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ACCESS TO THE DISCIPLINARY FILE OF AN ACADEMIC TEACHER

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Abstract

The article is of a scientific and research-based nature. It analyses the transparency of disciplinary proceedings against academic teachers, which are conducted under the Act on Higher Education and Science. The article examines issues of transparency in light of the provisions of that Act, the Code of Criminal Procedure, and the Act on Access to Public Information. The research objective was clear: to determine whether persons not involved in disciplinary proceedings (namely the accused, their defence counsel, or the disciplinary advocate) may request access to the records of such proceedings (in whole or in part), or seek information from them other than official documents, under the Act on Access to Public Information. The analysis covered the regulations concerning the parties to disciplinary proceedings contained in the Higher Education and Science Act, the 2022 Implementing Regulation governing disciplinary procedures, and the Code provisions applicable to disciplinary matters. The rules concerning access to public information were also analysed, both in normative terms and in light of administrative court rulings. The research employed the dogmatic method, and its findings are original and significant for both legal scholarship and practice. The study has conclusively demonstrated that information from disciplinary proceedings involving academic teachers, as well as the files of such proceedings, although considered public information, are not subject to disclosure to persons requesting access under the Act on Access to Public Information. This is because a special regulation – namely the appropriate application, under Article 305 of the Higher Education and Science Act, of Article 156 § 1 of that Code – excludes such applicants, until the conclusion of the disciplinary proceedings, from the group of persons who, under the current legal framework, have access to disciplinary files.

Keywords: disciplinary proceedings of academic teachers, disciplinary files, access to files, public information

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INTRODUCTION

Disciplinary proceedings against academic teachers are conducted under the provisions of the Higher Education and Science Act[1] (hereinafter referred to as the 'HESA'), as well as, by virtue of the reference in Article 305 of that Act, the correspondingly applied provisions of the Code of Criminal Procedure[2] (hereinafter referred to as the 'CCP'). In matters relevant to the issues discussed below, the provisions of the Regulation of the Minister of Education and Science of 8 June 2022 on the detailed procedure for conducting mediation, explanatory proceedings, and disciplinary proceedings in matters concerning the disciplinary responsibility of academic teachers, as well as on the manner of executing disciplinary penalties and their expungement[3] (hereinafter referred to as the 'Ministry of Education and Science Regulation' or 'MESR'), also apply.

Disciplinary proceedings against academic teachers are conducted by a disciplinary committee. Depending on the charge brought against the teacher by the disciplinary spokesperson, the matter may be considered by one of three types of committees, as provided for in Article 278 of the HESA. These include university committees, the disciplinary committee of the Main Council of Science and Higher Education (hereinafter 'the MCSHE'), and the disciplinary committee of the minister (currently the Minister of Science and Higher Education). The committees are independent in their decision-making and are autonomous from public authorities and university bodies.[4] They independently establish the facts and decide on legal issues, without being bound by the decisions of other law enforcement bodies, except for a final conviction handed down by a criminal court, as well as the opinion of the Committee for Ethics in Science of the Polish Academy of Sciences. In the literature, the independence of the committee is consistently defined as the inadmissibility of any extra-procedural influence on its decisions.[5] This applies in particular to university committees and university authorities, but also to other state bodies in relation to committees operating at the General Council for Science and Higher Education or those at the Ministry. Independence is further understood as the conferral of powers and competences that cannot be exercised by other entities, coupled with organisational separation, among other safeguards.[6]

All the normative acts indicated above contain provisions regulating the issue of the so-called transparency of disciplinary proceedings against academic teachers,

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1 Act of 20 July 2018 (consolidated text: Journal of Laws of 2024, item 1571).

2 Act of 6 June 1997 (consolidated text: Journal of Laws of 2024, item 46).

3 Regulation of the Minister of Education and Science of 8 June 2022 on the detailed procedure for conducting mediation, explanatory proceedings and disciplinary proceedings in matters of disciplinary responsibility of academic teachers, as well as the manner of executing disciplinary penalties and their expungement (Journal of Laws of 2022, item 1236).

