Transparency of Administrative Bodies and Accountability of Public Officials – is there any Link? - Analysis of the Czech Republic Practice

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Abstract: Transparency is intertwined with the right to information which is necessary to properly exercise political rights, such as freedom of speech and the right to vote and be elected. Further, transparency is one of the basic principles of good governance, as it implies the public insight in the work of administrative bodies. Moreover, it is a fundamental element of abolishing corruption as it encourages openness, and increases concerns for secrecy and privacy. Transparency is also subtly intertwined with accountability, responsibility and the duty to pay damages to those affected in their rights by misuse of power or other types of illegal acting of public administration.
Act on free access to information providing for a broad right to obtain information form administrative authorities has been effective for over twenty years in the Czech Republic. Stable case law of the administrative courts interpreting the exceptions when information is not provided rather restrictively is already in place. The Contracts Register Act was adopted in 2015. Thus, it seems that all necessary legal instruments are in place.
However, the article argues based on data from public authorities, that these laws are not sufficiently connected with the accountability of individual public officials. Although the Act on Civil Service contains provisions on disciplinary proceedings, the sanctions are not as severe and these proceedings are often not instigated. Also, the damages caused by unlawful decisions or maladministration are difficult to claim, as these are adjudicated by civil courts in a separate proceeding from administrative action. As the level of accountability divulges the democratic character of the administrative system, some recommendations upholding greater accountability are made in the conclusion.

Key Words: Administrative inspection, Fair Trial, Good Governance, Self-incrimination, Rule of Law.

1. INTRODUCTION

Both transparency and accountability certainly contribute to government legitimacy and thus strengthen democracy and rule of law. Transparency enables the citizens to see whether the government act according to the rules they are to obey and accountability operates both as prevention from breach of rules and misuse of power and as punishment when such misconduct occurs. Therefore, the principles are closely connected and transparency is generally believed to be a necessary precondition for accountability. [13, p. 663]

Transparency of public administration can be understood more broadly as openness or in a more narrow sense as free access to information. It is one of the elements of good administration that can enable the control of public administration not only by citizens but also by public institutions. Last but not least, transparency is believed to eliminate corruption. The more transparent public administration is, the more the citizens can be informed about its activities and may have more room to form their own opinions and to participate in public life. Especially with the development of information technologies, transparency is becoming more and more discussed as provision of information to the public is simplified. This is also related to the increase in demands on the information made available, e.g. in terms of the amount of information, machine-readable format, remote access, etc.

Provision of information on implementation of state policies, behavior of politicians and officials, decision-making on public issues, etc., is not a self-sufficient goal. It is necessary to create an environment where a specific individual needs to be held accountable and bear the negative consequences associated with the found

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misconduct. This should apply not only for one's own misconduct but also in some cases of rule violations by his or her subordinates.

Accountability has a broader scope, which includes the organization of administration, openness and transparency, internal and external accountability, and institutions with powers to control and punish. Public institutions and individual public officials should be accountable to ensure the proper performance of their duties. This requires not only access to information, but also a system of controls, independent supervision and judicial review of administrative cases.

Proper statutory laws should assure that sufficient transparency sheds light on abuses and further that individuals and institutions are held accountable, bear legal consequences. Although, such legislation seems to be in place both for transparency and even for accountability at least in some respects, Central and Eastern European countries face accountability deficits. The reasons are several starting with the difference between accountability *de facto* and accountability *de iure*. Still, the legal instruments are not necessarily as strong as they generally are perceived if the interconnections between the two principles are weak. The article argues based on data from public authorities, that transparency laws are not sufficiently connected with the accountability of individual public officials. Although the Act on Civil Service contains provisions on disciplinary proceedings, the sanctions are not as severe and these proceedings are often not instigated. As the level of accountability divulges the democratic character of the administrative system, some recommendations upholding greater accountability are made in the conclusion.

2. METHODOLOGY

The main research question is whether the statutory laws developing the principles of transparency and accountability of public administration are interconnected sufficiently. For the purposes of this qualitative research, several different methods were applied as relevant. First, a comprehensive overview of the principles of transparency and accountability is carried out through literature review and using normative-analytical method. Through systematic approach, the author analyses relevant statutory laws dealing mainly with free access to information and public officials' disciplinary liability. The case law of both the Czech Supreme Administrative Court and Constitutional Court interpreting these laws is also included in the study. This case law is studied using analogy, comparative method and inductive reasoning. The findings are supported also through data collected from the Ministry of Interior annual report. In the conclusion a synthesis of the findings is carried out and proposals *de lege ferenda* are made.

