



SHINING THE LIGHT ON CORRUPTION: FREEDOM OF INFORMATION AND TRANSPARENCY IN CENTRAL AND EASTERN EUROPE

October 2024



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FOREWORD

Access to information contributes to promoting integrity of public institutions. Effective and appropriate freedom of information frameworks contribute to fostering public trust in the government sector and play a critical role in combatting corruption.

One such critical tool is the national freedom of information laws. Largely enacted in Central and Eastern Europe decades ago following the fall of communism, these laws ensure a more robust and transparent source of information for journalists, civil society, and the general public about government procurements generally and healthcare procurement particularly. However, over time, those who wish to obscure their activities have often sought to erode those protections—a worrying trend that accelerated during the COVID epidemic, when the crisis of the moment often hid the illegal actions of the corrupt.

Due to the scale of government expenditures, the potential for corruption is extraordinarily high in the healthcare sector. With the true costs of healthcare services often murky, the vulnerability to corrupt actors in this sector is equally high. Corruption is particularly pernicious in this area, potentially denying the public safe and reliable healthcare services while diverting badly needed resources from the health of citizens to the pockets of corrupt officials and businesses. It is therefore critical to have all the tools necessary to deter, identify, expose, and prosecute those whose criminal offenses jeopardize the fundamental health of the public.

The CEELI Institute therefore is proud to present the following publication *Shining the Light on Corruption: Freedom of Information and Transparency in Central and Eastern Europe*. This report provides an invaluable analysis of the recent backsliding in freedom of information, and charts a way forward to restore these highly needed anti-corruption protections. We hope that the recommendations for good practices can provide valuable guidance to those committed individuals and organizations seeking to combat corruption in all its forms.

Robert R. Strang
Executive Director
The CEELI Institute

EXECUTIVE SUMMARY

Freedom of information (FOI) is the right of individuals and organisations to obtain information from public bodies on a wide variety of issues of public interest. It includes both a right to demand information and obligations on public bodies to publish information. It is recognised globally as a human right and essential tool for fighting corruption.

FOI is a crucial tool in the fight against corruption. It facilitates the transparency of public administration, making available information on decision-making, hiring, spending, and procurement available for public scrutiny. It is frequently used by civil society organisations and journalists to access information to reveal and fight corruption. It is also recognised that public access to information deters corrupt actors.

In Europe, there is a complex but incomplete collection of regional treaties, directives, rules, and recommendations governing FOI. Only the Council of Europe Tromsø Convention provides for a comprehensive approach to FOI, but few countries have ratified it.

The EU Member States in Central and Eastern Europe all adopted comprehensive FOI laws more than 20 years ago. These laws are generally similar in structure, however, there are dissimilarities between the countries, especially relating to appeals and oversight. The countries have also adopted numerous other related laws and policies around open data and access to sectoral information useful in the fight against corruption including relating to procurement, conflicts of interest, and beneficial ownership of companies.

Most of the countries face substantial challenges with the full implementation of their FOI laws. Often officials do not respond to requests or affirmatively publish information, in violation of clear requirements in law. Exemptions, especially relating to personal data are abused. Legal redress may be slow. At the same time, new technologies are increasing the amount of information created.

FOI is of particular use in monitoring healthcare systems, usually one of the largest components of national budgets. In particular, monitoring of healthcare contracts for goods and services have revealed considerable corruption in many countries. FOI is also of use in ensuring that appointments of key officials are made in an appropriate manner and with integrity.

Anti-corruption and other civil society groups have been making extensive use of FOI and other laws to monitor corruption in the healthcare sector including in procurement and hiring. They have faced many problems in obtaining reliable and current information. This proved especially difficult during the COVID pandemic, where access was severely restricted in some countries while rules on procedures and oversight were often suspended.

This report was carried out in collaboration with civil society in Central and Eastern Europe. It provides an overview of the international instruments and standards on FOI, and outlines the legislative landscape in the region. The third section of the report highlights opportunities and challenges in using access to information to combat corruption in the public sector, including in the healthcare sector, and provides illustrative case studies. Finally, recommendations of good practices for governments and civil society are offered. The annex of the report features an analysis of access to healthcare-related information in countries in the CEE region and an overview of civil society's efforts to promote integrity through FOI in the healthcare sector.

Among the recommendations, governments are encouraged to ensure alignment of national legislation with international standards and harmonize data protection policies with FOI frameworks. Civil society, in turn, should consider engaging with public officials, the judiciary and other relevant stakeholders to raise awareness of the importance of FOI, and share expertise to support other civil society organizations in their efforts to use FOI as an anti-corruption tool.

“Sunlight is said to be the best of disinfectants; electric light the most efficient policeman”

- U.S. Supreme Court Justice Louis Brandeis, 1913

I. DEFINING FREEDOM OF INFORMATION

Freedom of information (FOI) is the right to be able to obtain and use information from public bodies. The right empowers any person or body, including companies, civil society organisations, media organisations, and informal citizen associations to demand information held by the bodies in all forms without having to show a reason for asking for it. The information can be in any form, including documents, data, messages, and videos.

The public bodies are obliged to respond to the requests and provide the information requested within a limited period. There are exemptions for protecting from harming the important interests of others such as privacy and commercial secrets and national security, among others. These exemptions need to be balanced against the public interest in disclosure and there is a presumption that the information should be made public. Independent bodies or courts are tasked to enforce the right.

Public bodies are also affirmatively required to publish information of public interest, such as contracts, spending, rules, and the names and roles of leading officials. This is typically done using websites or data portals.

FOI derives from right of freedom of expression to “seek and receive information”¹ and is widely recognized worldwide as a human right that underpins public participation and democracy and supports the development of numerous other rights including the right to education, health, the environment, and sustainable development.²

The right is typically recognized at the national level through constitutional provisions and national laws.³ There are currently around 140 jurisdictions worldwide who have adopted laws or national regulations enshrining FOI into national law. In many countries, it is known as the right to information (RTI), access to information (ATI), access to documents, or more informally as “The Right to Know”.

A. The Importance of FOI for Fighting Corruption

Freedom of information is a key tool in the fight against corruption. Information is crucial for the holding governments accountable and it is vital for journalists and civil society

¹ See Article 19, Universal Declaration of Human Rights; Annual report of the United Nations High Commissioner for Human Rights and reports of the Office of the High Commissioner and the Secretary-General, Freedom of opinion and expression (A/HRC/49/38, 10 January 2022)

² UN Special Rapporteur on promotion and protection of the right to freedom of opinion and expression, Sustainable development and freedom of expression: why voice matters, A/HRC/53/25, 19 April 2023. Available at <https://www.ohchr.org/en/documents/thematic-reports/ahrc5325-sustainable-development-and-freedom-expression-why-voice>

³ Andrey Richter, The need to accelerate worldwide progress: UNESCO 2023 report on public access to information (SDG 16.10.2) (UNESCO, 2024). <https://unesdoc.unesco.org/ark:/48223/pf0000389214>

organisations to identify misgovernance, corruption, and illicit financial flows that seriously hinder development in countries across the world. FOI laws are regularly used by journalists and civil society groups to demand information from public bodies about decisions, procurement and spending, and conflicts of interest. Open data, either released proactively through FOI requirements or other initiatives, complements these efforts in making important information easily available for uncovering and tracking corruption.⁴

Anti-corruption groups frequently use FOI laws for a variety of reasons. As Transparency International Czech notes:

A2I laws are a major tool for us - a tool, which has proven to be effective in great many times. Such tool can be utilised to access information to be further analysed, to verify or rectify a theory, or to simply cause a stir and provoke a reaction, getting things into motion.⁵

The easy availability of information, either by requests under FOI legislation or by affirmative publication under FOI or other laws, can also significantly benefit local communities, who can examine spending commitments and claims and compare them against local realities. This could include the state of healthcare facilities and availability of drugs and services or road and infrastructure works. They can also detect conflicts of interest, recognising the relatives or friends of local officials receiving government works. Local citizens can then notify CSOs or journalists.⁶

FOI laws can also act as a deterrent, warning those considering engaging in corruption that their actions may become publicly available. This can lead to a reduction of corrupt behaviours, especially relative to areas such a public procurement, where the collection of detailed information and data about decisions is routine.

*“When it comes specifically to public procurement, public scrutiny and access to official documents are key to effectively preventing corruption”.*⁷

- Council of Europe’s Group of States Against Corruption (GRECO)’s
President Marin Mrčela

Case study⁸

In Croatia, a local politician who [filed FOI requests via Imamo pravo znati \(IPZ\)](#)⁹ to the Tourist Board of the Zadar County, asking for information about a trip to New York that was supposed to be part of a promotion of Zadar, the fifth largest city in Croatia, but in fact was merely a very expensive excursion of friends and associates. After being called out by local

⁴ See Karolis Granickas, Open Data as a Tool to Fight Corruption, European Public Sector Information Platform Topic Report No. 2014 / 04, April 2014.

⁵ Submission of TI-Czech

⁶ Open Contracting Partnership, Case Study: Open Contracting in the Slovak Republic, 14 August 2013. Available at https://www.open-contracting.org/2013/08/14/case_study_open_contracting_in_the_slovak_republic/

⁷ COE, GRECO calls on European governments to ensure access to information to help fight corruption, 25 June, 2023

⁸ Submission of Gong

and national media, the Head of the Zadar Tourist Board Mario Paleka resigned from office, while continuing to claim that the trip was a great success in the promotion of Zadar. The local opposition party Akcija Mladih (Youth Action) subsequently filed a criminal report to the State Attorney General.

Healthcare, Corruption and Freedom of Information

FOI is essential in fighting corruption and promoting transparency in healthcare. In most countries, the health budget is typically one of the largest areas of expenditures, involving spending for both supplies and services. Spending is increasing the most in countries with complex systems involving numerous bodies, both public and private, responsible for and conducting different functions. Many countries have decentralized structures in the sector, with different systems at the national, regional and local levels, each with their own appointments, contracts, and operations.