4 Cf. Article 278(7) of the Act on Higher Education and Science.

5 Cf. K. Wiak, in: Pyter M. (ed.), *Prawo o szkolnictwie wyższym. Komentarz*, Warszawa, 2012, Article 143, p. 782; J. Kosowski, in: Jakubowski A. (ed.), *Prawo o szkolnictwie wyższym i nauce. Komentarz*, Article 278, LEX/el., 2023.

6 P. Wiliński, P. Karlik, in: Bosek L., Safjan M. (eds), *Konstytucja RP. Tom II. Komentarz do art. 87–243*, Warszawa, 2016, Article 173, p. 968.

including the rules governing access to the documentation of such proceedings. There is no doubt that all documents collected in the course of disciplinary proceedings, including the files of the explanatory proceedings conducted by the disciplinary officer for academic teachers, as well as the request to initiate disciplinary proceedings before the disciplinary committee, constitute a set of documents forming the disciplinary proceedings file. These are subject to a special regime concerning access, both for the participants in the proceedings – namely the parties, i.e. the disciplinary officer and the accused – and for the defence counsel.

The question of transparency in proceedings conducted before the disciplinary committee (only at this stage of the process can one in fact speak of disciplinary proceedings) must be considered in relation to ongoing proceedings. Neither the HESA nor the MESR regulate access to the files of completed proceedings.

The possibility of invoking the provisions of the Act on Access to Public Information[7] (hereinafter referred to as the 'AAPI') to request that the bodies conducting disciplinary proceedings (disciplinary committees) make certain information available to an applicant, most often in the form of specific documents contained in the files of disciplinary proceedings, creates a significant problem in this context. The question that must be addressed is whether it is legitimate to apply the provisions of this Act to obtain access to information from ongoing disciplinary proceedings, what type of information may be accessed, and which entities may lawfully be granted such access.

PRINCIPLE OF OPENNESS AND DISCIPLINARY PROCEEDINGS AGAINST ACADEMIC TEACHERS

As previously indicated, disciplinary proceedings are conducted by a disciplinary committee and are initiated at the request of the disciplinary officer, as provided in Article 293(1) HESA. Detailed provisions governing the course of this procedure are set out in the Ministry of Education and Science Regulation, which defines not only the conduct of the proceedings but also the powers of the respective disciplinary bodies at each stage of the process, including the stage before the disciplinary committee. The disciplinary proceedings, which are modelled on criminal proceedings, are initiated – like the jurisdictional stage of criminal proceedings – at the request of an authorised entity, which, in proceedings against an academic teacher, is the disciplinary officer. The decision to commence such proceedings before the committee is made by the chairperson of the committee through the issuance of an appropriate order. At that point, the disciplinary proceedings commence – this is what is referred to as the 'course of proceedings'. This explanation is important for the following analysis, as it should be emphasised that the term 'disciplinary proceedings' refers only to a specific stage of the broader procedure aimed at determining whether an academic teacher has committed a disciplinary offence (the explanatory proceedings conducted by the disciplinary officer)

[7] Act of 6 September 2001 on Access to Public Information (consolidated text: Journal of Laws of 2022, item 902).

and adjudicating disciplinary responsibility for the alleged act constituting a disciplinary offence (disciplinary proceedings *sensu stricto*). The disciplinary proceedings, initiated by a complaint (a request to initiate proceedings) submitted by the authorised disciplinary officer, are conducted before the committee until their legally binding conclusion. The decision of the university committee or the committee of the Council, against which no appeal has been lodged within the prescribed time limit or from which the appeal has been effectively withdrawn, becomes final and subject to enforcement. The finality of the decision is then declared by the chairperson of the disciplinary committee.[8] In other cases, the disciplinary proceedings are deemed to have been legally concluded when the decision to terminate the proceedings is issued by the committee adjudicating the case in the second instance.

The principle of openness, which determines the course of the individual stages of criminal proceedings, is implemented in a slightly different manner in disciplinary proceedings against academic teachers, even though, under Article 305 HESA, certain CCP provisions also apply correspondingly to proceedings before the disciplinary committee. This also includes provisions implementing the principle of openness of proceedings.

