AGNIESZKA KORZENIOWSKA-POLAK
University of Social Sciences, Poland, Lodz
adkorzeniowska@interia.pl
ORCID 0000-0002-7151-002X

Right to access to public information and right to privacy of persons exercising public functions

ABSTRACT

The Constitution of the Republic of Poland of 2 April 1997 mentioned i.a. the right to obtain information about the activities of public authorities, which was laid down in more detail in the Act of 6 September 2001. However, the same Constitution also defines the right of every natural person to the protection of their privacy. Does the Polish legislator regulate the conflict of these constitutional principles, and, if so, how? Is primacy given to any of them? Is the exercise of a public function tantamount to a waiver of the right to privacy? Does everyone have the right to obtain any information regarding a person exercising public functions?

KEYWORDS: *protection of privacy, public information, persons exercising public functions, limited access to public information*

1. The right to public information is still a topical, very interesting and thought-provoking issue, which often, perhaps too often, leads to widely differing conclusions. This is an intriguing problem not only for lawyers. The issues of access to information on the activities of public authorities and the implementation of the principle of transparency arouse unwavering interest among the members of society. Information about the refusal to provide information about the names of advisors to the President of the Republic

of Poland or persons supporting candidates for members of the National Council of the Judiciary, the salaries of top executives at the National Bank of Poland, bonuses paid to constitutional ministers or the cost of flights of Sejm deputies' family members by government aircraft are repeated by the mass media for many days. Despite the fact that the Act on Access to Public Information[1], passed on 6 September 2001, has been in force in Poland for many years, the solutions contained in it still raise doubts of interpretation in legal doctrine, in jurisprudence, but first of all among entities obliged by the legislator to make available information on the activities of public authorities. Unfortunately, there are many reasons for these doubts and, what is worse, divergences in the interpretation of the binding provisions of law. The most important of them is the dispersion of regulations concerning the right to public information and the vagueness of terms used in the Act of 6 September 2001. Moreover, there is no terminological consistency between this legal act and the provisions of the Constitution of the Republic of Poland of 2 April 1997[2], which, what is worth noting, does not even use the term 'public information'.

Access to information is one of the fundamental values. Access to information held by public authorities is a necessary part of the functioning of a democratic rule of law. The right of everyone to obtain public information without indicating the purpose for which it is obtained is an essential feature of modern democracy, which is intended to serve the openness of public life. The availability of information to the society or its member allows the latter to participate actively in social life, contributes to the effectiveness of public authorities' work and a sense of responsibility for the actions taken.

The right to public information has a profound impact on an individual's relationship with the state. It is worth remembering, however, that the right to public information also has a significant impact on the relations of the entity about which information is provided with the state providing such

[1] Consolidated text: Journal of Laws of 2018, item 1330, as amended; hereinafter referred to as AAPI.

[2] Journal of Laws no. 78, item 483.

information. Access to public information is also, to a certain extent, access to information about public figures and their activity or inactivity. Does this mean, however, that everyone, at any time and without proving any legal or even actual interest, has the right to obtain any information about anyone who exercises a public function? In such situations, do the applicable legal regulations ensure that the good of the individual is balanced against the common good?

These questions are particularly important in times when, due to the development of new technologies and social changes, the information once obtained may immediately become universal and indelible. In addition, the information made available may be stored and used in a way that is not subject to any control. This problem does not only concern information which, due to the maximum statutory de-formalisation of access, may be provided to an anonymous applicant[3]. Is the mere fact that you are the president of the country, the speaker of the Sejm or the chairman of commune's board, a judge, a prosecutor, an employee of a public administration body or a researcher training such persons equivalent to the right of others to obtain any information about them? Does the existing legislation and jurisprudence interpreting it ensure that the constitutional values of transparency of public life and the protection of natural persons' privacy are properly balanced?

2. The right of access to information as a human right derives from Article 10 of the Convention of 4 November 1950 for the Protection of Human Rights and Fundamental Freedoms[4] which provides for the freedom to obtain and disseminate information. It is defended by the European Court of Human Rights. This facts implies that this right belongs to the sphere of 'human rights'. This means that it is a universal right, to which everyone is entitled, and which is a benefit in itself [Tomaszewska 2012, pp. 113–114]. The state authority cannot take it away; instead, it is obliged to ensure

[3] In its judgement of 23 September 2009, II SAB/Wa 57/09, Lex no. 527024, Voivodeship Administrative Court in Warsaw stated that the authority – in this case the Inspector General for the Protection of Personal Data – cannot make the provision of public information dependent on the applicant providing their personal data or address with a postal code.

[4] Journal of Laws of 1993 no. 61, item 284, as amended.

conditions for its protection and implementation. The right to information, like any other human right, may be restricted by other rights and freedoms or by values such as national security.