3. TRANSPARENCY

The principle of transparency is one of the basic principles of good governance and as such it is based on fundamental human rights established, for example, by the Charter of Fundamental Rights of the European Union or in the Czech legal order by the Charter of Fundamental Rights and Freedoms. This principle does not have to be explicitly stated in legal regulations, but its essence appears in individual legal regulations or in the definition of the activities of public institutions. Transparency is intertwined with the right to information which is necessary for the ability to properly exercise political rights, such as freedom of speech and the right to vote and be elected. Further, transparency is one of the basic principles of good governance, as it implies the public insight in the work of administrative bodies. Every natural and legal person should be enabled to inspect the

work of the public administration as well as the public expenditures. Moreover, it is a fundamental element of abolishing corruption as it encourages openness, and increases concerns for secrecy and privacy. It helps to build trust in public administration and thus prevents from unpredictable results in elections favouring extremist parties.

When analysing transparency, we can distinguish two functions. [10, pp. 54, 56] First, it facilitates the decision-making of individuals who, thanks to a transparent environment, can anticipate the consequences of their behaviour. The second function is to be able to monitor what the government is doing, so it is about checking public authorities or organizations to see if they are acting in accordance with the law and democracy.

Within these functions, we can distinguish the goals that transparency helps to fulfil. Transparency contributes to democracy as it is a prerequisite for participation and responsibility. It helps the market to function as a transparent environment, allowing economic operators to make better decisions. Furthermore, it is a necessary precondition for the accountability of public authorities, it also contributes to the realization of the rights of individuals in order to prevent the violation of their rights. [2, pp. 111-112] Thus, transparency does not have one specific goal, but helps to meet general goals, such as democracy, increasing trust in government, the implementation of individual rights, economic performance and the functioning of the market. [10, pp. 52-53]

3.1 Free access to information

Access to information was enshrined in law in the second half of the 20th century; post-communist countries did not add it until the 1990s. By law, public institutions must respond to requests for information – take reactive measures (passive behaviour), but also make some information available on their own initiative (or if required by law) – take proactive measures (active behaviour). [10, p. 32] In the Czech legislation, the right to information is guaranteed in the Charter of Fundamental Rights and Freedoms in its Article 17 together with freedom of speech. A more detailed regulation of the right to information can be found in Act No. 106/1999 Coll., On Free Access to Information (hereinafter referred to as "Act"). The Act has a rather broad effectiveness, anyone might require information without having to provide any reasons for doing so, the scope of institutions that are to provide information in its regime is rather broad, and all information available to the institution are to be provided unless they fall within the exceptions. Those are interpreted restrictively.

According to Sec. 2 par. 1, state bodies, territorial self-governing units, their bodies, and public institutions, which are obliged to provide information related to their competence, have the obligation to proceed according to the Act. The obligation to provide information does not apply to opinions and future decisions. The obliged entities include the legislative, executive and judicial bodies, as well as the Supreme Audit Office and the Czech National Bank; central state administration bodies (ministries and other central state administration bodies); the Ombudsman; Government Office; security forces of the Czech Republic; Public Prosecutor; municipalities, regions; and last but not least public institutions. With some institutions, it is not obvious whether they are to be regarded public or not. This is crucial, as private institutions have no duty to provide information under the Act. Doubts arose for example, when state was the majority owner of a business company, the goal which of was to make profit and thus it has an important interest in some of its activities not being revealed to its business rivals. The duty to disclose certain information could jeopardize its market position. To Constitutional Court (hereinafter referred to as the "CC") set criteria to assess the nature of a particular institution, in the judgment in

file no. I. ÚS 260/06, where he discussed whether the public institution is Prague Airport, a state enterprise. The criteria for this assessment include:

- the method of establishment (dissolution) of the institution (presence or absence of private acting);
- whether the founder of the institution is the state or not; if so, it is a sign of the public institution itself;
- the body forming the individual organs of the institution;
- existence or non-existence of state supervision over the activities of the institution; and
- public or private purpose of the institution.

The examined institution should be assessed according to the "predominance of features", to conclude on its public or private nature. The CC came to the conclusion that the state enterprise undoubtedly meets the criteria, and therefore it is a public institution.

The case law has undergone a certain shift since the key CC finding on Prague Airport, an example being the decision-making on the nature of a public institution of ČEZ, a.s. (share of approximately 70% of this energy producing joint stock company is owned by the state). First, the Supreme Administrative Court (hereinafter referred to as the "SAC") ruled in judgment file No. 2 Ans 4/2009-93 that ČEZ, a.s. is a public institution. The company was established during the so-called large-scale privatization by a decision of the National Property Fund (i.e. established by the state), as the state has a dominant position in the company, and thus the creation of bodies takes place under the dominant influence of the state, and thanks to the dominant position, there is also state supervision over the activities of ČEZ. Further, the energy sector is one of the strategic, security and existential interests of the Czech Republic, and therefore the state retains a decisive share in this company.