This complexity has led to increased possibilities for corruption in the sector, which reduces the capacity of countries to ensure care. The largest area for corruption relates to procurement, both of goods and services. Billions are spent every year in each country on a variety of medical supplies, from complex equipment to protective equipment to cleaning supplies. Further, they also contract out for services such as electricity and water, as well as subcontract out certain services to private vendors.

The leaderships of these various institutions needs close scrutiny, to ensure that appointments are not made on the basis of cronyism, bribery, or as a larger system of state capture. Access to this information can be either through FOI or publication of information requirements in other laws.

Case study¹⁰

In Hungary, the Ministry of Interior ordered a comprehensive study on the state and transformation of the healthcare system from the international consulting firm Boston Consulting Group for EUR 720,000 in 2020. However, the content of the study has not been made public or shared with stakeholders as the ministry classified it for a period of ten years. Citing public interest, K-Monitor filed a lawsuit against the Ministry, seeking access to the contract with BCG and the study itself. K-Monitor won the case in 2024¹¹ but the Ministry is expected to seek extraordinary review in the highest court.

⁹ [Imamo pravo znati](#) (Right to Know) is Gong's digital tool developed together with Code for Croatia, an informal group of civic hackers, with the aim of encouraging citizens to become aware of their constitutional right to access to information, and simplifying the submission of FOI requests.

¹⁰ Submission of K-Monitor

¹¹ See https://k.blog.hu/2024/02/29/a_belugynek_ki_kell_adnia_a_titkos_bcg-tanulmany

B. The Necessity of Civil Society and Journalists

Access to information, either through FOI or these other laws and practices, is not sufficient by itself to reduce corruption. Considerable research has shown that effective civil society and media are needed to be able to use and publicise the information to pressure decisionmakers to take action against the corrupt actions.¹² This also requires the existence of effective mechanisms of enforcement or regular disclosure may lead only to disillusionment and apathy.

An additional measure is the protection of civic space, so that NGOs and journalists are not constrained from being able to effectively act to fight corruption. There has been increasing restraints on NGOs to be able to operate in numerous countries and attacks on journalists.¹³ In the region, this includes imposition of foreign funding laws such as Hungary's Protection of National Sovereignty Act.¹⁴

At the UN General Assembly Special Session on Corruption (UNGASS) in 2021, the UN Member States committed to ensure that “the conditions are present for their effective contribution to achieving the objectives of the Convention, including the ability to operate independently and without fear of reprisal because of their efforts in that regard”.¹⁵ This recommendation needs to be fully implemented to ensure CSOs and journalists are able to play their important roles.

Case study¹⁶

Civil society organizations in the Czech Republic used the national FOI law to obtain data about emission control stations of vehicles. The data, collected by the Ministry of Transportation, were analysed to point out irregularities and possible corruption schemes in the system.

II. FREEDOM OF INFORMATION IN INTERNATIONAL AND EUROPEAN LAW

There are many international instruments, including treaties, declarations and agreements, as well as decisions of international courts, which endorse freedom of information. These instruments are found at both the international level, as well as from European regional bodies and apply across a number of thematic areas. Most importantly, they agree that FOI is

¹² See e.g. Žuffová. Do FOI laws and open government data deliver as anti-corruption policies? Evidence from a cross-country study. *Government Information Quarterly*, 37(3) (2020) <https://doi.org/10.1016/j.giq.2020.101480>

¹³ Report of the Special Rapporteur on the situation of human rights defenders, At the heart of the struggle: human rights defenders working against corruption (UN Doc A/HRC/49/49, 28 December 2021)

¹⁴ Hungary's NGOs feel 'chilling effect' of foreign funding law, *The Parliament Magazine*, 31 May 2024.

¹⁵ Report of the Conference of the States Parties to the United Nations Convention against Corruption on its preparatory work for the special session of the General Assembly on challenges and measures to prevent and combat corruption and strengthen international cooperation, UN Doc A/S-32/2/Add.1, 17 May 2021.

¹⁶ Submission of TI-Czech Republic.

a fundamental human right in relating to freedom of expression and applying to all persons, and also as a key obligation of states relating to their commitments to fight corruption.¹⁷

A. International Instruments

Freedom of information is recognised in international laws in numerous instruments relating to human rights, anti-corruption and environmental protection including the Sustainable Development Goals.

Under Article 19 of the Universal Declaration of Human Rights and Article 19 of the International Covenant on Civil and Political Rights (ICCPR), FOI is an essential element of freedom of expression and the right to seek and receive information. In 2011, the UN Human Rights Committee released General Comment 34 on Article 19 to better define the right of freedom of expression, including the right to information. The Comment states the Article ensures the right to information held by public bodies and countries must enact legislation to give effect to the right.¹⁸

In 2022, the UN's Office of High Commissioner for Human Rights released a report building on the General Comment, specifying principles that all countries should incorporate relating to FOI:¹⁹

Recognition in law. States should enact the procedures necessary for a person to gain access to information, such as by legislation.

Exemptions. When it is necessary to restrict the right of access to information on legitimate grounds, the burden is on the State to demonstrate that it has no other means to protect the interest at stake. Where restrictions are necessary for a legitimate purpose such as national security or protecting the rights of others, they must be proportionate to the interest protected, they must be appropriate to achieve their protective function, and they must be the least intrusive restriction among those that achieve their protective function.

Maximum disclosure. All information held by public bodies should be subject to disclosure, and this presumption may be overcome only in very limited circumstances. Rights holders should be able to access adequate and necessary information as soon as it is known.

Applies to all public bodies. The obligation to provide access to information applies to the executive, legislative and judicial branches of government, and

¹⁷ See SDG Targets 16.6 and 16.10

¹⁸ *Toktakunov v Kyrgyzstan*, Merits, Communication No 1470/2006, UN Doc CCPR/C/101/D/1470/2006, IHRL 156 (UNHRC 2011), 28th March 2011

¹⁹ Annual report of the United Nations High Commissioner for Human Rights and reports of the Office of the High Commissioner and the Secretary-General, Freedom of opinion and expression (A/HRC/49/38, 10 January 2022)

extends to all organs of the State, including all de facto entities and private entities carrying out elements of governmental functions.

Proactive publication. States should seek to proactively disclose information in the public interest. States should implement general policies for the proactive publication of information as a measure to complement the right of individuals to access information. States have a positive obligation to put information in the public domain such as information required for the exercise of other human rights. Information should be published in formats that would permit its reuse.

Procedures. Requests for access should be processed in a timely manner. Information should be available at a reasonable cost.

Independent oversight. States should establish independent and impartial oversight mechanisms with a mandate to monitor and report on the implementation of the right of access to information. The reports of such a mechanism should be made public.

International anti-corruption law also requires that countries adopt measures to make information available as a means to fight corruption. Article 10 of the UN Convention against Corruption (UNCAC)²⁰ requires countries to adopt procedures or regulations to allow the general public to demand information on the organisation and decision-making process and imposes duties on public bodies to publish information. Article 13 on the “Participation of society” requires countries to improve participation in anti-corruption efforts by enhancing transparency and ensuring public access to information. UNCAC also requires transparency of procurement (Article 9), disclosure of public officials’ assets and conflict of interests (Article 8), and promotes whistleblower protections (Article 33).

There are also international agreements and documents on public procurement, which promote access to information to fight corruption. These include the World Trade Organisation’s 1994 Agreement on Government Procurement²¹ and the UNCITRAL Model Law on Public Procurement.²²

B. European Instruments

The legal infrastructure related to access to information in Europe is fragmented. There is no overarching legislative instrument that binds countries in the region such as in the fields of whistleblower protection or personal data protection. Instead, there is a myriad of treaties, directives, agreements, court decisions, and declarations that form a legal patchwork under which countries have adopted national laws, which are roughly similar but diverge in significant ways.

²⁰ UN Convention Against Corruption. http://www.unodc.org/unodc/en/crime_convention_corruption.html

²¹ WTO, Revised Agreement on Government Procurement, Annex to the Protocol Amending the Agreement on Government Procurement, adopted on 30 March 2012 (GPA/113)

²² UNCITRAL Model Law on Public Procurement. UN Doc, A/66/17, annex I, 1 July 2011

Council of Europe

The Council of Europe (COE) has long recognized freedom of information. The Parliamentary Assembly first issued a resolution in 1979 recognizing the importance of FOI, calling on the Committee of Ministers to recommend that member countries adopt FOI laws.²³ In 1981, the Committee adopted general principles on the right of access that member countries were recommended to implement.²⁴

In 2002, the Committee issued detailed guidelines for member countries on developing access laws²⁵ and began work on a convention to improve and harmonize practice across the region, which it completed and opened for ratification in 2005. The Convention on Access to Official Documents (CETS 205-“Tromsø Convention”), only entered into force in December 2020. The convention sets out a comprehensive framework for access to information laws in COE member states including procedures, exemptions, and appeals. Importantly, it includes a public interest test for exemptions. However, it is largely silent on the issue of independent oversight mechanisms. To date, it has been of limited utility and of the countries covered by this report, only Hungary and Slovenia have both signed and ratified the Convention.

A more limited right of access to information has also been recognized in caselaw by the European Court of Human Rights under Article 10 of the European Convention on Human Rights. In *Magyar Helsinki Bizottság v. Hungary*, the Court recognized “there exists a broad consensus, in Europe (and beyond) on the need to recognise an individual right of access to State-held information in order to assist the public in forming an opinion on matters of general interest”.²⁶ The Court set out a number of criteria that must be satisfied for the application to succeed:

- (a) the purpose of the information request;
- (b) the nature of the information being sought;
- (c) the role of the applicant; and
- (d) the readiness and availability of the information in question.