In the Constitution of the Republic of Poland of 2 April 1997 the right to information was regulated in three separate provisions: Art. 54(1), Art. 61 and Art. 74(3). Article 61, which deals exclusively with the right to information, is included in the chapter "Political Freedoms and Rights". This should be viewed as the reason for the fact that in jurisprudence the right to information is well established as a political right. It is aimed at creating a civil society by increasing transparency in the activities of public authorities, protecting and strengthening the principles of the democratic rule of law and ensuring social control over the activities of public authorities[5].

It should be noted that in the literature there is also a view that the Constitution of the Republic of Poland does not create any public subjective right to access to information "popularly referred to as public information". Its authors stress that the opposite statement "should be regarded as equivalent to the creation or strengthening of a myth, unfortunately with the active participation of administrative courts and a considerable part of the so-called literature on the subject" [Wrzołek-Romańczuk, Szewczuk 2014, p. 58.].

3. Article 10(1) AAPI defines the priority principle of making public information available by publishing it in the Public Information Bulletin (BIP). However, there is no single model according to which all public entities in Poland would place type-consistent information in their BIPs. Some entities place little information or omit relevant information in their BIPs, others do not have BIPs at all [Kwiatkowski 2014, pp. 12–18].

Public information not included in the BIP or the central repository shall be made available on request. However, this should not happen automatically. The Act on Access to Public Information is not a fundamental law, nor is it

[5] Judgements of the Supreme Administrative Court of 1 October 2010, I OSK 1149/10, CBOSA, http://orzeczenia.nsa.gov.pl; judgement of the Supreme Administrative Court of 30 November 2012, I OSK 1835/12.

a special purpose law that would prevail over others. Although the justification of the draft as put forward by the Sejm deputies proposed that it should be a "systemic act", this suggestion was not taken into account[6]. The Act of 6 September 2001 was granted by the legislator its place in the legal system on an equal footing with other acts, and its provisions should be construed in accordance with the principles of correct interpretation. When considering requests for access to information referred to as "public information", or those invoking the Act on Access to Public Information, public authorities should bear in mind several rules and apply them in the appropriate order.

First, mere reference by the applicant to the right of access to public information does not determine whether the request should be treated as a request for access to public information and examined in accordance with the Act of 6 September 2001. Not every piece of information held by a public authority is public information. Secondly, not all public information is covered by the above Act. Thirdly, not all public information to which the Act of 6 September 2001 applies can be made available. Only action which takes into account the above-mentioned principles is consistent with the rule of law expressed in Article 7 of the Constitution of the Republic of Poland. When determining the legal basis for its action, the addressee of the request is not bound by the assessment of its originator, but by the guidance provided by the legislator. Public authorities are obliged to comply with all applicable provisions of law, which also means that they apply them only in cases specified by the legislator.

4. As it is indicated by the very title of the Act of 6 September 2001, it shall be applied only in matters of access to information that is characterised by the attribute "public". This means that access to any other information is either not regulated at all or is regulated, but in a separate legal act. Thus, the legislator found it legally unacceptable to apply the provisions of the Act on Access to Public Information to obtaining or making available information that is not public information.

[6] Sejm paper no. 2094 of 30 June 2000, pp. 17–18. http://orka.sejm.gov.pl/Rejestrd.nsf?OpenDatabase

Unfortunately, the legislator has not clearly defined this concept, which determines the entire statutory regulation. It has only been stated that any information about public matters is public information. When creating Art. 1(1) AAPI, an *ignotum per ignotum*-type mistake was made: one vague concept was defined by another one, which can be understood in many different ways. For this reason, many different definitions of this concept have been formulated in jurisprudence and literature [Jaśkowska 2002, p. 28][7]. While attempting to reconstruct the legislative intent expressed in the binding provisions of law, the conclusion that public information is information exclusively on public matters should be considered justified. Supplementing this notion with the phrase contained in Art. 61(1) of the Constitution of the Republic of Poland, public information is only information about the activities of public authorities and persons exercising public functions, and about the activities of economic and professional self-government bodies in the scope in which they perform public authorities' tasks and manage municipal or State Treasury property. It is clear from the above-mentioned provisions that the legislator has put emphasis on what the information refers to and not on which entity created it.

5. The legislator also specified in Art. 1(2) AAPI that the right to public information is restricted in the scope and on principles set forth in specific provisions. The legislator expressly stated that the provisions of the Act are without prejudice to other laws laying down different rules and procedures for access to public information, provided that they do not restrict the obligation to communicate public information to a central repository for public information referred to in Article 9b(1). It ensues from this provision that in the event of a collision of laws, the provisions of specific laws take precedence over the provisions of the Act on Access to Public Information, but only if the rules and procedures for access to public information are regulated differently in these acts. Therefore, the existence of other rules