However, the CC to a constitutional complaint against the cited SAC decision came to a different conclusion in its finding file No. IV. ÚS 1146/16. In the reasoning of the CC, it is explained that the aim of privatization was the privatization of state-owned enterprises, while at the moment of denationalization the direct management or founding function of the state ceased to exist. The company has therefore been a person of private law since its inception, which differs from the state and to which the Commercial Code applies. The creation of its bodies or the exercise of shareholders' rights then had a completely private regime. The CC agreed with the SAC that the company fulfils a certain public purpose, but the essence of its existence and operation is primarily carrying out business activities and making a profit. The obligation to provide information under the Act would affect its position in competition, which could jeopardize its existence. The State "regardless of the size of its shareholding in a company, merely exercises its rights, which, like any other shareholder, confer on it the rules of private law." The majority share does not change anything in itself. Moreover, there is no threshold set in legal provisions the excess whereof would constitute an answer to the question whether it is a public institution or not.

CEZ is thus not an entity with a duty to provide information pursuant to Sec 2 para. 1 of the Act, but has the status of a legally bound person under Sec. 2 para. 2 of the Act, which stipulates that: "*Entities that have been authorised by law to decide on the rights, legally protected interests or obligations of natural or legal persons vis-a-vis the public administration shall also be legally bound persons, however, only to the extent of their decision-making powers.*" This decision thus narrowed decisively the situations when the duty of ČEZ, a.s. occurs.

However, the CC finally specified the decisive criteria in its decision file No. II. ÚS 618/18. The case concerned another energy sector company - OTE, a.s., which is fully owned by the state. The final opinion of the CC is

that: "The term "public institution" according to the Act also includes legal entities in which the state or another public corporation has a 100% ownership interest."

Restrictions on right to obtain information can only be provided by law, according to of Sec. 7-11 of the Act, specifically with regard to the protection of classified information, protection of privacy and personal data, protection of trade secrets, protection of property confidentiality and further.

Pursuant to Act No. 412/2005 Coll., On the protection of classified information and security clearance, the right to information may be restricted with regard to classified information. Classified information must be included in the list of classified information (according to the Government Regulation No. 522/2005 Coll., which lays down the list of classified information) and there must be a potential risk that its disclosure or misuse could cause harm to the Czech Republic. If the applicant requests classified information, the obliged entity may not provide it. If the classified information is only a part of the requested information, the obliged entity shall exclude the classified information and provide the remaining part.

Furthermore, it is not possible to provide information regarding privacy and personal data. Here, the right to information conflicts with the right to privacy, which is enshrined in Article 10 of the Charter of fundamental rights and freedoms. Thus, personal data are protected, however the absolute priority of personal data protection over the right to information is not in place and the two rights have to be assessed by the principle of proportionality in each individual case. Therefore, the disclosure of personal data which is in the public interest will led to publication of such data, if the public interest prevails over the private interest of the affected individual. The CC concluded in its finding of file No. ÚS 517/10, that there is a public interest in learning about the Communist Party membership of individual judges during the totalitarian regime, even though it is personal data information. A political regime that refuses to disclose this information would be untrustworthy and would not be of a democratic state governed by the rule of law. Persons in public office enjoy a reduced level of personal data protection. The proportionality test is based on the presumption that the rights of judges are weaker than the right of the public to know how a judge has behaved in the previous regime. The CC further added that information on membership in the Communist Party is not an indication of the current political attitudes of the subjects and is therefore not an indication subject to the protection of personal data.

Another obstacle may be of financial nature. The Act in its Sec. 17 allows the legally bound persons to charge a fee for the provision of information in an amount which must not exceed the costs relating to making copies, obtaining of data media and sending the information to the applicant. Legally bound persons may also request a fee for a labour intense search for information. In a very recent decision of the CC file No. III. ÚS 3339/20 of 1 July 2021 the CC dealt with a constitutional complaint in the case of a journalist who asked the Police to provide a list of data on all criminal offenses recorded in the last five years preceding the submission of the application. The Police found that the processing of the request would be connected with an extraordinarily extensive search for information, and therefore, on the basis of Section 17 of the Act, set a fee of almost CZK 26 million (EUR 1million) using a qualified estimate. The administrative authorities unjustifiably chose the most complicated possible way to deal with the application when they claimed they need to search each detail manually and estimated that they need four minutes per each crime. The CC therefore found their procedure in determining the payment not only unreviewable, but also highly irrational. According to the CC the legally bound person is to be a legal professional in the information procedure under Article 17 (5) of the Charter of fundamental human rights and freedoms, which is to guide the applicant in the process of providing information in such a way as to satisfy

them as far as possible; it is inadmissible for the liable entities to transfer the responsibility for the successful processing of the application to the applicants and to blame them for the lack of activity where the administrative body should be active with regard to the basic principles of administrative activity. The obliged entity should look for ways to maximally comply with the submitted application and not with reasons to prevent its compliance. In view of the requirements of Article 4 (4) of the Charter of fundamental human rights and freedoms, care should be taken to review the justification for setting a fee for the provision of information not only in terms of its amount, but also in terms of effectiveness and rationality.