The key stage in disciplinary proceedings concerning academic teachers is the disciplinary hearing before the committee. However, from the point of view of the efficiency of the proceedings, closed sessions held by adjudicating panels appointed by the chairperson of the committee to examine a given case are no less significant. Hearings are open to a defined group of participants specified in the regulations, or to other designated persons acting in the proceedings as representatives of a particular entity or group. Conversely, closed sessions, as their name suggests, are not accessible to participants in disciplinary proceedings other than the adjudicating panel. This follows from § 19(1)(1) MESR, which specifies two adjudicating forums: the disciplinary hearing and the closed session.

With regard to the external aspect of the openness of disciplinary proceedings, it should be emphasised that the disciplinary hearing is open only to a specific group of entities defined by law. These include employees of the university where the accused academic teacher is employed, representatives of the student and doctoral student councils (if the offence concerns the rights of a student or doctoral student), the victim, and representatives of the MCSHE, as well as representatives of the Minister. With the consent of the accused, representatives of the trade union of which he or she is a member may also be present at the disciplinary hearing. It should be noted that the presence of these persons does not confer the right to participate in the hearing. From a procedural standpoint, a distinction must be drawn between participation, understood as the right to take an active part in a given procedural act, and mere presence at such an act. A person entitled to be present during a procedural act is only an observer, whereas a participant in the act fulfils a specific procedural role – as a member of the adjudicating body, a party to the proceedings, a personal source of evidence (witness, expert), an auxiliary to the body (court reporter, interpreter), or a representative of a party (for instance,

[8] Cf. § 42(2) MESR.

the defendant's defence counsel). It should be noted that neither the victim of the accused nor the person reporting the disciplinary offence possesses the status of a party to the disciplinary proceedings. This means that, unless they belong to the group of persons indicated in Article 293(5) HESA, they are not entitled to participate in a disciplinary hearing before the disciplinary committee.

There is no doubt that entities other than the adjudicating body cannot participate in closed sessions. These sessions are convened by the chairperson of the committee to address organisational matters; they do not serve as a forum for adjudicating on the merits (that is, in matters of disciplinary responsibility). Consequently, only members of the adjudicating body and the minute taker attend them.

In terms of internal transparency, which concerns both parties' access to the disciplinary proceedings file and their ability to participate in procedural activities undertaken by the disciplinary committee, the provisions of the Ministry of Education and Science Regulation –particularly § 23(4) – are of key importance, as will be discussed later.

Participation in disciplinary proceedings, including the hearing, constitutes a right of the parties to the proceedings; therefore, both the disciplinary officer (the active party) and the accused (the passive party) may actively participate in the hearing. It should be emphasised that this is a right, not an obligation. If a party neither requests to be excused from attending the hearing nor applies for its postponement, the hearing may be conducted in their absence. However, if such a request is submitted, a new hearing date must be set, at which the requesting party may – according to their rights – attend and actively participate.[9] This is confirmed by § 5(6) MESR. A prerequisite for such a procedure is that the parties are properly notified of the date and venue of the hearing, which should be done through a postal operator or a university employee.[10] Due to the specific nature of this regulation (*lex specialis*), the notification procedures applicable in criminal proceedings cannot be used in this instance, as the provisions of the Code of Criminal Procedure do not apply here (cf. Article 305 HESA).[11] Although the literature draws attention to the possibility of using simplified forms of notification (for example, by telephone or e-mail), this remains limited in scope – applicable only to the disciplinary officer,

[9] Cf. § 34(2) MESR.

[10] Cf. § 5 MESR.