[7] E.g. judgements of the Supreme Administrative Court of 30 October 2002, II SA 1956/02; of 25 September 2018, I OSK 971/18; of 15 June 2018, I OSK 1187/18; judgements of the Voivodeship Administrative Court in Warsaw of 9 January 2006, II SA/Wa 2043/05; of 31 August 2005, II SA/Wa 1009/05;.

or procedures for making public information available precludes the application of the Act on Access to Public Information, but only to the extent expressly regulated by those specific laws. As emphasised in the literature, the provision of Article 1(2) AAPI means that wherever specific matters concerning the principles and procedure of access to public information are regulated differently in the Act on Access to Public Information and differently in a special act on access to information, and application of both these acts is impossible to reconcile, the provisions of the special act take precedence [Sitniewski 2011, pp. 38–40]. However, it should be stipulated that where a given matter is regulated only partially or is not regulated at all in a *lex specialis* act, the relevant provisions of the Act on Access to Public Information shall apply; in the first case they are applied in a complementary manner, while in the second – they constitute an exclusive legal regulation in the defined scope [Jendrośka, Stoczkiewicz 2003, p. 98]. While the right to information is a principle, exceptions to it should be strictly observed[8].

The right of access to public information is not unlimited. Already in Art. 61(3) of the Constitution of the Republic of Poland, it was stipulated that the right to obtain information on the activities of public authorities and persons exercising public functions may be restricted. Exceptions to this rule must always be clearly defined in the provisions of relevant acts. These restrictions result from the choice of a legislator who wishes to protect another value such as freedom, the rights of other persons and economic operators, public order, security or an important economic interest of the state and does so with due regard for the principle of proportionality.

In the case of a conflict of rights that are constitutionally and statutorily protected, it is necessary to balance them. The right to public information in a particular category of matters may not be automatically and generally excluded. Whenever this right is restricted, it must be made clear on what legal basis it has been done. In order to justify a refusal to grant access to public information, it is necessary to present an analysis leading to the conclusion that the provision in question applies in this particular case.

[8] Judgement of the Supreme Administrative Court of 6 March 2013, I OSK 2984/12.

In Art. 5 AAPI, the legislator defined in general terms when the right to obtain public information may be restricted. Section 1 of this provision stipulates that the right to public information is restricted in the scope and on principles set forth in the provisions on the protection of classified information and on the protection of other secrets protected by law. The regulations concerning such secrets are contained in more than 250 acts. They include over 20 professional secrets, including e.g. attorney/solicitor-client, tax counsel-client, physician-patient of journalist's professional privilege and legally protected other secrets, e.g. crown witness's secrets or civil status records [Taradejna, Taradejna 2003, pp. 25–197]. Section 2 of Art. 5 AAPI adds that the right to public information is restricted on grounds of privacy of a natural person or business secret. This restriction does not apply to information on persons exercising public functions – information that is related to the performance of those functions, including the conditions of entrustment and performance of a function, and the case where a natural person or an entrepreneur waives their right. If any of these restrictions applies, the addressee of the request for public information, although in possession of that information, is obliged to refuse to make it available.

One of the reasons justifying the refusal to disclose public information held by the requested authority is the order to protect private life.

6. The area of privacy is protected by Article 8(1) of the Convention for the Protection of Human Rights and Fundamental Freedoms. In situations where the right of access to information and the related right to provide information may involve an intrusion into the sphere of privacy, the obligation to harmonise Articles 8 and 10 of the Convention arises. According to the jurisprudence by the European Court of Human Rights, the boundary of protected goods in relation to persons exercising public functions is the sphere of intimacy and family life [Garlicki, Hofmański, Wróbel 2010, p. 646-647]. The value related to the openness of public life cannot *de facto* lead to the annihilation of the protection related to private life of persons performing public functions.

The Constitution of the Republic of Poland guarantees everyone the right to legal protection of private life. This right may also be exercised

by a person performing public functions. While public office holders must accept a wider range of interference in their privacy once they have taken their appointment, this must not lead to the complete deletion of private life protection [Safjan 2002, p. 10][9]. However, such a person shall not be eligible for this protection if the request concerns information related to the exercise of a person's public function, e.g. the conditions of entrustment and performance exercise of that function. A natural person or an entrepreneur may waive their right to privacy. Also, the assessment of whether the right to public information of a particular kind is restricted for reasons of legal protection of private life should be made on an individual basis, with a clear indication of the specific reasons for refusing to provide the requested information. Only if it is established and convincingly demonstrated that there is a need for legal protection of private life, should the addressee of a request for public information issue an administrative decision refusing to make specific public information available, invoking the limitations provided for in Article 5(2) AAPI. The authority to which the request is made invoking the right to public information, is obliged to take into account the fact that, e.g. it is one thing to specify only the number of days when a particular public officer receiving remuneration from public funds was on legal sick leave, and another to disclose what illness made it impossible e.g. for the minister to perform duties resulting from their public function, or where or how or by which doctor they were treated. In the first case, public information should be made available, in the second case, a negative decision should be issued on the basis of Art. 5(2) AAPI. Unfortunately, in practice, the necessity to carry out such legal reasoning and formulate convincing arguments and prepare an administrative decision subject to review by a second tier authority and administrative court discourages such action. It is simpler, quicker and without a risk of being subject to the said review to make the requested information available, even if it is tantamount to violating the right to privacy of a given person. In such situations, the

[9] Justification of the judgement of the Constitutional Tribunal of 20 March 2006, K 17/05, OTK ZU-A 2006, no. 3, item 30, p. 4 and 14;.

right to privacy and its protection becomes an illusion. Due to the lack of review and practically no sanctions for making such information available, the scale of such practices is difficult to investigate.