The examples above show, that there is a stable case law of the CC and the administrative courts interpreting the restrictions, i.e. the exceptions when information is not provided rather restrictively. The payments are limited and review procedures including the access to administrative courts are enshrined in the law. This all may lead us to a conclusion, that the free access to information legislation and its interpretation are robust and should ensure transparency of administrative bodies.

Furthermore, the Contracts Register Act was adopted in 2015 and publication of contracts entered into by all state and public institutions, territorial self-governing units, state enterprises, legal entities in which the state or territorial self-governing unit and other institutions defined by this Act have a majority ownership share is a necessary condition of such contract's validity.

4. ACCOUNTABILITY

4.1 Different concepts of accountability

Transparency is also subtly intertwined with accountability and the duty to pay damages to those affected in their rights by misuse of power or other types of illegal acting of public administration.

Accountability has different meanings, depending on how widely the concept is perceived. [36, p. 313] In the broadest sense, it is an unspecified term that serves as a synonym for, for example, good governance, transparency or democracy. [1, p. 159] In a narrower sense, these are various mechanisms for controlling and ensuring the quality and efficiency of public institutions. These mechanisms may include transparency, trust and control. [7, pp. 160] "The minimal conceptual consensus entails, first of all, that accountability is about providing answers; is about answerability towards others with a legitimate claim to demand an account. Accountability is then a relational concept, linking those who owe an account and those to whom it is owed." [5, p. 7] The literature usually describes the relationship as one of a principal and an agent. Generally, it means that the performance and acting of an agent is being judged by the principal, while these may include civil servants (or more broadly administrative agencies) as agents and either the public or the superiors as principals. Thus, accountability might be external or internal. [24, p. 230] Further, Bovens distinguishes two concepts of responsibility, namely responsibility as a personal or organizational virtue (broader concept) or as a social mechanism (narrower concept). [6, pp. 947 - 950]

The accountability mechanism is the course of a process that leads to accountability in some way. Well-functioning accountability mechanisms can support innovation in the public sector, which requires the existence of accountability as a public value, a non-politicized public sector and independent and investigative media. [20, p. 94] Despite the broad consensus on necessity of the accountability mechanisms, the practice may differ.

4.2 Dimensions and forms of accountability

There are several types of accountability as there may be different accountable agents (politicians, civil servants), different principles (voters, the public, superior bodies, NGOs etc.), different sorts of actions that are being considered and several types of consequences if misconduct is proved. B. Guy Peters distinguishes accountability per se, responsibility and responsiveness. In the strict sense accountability implies “that the independent authority to whom the account is rendered will have some capacity to enforce remedies for any perceived failures on the part of the individual or the organization that is found wanting.” [21, p. 213] The process involves an external actor and hierarchical control either through regular reports that are to be submitted, or through ad hoc controls. On the other hand, responsibility implies some internal checks and is a more individually oriented concept. Finally, responsiveness rest in the fact that civil servants should be responsive to the political leaders who have been elected and thus enjoy some level of legitimacy. More broadly public administration should be responsive to the public who is affected by the making and carrying out of public policies. [21, p. 214 - 215]

“There is a bewildering array of approaches across the multitude of academic fields that concern themselves with accountability.” [5, p. 6] As the consequences of a misconduct may differ, accountability may be studied from political, legal or sociological perspective. “Law scholars often focus on the norms that do or ought to govern political accountability, the institutions embodying and guarding those norms, and the commensurability of existing norms with new developments in governance, such as, for example, the emergence of multi-level governance.” [5, p. 6] A specific type of legal accountability that concerns public administration is the disciplinary liability of civil servants which is studied in this article.

4.3 Accountability deficits, overloads and traps

Accountability is a very broad and complex concept that is rarely applied in practice flawlessly. There are several repeating problems or shortcomings described in theories related to liability. These are the liability deficit, the overload of liability, the liability trap and the so-called dormant liability. The occurrence of any of these is undesirable. Accountability deficit manifests itself as inappropriate behavior or unresponsive and opaque management. [6, p. 957] It is most often associated with the absence of political control by democratically elected representatives, but it can also be found in other types of responsibility. The accountability deficit illustrates: "the condition that those who govern us are not sufficiently constrained by the requirements to publicly explain their behavior to the various types of forums that have a duty to sanction them." [5, p. 229]

The “accountability overload” describes situations when too much emphasis on accountability can lead to a breakdown in the efficiency and effectiveness of organizations. It arises when various liability measures become inoperable. [15, p. 561] The dysfunction of the measure can be manifested by delays from the point of view of service recipients, excessive bureaucracy, excessive use of public sector resources compared to the private sector, insufficient responsiveness, innovation, etc. A classical example are schools, where teachers have the task of filling in evaluation exercises or answering questionnaires, which are then carried out at the expense of the subject matter.