The public interest in the information can be satisfied when it “may relate to issues concerning the life of the community, important social issues or problems the public would have an interest in being informed about” such as where “disclosure provides transparency on the manner of conduct of public affairs and on matters of interest for society as a whole and thereby allows participation in public governance by the public at large.” The media or NGOs

²³ Council of Europe Parliamentary Assembly, Recommendation 854 (1979) on the disclosure of government documents and on freedom of information

²⁴ COE Recommendation No. R (81) 19 on the access to information held by public authorities

²⁵ COE, Recommendation Rec(2002)2 of the Committee of Ministers to member states on access to official documents, 2002. http://cm.coe.int/stat/E/Public/2002/adopted_texts/recommendations/2002r2.htm

²⁶ *Magyar Helsinki Bizottság v. Hungary*, App no. 18030/11, § 31-63, 148

acting in a “public watchdog role” such as for anti-corruption purposes satisfies the criteria of the applicant. This has been reaffirmed by the Court numerous times.²⁷

Access to information is also a component of European anti-corruption law. The Group of States against Corruption of the Council of Europe (GRECO) set up to evaluate member states’ implementation of the COE Civil and Criminal Conventions against Corruption have frequently promoted access to information as a measure to fight corruption. In its 2022 annual report, GRECO noted the key role of access to information plays in fighting documents and urged states to follow the principles of the Tromsø Convention and the 2002 Guidelines.²⁸ GRECO’s Sixth Evaluation Round to be completed in 2025 includes the themes of “transparency, access to information, participation and accountability” and asks detailed questions on rules and procedures for access to information.²⁹

European Union

The European Union has more limited instruments related to freedom of information as the competence in many of these areas remain with Member States. One key area relates to public sector data. The EU first adopted a Directive on the re-use of public sector information in 2003 and subsequently amended it in 2013.³⁰ The Directive did not require member states to put in systems of access to information but required that states ensure that the access is inexpensive and in open and machine-readable formats. The original directive and its revision required member states to adopt new laws or to revise their existing FOI laws to include these principles.

The Directive was replaced in 2019 by the “open data directive”,³¹ which places more emphasis on free reuse of open data, quicker access, and access to “high value” data sets. One high value data set relates to company ownership which is crucial for identifying corrupt actors. The Data Governance Act (DGA) adopted in 2022 further promotes the sharing of protected data through data intermediaries.³² At the moment, implementation of the DGA has been slow with the European Commission opening infringement proceedings against 18 Member States including the Czech Republic, Poland, Romania, Slovenia, and Slovakia in May 2024.³³

²⁷ See among others, *Kenedi v. Hungary*; *Youth Initiative for Human Rights v. Serbia*; *Guseva v. Bulgaria*; *Österreichische Vereinigung zur Erhaltung, Stärkung und Schaffung eines wirtschaftlich gesunden land- und forstwirtschaftlichen Grundbesitzes v. Austria*; *Sieć Obywatelska Watchdog Polska v. Poland*; and *Suprun and Others v. Russia*

²⁸ GRECO, 23rd General Activity Report (2022) of the Group of States against Corruption (GRECO) Anti-corruption trends, challenges and good practices in Europe & the United States of America

²⁹ GRECO, Sixth Evaluation Round Questionnaire, Doc GRECO 2024(7), 22 March 2024, §10(1). Available at <https://rm.coe.int/greco-2024-7-eng-questionnaire-sixth-evaluation-round/1680af516f>

³⁰ Directive 2003/98/EE of the European Parliament and of the Council of 17 November 2003 on the re-use of public sector information; Directive 2013/37/EU of the European Parliament and of the Council amending Directive 2003/98/EC on the re-use of public sector information

³¹ Directive (EU) 2019/1024 of the European Parliament and of the Council of 20 June 2019 on open data and the re-use of public sector information (recast)

³² Regulation (EU) 2022/868 of the European Parliament and of the Council of 30 May 2022 on European data governance and amending Regulation (EU) 2018/1724 (Data Governance Act)

³³ European Commission, Press Release: Commission calls on 18 Member States to comply with the EU Data Governance Act, 23 May 2024

The EU has also adopted extensive rules on transparency in public procurement that require publication of information relating to tenders and awards.³⁴ One of the six foci of the current EU Procurement Strategy is “Improving transparency, integrity and data”. According to the Commission, it “advocates for the set-up of publicly accessible contract registers, which publish awarded contracts and their amendments” as well as whistleblower reporting and protection mechanisms.

Under EU anti-money laundering legislation (AML), member states have been required to collect information about the beneficial ownership of shell companies and to create central registries. Legitimate users including anti-corruption CSOs were to be given access.³⁵ Under the Fifth AMLD, countries were required to make the registries publicly available, which was subsequently challenged.³⁶ Recently, the EU adopted a new AML package, which modifies the access regime including a specific recognition that anti-corruption CSOs and journalists have a specific legal right to access to the information.³⁷

UN Economic Conference for Europe (UNECE)

The UNECE Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention) was signed in June 1998. The Convention requires member countries to adopt legislation on public access to environmental information. It was ratified by all of the countries in the CEE and later incorporated into EU Law as a directive binding on all Member States.³⁸ While the focus of the Convention is on access to environmental information, it was influential in promoting early access laws in countries in the region, with many countries adopting a comprehensive freedom of information law with environmental provisions to meet their obligations.

Organisation for Security and Cooperation in Europe (OSCE)

The OSCE has been also active in promoting citizen and civil society access to government information. In 1999, the Charter for European Security declared that the public’s right to access information and free media is “an essential component of any democratic, free and open society.”³⁹ In 2001, the Parliamentary Assembly urged participating states to “strengthen their efforts to promote transparency and accountability” and promote financial disclosures and open budgets. In 2003, the Assembly issued a resolution urging participating

³⁴ See EU, Public tendering rules, available at https://europa.eu/youreurope/business/selling-in-eu/public-contracts/public-tendering-rules/index_en.htm

³⁵ Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation (EU) No 648/2012 of the European Parliament and of the Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC.

³⁶ Directive (EU) 2018/843 of the European Parliament and of the Council of 30 May 2018 amending Directive (EU) 2015/849 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, and amending Directives 2009/138/EC and 2013/36/EU.

³⁷ Council of the EU, Press release Anti-money laundering: Council adopts package of rules. 30 May 2024.

³⁸ Directive 2003/4/EC of the European Parliament and of the Council of 28 January 2003 on public access to environmental information and repealing Council Directive 90/313/EEC

³⁹ OSCE, Charter for Economic Security, 1999.

States to “work with civil society in advancing and supporting ideas of accountability and transparency in government, and the promotion of good governance practices”.⁴⁰ The OSCE Representative on Freedom of the Media has conducted numerous reviews of states FOI and secrecy laws as they were being adopted and subsequently and has joined with the special rapporteurs from the UN, Organization of American States, and the African Union urging national governments to adopt FOI laws as an essential part of freedom of expression.⁴¹

III. FOI IN CENTRAL AND EASTERN EUROPEAN COUNTRIES

FOI has been an European concept for over two centuries. The Swedish Freedom of the Press Act adopted in 1766 set the principle that government records were by default open to the public and granted citizens the right to demand documents from government bodies.⁴² The 1789 French Declaration of the Rights of Man called for access to information about the budget to be made freely available: “All the citizens have a right to decide, either personally or by their representatives, as to the necessity of the public contribution; to grant this freely; to know to what uses it is put.”

However, it was a long time before other countries followed suit. FOI laws were adopted in Finland, France, Netherlands, and other democracies only starting in the 1950s and 1960s, responding to increased demand for transparency and accountability of the larger administrative states. Today, all countries in Europe except for Belarus have some form of freedom of information law in place while 130 countries worldwide have such laws.

A. FOI Laws in CEE

The adoption of FOI legislation is more recent in the CEE region. Following the transition to democracy in the 1990s, many countries including Bulgaria, Croatia, Hungary, Poland, and Slovenia incorporated freedom of information in their constitutions. In Czechoslovakia, the Charter of Fundamental Rights and Freedoms provided for a right to information which was incorporated into the constitutional frameworks in Czech Republic and Slovakia. Many of these instruments also evolved, such as in Croatia, which amended the constitution to expand the right of access from just journalists to all persons.

Following the adoption of constitutional rights of access, the countries began to adopt FOI laws to give formal procedures to this right. Hungary was an early adopter of FOI in 1992 and was followed by the rest of the countries between 1999 and 2003. The reasons for the adoptions include the suggestion - although not a formal legal requirement - that having a FOI law would facilitate the EU accession process, the implementation of the UNECE Aarhus

⁴⁰ See eg Haraszti, Access to information by the media in the OSCE region: trends and recommendations: Summary of preliminary results of the survey, Vienna, 30 April 2007; Review of Albania FOI and Secrets legislation <https://www.osce.org/files/f/ documents/6/0/18934.pdf>

⁴¹ <http://www.cidh.org/Relatoria/showarticle.asp?artID=319&lID=1>

⁴² Section 6. See Örtenghed, K. and Wennberg, B., Press Freedom 250 Years: Freedom of the Press and Public Access to Official Documents in Sweden and Finland – a living heritage from 1766, Swedish Parliament, 2017

Directive, pressures to adopt e-government, and most significantly, domestic pressures on ensuing transitions to democracy demanding accountability.

All of the laws have undergone amendments and modernizations, especially to implement European Union rules relating to data reuse. For the most part, the laws, except for those of Hungary and Croatia, are largely unchanged from their original versions. The participants of the May 2024 workshop to discuss the laws generally expressed general satisfaction about the contents of the laws while pressing for changes to improve their implementation.

Country	Name of Law	Year 1st Adopted	Years significantly modified
Bulgaria	Access to Public Information Act	2000	2016
Croatia	Law on the Right to Access Information	2003	2015, 2022
Czech Republic	Law on Free Access to Information	1999	2006
Hungary	Act on the Right of Informational Self-Determination and on Freedom of Information	1992	2011
Poland	Law on Access to Public Information	2001	2016
Romania	Law 544/2001 Regarding Free Access to Information of Public Interest	2001	2016
Slovakia	Act on Free Access to Information	2000	2023
Slovenia	Access to Public Information Act	2003	2014

The general framework for the laws in the region are similar. This is in part because they were significantly influenced by the U.S. Freedom of Information Act and practice by groups such as the US National Security Archive, ARTICLE 19, and various branches of the Open Society Institute who were heavily involved in promoting FOI in the region. In the Czech Republic, one of the Senate promoters of the law had been the Ambassador to the United States and was familiar with U.S. law.