This is despite the fact that the Polish legislator adopted the principle of the primacy of the protection of the right to privacy in the situation of its collision with the right to public information. The second sentence of Article 5(2) AAPI should be regarded only as an exception to this rule. However, the correct interpretation of Article 5 AAPI poses quite a challenge in practice. The legislator in the first sentence of Section 2 of that provision sets out an exception to the principle of disclosing public information, while in the second sentence of the same Section sets out an exception to the exception set out in the first sentence. An additional exception is laid down in Article 5(3). Such wording of the provision, coupled with the fact that both the principle and exceptions are expressed through undefined concepts such as 'public information', 'privacy of a natural person', 'person exercising a public function', 'information related to the exercise of a public function', raises numerous doubts of interpretation and in practice often leads to violations either of the right to public information or of the right to privacy. After all, most of the persons who make public information available on behalf of the obliged entity do not have legal or administrative education and are not proficient in interpreting such intricate legal norms. It is therefore necessary, first and foremost, to clarify the concepts used by the legislator and to construe the legislator's intent.

7. The term 'person exercising a public function' used in Article 5(2) AAPI was interpreted by the Constitutional Tribunal in the justification of its judgement of 20 March 2006, K 17/05. It was emphasized that it is not possible to precisely and unambiguously determine whether and in what circumstances a person functioning within a public institution may be considered as one exercising a public function. The Tribunal pointed out that not every public person shall be the one who performs public functions. However, it would be difficult to create a general, abstract, and even more so a closed catalogue of such functions and positions. "Performing a public function is related to the performance of specific tasks in an office, within

the structures of public authority or in another decision-making position in the structure of public administration, as well as in other public institutions. An indication of whether a public function is involved should therefore refer to the examination of whether a particular person within a public body carries out to some extent the public task imposed on that body." According to the Tribunal, a person performing a public function is one who has at least a narrow scope of decision-making powers within a public institution. "Therefore, not every employee of such an institution shall be subject to restriction of their protected privacy sphere from the perspective of the legitimate interest of third parties exercising their right to information. ...the positions and functions in question are those which involve taking actions directly affecting legal situation of other persons or are related at least to drawing up decisions concerning other entities. Therefore, positions of a service or technical nature, even if held within public authorities, shall be excluded from the scope of a public function."[10]

The doctrine is dominated by a broad understanding of the term 'person exercising a public function'. It is emphasised that the catalogue included in Article 115 § 13 and 19 of the Act of 6 June 1997 – Penal Code[11] is only rudimentary and non-exhaustive. Numerous authors [Kamińska, Rozbicka-Ostrowska 2012, p. 87; Bidziński 2010, p. 73–74] believe that a person performing a public function should be considered anyone who exercises a function in public authorities or in structures of legal persons and organizational units without legal personality, if this function is related to disposing of state or local government property or managing matters related to the performance of their tasks by public authorities, as well as other entities that perform this authority or manage municipal or State Treasury property. It does not matter on what legal basis a person performs a public function. Out that even natural persons not being members of the State apparatus should, under certain conditions, be treated as persons performing public functions.

[10] OTK-A of 2006, no. 3, item 30.

[11] Journal of Laws of 2018, item 1600, as amended.

The term 'person exercising public functions' is defined congruently in jurisprudence[12]. Based on this definition, the Supreme Administrative Court and the Supreme Court assume fairly uniformly that data on contractors concluding agreements with public entities, such as names and surnames, is subject to disclosure under the procedure established for public information and shall not be excluded from it due to the privacy of these persons as indicated in Art. 5(2) AAPI[13]. The courts, justifying such a position, pointed out that it corresponds to the function played by an institution of access to public information that allows to counteract such pathologies of public life as nepotism. "Contractors of agreements concluded by public entities must take into account the fact that the use of public funds under these contracts (in any way or form) may also be subject to social review, performed pursuant to the Act on Access to Public Information, and that the data of these contractors will not be eligible for protection." It should be noted, however, that such a view was expressed i.a. in a case in which the refusal to disclose the names of persons signing contracts for specific work, employment orders or other contracts with a particular commune was assessed for legality. However, when assessing the legality of a decision refusing to disclose personal data of persons preparing a legal opinion for the Chancellery of the President of the Republic of Poland, the Supreme Administrative Court found out that the name and surname may be public information only if they refer to persons performing public functions or persons related to performing public functions, and activities of a purely service nature, undertaken even within public institutions, do not give grounds to qualify persons performing such activities as persons performing public functions[14].