[11] For more on the proper application of regulations see: J. Nowacki, 'Odpowiednie stosowanie przepisów prawa', *Państwo i Prawo*, 1964, No. 3, pp. 370 et seq.; S. Wronkowska, M. Zieliński, *Komentarz do zasad techniki prawodawczej z dnia 20 czerwca 2002 r.*, Warszawa, 2012, p. 302; as regards the appropriate application of the CCP provisions in disciplinary proceedings, cf. K. Dudka, *Zasady i zakres odpowiedniego stosowania przepisów Kodeksu postępowania karnego w sprawach odpowiedzialności dyscyplinarnej notariuszy. Zasady ponoszenia kosztów postępowania dyscyplinarnego notariuszy na tle regulacji dotyczących innych zawodów prawniczych*, Warszawa, 2015, p. 10; also K. Dudka, 'Stosowanie przepisów kodeksu postępowania karnego w postępowaniach dyscyplinarnych uregulowanych w prawie o adwokaturze oraz ustawie o radcach prawnych', *Prawo w Działaniu*, 2014, No. 18, p. 48; and K. Dudka, *Odpowiedzialność dyscyplinarna w prawniczych zawodach zaufania publicznego. Analiza orzecznictwa kar dyscyplinarnych*, Warszawa, 2013, p. 14; P. Czarnecki, 'Odpowiednie stosowanie przepisów prawa karnego w postępowaniach represyjnych', in: Czarnecki P. (ed.), *Postępowanie karne a inne postępowania represyjne*, Warszawa, 2016, pp. 13 et seq.

as such a form of notification does not infringe upon their procedural rights.[12] This matter has been regulated by the legislator in § 5(2)–(5) MESR.[13]

The regulation concerning access to the files of disciplinary proceedings against academic teachers is essentially exhaustive only in relation to the parties to the proceedings. The relevant provision governing the accused's access to the file or parts thereof, as well as the right to make copies, is found in § 21(4) MESR, which provides that from the moment the order setting the date of the hearing is served on the accused, only the accused or their defence counsel may inspect the case file and make extracts, notes, and photocopies thereof, in the presence of a person appointed by the chairperson of the adjudicating panel.

However, when applying by analogy the technique of the appropriate application of the CCP provisions, as permitted by Article 305 HESA, it becomes apparent that this issue is regulated in a similar manner in Article 156 §§ 1–2 CCP. These provisions clearly state that only the parties, defence counsels, attorneys, and legal representatives have access to the court case files and are entitled to make copies or duplicates thereof. With the consent of the president of the court, these files may also be made available to other persons. The law does not define the group of such persons nor does it specify the criteria for recognising them as eligible for access to court case files. In the literature, it is suggested that the guiding principle in this respect should be that such persons must demonstrate a legitimate reason for inspecting all or part of the documentation constituting the case file. It is, for example, indicated that such persons may include representatives of the media, individuals conducting scientific research, or others who can demonstrate a legitimate reason for requesting access to the file.[14]

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[12] This is pointed out by A. Jakubowski, *Komentarz do ustawy prawo o szkolnictwie wyższym i nauce*, comment on Article 293, LEX/el., 2023 [accessed on 12 February 2025].

[13] '§ 5. 1. In proceedings concerning the disciplinary responsibility of an academic teacher, summonses, notifications, decisions, rulings, orders and other documents shall be delivered against a receipt.

2. Summonses, notifications and other documents, the delivery date of which determines the deadline, shall be served by an authorised employee of the university or a postal operator within the meaning of Article 3(12) of the Act of 23 November 2012 – Postal Law (Journal of Laws of 2022, item 896).
3. Summonses and notifications may also be made by telephone, with an annotation including the date and content of the summonses or notification, together with the signature of the person who made the call, being placed in the case file.
4. Documents other than summonses and notifications may also be delivered by fax or e-mail, with a printout of the delivered document and confirmation of data transmission being included in the case file.
5. The provisions of paragraphs 3 and 4 shall apply if it serves the interest of ensuring the efficient conduct of the proceedings and does not result in a violation of the rights of its participants.
6. The provisions of paragraphs 3 and 4 shall not apply to the delivery of summonses, notifications and other documents addressed to:
   (1) the person to whom the notification or information relates;
   (2) the person whose act is the subject of the explanatory proceedings;
   (3) the accused.'

[14] Cf. H. Paluszkiewicz, in: Dudka K. (ed.), *Komentarz do kodeksu postępowania karnego*, Warszawa, 2023, p. 324.