The laws all include the following:

- *Right of Access.* Any individual, legal entity or organization can demand information held in any form from public bodies without having to show a specific legal interest.
- *Affirmative Publication.* Public bodies are required to proactively publish categories of information about their activities, including names of senior officials, structures, decisions, and procurement. More recently, these include

obligations to publish in open data formats and allow reuse of the information and data. In Poland, the Public Information Bulletin is expected to be the primary means for seeking access to information under the FOI law.

- *Duty to Provide Information.* Public bodies have the duty to respond and provide information. This includes mechanisms for handling requests and set time limits for responding to requests. The average for acknowledging the request is five days with the time frame for providing the information ranging from eight days in Slovakia to fifteen in Hungary.
- *Exemptions.* Public bodies can withhold certain categories of information from disclosure. These include personal information, commercial secrets, and threats to public order and national security. Most require that the body show that the release would cause some harm to the interest defined by the category before it can be withheld. Most jurisdictions also recognise that the information can be released if there is an overriding public interest in the information, such as revealing corruption or human rights violations. There remain many variations among the countries on the exemptions and the public interest tests.
- *Appeals.* Mechanisms allow the requestor to appeal the withholding of information. Most first require that requestors appeal to a higher-level internal body prior to external reviews. Courts in all countries have the final decision but several jurisdictions have independent bodies with some form of decision and order powers that can hear appeals first.
- *Oversight Body.* This is one of the most significant differences between the national laws in the CEE. Only three countries - Croatia, Hungary, and Slovenia - have created a specific oversight body which has a key role in the implementation and enforcement of the laws. Others such as Romania recognise the role of the existing ombudsman institution to have some oversight authority.
- *Sanctions.* Most create administrative penalties for officials who unlawfully destroy, modify, or refuse to release information and bodies that fail to comply with the orders of the external review system. However, in practice, few penalties have been imposed.

Complimentary Legislation in CEE Countries

In all of the countries, FOI legislation is not the only means of access to information relevant to corruption. Many other laws exist with complementary (and sometimes contradictory) access to information.

- Open data laws and policies and portals make data from government bodies available publicly in an easily machine readable and reusable format to facilitate data analysis to implement the EU PSI and Open Data Directives. The data is usually freely usable without permission from the publisher for most uses. These

can be part of FOI law such as in Slovenia and Bulgaria or free standing legislation such as Act No CI of 2023 in Hungary.

- Public procurement laws - EU and domestic - require the collection and publication of information on major tenders and awards. Systems such as electronic procurement systems and advanced open contracting use open data to monitor the planning, procurement, and management of public contracts and engaging with the public and businesses.
- Conflict of interest and asset disclosure laws make available information on officials. Many countries have created public registers of public officials' disclosure forms. Lobbying disclosure obligations allow citizens to see who is meeting and influencing officials.
- Beneficial ownership laws allow for access to the identities of who control secretive shell corporations. The countries have also created public registers which can be accessed by civil society organisations and journalists to investigate suspicious activities and persons.
- Other laws which require publication of information about who is receiving public funding such as the Hungarian Act on the Transparency of Subsidies Awarded from Public Funds.
- Whistleblower laws protect officials and private persons who reveal corruption and other threats and harms to society.⁴³ The release of the Panama, Pandora, and Paradise Papers and LuxLeaks revealed key information about corruption worldwide that would not have been made public, and led to resignations, investigations, and legal changes. Most countries in the region have not yet fully adopted the EU Whistleblower Directive.

B. Challenges to FOI in CEE Region

Even though the national FOI laws have been in place for over 20 years, there are widespread challenges to access to information across jurisdictions. These include poor responsiveness by officials, excessive application of exemptions (especially relating to data protection), and slow and inconsistent enforcement by courts. The COVID pandemic resulted in further delays and backlogs, while at the same time restricting other anti-corruption rules. This section looks at some of the key problem areas reported by the civil society partners.

Delays and failures to respond

The most common concern reported from civil society is delay. Often, officials ignore (repeated or appealed) requests or delay responses long past timeframes without explanation. These are frequently done in clear violation of the national laws and regulations.

⁴³ See CEELI, *Beyond Paper Rights: Implementing Whistleblower Protections in Central and Eastern Europe* (2023)

The problems can stem from lack of capacity and knowledge by smaller local bodies, but are perceived to be deliberate strategies by many larger national bodies.

In Slovakia, for example, there is a concerning trend emerging recently known as „fictitious decisions.“ These are cases where neither the first-instance nor the appellate authority issued a decision on the FOIA request. The law does acknowledge this possibility, with the original intent to provide a more efficient avenue for applicants to seek remedies in the event that they do not receive the decision on their request within the given period of time. However, public authorities frequently exploit this loophole by pretending to not have noticed the original request and forcing the applicant to file an appeal instead of issuing a proper decision regarding their request. In the event that the appeal body does not comply with the request, it is possible to file an administrative legal action with the administrative court, but such proceedings usually take years.⁴⁴

In Bulgaria, there are significant problems with responses at the municipal level. Officials when dealing with requests for public information often refer to non-existent prohibitions in the legislation, or simply just do not answer. Deterioration in the quality of access to information is often observed after political changes in the municipalities' ruling teams. With national bodies, there are problems relating to bias. Officials are more responsive to well-known CSOs or big media organisations, while ordinary citizens, or entities without organizational history, are often not even given a response.⁴⁵

Affirmative Publication and the failure to publish information

Another significant problem relates to the failure of bodies to follow legal obligations on the publication of information and data. As noted above, countries have adopted provisions that information of public interest is affirmatively published to improve the accountability of the public administration, including the reduction of corruption. These requirements are supplemented by legal obligations to implement EU directives on reuse of information and open data, as well as procurement legislation.

Most use the bodies' websites but few have adopted open data portals for national bodies. However, many bodies, especially smaller ones, do not regularly publish information. Further, most FOI laws have inadequate mechanisms of enforcement when a body violates its publication requirements.

In Croatia, proactive disclosure of information on the websites of public authorities, in accordance with the principles of easy searchability and machine readability, should be a regular part of the document creation process. However, practice shows that proper fulfilment of this obligation is challenging. Compared to the previous year, 2023 saw a slight improvement in ensuring the basic prerequisite for fulfilling these obligations – 595 out of 5,822 or 10.2% of the bodies do not have their own website. These are public authorities that have been to a large extent identified as bodies that have not appointed an information

⁴⁴ Submission by TI-Slovakia

⁴⁵ Submission by Bulgaria Institute for Legal Initiatives (BILI)

officer, do not submit annual reports on the implementation of the Act, and are not familiar with legal obligations, i.e., do not recognize themselves as obliged entities for the implementation of Croatia's FOI law.⁴⁶

In Bulgaria, around 90 percent of state institutions did not publish their budgets on their internet sites in 2023, up considerably from the previous years.⁴⁷ Between 72 and 75 percent of the institutions do not publish their annual financial reports. At the same time, over 90 percent of the so-called authorizing officers by delegation's institutions, do publish their monthly and quarterly reports regarding the implementation of their budgets. Two thirds of the institutions publish user/citizens friendly budget annotations. The APIA was amended in 2023 to allow the Minister for e-Government to require executive authorities to publish on the Open Data Portal public sector information, created and held by them, in a machine-readable open format, setting a deadline for the publication of the information.⁴⁸

In Romania, according to a report prepared by the General Secretariat of the Government (SGG) on the implementation of Law 544/2001 in 2020, 40 percent of the institutions or public authorities included in the report posted the required information at the institution's headquarters, 37 percent on the institution's website, 9 percent in the press, 7 percent published by other methods, and 6 percent in the Official Gazette.⁴⁹

In Hungary, upon a complaint, the National Authority for Data Protection and Freedom of Information is given the power to call public bodies to release data that was requested or had not been published proactively pursuant to Annex 1.⁵⁰ However, the decision of the Authority is legally not binding. In case a body with a budgetary status fails to publish data on kif.gov.hu proactively, the Authority may deliver a legally binding decision and even impose an administrative fine. The government created an on-line e-learning tool, which provides relevant information on this open data in a clearly structured way.⁵¹

Court appeals and delays

In general, the practice of the courts in the CEE region are described by civil society as positive in the promotion of FOI. The courts generally make fair and reasoned decisions and have built up considerable case law in many countries.

However, there are many concerns with delays and the cost of litigation. In many cases, decisions can take years with the decisions merely sending requests back to the bodies to

⁴⁶ Submission by Gong

⁴⁷ Data is taken by the annual reports of Access to Information Program. http://www.aip-bg.org/publications/Годишни_доклади_за_състоянието_на_достъпа/

⁴⁸ Ibid, BILI

⁴⁹ Submission of Expert Forum

⁵⁰ Submission of K-Monitor

⁵¹ <https://data.gov.cz/vzd%C4%9Bl%C3%A1v%C3%A1n%C3%AD/e-learning/co-jsou-otev%C5%99en%C3%A1-data/>

review their decisions, further delaying the release of information. In other cases, there is inconsistencies, where identical cases are treated differently by judges.