[12] Judgements of the Supreme Administrative Court of 8 July 2015, I OSK 1530/14; of 21 June 2018, I OSK 169/18; of 7 March 2019, I OSK 631/17.

[13] Judgement of the Supreme Court of 8 November 2012, I CSK 19/12, OSNC 2013, no. 5, item 67; judgements of the Supreme Administrative Court of 11 December 2014, I OSK 213/14,; of 4 February 2015, I OSK 531/14 and of 12 February 2015, I OSK 759/14; of 22 March 2016, I OSK 2317/14; of 13 April 2016, I OSK 2563/14; of 15 June 2016, I OSK 3217/14; of 25 November 2016, I OSK 2153/14; of 9 October 2014, I OSK 267/14 and I OSK 546/14.

[14] Judgement of the Supreme Administrative Court of 25 April 2014, I OSK 2499/13.

It can be noticed that the 'public function' is perceived by the Supreme Administrative Court from the point of view of social evaluation, influence on the public sphere. According to the judicature, the legislator links the notion of a 'public function' used in Art. 5(2) AAPI to the notion of a 'public matter' from Art. 1(1) AAPI, since in this context the public function means influencing public matters. Therefore, although these are not equivalent concepts, their complementary interpretation should be pointed out.

In addition, jurisprudence emphasises that a person may at some point in time be regarded as holding a public function and that, for that period, information relating to that function shall be made available, but may lose that attribute at a later date. However, the cessation of a public function does not mean that information from the time when it was performed ceases to be made available with limiting the individual's privacy. It will continue to be made available to interested parties, but only within the relevant timeframe[15].

Both doctrine and jurisprudence agree that the notion of a person exercising a public function, used by the legislator in the Act of 6 September 2001, is not limited to the definition of this notion contained in Article 115 § 13 and 19 of the Penal Code. The Code of 6 June 1997 is a basic regulation for the norms of criminal, not administrative law. The rational legislator did not include in Art. 5(2) AAPI a reference to the definition of the aforementioned concept included in the Penal Code, while did so in relation to the concept of a public official used in Article 6(2) AAPI. It is therefore reasonable to conclude that the legislator's intent was to give the concept of 'persons exercising a public function' an autonomous and broader meaning than that set forth in Article 115 § 13 and 19 of the Penal Code. It includes any person who has influence on shaping of public matters within the meaning of Art. 1(1) AAPI, i.e. on the public sphere.

8. To determine that a person holds a public function within the meaning of Article 5(2) AAPI is not the same as the obligation to provide the applicant with the requested information, excluding the protection of that person's privacy. In this provision, the legislator additionally stipulated that in order to

[15] Judgement of the Supreme Administrative Court of 31 July 2013, I OSK 742/13.

restrict the right to privacy, it is also necessary that the requested information on a person performing a public function should be related to the performance of this public function. There must therefore be an appropriate link between the information relating to the person concerned and their functioning in the public sphere. Determination of whether or not this premise exists seems to be the most difficult interpretation procedure. And it seems that it is precisely the correct and precise determination of the existence of the limits of this link that determines the proper protection of the right to privacy of individuals, including persons performing public functions. For example, information on the basic salary of a person performing a public function is made available as public information, since that remuneration is compensation for the performance of the duties entrusted to that person, while performance of duties shall constitute the performance of a public function. However, information on certain components of remuneration, whether derived from the family or social status of the employee, shall not be viewed as linked to the exercise of a public function[16].

Privacy interference consisting in the disclosure of the surname of a person performing a public function shall not cross the boundary of intimacy and family life designated by Articles 47 and 61(3) of the Constitution of the Republic of Poland and Articles 8 and 10 of the European Convention[17]. This applies, for example, to members of teams creating core curriculum guidelines for the general education of children. In the opinion of the Supreme Administrative Court, they had an impact on major decisions related to the general public, since "the way children are formed and brought up will have a significant impact on the future of the country and nation". Having participated in creating core curriculum guidelines, these persons had some impact, even if only minimal, on shaping of a public matter. "To at least certain extent these persons influenced the shape of the adopted core curriculum, i.e. the content of a decision related to the general public."

[16] Judgements of the Supreme Administrative Court of 18 February 2015, I OSK 695/14 and of 24 April 2013, I OSK 123/13.

[17] Judgement of the Supreme Administrative Court of 5 January 2016, I OSK 3184/14.