A specific problem typical of Central and Eastern Europe is insufficient accountability or "sleeping accountability". [3, p. 320 - 321] Greater transparency, use of information technology or the transition from governing to governance can reduce the burden of responsibility. [5, p. 560]

Sometimes institutions and individuals are interested only in the proper fulfillment of evaluation criteria, thus no longer tend to improve in fulfilling their public mission. [25, p. 319] We can see a close connection with accountability overload, where frequent monitoring and evaluation is undesirable, as it does not give actors enough time to carry out their responsibilities. The accountability trap refers to a situation where actors focus on improvement only in how they are evaluated, not in terms of the benefits their aktivity should bring to the society.

4.4 Sleeping accountability

Discrepancies between the formal existence of many accountability mechanisms and their actual performance is a phenomenon of post-communist countries in Central and Eastern Europe. Veselý describes these deficits in the so-called EU-10, which includes: Poland, the Czech Republic, Slovakia, Hungary, Slovenia, Lithuania, Latvia, Estonia, Romania and Bulgaria. [25, p. 314] In these countries, accountability mechanisms have only been incorporated in the 1990s, and in general we can say that they do not work as well as in Western European countries. In this respect, the term "sleeping accountability" has been used, which is characterized as: "insufficient use of established procedures and liability mechanisms". [25, p. 320]

Sleeping accountability can be studied in more detail along to the three phases of accountability - the information, the discussion and the consequences – when they are not fully satisfied. In practice, the information phase is not the essential element causing sleeping responsibility, although it still might be improved. A more important element is the debate phase, the EU-10 countries are affected by high levels of corruption, low levels of trust in governments, frequent changes in political representation and a lack of independent fora. Independent fora are needed for the proper functioning of accountability mechanisms. Low level of trust, frequent changes in political representation, and the “lack of knowledgeable and impartial accountees” are the reason for the incomplete functioning of the third phase sanctions and other consequences, such as the accountable public servant being no longer in service nor occupying any similar position. [25, p. 321] Veselý concludes that it is important to distinguish between accountability *de facto* and *de jure*.

4.5 Disciplinary liability

Regulations governing disciplinary liability are perceived as one of the key elements of the fight against corruption and as an essential condition of a democratic state governed by rule of law principle. Legal mechanisms for holding public officials liable through disciplinary proceedings for any intentional breach of rules and negligent misconduct. The disciplinary action may result in dismissing the official, should such misconduct be proved. The basic preconditions of legal regulations include, for example, officials independent of the political environment, transparent selection procedures, clearly defined duties, remuneration based on performance, etc. Duties of civil servants may arise from legal and service regulations, and ethical standards set by internal rule.

4.6 Legal regulation of civil servants disciplinary liability in the Czech Republic

Art. 79 of the Czech Constitution provides for special legislation governing the status of civil servants. As of 1 January 2015, Act No. 234/2014 Coll., On Civil Service, came into effect (hereinafter the “Act on civil service”). Till then standard legal institutes such as disciplinary liability, requirements for individual positions and the

procedure for illegal or incorrect orders were not enshrined in laws. The provisions contained in Sec. 87–97 of the Act on civil service stipulate that civil servants have to perform their role in accordance with official discipline and set liability for its violation. According to Sec. 87 service discipline means: “proper fulfillment of the duties of a civil servant arising from legal regulations that relate to service in the field of service performed by him, from service regulations and from orders”. A disciplinary offense is a culpable breach of official discipline, which includes both conscious and negligent liability. Disciplinary proceedings, unless otherwise provided, are subject to the provisions of the Administrative Procedure Code (Act No. 500/2004 Coll., as amended).

The disciplinary proceedings are initiated ex officio by the disciplinary commission on the initiative of the service body. Presumption of innocence principle applies. A disciplinary measure may be imposed for a disciplinary offense, which according to Sec. 89 par. 2 may be a written reprimand, salary reduction of up to 15% for a period of up to 3 calendar months, dismissal from the position of a superior official, or a dismissal. Disciplinary measures cannot be combined, e.g. if a disciplinary offense has been resolved by a written reprimand, the salary cannot be reduced at the same time. The official may also be released from service only after the disciplinary proceedings has been instigated. Sec. 48 par. 1 sentence three of the Act on civil service, stipulates that two conditions must be met simultaneously: initiation of disciplinary proceedings on reasonable suspicion of committing a particularly serious disciplinary offense if keeping such person in office would jeopardize the proper performance of service or collecting evidence for the disciplinary proceedings. Such official may be kept out of service until the end of the disciplinary proceedings, unless the reason for which the civil servant was released from service ceases earlier.