There have been some progress in addressing the issue of delays. In particular, the Czech system is positive in that courts can issue information orders, where the court imposes an obligation on the body to provide the information directly rather than return the request to the obliged entity or oversight body to resolve the problem. This helps to process requests for information more quickly and efficiently, even in more complex cases that end up before the courts. A bill to amend the law was successfully opposed in part by civil society groups because of concerns about overturning existing good court practice.⁵²

In Bulgaria, following amendments to the law on administrative law, FOI case processing has been significantly sped up. In Hungary, as a result of the reforms enacted within the European Commission's conditionality procedure the FOI cases are heard in an accelerated procedure. Court decisions are generally swiftly delivered, legally binding and well-reasoned. However, if the case reaches the Hungarian Constitutional Court, no rule is set out for a time frame for delivering a decision. It may therefore take years for the Constitutional Court to make a decision. At the same time, decisions by oversight bodies have been ignored by public bodies knowing that the courts will not act quickly.⁵³

There are also problems in some countries with sensitive questions. In Romania, even if the requestor prevails in court, in recent years there have been instances where the information was still not disclosed, especially if sensitive. For example, some of the major political parties in Romania refused to comply with court decision obliging them to disclose information about the contracts they concluded with the press paid through political subsidies (public money).⁵⁴ In Croatia, Gong reports that the Constitutional Court is generally very careful in deciding matters concerning the government, especially highest government officials, which is especially visible in conflict of interest cases where the High Administrative Court is also the second instance body.⁵⁵

Conflicts with data protection laws

A common theme that reoccurs in the region is the issue of conflicts between freedom of information and data protection. Every national FOI law has an exemption for personal privacy and all of the countries have also adopted data protection laws to implement the EU General Data Protection Directive (GDPR) that may interact with the FOI law in determining the release of information. In all of the countries, the exemption for privacy is one of the top justifications for withholding information. It is believed that this is being abused to hide information that is embarrassing to government bodies such as relating to corruption.

⁵² Ibid, Gong

⁵³ Ibid, BILl

⁵⁴ Ibid, Expert Forum, See <https://www.inovarepublica.ro/contractele-partidelor-politice-sunt-informatii-de-interes-public/>

⁵⁵ Ibid, Gong

In Romania, civil society reports that adoption of GDPR has severely limited access to information. It is frequently invoked by government bodies as an instrument to deny access to public information with the justification that the information requested either is or includes personal data. However, the High Court of Cassation and Justice has rendered a decision in the interpretation of the law stating that even if it contains personal data, public information needs to be disclosed, with the obligation on the institution to anonymize any personal data.⁵⁶

In Croatia, the law was amended in 2022 on data protection grounds to narrow the scope of information available on public spending that can be accessed easily, thus making public expenditure less transparent.

The key question in the discussion of data protection and freedom of information is which right takes precedence. Under international law, the rights are co-equal and must be balanced, not prioritizing one over the other.⁵⁷ As a general matter, they should be considered as complementary rights, working together to ensure the accountability of the state and other powerful actors to citizens. As Laszlo Majtényi, the first Hungarian Parliamentary Commissioner for Data Protection and Freedom of Information observed, the common purpose of the two rights is “to continue maintaining the non-transparency of citizens in a world that has undergone the information revolution while rendering transparent the state.”⁵⁸

The need to reconcile competing rights has been recognised in international instruments on data protection. Specific protections for freedom of expression are incorporated in the recently approved revisions to the Council of Europe (COE) Convention 108 on Data Protection (“Treaty 108+”).⁵⁹ The Explanatory Report reaffirms the need to balance FOE and privacy rights to “maintain a careful balance between the different interests, rights and fundamental freedoms”.⁶⁰ It clarifies that data protection should not be used to prevent freedom of information, stating “the exercise of the right to data protection, which is not absolute, should notably not be used as a general means to prevent public access to official documents.”⁶¹ Article 86 of the GDPR allows the release of personal data in official bodies “in order to reconcile public access to official documents with the right to the protection of personal data”.

The Court of Justice of the EU (CJEU) has long ruled that states must develop a “fair balance” between the right to privacy and freedom of expression based on the principle of

⁵⁶ Ibid, Expert Forum

⁵⁷ Vienna Declaration and Programme of Action, U.N. Doc A/CONF.157/23 (12 July 1993)

⁵⁸ Dr. Laszlo Majtényi, Freedom of Information – Experiences from Eastern Europe, Presentation at the Conference on Guaranteeing Media Freedom on the Internet, Amsterdam, 27 and 28 August 2004. Available at <https://www.osce.org/files/f/documents/5/a/36235.pdf>

⁵⁹ Council of Europe Treaty Series - No. [108] for the Protection of Individuals with regard to Automated Processing of Personal Data, as amended by its Protocol CETS No. [223]

⁶⁰ Council of Europe Treaty Series - No. [223] Explanatory Report to the Protocol amending the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data. Available at <https://rm.coe.int/16808ac91a>

⁶¹ Ibid, Report, par 11

proportionality.⁶² However, the Court has often taken a restrictive approach on FOI rights on the disclosure of personal information with corruption purposes including agricultural subsidies and lobbyists. Of particular concern relates to beneficial ownership. The Court ruled in 2022 that a public register of the beneficial owners of shell corporations violated the data protection rights of the owners.⁶³ It did, however, still reaffirm that journalists and anti-corruption CSOs have a legitimate interest in accessing the information. This has led to most EU Member States, including those in CEE, to restrict public access to their databases.

One means to better ensure the balance of interests is to create a single oversight body that handles both privacy and access to information. The creation of a single body with both powers reduces the likelihood that public bodies can misuse data protection, knowing that their decisions are subject to review by an oversight body that is an expert in both.⁶⁴ This has been done in the three countries in the region with oversight bodies - Croatia, Hungary, and Slovenia. In Hungary, the 1992 law protected both data protection and freedom of information and set up an information ombudsman. In Slovenia, the separate oversight bodies for FOI and data protection were merged into a single new commission headed by the information commissioner.⁶⁵ The Slovenian Commissioner has found that it resulted in greater awareness of both rights:

The merged body also insures for its greater visibility as well as unification of the entire legal practice of the field. It will also increase the awareness of all other government bodies while carrying out the stated legislative provisions to the benefit of all applicants.⁶⁶

Oversight Bodies

One major area of divergence in the region is the oversight mechanisms countries have adopted. Only three of the countries in the region have created independent bodies which monitor implementation and hear complaints from users: Croatia, Hungary, and Slovenia. In other countries such as Poland and the Czech Republic, the existing Ombudsman institution has a limited role. In the rest of the countries, the public administration, including audit agencies, has the only official monitoring role and the courts are the only means of external appeal.

An independent information commission is considered an international good practice found in around 90 countries around the world. The commission can play an important support

⁶² Court of Justice of the European Union, Case C-73/07, *Tietosuojavaltuutettu v Satakunnan Markkinapörssi Oy and Others* (2008)

⁶³ Joined cases C-37/20 and C-601/20 WM, *Sovim SA v Luxembourg Business Registers* [2022] ECR I-912.

⁶⁴ Hungarian Information and Privacy Commission, 1998 report, p 73

⁶⁵ Information Commissioner Act, Official Gazette of the Republic of Slovenia, no. 113/2005

⁶⁶ Nataša Pirc Musar, *New Principles of the Amended Act on Access to Public Information in Slovenia: Commissioner or Ombudsman*, 2005. Available at https://www.ip-rs.si/fileadmin/user_upload/Pdf/clanki/New_principles_of_the_Amended_Act_on_Access_to_Public_Information_in_Slovenia_Commissioner_or_Ombudsman.pdf

role to both government bodies and to the public in fully implementing a FOI act. The body typically plays many roles: as a promoter of good practice, an advocate for the citizen, and a mediator of disputes.

In Hungary, the Commissioner can only make recommendations on FOI cases but can order a change in the classification of state secrets. This office began as an independent body, but its status was changed in the 2011 law to become an administrative body, which reduced its power to appeals of new laws to the Constitutional Court. There is general concern in civil society about the independence of the body from the government since this change.⁶⁷

In Croatia, the Information Commissioner conducts the tasks of the first instance body in resolving appeals relating to exercising the right of access to information and the right to re-use information. The Commissioner is obliged to issue a decision on the appeal and deliver it to the requesting party, through the first instance body, no later than 60 days from the date of filing the complaint. There is no appeal against the decision of the Information Commissioner, but an administrative dispute can be initiated before the High Administrative Court, which then has 90 days to render a decision.⁶⁸

In Romania, there is no external oversight body. In 2023, the OECD recommended the creation of an external system for reviewing refusals to disclose information of public interest by establishing an independent specialised body to control, supervise, monitor, and evaluate the FOI law. Such a system will make a substantial contribution to resolving conflicts over withheld information; unify the practice of institutions and public authorities with regard to the application of the FOI law by providing them with support; and reduce demands on resources as actions under the body would not require as many resources as an administrative litigation action.⁶⁹ UNESCO also recently recommended that Poland create an independent information commission as part of the Universal Periodic Review (UPR) process at the UN Human Rights Council.

The COE Tromso Convention is mostly silent on the issue of an oversight body. However, under COE and EU data protection law, independent public bodies (such as those which hold joint authority on FOI and data protection in many countries) have detailed duties and obligations. The GDPR requires each Member State to set up oversight authorities which “act with complete independence in performing its tasks and exercising its powers in accordance with this Regulation”.⁷⁰

Impact of COVID on FOI

The Covid pandemic had a profound effect on the work of public bodies in the CEE, including freedom of information. Laws were suspended or timelines extended; information collection was limited and access to information was hampered. At the same time, public procurement

⁶⁷ Ibid, K-Monitor

⁶⁸ Ibid, Gong

⁶⁹ Ibid, Expert Forum

⁷⁰ GDPR, Art. 52 (1)

and other anti-corruption rules were weakened. One academic study detailed the corruption problems in many countries:

Worst examples of corruption during this period include public procurement of goods and services for the treatment of disease, bid-rigging in public procurement and kickbacks, embezzlement of healthcare funds, opacity in governance, misuse of power or level position, nepotism and favouritism in the management, petty corruption in levels of service, fraud and theft of medicines and medical devices.⁷¹

In Hungary, a special law provided that FOI requests could be responded within 45 days instead of the statutory 15 days. The 45-day response time could be further prolonged to 90 days in total. The law was held constitutional by the Hungarian Constitutional Court and remained in force until the end of 2022.⁷² General transparency rules on public procurements were continued to be applied during the pandemic. However, under emergency law, the Ministry of Interior was empowered by law to exempt procurements from the Public Procurement Act. These procurements, therefore, have fallen out of the scope of general transparency rules on public procurements. This means that during the epidemic, citizens had access to reduced information.⁷³

In other jurisdictions, poor management hampered access to information. According to Czech civil society, the approach of the government to the COVID epidemic was “extremely chaotic and disorganized. Communication from officials and state bodies was insufficient during the COVID epidemic, they were unable to coordinate and provide hardly any answers to questions and refused to disclose some information.”⁷⁴ On the other hand, the chaotic approach meant that the authorities were not coordinated in withholding information. Gradually, much of the information from that period became public through investigations and successful requests for information.