The Ministry of Education and Science Regulation does not address the issue of granting access to the files of ongoing disciplinary proceedings to other persons, which implies the necessity of applying special provisions governing access to such files. The possibility of applying such special provisions is ensured by Article 305 HESA, which, in matters concerning the disciplinary responsibility of academic teachers not regulated by that Act, refers to the corresponding application of the Code of Criminal Procedure. Accordingly, the rules on access to the disciplinary proceedings file of academic teachers are also regulated, through appropriate application, by the provisions of Article 156 §§ 1 and 2 CCP. As noted in case law, the CCP provisions comprehensively regulate the issue of access to files during ongoing preparatory proceedings and exclude the application of the AAPI in this respect. This position is based primarily on the fundamentally different procedural standing of the parties to the proceedings at this stage of the criminal process compared with other entities that do not hold such status. The Supreme Administrative Court (NSA) has emphasised that it would be a violation of the principle of equality enshrined in Article 32(1) of the Constitution of the Republic of Poland if a party to criminal proceedings, whose vital interests are directly affected by the case, were to obtain access to the case file under the formalised rules of the Code, while other persons could gain access under the less formal provisions of the AAPI.[15] Since the present considerations concern disciplinary proceedings, which are a functional equivalent of the pre-trial stage of criminal proceedings, it is necessary to consider whether any legal basis exists for access to the files of such proceedings other than those provided for in the HESA, CCP, or MESR. The only potentially applicable legal act in this regard is the Act on Access to Public Information, provided that its provisions can be interpreted as encompassing disciplinary proceedings pending before the disciplinary committee.[16]

ACCESS TO THE RECORDS OF DISCIPLINARY PROCEEDINGS UNDER THE ACT ON ACCESS TO PUBLIC INFORMATION

The term ‘public information’ is a statutory concept defined by the legislator in Article 1(1) and Article 6 AAPI. Pursuant to Article 1 AAPI, any information concerning public matters constitutes public information and is subject to disclosure according to the rules and procedures prescribed by law.[17]

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[15] Judgment of the Supreme Administrative Court (NSA) of 25 May 2017, I OSK 1399/15, LEX No. 2323346.

[16] Cf. the Supreme Administrative Court (NSA) order of 19 January 2011, I OSK 8/11, LEX No. 741678, which states that the right of access to public information includes the right to request public information concerning specific facts and circumstances existing at the time the information is provided.

[17] An interesting analysis of this concept in the light of case law was carried out by P. Szustakiewicz, who indicated that the classification of certain information as subject to disclosure within the meaning of the aforementioned Act is determined by various criteria. The first is the material criterion, namely the content and nature of the information (see judgments of the Supreme Administrative Court of 24 May 2013, I OSK 260/13, and of 30 November 2012, I OSK

Article 6 of this Act lists information and documents that constitute public information. However, this catalogue is not exhaustive, as indicated by the use of the phrase 'in particular' in the provision. It includes, among other things, information about the entities referred to in Article 4(1) AAPI and the principles governing their operations. In the case law of administrative courts, it is consistently recognised that public information includes any data produced by broadly understood public authorities and by persons performing public functions, as well as by other entities exercising such authority or managing municipal or State Treasury property within the scope of their competences. This also extends to information not produced by public entities but relating to them.[18] In another judgment, the Supreme Administrative Court stated that not every document produced by a public authority is public information; what is decisive is the content and nature of the data, not the title or classification of the document containing it.[19] Consequently, not all information held by an entity obliged to disclose public information qualifies as such in the legal sense. Only information concerning matters related to the functioning of the state is public information, and moreover, such information must relate to events occurring in reality.[20]

In this context, it is reasonable to ask whether disciplinary proceedings against academic teachers, and the documentation collected during those proceedings which constitutes the case file, fall within the notion of public information.