Minor deficiencies in service may be settled by a written or oral admonition pursuant to Sec. 88 par. 3 of the Act on civil service. Nevertheless, according to the Supreme administrative court judgment file No. 4 Ads 265/2020 this admonition is not a disciplinary measure. The purpose of the admonition is not primarily sanctioning, but according to the Supreme administrative court it is a quick, flexible and effective solution to small failures of civil servants. A minor deficiency resolved by the admonition does not justify the initiation of disciplinary proceedings. Through the admonition, the civil servant is primarily alerted to the incorrectness of his conduct, so it has a preventive and alert character. Thus, the admonition creates an obstacle of *rei iudicatae* and prevents the initiation of disciplinary proceedings for the same misconduct. However, the written admonition is inserted in the personal file of the civil servant and may be considered as an aggravating circumstance in disciplinary proceedings in terms of determining the type of disciplinary measure for other disciplinary offenses against the service discipline.

A written admonition may be the subject of judicial review on the basis of an action pursuant to Section 65 of the Act No. 150/2002 Coll., the Code of Administrative Justice. On the contrary, the review of an oral admonition will be almost impossible in terms of its nature, therefore the judicial review cannot be applied to it.

Several disciplinary offenses of the civil servant may create the subject of disciplinary proceedings, in which case a disciplinary measure will be imposed according to the most serious act (i.e. the absorption principle applies). Thus, several disciplinary proceedings cannot be conducted simultaneously with the civil servant. However, if he commits another disciplinary offense at the time when the previous proceedings is ended, it is of course possible to impose a disciplinary measure on him in a "new" case.

The disciplinary liability of a civil servant is subject to a one-year limitation period pursuant to Section 90 of the Act on civil service. If disciplinary proceedings have not been initiated within one year of the disciplinary offense perpetration, the civil servant may not be punished. It is an objective period, since its beginning is linked to the day when the disciplinary offense was committed, not when the competent authority became aware of the offense.

Pursuant to Sec. 89 par. 3 of the Act on civil service the disciplinary measure of dismissal from the post of superior or dismissal from service may be imposed only for a particularly serious disciplinary offense, especially if the civil servant kept violating discipline for a long time, caused a particularly serious consequence or acted with reprehensible motives. Thus, the Act on civil service does not provide any definition of a particularly serious offence, as it only provides several examples. The Municipal Court in Prague in its judgment file No. 10 Ad 18/2019 dealt with the issue of dismissal due to a disciplinary offense of payment of remuneration in excess of the law, specifically the reassignment of a representative to a higher grade than she actually belonged to. The court considered the "definition" of a particularly serious disciplinary offense. As the list in the Act on civil service is only demonstrative, so the commission of a particularly serious disciplinary offense may consist in another breach of official discipline, which, however, must be of high severity. In this particular case, the Municipal Court ruled that the illegal drawing of funds was a particularly serious disciplinary offense.

4.7 Practice in the Czech Republic

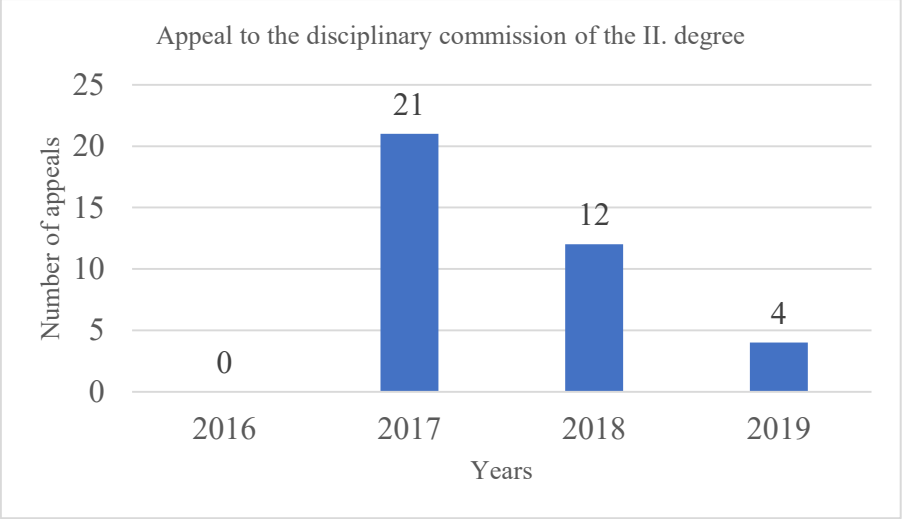
The disciplinary proceedings are two-instance. A disciplinary commission of the 1st degree decides in the first instance. It is to be established in every service office with at least 25 civil servants. A disciplinary commission II. degree decides in the second instance. It is established at the Ministry of the Interior and has nationwide competence. The position of the disciplinary commission II. degree is problematic in some respects, as it is the superior service body in matters in which it has decided on its own. Each disciplinary commission has 3 members, decides as a collective body under the condition set in Sec. 134 of the Administrative Procedure Code. The commission is chaired by the highest-ranking civil servant of the service office. The disciplinary commission first decides on the issue of guilt and then, when imposing a disciplinary measure, selects one of the disciplinary measures stipulated by law. The choice of a disciplinary measure depends on the administrative discretion of the members of the commission. The head of the service office is subject to the disciplinary commission of the first instance of the superior body jurisdiction, or to the commission of the first instance of the Ministry of the Interior.