In Bulgaria, officials did not routinely make information available about key information relating to the crisis and failed to provide it subsequently. As the Bulgarian Institute for Legal Initiatives notes “there was ... total misalignment between public speaking, current published numbers and final results.”⁷⁵

Case study

K-Monitor filed two lawsuits against the Hungarian Ministry of Interior to obtain access to data on public procurements exempted discretionary from the general public procurement law by the minister in charge during the pandemic, as neither the names of the contracting parties,

⁷¹ Teremetskyi V, Duliba Y, Kroitor V, Korchak N, Makarenko O. Corruption and strengthening anti-corruption efforts in healthcare during the pandemic of Covid-19. *Medico-Legal Journal*. 2021;89(1):25-28. doi:10.1177/0025817220971925

⁷² Decision [15/2021. \(V. 13.\)](#)

⁷³ Submission of K-Monitor

⁷⁴ Submission of TI-Czech

⁷⁵ Submission of BILI

nor the decisions on exemptions have been published or justified. In November 2022, the court ordered the data to be published. Another lawsuit regarding additional data was won by K-Monitor in April 2023. The data provided was subsequently processed by news outlet *Atlatzso.hu*.⁷⁶

Using technology to promote access to information

Technology can facilitate the disclosure and availability of information from public bodies. It allows for governments to easily and routinely release information on their activities and for citizens to be able to obtain the information without needing to travel to offices or wait for responses. All of the countries in the region have adopted open data laws or policies as required by the EU PSI Directive and its successor laws.

Technology can facilitate the managing of information. Large language models (LLMs) can be used to process the large quantities of documents involved in procurement tenders and awards to identify common elements and summarize them. There is also greater possibilities that public bodies can use the models to analyse documents to identify exempt information.⁷⁷

At the same time, computerisation has led to many bad practices with government bodies flooded with data failing to collect, organising, and permanently record information used in decision-making. Further, many questions have been raised about governments' obligations to provide information that is in raw databases or it is not organised in the form requested.

One of the most contentious issues in Romania is whether the notion of public interest information includes information that needs to be processed by the public authority in order to be disclosed. Court practice states that public institutions are not obliged to provide public information that needs to be processed, even if the institution has the information. This is frequently used by public institution in order to limit access to public information. For example, if a public institution decides internally that certain information/data that is available to them will not be collected or processed, they are not obliged to provide the information.⁷⁸

Under the Polish Law on Access to Public Information, public bodies are required to publish detailed information about their policies, legal organization, principles of operation, contents of administrative acts and decisions, and public assets in a Public Information Bulletin on their web sites. The Public Information Bulletin is the primary method of accessing government information.

⁷⁶ Submission of K-Monitor. See <https://atlatzso.hu/kozadat/2023/06/15/722-milliard-forint-kozpenzt-koltott-el-a-kormany-a-covid-alatt-kozbeszerzes-nelkul/>

⁷⁷ See Jason R. Baron, Mahmoud F. Sayed, and Douglas W. Oard. 2022. Providing More Efficient Access to Government Records: A Use Case Involving Application of Machine Learning to Improve FOIA Review for the Deliberative Process Privilege. *J. Comput. Cult. Herit.* 15, 1, Article 5 (January 2022). <https://doi.org/10.1145/3481045>

⁷⁸ Submission of Expert Forum

The widespread availability of data has its limitations. In Hungary, Act No. CI of 2023 governs the re-use of public sector information. There is no comprehensive law or strategy on open data in Hungary, and the Hungarian government has not yet transposed the EU's Open Data Directive and is facing an infringement procedure.⁷⁹ Access to public registers like the land registry, company register, and database for public procurements have been codified in separate law without any overarching strategy. None of these datasets can be fairly labelled as open data.

FOI and open data are of particular use in public procurement. EU Procurement law requires the publication of information about tenders and contracts both in EU systems for larger tenders and domestically for smaller ones but many gaps remain. Civil society uses a variety of means to obtain information about public procurement including FOI information if it is not published. The Open Contracting Partnership promotes partnerships between governments and civil society to use data systems to better track procurement across its entire lifecycle from tender to closure.

In Hungary, a recently established site by the Hungarian Government (<https://kif.gov.hu/>) is to publish specific data on contracts bimonthly. However, the scope of the repository is limited to bodies having a budgetary status (local governments, public interest trust, and state owned companies like the Hungarian National Bank are importantly not included). Only metadata of contracts are published in a number of separate pdf or csv documents per upload on a webpage with very limited search functions. Another database⁸⁰ exists for the publication of public procurement contracts, but documents on the fulfilment are often not included.⁸¹

In the Czech Republic, government contracts must be published on the basis of Act No. 340/2015 Coll., on Register of Contracts. The contract must be published in the Register of Contracts no later than 30 days from the date of its conclusion, otherwise it is invalid. There are many obstacles to enforcing this obligation, so there are many potentially invalid contracts, which were not published with all the necessary metadata (subject of the contract, price, date, parties), or not published at all. But generally speaking, this obligation is mostly fulfilled by the obliged authorities.⁸²

Civil society groups in many of the countries have also created portals to facilitate making requests to public bodies and creating a public archive of responses, using the open source Alaveteli tool developed by the UK group mySociety.⁸³ In the Czech Republic, the Info Pro Všechny system allows requests to 12,000 public bodies.⁸⁴ Similar systems are in use in

⁷⁹ Submission of K-Monitor. Case number [INFR\(2021\)0434](#)

⁸⁰ <https://ekr.gov.hu/ekr-szerzodestar/hu/szerzodesLista>

⁸¹ Ibid, K-Monitor

⁸² Ibid, Ti-Czech

⁸³ <http://alaveteli.org>

⁸⁴ <https://www.infoprovsechny.cz>

Croatia⁸⁵, Hungary⁸⁶, and Romania⁸⁷. In Poland, Sieć Obywatelska Watchdog Polska has set up a platform that allows authorized users to file bulk requests for the same information across many different government bodies. The group then works with the requester to process the information using an AI-based system.

Case study: civil society using open data to fight corruption

In open data formats, the information can be organised and combined with other data to facilitate investigations and uncover corruption. Following the leaks of the Panama Papers and Pandora Papers, media organisations worked together to analyse leaked databases containing millions of documents recording complex tax evasion and avoidance schemes by companies, and stolen or untaxed assets,⁸⁸ combining that data with other public and private databases to identify important people from Hungary, Slovakia, Poland, and the Czech Republic. The stories published from the investigation resulted in resignations, investigations, fines,⁸⁹ and prosecutions.⁹⁰

IV. CONCLUSIONS AND RECOMMENDATIONS

Freedom of information in Central and Eastern Europe is a work in progress. Fairly strong legal frameworks have been in place for over 20 years across the region and civil society and journalists have used those laws and regulations to obtain information and successfully reveal corrupt acts and force changes. In particular, they have used FOI requests to improve accountability around healthcare in their countries.

However, they have also faced challenges in obtaining information from public bodies. In particular, officials all too frequently delay responding or completely ignore requests for information or fail to publish information where affirmatively required. This substantially impacts the legal rights of the requestors and denies the public the information they need to hold governments accountable which in turn allows corruption to flourish. Bodies often abuse exemptions, especially relating to personal data.

The COVID pandemic created new challenges to freedom of information. Many governments in the region, with varying success, tried to limit the legal rights to access and data publication.

⁸⁵ <https://imamopravoznati.org>

⁸⁶ <https://kimitud.hu>

⁸⁷ <https://www.romaniacurata.ro/ia-statul-la-intrebari/>

⁸⁸ Winter & Voza, Corruption, Tax Evasion, and the Distortion of Justice: Global Challenges and International Responses, 85 Law & Contemporary Problems 75 (2022); “9.6 billion in fines and monies seized 2011-2023”, OCCPR impacts (<https://www.occrp.org/en/impact-to-date>).

⁸⁹ ICJ, Panama Papers revenue recovery reaches \$1.36 billion as investigations continue, 6 April 2021 <https://www.icj.org/investigations/panama-papers/panama-papers-revenue-recovery-reaches-1-36-billion-as-investigations-continue/>

⁹⁰ Shabbir and Graves, Gauging the Global Impacts of the ‘Panama Papers’ Three Years Later, Reuters Institute, March 2019. Also see <https://www.icj.org/investigations/panama-papers/five-years-later-panama-papers-still-having-a-big-impact/>

At the same time, crucial anti-corruption measures, especially relating to procurements, were relaxed. The consequences of the situation is still being addressed but access to information has improved significantly to pre-pandemic levels in most countries.

