the meaning of public information, so that the information about them is not deemed to be public.

d) Codification of exemptions from freedom of information

The Czech act no. 106/1999 CoL does not try to codify exemptions from freedom of information. In relation with c), we have to find a negative definition of public information. I have already mentioned that the way of doing so is long and laborious because of the amount of acts that enact exceptions from the freedom of information. Therefore, the success in finding a perfect negative definition of public information is almost impossible.

e) Forms of the duty to facilitate an access to information

According to the provisions of the Czech act on free access to information, every subject with the duty to inform has to create certain information. This information should be also provided in order to inform public and to make certain information public at the place of the seat of the subject and at the subject's agencies. Among such information the act named the following:
a) the reason and the method of foundation of this subject, including conditions and principles of exercising subject's activities;
b) the description of an organisation structure of this subject, the place and the way how to gain certain information, the place where it is possible to submit an application, submit a proposal, a suggestion or another request as well as the place, where it is possible to get a decision;
c) the place, the time limit and the way, where to ask for remedy against the decision of this subject with the duty to inform, including expressed requirements, description of procedures and rules, that are to be followed, the name of a relevant form and the way to get this form and the place where it is possible to get this form;
d) required procedure that should be followed by this subject with the duty to inform while handling applications, proposals and other requirements of citizens, including time limits prescribed by law;
e) the summary of the most important legal norms according to which the subject with the duty acts and decides and which enacts the right to request information and the duty to provide information and which enacts other rights of citizens in relation to the subject with the duty to inform, including information where and when it is possible to look into such legal norms;
f) the schedule of charges requested for providing information;
g) the annual report on previous year about the subject's activity in the sphere of providing information.

It is obvious that Czech subjects with the duty to inform have no duty to create registries of public information that include the summary of these information content as it is enacted in some foreign acts (e.g. Bulgarian public registries of all documents that are held

and generated by the central and local government, Irish reference books of public authorities information, registries of documents of EC institutions that should be accessible through electronic registers etc.). These acts could serve as models in the time of creating the Czech act no. 106/1999, because such forms of ***metadata*** can significantly help applicants for information.

Provisions of the § 18 of the Czech act anchor a duty of the subject to release every year an ***annual report*** about activities in the field of providing information till 1. March that should contain:
a) the number of submitted applications for information;
b) the number of requests for remedies against decisions not to give information;
c) the copy of substantial of every related court ruling;
d) the results of sanction proceedings for not observing this act without stating personal data;
e) other information that are related to exercising of this act.
- Such annual report can be imperfect because of many reasons. One of them sourced from the forms of requests for information. In the Czech Republic, it is possible to ask orally or in a written form, however, a special procedure is prescribed only for a written form of a request (especially time limits for handling requests and the duty to record the procedure of providing information that is reflected in the number of applications).

The duty to assist applicants for the access to information. According to provisions of the act no. 106/1999 CoL, it is obvious that a subject with a duty to inform has to assist in a certain manner in case of imperfect (but only written) applications in order to remedy the deficiencies.
- In provisions of § 14, it is enacted that a subject with a duty to inform has to judge a ***content of an application*** and in case that the application is not comprehensible or it is not clear what information is requested or an application is too general, the subject should ask the applicant within the time limit of 7 days (from the date of the application submitting) to specify his/her request. If the applicant does not do so in 30 days, the subject with the duty to inform should decide to reject a request.
- ***In case that the requested information is not related to the sphere of action*** of the subject, the subject will "reject the application". In accordance with the act, the subject with the duty to inform should only acquaint the applicant with rejecting his/her application. The subject has no duty to pass the application to a competent subject or to inform the requester about the place, where he/she can gain requested information. Again, I have to stress that the creator of the Czech act could be inspired by foreign legislation that enact such an important duty. The Czech authorities have only the duty to refer to information that has been already published in case that such information is requested.
- This act also does not stipulate the ***duty to announce the receipt of the request*** that is extremely important for electronic communication with public administration authorities. For example, in Bulgaria, Finland and Hong-Kong this duty is expressed by their acts, including time limits.
The mentioned facts lead me to say that the forms of the duty to assist requesters are insufficient in the Czech Republic.

Also ***other instruments*** that are comprised in foreign legislation in order to facilitate the access to information are not part of the Czech act no. 106/1999 CoL. There is no emphasis on *education of civil servants related to freedom of information* in this act (e.g. the Bulgarian act, the act of the Republic of South Africa and the above mentioned EC regulation

presupposed such education of civil servants).[16] Some foreign acts also establish a special office of *the information officer(s)* that should handle all requests for information (e.g. the bill of Bosnia and Herzegovina, the act of the Republic of South Africa and of Hong-Kong). Also the introduced duty to implement principles of proper information management is not enacted in the Czech act no. 106/1999 (e.g. Finland has such provisions).

Fees. According to the § 17, the Czech subjects with the duty to inform are allowed to request fees related to the providing of information (this means that they have no duty to charge for information). The provisions of § 17 also say that the amount of the fees should not exceed costs of seeking information, making copies, getting media and mailing information. Subjects with the duty to inform have to confirm a presupposed amount of cost to applicants. The act does not presume any act that would specify the mentioned facts related to fees in order to calculate the costs of making information accessible and to unify the costs of providing information. That is why the amount of fees is very miscellaneous in practice. Insufficient legal enactment may also lead to creation of "information gold mines" that was characteristic of the Canadian case.