The disciplinary commission of the first degree is established with 234 service offices. No national statistics regarding the numbers and subject of disciplinary proceedings are kept. The Civil Service Section of the Ministry of the Interior, who is the responsible body, does not collectively record the number of disciplinary proceedings. Unless the civil servant appeals against the decision of the disciplinary commission of the first instance, the Civil Service Section does not even know about the disciplinary proceedings.

The disciplinary commission of the first degree established at the Ministry of the Interior has not yet ruled in any proceedings. Disciplinary commission of the II. degree has been deciding on the appeal of the participants in the disciplinary proceedings against the decision of the disciplinary commissions of the first instance or in the case of the filed objections of bias in the disciplinary proceedings since 2016. The following graph shows that the decision-making of the Disciplinary commission II. degree is rather an isolated case and the number of appeals in which it has decided is still declining. Thus, it may be concluded that the disciplinary liability mechanisms are

used rather rarely. That might have several explanations, either there is no need for such proceedings as the civil servants work perfectly, or there is no strong will to instigate such proceedings.

Graph 1: Number of appeals to the disciplinary commission of the II. degree



Source: [30, p. 17; 31, p. 15]

5. RELATIONSHIP BETWEEN TRANSPARENCY AND ACCOUNTABILITY

Transparency on its own would work as a pure incentive to publish information to the public, but without accountability there would never be any action against inappropriate behaviour of politicians, civil servants, or other actors. The public would learn about misconduct, but there would be not negative consequence to it. At the same time, a separate accountability principle would not make do, as there would be no incentives or evidence information for granting corrective action. Transparency therefore has a very strong position of a partner principle, as it creates accountability, [13, p. 664] or, as some authors state, transparency is part of accountability (the so-called information phase). [9, p. 147] However, a high degree of transparency does not automatically mean a high degree of accountability or better performance of public administration. The level of responsibility of governments in Central Europe is relatively limited [25, p. 320] and the low level of responsibility significantly correlates with the level of corruption.

The discussion phase of accountability is also exacerbated by the high level of politicization of public administration. The depoliticization of public administration is regulated by the relevant laws of individual states. Depoliticization of public administration is the weakness of Czech public administration. The goal of the Act on civil service was to increase the efficiency and effectiveness of state administration, professionalization and stabilization of state administration and its depoliticization. The professionalization of state administration is fulfilled by the requirement of education of civil servants, official examinations and official evaluation. Experience shows that the Act on civil service is in some cases quite rigid and does not allow to respond to the inadequate quality of performance of civil servants, even in the position of superiors. [28, p.13] The amendment to the Act on civil service, carried out by the Act No. 35/2019 Coll., abolished the disciplinary liability of state secretaries and instead introduced the possibility of governmental dismissal from the office at the initiative of the relevant ministers. This provision politicised rather than depoliticised the civil service. The process of

independence of the civil service has been the subject of a review by the European Commission, according to which the Act on civil service partially met its original goal. [29, p. 48]

Generally said, several measures need to be taken to improve accountability, including the promotion of free access to information. Transparency is the first step in reducing corruption and increasing citizens' participation in public life. Corruption is one of the problems of the Czech Republic, as there is a considerable degree of politicization of civil servants, which cannot be eliminated even by the adopted laws. The Act on civil service could be described as an anti-corruption law, as it regulates the disciplinary liability of civil servants. The law on lobbying, which still has not been adopted, could further reduce corruption. However, even a low level of corruption will not ensure compliance with the established responsibilities and legal duties. There is a need to ensure that disciplinary institutes are clear and easy to apply and that there is a willingness and ability to use them effectively. It follows that none of the elements alone will improve accountability, as they all are interdependent and they need to be connected properly.

Since 2015, there has been an investigator position established with individual service authorities, appointed by the service authority to investigate allegations of suspected law infringements and to ensure the protection of the civil servant who announced such misconduct (the whistle-blower) and thus fears sanctions, disadvantage or coercion that may occur in connection with the notification made. The activity and designation of investigators is based on the empowering provision of Sec. 205 letter d) of the Act on civil service, on the basis of which the Government Decree No. 145/2015 Coll., was issued. It is a matter of course for the investigator's activities to protect the identity of the whistle-blower during the ongoing investigation; in the case of the whistle-blower's interest, the investigator has the opportunity to keep his identity secret. The investigator prepares a written report on the course and results of his investigation, which, with regard to the identified breaches of law or other misconduct, contains a proposal for appropriate remedial measures. All the designated investigators shall submit to the Ministry of the Interior a report on their activities for the past year, no later than 1 March of the following year.