In light of Article 4(1) AAPI, a public university is an entity obliged to disclose public information, both because it performs public tasks and because it disposes of public property. As a rule, therefore, a university is subject to the obligation to disclose public information, and disciplinary proceedings against an academic teacher,

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1835/12), where the criteria determining that the requested information is of a public nature are set out in Article 6 AAPI, which establishes the types of information relating to public matters. This provision develops Article 1 AAPI, linking the concept of 'public information' with that of a 'public matter', and therefore 'the subject of the information must be a public matter and, although its understanding is quite broad, it should nevertheless concern the sphere of facts' (judgment of 18 December 2013, I OSK 1944/13). Another criterion is the subjective criterion, according to which 'public information is everything that is directly related to the functioning and mode of operation of the entities referred to in Article 4(1) of the Act' (as stated in the judgment of the Supreme Administrative Court of 2 October 2014, I OSK 501/14). There is also a subjective-objective criterion, according to which public information is any message produced by, or relating to, public authorities, as well as information concerning other entities performing public functions in the exercise of their public authority tasks (judgment of the Supreme Administrative Court of 27 June 2013, I OSK 513/13; similarly, judgment of 10 January 2014, I OSK 1966/13). Two elements are decisive in determining whether a specific piece of information is public information: the subjective element – the entity in question is classified as a public authority or performs public tasks on behalf of the state; and the objective element – the information concerns matters related to the performance of public tasks by these entities. See more extensively, P. Szustakiewicz, 'Definicja informacji publicznej w orzecznictwie Naczelnego Sądu Administracyjnego', *Przegląd Prawa Publicznego*, 2016, No. 10, pp. 53–62.

[18] Cf. judgment of the Regional Administrative Court in Warsaw of 11 June 2010, II SAB/Wa 9/10, LEX No. 643859.

[19] Judgment of the Supreme Administrative Court of 5 March 2013 I OSK 2888/12, Legalis No. 760481.

[20] Judgment of the Supreme Administrative Court of 18 December 2013, I OSK 1944/13, LEX.

together with the documentation produced in the course of those proceedings, are public information, as they are created in the performance of public tasks by the competent authority, namely the disciplinary committee.[21] However, this position is subject to certain limitations when considering disciplinary committees other than those operating at universities. The disciplinary committee at the MCSHE, like the disciplinary committee operating under the minister, does not dispose of any public property, nor does it have its own budget. Its administrative service is provided by the relevant organisational unit within the office of the minister responsible for science and higher education. Nevertheless, as noted by the Regional Administrative Court (WSA) in Poznań,[22] disciplinary liability is provided for in official regulations governing the status of officers of uniformed services (for example, the Police), in the provisions governing the legal status of other appointed employees (such as teachers or judges), and in statutes regulating the organisation and functioning of professional associations (for example, the Bar Association). This is a form of criminal liability, although it is most often exercised by entities operating, in a functional sense, as public administration bodies, for disciplinary offences. This term most commonly refers to a breach of an employee's duties, but it is equally often extended to cover violations of dignity or breaches of the ethical principles of a given profession. Furthermore, disciplinary sanctions belong to the category of state coercive measures that bear the characteristics of punishment. It therefore follows that disciplinary liability is a form of criminal liability, as it concerns responsibility for committing a punishable act. Consequently, the exercise of disciplinary power by university authorities is a form of exercising public authority.

On the other hand, the Regional Administrative Court in Opole, in its judgment of 18 May 2020,[23] expressed the view that the right of access to public information in the form of documents is not limited exclusively to official documents. In the opinion of the court, the term 'document' in the context of the AAPI should be understood broadly, in line with the right to public information. For the purposes of the constitutional right to information, 'document in general' should be interpreted as any information concerning the activities of public authorities or public affairs, expressed and recorded on some medium, most often in written form. In the broadest sense, a document is any data carrier, whether paper, electronic, or digital. This position was expressed in relation to a document in a disciplinary case file which served as evidence in the case. According to the WSA, the inclusion of this document in the file as evidence in the disciplinary proceedings does not deprive it of the character of public information, nor does it exclude it – by virtue of the special regulations of the Ministry of Education and Science and the CCP – from the obligation of disclosure under the AAPI. The court emphasised that the existence of such a document as an independent entity, separate from the disciplinary proceedings, cannot be disregarded, as it may function autonomously, detached

[21] Judgment of the Regional Administrative Court in Poznań of 25 November 2020, ref. No. II SAB/Po 87/20, LEX No. 3108996.