Protection of the right of access to information. Decisions on refusing access to information can be reviewed by courts. In prescribed cases, unsuccessful applicants may also ask for help the ombudsman (according to the act no. 349/1999 CoL on Public protector of rights). However, the authority of the ombudsman is limited to recommendations or to information. For example, his status is not similar to the Irish information commissionaire that can (in accordance with the article 34 of the Irish act), as he considers appropriate, annul the decision and, if appropriate, make such a decision. It would be also useful to enact the similarities to the Hungarian Data Protection Ombudsman. According to the article 25 of the *Hungarian Act No LXIII of 1992 on protection of personal data and disclosure of data of public interest*, the Data Protection Ombudsman shall "*announce to the general public the existence of data processing unlawfully undertaken, the identity of data controller, and the categories of data processed, if the data controller does not stop unlawful processing.*"

The Czech act on free access to information does not establish any specialized ***central instrument with a sphere of authority to observe the duty to inform***. This deficiency has also been revealed by the research of a non-profit sector institution on the mentioned issue of processing and releasing the annual report till 1 March.[17] The Authority for Public Information Systems was among the authorities that did not fulfil their duty to release such a report.

The ***Ministry of Informatics*** replaced this Authority and took over its tasks. New ministry was established by the act no.517/2002 CoL that came into force on 1 January 2003 and, for example, it is responsible for
- the exploration of new information related to development of public administration information systems;
- the strategic planning in the sphere of public administration information systems;
- the coordination of projects in the area of information systems of public administration;

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[16] However, the professionalism of civil service is presupposed by the
- act no. 218/2002 CoL on a civil service of state authorities' employees and about rewarding these employees and other employees of administrative authorities - so called civil service act; and
- act no. 312/2002 CoL on officials of self government and ammendments of other acts.

[17] This research were processed in relation to the duty to release such annual reports till 1. 3. 2001 (2000 annual reports). It was available in Czech on http://www.ostosest.cz.

- the legislation on standards of information systems of public administration and related matters;
- the enlightenment and the education for supporting the e-commerce, increasing the utilization of the information technologies by public administration;
- the control of practice of the standards of public administration information systems;
- providing information services - e.g. the portal of public administration.[18]

Conclusion

It is obvious that in relation to the freedom of information legislation that could be a useful instrument also for the practice of e-government, problems still remain, both on the side of public administration and on the side of public.

Experience of applicants for information with the activities of public administration may lead to their passivity that can endanger the legitimacy of democracy. It may also cause the malfunction of the information attempts.

Although the tradition of legislation is quite long (mainly since 80's of the 20th century), some countries have not utilized the benchmark of information that exists on this field while creating their own legal documents. E.g. in the case of the Czech Republic, many models and standards of freedom of information legislation existed at the time of creation of the act no. 106/1999. However, they have not been taken into consideration.

[18] You can visit the website of this ministry on www.micr.cz. However, in the time of preparing this paper (March 2003) this website was presented only in the Czech language. The English version is still under reconstruction.

Information sources:

a) E-government - A strategic Framework for Public Services in the Information Age, http://www.iagchampions.gov.uk

b) E-Government: The Next American Revolution, http://www.publicus.net.

c) The Swedish Agency for Administrative Development: The 24/7 Agency - Criteria for 24/7 Agencies in the Networked Public Administration, http://ww.statskontoret.se

d) Report of PUMA (OECD Public Management Service) Impact of the emerging information society on the policy development process and democratic quality, http://www.oecd.org

e) Édes, B. W.: The Role of Public Administration in Providing Information, http:/www.oecd.org

f) Coleman, S.: UK Citizens Online Democracy: An experiment in government-supported online public space, www.ukonline.gov.uk

g) Finish Act on the Openness of Government Activities, http://www.om.fi

h) Finnish Act on electronic service in the administration, http://www.om.fi

i) Regulation (EC) No 1049/2001 of the European Parliament and of the Council, http://register.consilium.eu.int

j) Hungarian Act on Protection of Personal Data and Disclosure of Data of Public Interest, http://www.obh.hu

k) Bill on freedom of information of Bosnia and Herzegovina, http://www.oscebih.org

l) Canadian Access to Information Act, http://laws.justice.gc.ca

m) Act on promotion of access to information of the Republic of South Africa, http://www.gov.za

n) Code on Access to Information of Hong-Kong, http://www.info.gov.hk

o) Irish Freedom of Information Act, http://www.irlgov.ie

p) Bulgarian Access to Public Information Act, http://www.aip-bg.org

q) Annual report of Canadian information commissioner, http://canada.justice.gc.ca

r) The research on annual reports, www.ostosest.cz

s) Czech act no. 1/1993 CoL, the Constitution of the Czech republic, www.psp.cz

t) Czech act no. 2/1993 CoL, Charter of fundamental rights and freedoms, www.psp.cz

u) Czech act no. 106/1999 CoL on free access to information, www.mvcr.cz

v) Czech act no. 218/2002 CoL on a civil service of state authorities' employees and about rewarding these employees and other employees of administrative authorities, www.mvcr.cz

w) Czech act no. 312/2002 CoL on officials of self government and amendments of other acts, www.mvcr.cz