This has determined the recognition of these persons as ones exercising public functions. "The mere circumstance that the guidelines developed by them were subject to consultations and arrangements does not change the fact that the work of these people concerned and influenced the shaping of public matters." Moreover, the Ministry of National Education concluded civil law contracts with these persons under which remuneration was paid to them. "Therefore, those persons, as recipients of financial compensation (remuneration) from public funds for their activities, also appear to be acting in a public capacity." In the justification of its judgement, the court stressed that the personal data of persons with whom the Minister concluded agreements make it possible to "assess whether the implementation of the agreement was entrusted to persons having the appropriate knowledge and skills to perform it, and the agreement itself was not in fact a covert means of unauthorized flow of public funds to private persons" [Szustakiewicz 2015, p. 180][18].

Restrictions on access to information on persons performing public functions were also subject of the judgements of the Supreme Administrative Court of 28 June 2019, and earlier of the Voivodeship Administrative Court in Warsaw of 29 August 2018. The courts have ruled on granting access to information in the form of annexes to the lists of candidates for membership in the National Council of the Judiciary with regard to the lists of citizens and of judges supporting applications for membership[19]. It was obvious for the courts that information on the activities of the State as represented by its duly empowered bodies, taken with the participation of judges, i.e. persons performing special public functions related to the administration of justice and enjoying, in this connection, guarantees of independence and sovereignty – activities aimed at the establishment of a constitutional body, namely the National Council of the Judiciary – constitutes public information within the meaning of Art. 61(1) of the Constitution of the

[18] Justification of the judgement of the Supreme Administrative Court of 21 June 2018, I OSK 169/18, Legalis no. 1806435. Cf. also:.

[19] I OSK 4282/18 and II SA/Wa 488/18.

Republic of Poland in conjunction with Art. 1(1) AAPI. For the Supreme Administrative Court, an issue which should not raise any doubts either was that the information on the activity of specific judges as public officials, aimed at selecting, within the framework of the statutory procedure, a specific composition of the constitutional body, i.e. the National Council of the Judiciary, and determining to a large extent the composition of this body, is public information, i.e. information on the activity of the entity (or entities) carrying out this procedure; and, as such, imposing secrecy on it or otherwise making it classified is at odds with the standards of a democratic state of law. In addition, the Court found that "the restriction of the right to public information invoking the provision of Article 5(2) AAPI in relation to the list of judges supporting applications of candidates to the National Council of the Judiciary shall be excluded, as such information is related to the performance of public functions by judges. ... The list of judges supporting the applications should be made available after previous anonymisation of their PESEL registration numbers, which are not connected with their public function and therefore should not be made available to the public."

Unfortunately, jurisprudence is not uniform in determining what data concerning e.g. judges constitutes public information and whether it is protected due to privacy of the person performing that function. For example, the judgement of the Voivodeship Administrative Court in Gdańsk, II SA/Gd 764/14, recognised that the age of a judge and the town in which he or she lives are connected with a public function and that this information cannot be withheld. The Voivodeship Administrative Court in Warsaw in its judgement of 20 April 2015, II SA/Wa 2304/14, stated that the provisions of the law make the right to perform the function of a judge dependent on age, setting an age limit for performing this function. Therefore, the age of a judge, including the date of his or her birth, has legal significance and is related to the conditions of entrusting and performing the function of a judge. It is therefore public information subject to disclosure. However, the judge's place of residence is in no way connected with the performance of their public duties. It shall not affect their appointment or termination of service. Therefore, the address of a judge, not being public information, is not subject to disclosure under the

Act of 6 September 2001. The Supreme Administrative Court also stressed that a judge's place of residence does not affect the scope and nature of their duties or the manner in which they are performed (judgement of the Supreme Administrative Court and of November 2016, I OSK 1323/15). However, voivodeship administrative courts often found that a judge's place of residence is related to the performance of a public function and is subject to disclosure as public information (the Voivodeship Administrative Court in Szczecin II SA/Sz 935/13, the Voivodeship Administrative Court in Gorzów Wielkopolski II SAB/Go 72/14, the Voivodeship Administrative Court in Bydgoszcz II SAB 69/14). The discrepancy in jurisprudence – from the refusal to provide access to information on address due to privacy, through its recognition as unclassified, to the statement that this issue is not subject to social review and does not constitute public information, is problematic misinformation for entities considering requests for access to information and may result in the disclosure of data that should be protected due to the privacy of the person concerned. A similar discrepancy concerns the official number of mobile phones of persons performing public functions or the course of studies of a Sejm deputy and then a minister.