[22] Ibidem.

[23] Judgment of the Regional Administrative Court in Opole of 18 May 2020, II SAB/Op 26/20, LEX No. 3007525.

from the disciplinary case. This means, according to the WSA, that if a document displaying the characteristics of objectivity, independence, and impartiality has been included in the case file solely as evidence of a particular circumstance, it remains subject to disclosure under the AAPI provisions. The fact that disciplinary proceedings have been concluded or are still ongoing is irrelevant to the possibility of disclosing such a document under the AAPI, since the document's evidentiary function within the proceedings does not alter its legal status as public information. Acceptance of this view would mean that, in practice, disciplinary committees receiving a request from a person who is not a party to the proceedings for access to a specific document from the case file (which, according to this interpretation, constitutes public information) would be obliged to assess the document's role and significance in the course of the disciplinary proceedings, as well as its relevance to determining the disciplinary responsibility of the accused academic teacher. It should be noted that documents in a disciplinary case file may include, for instance, documents containing the procedural submissions of the parties, such as a request by the disciplinary officer to initiate disciplinary proceedings; documents representing authoritative statements of the disciplinary committee, such as a non-final decision regarding the disciplinary liability of the accused; and other documents possessing independent legal existence and included in the file for evidentiary purposes, such as an audit of the organisational unit in which the accused is employed.

In its judgment of 21 November 2014,[24] the Supreme Administrative Court stated that the right of access to public information gives rise to the right to inspect official documents, but not the right to inspect the entire case file. This interpretation is consistent with Article 6(1)(4)(a) AAPI, which provides that the content and form of official documents shall be made available. In the opinion of the Supreme Administrative Court, the material scope of access to public information excludes a person's unrestricted access to case file. Consequently, not every collection of documents may be made available under the AAPI. The Act's material scope does not require the obliged entity to provide access to entire collections of documents (case files) for free inspection by an interested party. In this respect, Article 6(1)(4)(a) AAPI defines the extent of the individual's right by limiting the concept of public information to individual documents.

Such a firm approach, as reflected in the case law, indicates that documents constituting the files of ongoing disciplinary proceedings are, in the court's view, public information. However, this raises the question of whether the regulations governing access to public information are in fact applicable to such documents.

The answer to this question requires consideration not only of the Act on Access to Public Information but also of all regulations governing the disciplinary proceedings of academic teachers, including the provisions of the Act on Higher Education and Science, the relevant CCP provisions, and the provisions of the Ministry of Education and Science Regulation applied correspondingly in matters not regulated by the HESA.

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[24] Judgment of the Supreme Administrative Court of 21 November 2014, I OSK 779/14, LEX No. 2787769.

The assumption that information contained in documents forming part of ongoing disciplinary proceedings constitutes public information – since it meets the conditions of the legal definition set out in Article 1 AAPI – does not necessarily mean that such information is subject to disclosure to a person requesting access under the procedure provided for in that Act.

The Supreme Administrative Court, in a resolution of a panel of seven judges on 9 December 2013,[25] clarified that the AAPI provisions do not override the provisions of other acts that establish different rules and procedures for accessing information that also is public information. This means that the AAPI provisions do not apply in situations where they are incompatible with the provisions of specific acts that regulate the rules and procedures for access to public information differently. Such special provisions include, among others, Articles 156 and 321 CCP. Pursuant to Article 156 § 1 CCP, the right to access court files and to make copies thereof is granted to the parties, defence counsels, attorneys, and legal representatives. With the consent of the president of the court, such files may also be made available to other persons. Although this provision does not state this *expressis verbis*, it should be assumed that it applies to court files in both ongoing and completed proceedings. As noted by the Supreme Administrative Court in this judgment, the provisions of Article 156 §§ 1, 5, and 5a CCP apply to all potential addressees, not only to the parties to criminal proceedings, and concern documents that are public information contained in court files of criminal cases and files of ongoing preparatory proceedings. These are special provisions referred to in Article 1(2) AAPI, and therefore, the Act does not apply to them.