The following table shows the statistics and proves a very low number of deficiencies and measures that were taken in response.

Table 1: Summary survey statistics for the years 2017 to 2020

Year	2017	2018	2019	2020
Total number of service offices where the investigator is appointed	107	107	108	109
Total investigators' reports sent	107	100	106	109
Total notifications received in the sense of Government Decree No. 145/2015 Coll.	71	57	55	41
Investigation finalised	39	48	38	21
Ongoing investigation	2	3	3	1
Transferred to another investigator	74	7	15	19
Forwarded to the competent administrative authorities*	61	28	67	230
Handed over to the administrative body competent to hear the administrative offense	10	0	1	2
Notification to the public prosecutor or to the Police of the Czech Republic	1	2	1	1
Identified deficiencies	11	9	6	5
Measures taken	11	9	9	6

* This is a transfer of other complaints or grievances that were delivered to the investigators, but it was not a notification in the sense of Government Decree No. 145/2015 Coll.

Source: Annual Report on the Civil Service: on the Civil Service in 2020. Ministry of the Interior of the Czech Republic: Civil Service [26, p. 71]

Based on the reports submitted for the year 2020, it was found that the rate of use of the institute for reporting suspected infringements by civil servants in 2020 decreased slightly compared to previous years. Furthermore, the notification is also widely used for submissions that do not comply with the wording of a government regulation. These submissions are assessed as other submissions, or forwarded to the competent departments within the service office or other administrative bodies for settlement, most often, for example, as a complaint within the meaning of Sec. 157 of the Act on civil service or as an initiative for investigation under a special law. On the basis of information from the received written reports on the activities of investigators, measures were taken with regard to the identified shortcomings, e.g. oral admonition of the service body, public control, filing of a criminal complaint. [26, p. 71]

Even though there is another instrument that could support civil servants' liability created by legislation, it is not used in practice. Whistleblowing is generally perceived negatively in the Czech Republic due to the experience with totalitarian regimes. Still, some issues may not be transparent to the public or they become transparent rather lately. Thus, the persons that may learn about inadequate behaviour or even breach of laws due to their everyday presence in the office might be most helpful to promote accountability. The investigators' findings could be forwarded to the disciplinary commissions that would be obliged to instigate the proceedings, however the decree does not provide expressly for that. I believe that this should be considered *de lege ferenda*.

6. CONCLUSION

It is crucial for the democratic states governed by the rule of law principle to hold their civil servants accountable. Accountability comprises information, discussion and consequences/remedies phase. Thus, government transparency and accountability are closely intertwined. The Act providing for a broad right to obtain information form administrative authorities has been effective for more than twenty years in the Czech Republic. Stable case law of the administrative courts and the Constitutional Court adopting rather restrictive interpretation of exemptions when information does not need to be provided subsists. The Contracts Register Act was adopted in 2015 and publication of contracts entered into by all state and public institutions, territorial self-governing units, state enterprises, legal entities in which the state or territorial self-governing unit and other institutions defined by this Act have a majority ownership share is a necessary condition of such contract's validity. Thus, it seems that all necessary legal instruments indispensable for government openness are in effect. Further, mechanisms ensuring disciplinary liability of civil servants, which is one of the strongest forms of accountability, have been provided for in the Act on Civil Service since 2016 should the agency learn of its official's misconduct. However, transparency is an important *sine qua non* condition but not the sole condition to ensure accountability. It seems that the discussion phase and the consequences phase have not been paid attention to as much as they should have in the Czech Republic. Even though, the data are available, it happens that no corrective measures are taken in reaction to the found misconduct.

Despite the lack of specific data on the imposition of disciplinary measures and the conduct of disciplinary proceedings, as the Czech Republic maintains no central records, it can be concluded from the available data on proceedings run by commissions of the 2. degree that the institute of disciplinary proceedings is not used sufficiently. Due to the complexity and time-consuming nature of disciplinary proceedings, it is common

practice that many formal disciplinary liability relationships are not in fact enforced. Simplification of the whole process could ensure greater use of the institute of disciplinary proceedings. It would be more appropriate not to establish a first-level disciplinary commission at each service office with more than 25 employees, but to increase this limit and have the disciplinary commission of the superior body decide for disciplinary measures of "smaller" agencies civil servants. Furthermore, the institute of whistle-blowers is not interconnected with the disciplinary proceedings under the Act on civil service. This could be improved *de lege ferenda*. Accountability can also be promoted through informal liability relationships and the imposition of informal measures (admonitions, reprimands).

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