Conclusion

The constitutional right of access to public information derives from the principle of administrative transparency and concerns the openness of activities of public authorities. The exercise of this right enables the acquisition of knowledge about the activities of authorities and entities administering public property, ensures communication between the rulers and the ruled in the public sphere and constitutes a source of civic spirit in shaping the political (public) and economic scene and in the sphere of individual selections, for which knowledge about what the entities in power do and what are the justifications for their decisions is necessary. However, this objective must not be achieved in an unrestricted way. The implementation of the right to information is often associated with interference in the sphere of privacy, considered by the Polish constitutional

legislator and under acts of international law as requiring legal protection. Although the cited judgements concerned cases in which public authorities restricted the right to public information, in practice, the right to information is often given primacy despite statutory limitations in the event of a collision between the above-mentioned values. Persons performing public functions, and often the least significant ones, have the impression that their right to privacy is a minor one and that in the event of its violation, protection can only be sought at common courts, which entails costs and the need to wait a long time for a ruling. The lack of a free, generally accessible database of common court rulings makes it difficult for natural persons to obtain knowledge about the views of the judiciary, and thus about the possible line of defence, whereas information about them, once made available, shall be accessible ever after.

REFERENCES:

Bidziński, M. Chmaj, M., Szustakiewicz, P. (2010). Ustawa o dostępie do informacji publicznej. Komentarz, Warszawa

Garlicki, L. (2010). w: L. Garlicki, P. Hofmański, A. Wróbel, Konwencja o Ochronie Praw Człowieka i Podstawowych Wolności. Tom I. Komentarz do art. 1–18. Warszawa: Wydawnictwo C.H. Beck.

Jaśkowska, M., (2002). Dostęp do informacji publicznej w świetle orzecznictwa Naczelnego Sądu Administracyjnego, Toruń.

Jendrośka, J., Stoczkiewicz, M., (2003). Ustawa o dostępie do informacji publicznej a regulacje szczególne, „Państwo i Prawo", issue 6.

Kwiatkowski, K., (2014). Dostęp do informacji publicznej w świetle kontroli Najwyższej Izby Kontroli w: M. Maciejewski (red.), Prawo do informacji publicznej. Efektywność regulacji i perspektywy jej rozwoju, Warszawa: Wydawnictwo Biuro Rzecznika Praw Obywatelskich.

Safjan, M., (2002). Prawo do prywatności i ochrona danych osobowych w społeczeństwie informatycznym, „Państwo i Prawo" issue 6.

Sitniewski, P., (2011). Ustawa o dostępie do informacji publicznej. Komentarz. Wrocław: Wydawnictwo Presscom.

Szustakiewicz, P., (2015). Glosa do wyroku Naczelnego Sądu Administracyjnego z dnia 25 kwietnia 2014 roku, sygn. I OSK 2499/13, „Zeszyty Naukowe Naczelnego Sądu Administracyjnego", issue 5.

Taradejna, M., Taradejna, R., (2003). Dostęp do informacji publicznej a prawna ochrona informacji dotyczących działalności gospodarczej, społecznej i zawodowej oraz życia prywatnego, Toruń: Wydawnictwo Adam Marszałek.

Tomaszewska, K., (2012). Znaczenie i zakres ochrony publicznych praw podmiotowych a ochrona interesu jednostki, „Folia Iuridica Wratislaviensis" vol. 1, no 1.

Uzasadnienie projektu ustawy o dostępie do informacji publicznej, druk sejmowy nr 2094 z dnia 30 czerwca 2000 r. Sejm RP III kadencji, http://orka.sejm.gov.pl/Rejestrd.nsf?OpenDatabase

Wrzołek-Romańczuk, M., Szewczuk, R., (2014). Prawo dostępu do informacji znajdującej się w zasobach władz publicznych a kwestia ochrony sfery prywatności (tekst wystąpienia konferencyjnego). w: M. Maciejewski (red.), Prawo do informacji publicznej. Efektywność regulacji i perspektywy jej rozwoju. Warszawa: Wydawnictwo Biuro Rzecznika Praw Obywatelskich.

LEGISLATION:

Konwencja o Ochronie Praw Człowieka i Podstawowych Wolności z dnia 4 listopada 1950 r. Dz.U.1993.61.284.

Konstytucja RP z dnia 2 kwietnia 1997 r. Dz.U.1997.78.483.

Ustawa z dnia 6 czerwca 1997 r. Kodeks karny. Dz.U.2018.1600, tekst jednolity.

Ustawa z dnia 6 września 2001 r. o dostępie do informacji publicznej. Dz.U.2018.1330, tekst jednolity.