In contrast, in its judgment of 21 August 2013,[26] the Supreme Administrative Court emphasised that information in the form of court judgments is subject to disclosure. In support of this conclusion, the Court referred to Article 6 AAPI, noting that this provision precisely defines the catalogue of information that must be disclosed under the Act, and therefore, by its nature, such information is subject to disclosure. In that case, the Supreme Administrative Court ruled on the obligation to disclose a non-final court decision under the Act on Access to Public Information, recognising that such a decision is an official document which, regardless of its finality, represents public information and is therefore always subject to disclosure. With regard to disciplinary proceedings against an academic teacher, it should be observed that Article 156(1) CCP is another special provision excluding the disclosure of documents contained in the disciplinary proceedings file, by virtue of the provision contained in Article 1(2) AAPI. The very wording of the Act thus implies a prohibition on granting access to the files of pending disciplinary proceedings to entities other than those expressly indicated therein, including the prohibition on providing access to parts of those files in the form of specific documents contained within them.

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[25] Resolution (7) of the Supreme Administrative Court of 9 December 2013, I OPS 7/13, *ONSAiWSA*, 2014/3/37.

[26] Judgment of the Supreme Administrative Court of 21 August 2013, I OSK 754/13, LEX No. 1350343.

CONCLUSIONS

Based on the position presented by the Supreme Administrative Court in its judgment of 15 December 2021,[27] and summarising the above considerations, the following conclusions may be drawn.

Firstly, it should be assumed that the provisions of Article 156 §§ 1, 5, and 5a CCP apply to everyone, and therefore not only to the parties to criminal proceedings. This is confirmed, among other things, by the wording of the second sentence of Article 156 § 1 CCP, which provides that the files may, in exceptional circumstances, be made available to persons other than the parties (defenders, attorneys, legal representatives).

Secondly, these provisions establish a comprehensive and self-contained framework governing the rules of access to the files of criminal proceedings and to the public information included therein, both at the preparatory stage and at the stage of court proceedings, as well as, together with other relevant provisions, in relation to files of proceedings that have already been completed.

Thirdly, the CCP provisions constitute 'provisions of other acts' within the meaning of Article 1(2) AAPI, which establish different rules and procedures for accessing public information. Consequently, they preclude the application of the provisions of that Act to public information contained in criminal case files.

In conclusion, it should therefore be assumed that although information from the disciplinary proceedings against academic teachers, as well as the files of those proceedings, are public information, they are not subject to disclosure to persons requesting access under the Act on Access to Public Information. This is because a special regulation – namely, the appropriate application, under Article 305 HESA, of Article 156 § 1 CCP – excludes such applicants, until the disciplinary proceedings have been concluded, from the group of persons who, under the current legal system, have access to the disciplinary proceedings file. The position adopted here refers primarily to disciplinary proceedings that are ongoing, i.e. from their initiation by order of the chairperson of the disciplinary committee in response to a request by the disciplinary officer to initiate proceedings against a specific accused academic teacher, until their final conclusion. Access to the files of proceedings that have been legally concluded, including rulings issued in the course of those proceedings concerning disciplinary liability, remains – pursuant to the appropriately applied Article 156 § 1 CCP – at the discretion of the chairperson of the disciplinary committee, who has the authority to make such files available to persons other than the parties, defence counsels, attorneys, and legal representatives. Given the significance of such rulings for the academic community, as well as more broadly for society, and bearing in mind that they fall within the definition of public information under the Act on Access to Public Information, it should be recognised that there

[27] Judgment of the Supreme Administrative Court of 15 December 2021, III OSK 4343/21, LEX No. 3275807.

exist both factual and legal grounds for granting access to such information to persons requesting it under the procedure for access to public information, once the disciplinary proceedings have been lawfully concluded.[28]

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[28] The technical method of providing information, including the possible anonymisation of personal data, is a separate issue.