Recommendations for Governments

- Review national legislation to ensure that national legislation meets international and regional standards, including the CoE Tromso Convention, based on the principles of maximum disclosure and easy and quick disclosure of information.
- Ensure that data protection exemptions are harmonized with freedom of expression and freedom of information as required by the GDPR and COE Convention 108+ so that information of public interest is not restricted from public release.
- Review information and data management procedures to ensure that all relevant information used in official decision-making is collected and organised to facilitate access to information. Systematically collect and publish information on requests and disclosures.
- Review and audit procedures for responding to requests and revise to ensure that the process is simplified and responses and information is disclosed promptly. Provide training, in cooperation with civil society, to all officials on importance of FOI implementation, including senior officials and policy makers.
- Improve court processing procedures and deadlines for court decisions by ensuring that the cases are processed in a speedy and timely manner. Provide training for judges on FOI standards and requirements.
- Improve oversight mechanisms including reviewing the possibility of creating an independent oversight body to oversee implementation of the law.
- Audit proactive publication of data to ensure that all information that is legally required is made public in easily findable and reusable open data formats.
- Ensure that all public procurement processes, including tenders, offers, contracts, amendments, and amendments are timely and fully published in open data format using open contracting standards.
- Maintain regular engagement with members of civil society, journalists and other users of FOI, including formal working groups and feedback mechanisms.
- Adopt measures, including protection and anti-SLAPP laws, to ensure that civil society organisations, journalists, and others are not harassed, threatened, or otherwise deterred from demanding and using information to combat corruption. Eliminate laws such as foreign funding acts that restrict their ability to operate.

Recommendations for Civil Society

- Continue to use FOI as a tool to reveal corruption, being sure to refer to its role and importance in projects, reports, and articles.
- Promote use of FOI to other members of civil society community and provide assistance and support to less knowledgeable and resourced organisations and individuals. Provide technical tools such as request platforms as needed.
- Engage with officials, judges, and others regularly to ensure they are aware of importance of FOI and the communities using FOI.

ANNEX

This Annex includes a study “Transparency and Access to Information in the Health Care System”, prepared by Transparency International Slovakia, with inputs from civil society in the CEE region.

TRANSPARENCY AND ACCESS TO INFORMATION IN THE HEALTH CARE SYSTEM

1. INTRODUCTION

Public health is a critical area of the public sphere that directly impacts the lives of all citizens. Given the vast financial resources allocated to this sector, it is unsurprising that there is significant public interest in ensuring transparency in the management of these funds.

Additionally, it is crucial to recognize that any instance of wasteful spending in the healthcare sector can have serious political and societal consequences. This is because healthcare is regarded as highly important by most citizens, and a lack of financial resources is directly and visibly reflected in inadequate care. Healthcare has an immediate and tangible impact on everyone’s daily lives.

On the other hand, the healthcare sector is marked by significant conflicts of interest involving private companies, state-owned entities (such as public health insurance providers), and, importantly, the interests of citizens. This conflict primarily arises from the tension between profit maximization and the demand for high-quality healthcare. Moreover, the substantial financial resources in the sector heighten the risks of corruption and inefficient management.

These factors underscore the urgent need for transparency and broad public oversight. Civic engagement, alongside access to relevant data for investigative journalists and activists, enhances the ability to expose both individual misconduct and systemic issues. Such problems can then be addressed either on a case-by-case basis or through necessary legislative reforms. Naturally, objective constraints, such as the protection of personal data and intellectual property rights, must also be considered.

The aim of this study is to provide a comparative overview of access to information in the studied countries, specifically focusing on selected issues in the public health sector. This review will enable the identification of best practices as well as shortcomings in the application of transparency measures in countries that share not only similar geographical characteristics but also comparable historical, social, and economic conditions.

2. PUBLIC OVERSIGHT OF FUND ALLOCATION IN PUBLIC HEALTH INSURANCE

Public oversight of the allocation and the use of funds from public health insurance is crucial for ensuring transparency, accountability, and the efficient use of resources in healthcare. Without proper oversight, the risk of mismanagement and corruption increases, potentially undermining the quality of care. This chapter explores the mechanisms for public access to information, focusing on how these processes vary depending on the specific country.

2.1. *Bulgaria*

In Bulgaria there is only one, state owned, National Health Insurance Fund. The dozen private insurance funds are voluntarily chosen by citizens and companies for additional coverage of extra risks and payments. However, the private funds are not a subject of the Access to Public Information Act (APIA). The National Health Insurance Fund, on the other hand, is governed by this legislation and is one of the institutions in the country which complies with its obligations under APIA.

The National Health Insurance Fund publishes several key documents, including the annual National Framework Contract, the decisions and minutes of the meetings of the Supervisory Board, its budget, and reports and regulations on its activities. In accordance with the APIA, the Fund also publishes reports on medicinal products for pharmacies and hospitals, including their reimbursed prices. Upon official request via APIA, the Fund provides data on funds distributed for treating different types of illnesses granted to various hospitals.

2.2. *Czech Republic*

In general, the citizen can oversee how public health insurance funds are managed, in particular through the mandatory publication of budget data and supplementary payments.

The Ministry of Health also issues an annual reimbursement decree, that sets out the rules for calculating reimbursement limits for various individual medical specialties.

In addition, public health insurance companies are considered obliged entities under Act No. 106/1999 Coll., on free access to information, and are therefore required to respond to public requests for information.

2.3. *Hungary*

Basic information on funding might be accessed in the annual budgetary act.

The National Health Insurance Fund of Hungary is the central body entrusted with the public funding of statutory health care services. The Fund is a public body and therefore it falls under the scope of the FOIA. As a public body it is called upon to publish data proactively pursuant to

Annex 1 of the FOIA. This data does not provide the citizens with the opportunity to oversee how the funding is handled. FOI requests to the Fund are permissible, therefore, specific data might be requested from the Fund.

Insurance entities other than the Fund do fall under the scope of the FOIA only if they use public funds. However, these entities cannot be taken to court, which the Hungarian Constitutional Court deemed unconstitutional in 2020 due to the lack of judicial remedies available to citizens.

2.4. Slovak Republic

Health insurance companies are considered obliged entities under the Freedom of Information Act. They are required to provide information particularly regarding the handling of public funds in health insurance. However, this obligation is subject to several limitations, primarily arising from personal data protection regulations.

Health insurance companies are obliged persons with so-called limited information obligation. Therefore, they only make available information about *“the management of public funds, the management of state property, the property of a higher territorial unit or the property of a municipality, about the environment, about tasks or professional services related to the environment and about the content, performance and activities performed on the basis of the concluded contract. This limitation of the obligation to make information available does not apply to persons obliged under Sec. 2 (3), in which obliged persons according to Sec. 2 (1) and (2) separately or jointly exclusive direct or indirect participation”* - that is, a public health insurance company.

SUMMARY

Comparative analysis reveals distinct standards of access to information among the examined countries. The difference in access largely hinges on whether there is a single health insurance company or multiple providers, and whether these entities are state-owned or private. The foundational framework for accessing information consists of mandatory disclosures, which are typically aggregated and published in annual reports. The availability of data upon request varies significantly across countries. However, a legally established obligation for health insurance companies to provide information on the allocation of funds is considered a best practice.

3. ACCESS TO INFORMATION ON PUBLIC PROCUREMENT IN HEALTHCARE

One of the key factors influencing transparency and integrity in public procurement within the healthcare sector is the composition and selection of procurement committees. The individuals responsible for evaluating bids and making decisions wield considerable power, making the process of their selection critically important. This chapter examines the varying approaches to access to information across the analysed countries, primarily addressing the challenges posed by personal data protection regulations.

3.1. Bulgaria

Not all data is consistently available on the state-operated public procurement portal, particularly when it comes to the members of the selection committee.

Moreover, much of the data is not provided in machine-readable formats. In some cases, a so-called 'corruption Cyrillic alphabet' is used, where certain letters of the Cyrillic alphabet are substituted with corresponding Latin characters, numbers, or symbols. This practice renders search engines ineffective and complicates access to the information.

3.2. Czech Republic

This issue is regulated in the Czech Republic by Act No. 134/2016 Coll. on Public Procurement. Tenders must be published if their value exceeds the legal limit of 500 000 CZK (approx. 20,000 EUR). Then the tender is published on the contracting authority's portal, including the terms and conditions, general evaluation criteria, and the individual bids submitted.

However, transparency regarding the selection committees remains limited. Information about committee members is often withheld, even when requested under the Freedom of Information Act (FOIA), citing the need to protect personal data.

3.3. Hungary

Rules of procedure, including method of voting and conditions for evaluation of committee members, are considered data of public interest. Additionally, the composition of selection committees is also considered to be data of public interest and cannot be withheld as confirmed by court decision No Pfv.21.210/2014/7. However, while the names of committee members must be disclosed, their professional résumés may be withheld by invoking the protection of personal data.

3.4. Slovak Republic

Information about tenders is published on the website of the Public Procurement Office for contracts exceeding the relevant threshold. Upon conclusion of the tender process, information about the signing of the contract is made public, and the contract itself is subsequently published on the Central Registry of Contracts website. This publication is a mandatory requirement for the contract to come into effect. However, details about other participants in the tender are not disclosed, primarily to protect economic competition and safeguard trade secrets.

SUMMARY

Despite the fact that the composition of selection committees in public procurement plays a crucial role in ensuring transparency and fair application of procurement practices, very little data is available on this matter. One significant obstacle is the protection of personal data, which lacks specific national regulations that would provide a legitimate basis for disclosing

this information. A notable exception is Hungary, where case law has established clearer guidelines for transparency in this area. In all other countries studied, the availability of the CVs of selection committee members remains virtually non-existent, further limiting public insight into the decision-making process.

4. TRANSPARENCY OF SELECTION PROCEDURES FOR TOP MANAGEMENT POSITIONS

Transparent hiring processes for top management positions are essential to ensuring that leaders are selected based on their qualifications, experience, and ability to manage complex healthcare systems. This chapter will focus on the administration of the largest public hospitals as a case study. Promoting openness in these appointments helps build public trust, enhances healthcare delivery, and fosters greater accountability within hospital management. However, as will be demonstrated, one of the primary obstacles to achieving full transparency is the protection of personal data, which often limits the disclosure of crucial information during the hiring process.

4.1. Bulgaria

The appointment processes for directors and board members of public (state and municipality-owned) hospitals in Bulgaria are among the most opaque in the realm of public appointments. The root of the issue lies in the legislative framework, which does not require candidates to publish any strategic development plans for the hospitals, nor their CVs. Moreover, the selection process is further complicated by the involvement of two separate institutions, along with municipal councils for municipally owned hospitals. In recent years, a noticeable decline in the standards of these appointments has emerged. In some instances, even the full names of candidates were not disclosed, significantly impeding civic oversight and making public scrutiny nearly impossible.