Wyrok Wojewódzkiego Sądu Administracyjnego w Warszawie z dnia 31 sierpnia 2005 r. II SA/Wa 1009/05, http://orzeczenia.nsa.gov.pl/cbo/query

Wyrok Wojewódzkiego Sądu Administracyjnego w Warszawie z dnia 9 stycznia 2006 r. II SA/Wa 2043/05 http://orzeczenia.nsa.gov.pl/cbo/query

Wyrok Wojewódzkiego Sądu Administracyjnego w Warszawie z dnia 23 września 2009 r., II SAB/Wa 57/09 http://orzeczenia.nsa.gov.pl/cbo/query

Wyrok Wojewódzkiego Sądu Administracyjnego w Szczecinie z dnia 6 listopada 2013 r., II SA/Sz 935/13, http://orzeczenia.nsa.gov.pl/cbo/query

Wyrok Wojewódzkiego Sądu Administracyjnego w Gorzowie Wielkopolskim z dnia 17 września 2014 r., II SAB/Go 72/14, http://orzeczenia.nsa.gov.pl/cbo/query

Wyrok Wojewódzkiego Sądu Administracyjnego w Gdańsku z dnia 18 lutego 2015 r., II SA/Gd 764/14 http://orzeczenia.nsa.gov.pl/cbo/query

Wyrok Wojewódzkiego Sądu Administracyjnego w Warszawie z dnia 20 kwietnia 2015 r. II SA/Wa 2304/14 http://orzeczenia.nsa.gov.pl/cbo/query

Wyrok Wojewódzkiego Sądu Administracyjnego w Warszawie z dnia 23 listopada 2018 r., II SA/Wa 488/18 http://orzeczenia.nsa.gov.pl/cbo/query

Wyrok NSA z dnia 30 października 2002 r. II SA 1956/02; http://orzeczenia.nsa.gov.pl/cbo/query

Wyrok NSA z dnia 1 października 2010 r., I OSK 1149/10, http://orzeczenia.nsa.gov.pl/cbo/query

Wyrok NSA z dnia 30 listopada 2012 r., I OSK 1835/12. http://orzeczenia.nsa.gov.pl/cbo/query

Wyrok NSA z dnia 6 marca 2013 r. I OSK 2984/12, http://orzeczenia.nsa.gov.pl/cbo/query

Wyrok NSA z dnia 24 kwietnia 2013 r., I OSK 123/13. http://orzeczenia.nsa.gov.pl/cbo/query

Wyrok NSA z dnia 31 lipca 2013 r., I OSK 742/13 http://orzeczenia.nsa.gov.pl/cbo/query

Wyrok NSA z dnia 25 kwietnia 2014 r. I OSK 2499/13. http://orzeczenia.nsa.gov.pl/cbo/query

Wyrok NSA z dnia z 9 października 2014 r., I OSK 267/14 http://orzeczenia.nsa.gov.pl/cbo/query

Wyrok NSA z dnia 11 grudnia 2014 r. I OSK 213/14 CBOSA, http://orzeczenia.nsa.gov.pl/cbo/query

Wyrok NSA z dnia 9 października 2014 r., I OSK 546/14. http://orzeczenia.nsa.gov.pl/cbo/query

Wyrok NSA z dnia z 4 lutego 2015 r. I OSK 531/14 http://orzeczenia.nsa.gov.pl/cbo/query

Wyrok NSA z dnia 12 lutego 2015 r. I OSK 759/14 http://orzeczenia.nsa.gov.pl/cbo/query

Wyrok NSA z dnia 18 lutego 2015 r., I OSK 695/14 http://orzeczenia.nsa.gov.pl/cbo/query

Wyrok NSA z dnia 5 stycznia 2016 r., I OSK 3184/14 http://orzeczenia.nsa.gov.pl/cbo/query

Wyrok NSA z dnia z 22 marca 2016 r., I OSK 2317/14 http://orzeczenia.nsa.gov.pl/cbo/query

Wyrok NSA z dnia z 13 kwietnia 2016 r., I OSK 2563/14 http://orzeczenia.nsa.gov.pl/cbo/query

Wyrok NSA z dnia z 15 czerwca 2016 r., I OSK 3217/14 http://orzeczenia.nsa.gov.pl/cbo/query

Wyrok NSA z dnia 23 listopada 2016 r., I OSK 1323/15 http://orzeczenia.nsa.gov.pl/cbo/query

Wyrok NSA z dnia z 25 listopada 2016 r., I OSK 2153/14 http://orzeczenia.nsa.gov.pl/cbo/query

Wyrok NSA z dnia z 15 czerwca 2018 r. I OSK 1187/18 http://orzeczenia.nsa.gov.pl/cbo/query

Wyrok NSA z dnia z 21 czerwca 2018 r. I OSK 169/18 http://orzeczenia.nsa.gov.pl/cbo/query

Wyrok NSA z dnia z 25 września 2018 r., I OSK 971/18, Lex nr 78062; http://orzeczenia.nsa.gov.pl/cbo/query

Wyrok NSA z dnia 28 czerwca 2019 r. I OSK 4282/18 http://orzeczenia.nsa.gov.pl/cbo/query

Wyrok NSA z dnia z 7 marca 2019 r. I OSK 631/17 http://orzeczenia.nsa.gov.pl/cbo/query

Wyrok TK z dnia 20 marca 2006 r., K 17/05, OTK ZU-A 2006, nr 3, poz. 30,;

Wyrok SN z dnia 8 listopada 2012 r. I CSK 19/12, OSNC 2013, Nr 5, poz. 67;