4.2. Czech Republic

Generally, this information can be requested under Act No. 106/1999 Coll. (Freedom of Information Act). However, in practice, the availability of such information depends largely on the specific authority overseeing the selection process and its willingness to comply with transparency standards.

The system of state and public hospitals is fragmented, with each facility falling under the jurisdiction of a different governing body. Unfortunately, there are no uniform legal regulations governing the selection processes for hospital leadership positions. While open selection processes are common and offer varying degrees of transparency, it is also legally permissible to make direct appointments, further contributing to inconsistency and opacity in these procedures.

The issue often arises from the fact that personal data cannot be published under Act No. 106/1999 Coll. unless the individual concerned has provided explicit consent for such publication. Authorities responsible for the selection process typically do not require this

consent at the outset of the process. As a result, when transparency is not prioritized from the beginning, FOIA requests are frequently unsuccessful. Authorities can legally refuse to provide personal information—such as the names and résumés of applicants—based on privacy protections. Furthermore, applicants themselves are often not motivated to grant consent for the disclosure of their personal data later in the process, further limiting public access to crucial information.

4.3. Hungary

Act No. C of 2020 and Government Decree 528/2020 (XI. 28.) establish certain rules for the appointment of hospital directors, but they use vague language and do not mandate any transparency during the application process. Citizens only learn about the selection when the new director has already been appointed, leaving them unable to participate in or oversee the selection process.

While it is possible to request data submitted by applicants under the Freedom of Information Act (FOIA), it is uncertain whether such materials (e.g., strategic plans or application documents) even exist, as there is no legal requirement for these documents to be submitted during the selection process.

The laws do not impose any requirement to establish or involve a selection committee during the application process for hospital directors. The entire procedure is left to the absolute discretion of the minister and the head of the National Directorate General for Hospitals, who have complete authority to design and conduct the process as they see fit. In practice, these application procedures take place behind closed doors, without any provision for stakeholder or citizen participation.

4.4. Slovak Republic

The appointment of employees who serve as statutory bodies or members of statutory bodies in state-financed organizations under the jurisdiction of the Ministry of Health of the Slovak Republic, as well as joint-stock companies wholly owned by the Ministry, is governed by relevant legal directives.

Public participation in these selection procedures is limited to the role of observers. Observers do not have the right to inspect documents containing the applicant's personal data or other materials related to the selection process. Moreover, the public cannot ask questions of the candidates, nor are they allowed to record audio or video during the procedure.

While the applicant's CV and strategic development plan are included as part of the documentation for the selection process, these documents are only published if the applicant consents to their release. In [practice](#), most applicants do not grant this consent, which prevents the public from fully overseeing the process and evaluating the quality of the candidates.

SUMMARY

Even in the case of appointing individuals to the highest management positions in state hospitals, there is a clear public interest in knowing the identities of the candidates and their plans for hospital management. However, this public interest is often limited by concerns over personal data protection and, in some cases, copyright protection. In the countries studied, there is generally no specific regulation that defines a legitimate public interest in obtaining this information. As a result, the practice remains fragmented and largely dependent on the discretion of the appointing authority or founder. This inconsistent approach can be observed in all the cases investigated, further highlighting the need for clearer and more uniform regulations to ensure transparency and accountability in these critical public appointments.

5. TRANSPARENCY OF PANDEMIC MANAGEMENT

During the COVID-19 pandemic, timely access to critical information was vital for maintaining public trust, ensuring accountability, and facilitating effective crisis management. Public officials were expected to provide transparent and regular updates on key decisions, spending, and procurement related to the pandemic response. This chapter explores whether authorities consistently disclosed such information during the height of the crisis and assesses the current availability of that data.

By analyzing the transparency of government actions during the pandemic, this study seeks to identify both the strengths and weaknesses in public communication and accountability. The findings offer valuable insights into how crisis management practices can be enhanced to better serve the public in future emergencies, emphasizing the importance of transparency as a cornerstone of effective governance during times of crisis.

5.1. Bulgaria

In Bulgaria, data transparency was severely lacking even during the COVID-19 crisis, and much of this information remains untraceable after the pandemic's end. The management of the pandemic was marked by significant disorganization in the dissemination of information, leading to discrepancies between the continuously published data during the crisis and the overall figures that emerged once the pandemic subsided.

5.2. Czech Republic

The Czech government's approach to managing the COVID-19 pandemic was fragmented and lacked a comprehensive strategy. Communication from officials and state bodies was inadequate, with authorities often unable to coordinate effectively, provide clear answers to pressing questions, or disclose crucial information. This lack of transparency contributed to public frustration and diminished trust in government actions.

However, the chaotic nature of the response also had an unintended effect: due to poor coordination, authorities were inconsistent in withholding information. Over time, much of the information from that period eventually became public through investigations and successful Freedom of Information requests, allowing for greater transparency in retrospect, even if it was delayed.

5.3. Hungary

During the COVID-19 pandemic, the majority of law-making powers were shifted from the National Assembly to the Government, bypassing the usual legislative process. This shift led to the adoption of emergency laws without prior public consultation or communication. While these special laws were technically in line with public law, they were passed at an unusually rapid pace. In some instances, laws came into effect just hours after being promulgated.

One notable example is Government Decree 521/2020. (XI. 25.), which extended the response time for Freedom of Information (FOI) requests from the statutory 15 days to 45 days.

This response period could be further extended by up to 90 days in total. The Hungarian Constitutional Court upheld the constitutionality of this decree in decision 15/2021. (V. 13.), and the extended FOI response time remained in effect until the end of 2022.

During the COVID-19 pandemic, the general transparency rules governing public procurements remained in place. However, under emergency law, the Ministry of Interior was granted the authority to exempt certain procurements from the requirements of the Public Procurement Act. As a result, these procurements fell outside the scope of the usual transparency regulations, significantly reducing public access to information about government spending and procurement activities during the crisis. Consequently, citizens had access to less information than they would under normal circumstances.

5.4. Slovak Republic

During the COVID-19 pandemic, information regarding health issues and the impact of the pandemic was made available to the public through the Public Health Office's [website](#) and adopted measures, regulations, and decisions were published on the public website <https://korona.gov.sk/>.

However, transparency in the public sector significantly declined during this period. The use of fast-track legislative procedures, often with limited or no public engagement and minimal oversight, became more frequent. This practice extended even to areas unrelated to the pandemic, such as changes in the Judicial Council. A [figure](#) illustrating the increased frequency of fast-tracked legislative proceedings across various election terms highlights this trend.

Additionally, transparency in public procurement diminished due to the urgent need for goods and services related to public health. This opacity extended to public subsidies and other forms of government aid linked to the pandemic.

SUMMARY

The COVID-19 pandemic led to a decline in standards for access to information, particularly in the healthcare sector. The most fitting description for the availability of information during this time is likely „unsystematic.“ This inconsistency was not only evident when comparing the approaches taken by different countries but also within national strategies. Data regarding the management of the pandemic remains largely inaccessible, and when available, it is often due to information requests rather than proactive transparency. These requests are handled inconsistently, with the data being made public primarily through the efforts of active citizens and the media, rather than as a result of systematic government disclosure.

6. CASE STUDIES

This section aims to provide an overview of how access to information laws can be actively utilized in the healthcare sector to promote effective public oversight. The subjects involved in the study shared their direct experiences, which contributed to investigative conclusions about the practical application of these laws and their role in enhancing transparency and accountability within healthcare.

6.1. Bulgaria

In 2022, BILI pursued a case related to the COVID-19 spending in Bulgaria, seeking public data from a number of hospitals. While some hospitals provided the requested information, others did not. As a result, BILI took legal action against two key hospitals: Pirogov Hospital in Sofia, Bulgaria's only emergency hospital and one of the largest, and the state- and municipally-owned hospital in Pazardzhik.

Both hospitals denied access to information requests, which sought data on the number of COVID-19 patients, death tolls during the period, and expenditures on emergency supplies. Although the cases were identical and both were heard before the Sofia Administrative Court, they resulted in different outcomes. The court ordered Pirogov Hospital to release the requested data, while ruling that the Pazardzhik hospital was not obliged to do so.

In addition to these legal actions, BILI successfully advocated for the inclusion of a measure called the „COVID-19 Task Force“ under the “Good Governance and Anti-Corruption” thematic area in the Fourth National Action Plan of the Open Government Partnership Initiative of the Republic of Bulgaria. This initiative was aimed at promoting transparency and accountability during the pandemic.

6.2. Hungary

In the summer of 2022, K-Monitor submitted Freedom of Information (FOI) requests to all major hospitals in Hungary seeking details on the appointment of healthcare leaders. In response, each hospital provided an identical, unified reply, likely following instructions

from the National Directorate General for Hospitals. Instead of offering specific information regarding the appointment processes for hospital directors, the reply merely stated that „everything was done in accordance with the respective law.“

Unconvinced by this lack of transparency, K-Monitor filed a lawsuit against the Directorate, seeking detailed information about the appointments, including which bodies were responsible, the rules governing the appointments, and the qualifications of the appointees. In 2023, K-Monitor won the case, securing a legal victory that compelled the release of the requested information, thus enhancing transparency in the healthcare sector.

6.3. Slovak Republic

In response to the lack of transparency regarding public spending during the COVID-19 crisis, TI Slovakia took on an expanded role, supplementing the state's efforts by requesting information on all public subsidies. TI Slovakia then made this data available as open data on its [website](#), providing a valuable resource for investigative analyses and public scrutiny.

Despite this progress, some information, such as public subsidies granted through the Export-Import Bank to third parties, remains inaccessible. TI Slovakia is currently involved in a legal dispute, awaiting a court decision to potentially gain access to this missing data.



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