Access to public information and the right for privacy

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ABSTRACT

Individual’s access to public information has been guaranteed by article 61 of the Constitution of the Republic of Poland. The said provision precisely sets forth the rights with regards to the access to information on the functioning of public figures or the functioning of the organs of public administration. Additionally, the right to obtain the said details has been thoroughly regulated by the act on the access to public information. The access to public information is tightly related to the principle of transparency with regards to the functioning of state organs, including state officers, with special emphasis put over the ones managing public property. The right for public information remains tightly related to the right for privacy and cannot operate separately. In every precise case, one should consider whether providing an applicant with a piece of public information demanded by them will not bring about the infringement on the privacy right for the persons who the said piece of information refers to or for the persons mentioned therein. The demand by an individual for public information encompassing the grounds for a judicial sentence raises controversies, especially when the sentence has been passed in a criminal case involving sexual circumstances. The grounds for the sentence shall contain the details related to an intimate sphere. As a rule, the right for intimacy should receive absolute protection and may be restricted under special circumstances only, e.g. when the public interest so requires. It must be mentioned here that a wronged person may give up their right for privacy. Such a consent may not constitute an absolute positive prerequisite resulting in the applicant been given the grounds for the sentence as it may lead to the infringement of the privacy right with regards to third parties, for example witnesses. Anonymizing procedure does not guarantee, however, a complete inability to identify the people specified in the grounds for the sentence especially when the sentence refers to a controversial case which was held in a small town, where keeping anonymity
seems to be more difficult. My dissertation intends to consider whether a motion to be given a court
decision lodged by an individual who is not a participant in the proceedings should be accepted due to
the individual’s right for the access to public information or it should be dismissed bearing in mind the
right for privacy [3].

Keywords: access to public information; dissemination of the courts decisions; the right for privacy;
personal data protection

1. INTRODUCTION

The access to public information is not a new concept because as early as in the
eighteenth century first democracies noticed the necessity to provide an individual with the
rights owing to which they were able to get acquainted with the mechanism of state
functioning in order to function better and in a more conscientious manner within civil society
[1,2,8].

The legislation of that times regarding the access to information was tightly connected
to the freedom of speech and the freedom of press publications. The rights for an individual
on that matter evolved after the termination of the World War II on a par with the
development of international institutions.

The Common Declaration on Human Rights, the European Council Convention on the
Protection of Human Rights and Fundamental Freedoms, the International Pact of Citizenship
and Political Rights connected the right for information with every person and made it
possible for them to apply for information to state organs. The right for information started to
be regarded then as one of the fundamental human rights [5].

Currently, the right for information plays an important role due to the postulate of
public life transparency. Wide access to information guarantees the enhanced level of social
awareness on the functioning of state organs. Any person can apply for the access to public
information without the necessity to determine their interests. However, their demand may be
restricted due to the right for privacy [6].

2. THE RIGHT FOR INFORMATION IN THE REPUBLIC OF POLAND

The access to public information was guaranteed for the citizens of the Republic of
Poland in 1997 by the Constitution. Article 61 of the Constitution of the Republic of Poland
[10] states that a citizen is entitled to obtain information on the functioning of public organs
and the persons performing public functions. The said right also encompasses obtaining
information on the functioning of the organs of commercial and vocational local governments
as well as other persons and organisational units to the range they perform the tasks of public
authorities and manage the public property or the property of the State Treasury. The right to
obtain information encompasses the access to the documents and the entrance to the
assemblies of collegial organs of public authorities originating from general elections with the
right to record sound and vision (clause 2). At the same time clause 3 specifies that restriction
of the right, stipulated by clause 1 and 2, may occur exclusively due to the rights and
freedoms of other persons and business entities specified in the relevant acts as well as the
protection of public order, safety or important interest of the state. The manner in which information specified in clause 1 and 2 is provided is determined by the acts while with regards to the Lower and Upper Chamber of the Parliament (the Sejm and the Senate) by their regulations (clause 4).

The aforementioned constitutional norm may be applied straightforwardly. Applying by an individual for dissemination of public information faced noticeable obstacles due to the lack of detailed guidelines how the said right was to be exercised. Therefore it was indispensable to clarify the legislation in order for it not to be an empty postulate and to make it implement the principle of full transparency with regards to the functioning of the state.

On 6\textsuperscript{th} September 2002 the Act on public information accessing was passed [11]. It must be highlighted that the said act expanded the range of entities eligible to obtain public information. It does not relate the right with the possession of nationality. Each person is entitled to have the access to public information (article 2 clause 1 of the Act on public information accessing). Not only a Polish national but any person who does not reside nor stay within the territory of Poland can apply for public information to be disseminated.

It must be underlined that the demand for public information accessing can be submitted by physical persons being in full legal powers or by legal persons devoid of legal personality.

Public authorities and other entities performing public tasks are committed to provide public information (article 4 clause 1 of the aforementioned Act). The legislator has not enumerated such entities but has provided examples only. Public authorities are the organs of governmental and self-governmental administration, the organs of state control and courts. Other entities encompass trade unions, political parties and organs of commercial and vocational organisations.

Public information means any information on public matters. Therefore it encompasses a wide spectrum of issues referring to the functioning of public authorities – commanding, organisational or civil. This means that public information refers, in fact, to any activities performed by public authority [9].

It must be stated that the following remain public information: administrative acts, drafts of the resolutions, resolutions of the organs remaining territorial self-governmental units, orders and guidelines of executive organs, instructions, wordings of civil agreements, settlements, judicial decisions in public cases where a territorial self-governmental unit remained one of the parties, post-control documents, information on the state of self-governments and their organisational units, information on the functioning of local governments or recruitment procedures for vacancies in clerical positions.

3. RESTRICTING THE RIGHT FOR INFORMATION DUE TO THE RIGHT FOR PRIVACY

The right for information is not absolute for it is subject to restricting due to other legally protected goods. Additionally, it cannot function separately from other constitutional principles [4].

Article 47 of the constitution states that everyone has the right for legal protection over their private and family life, dignity and good reputation as well as for deciding about their own private life. Pursuant to article 51, no one can be committed to disclose information about themselves (clause 1) unless the relevant act so requires, public authorities cannot
obtain, collect nor disclose information about the citizens other than indispensable within a democratic state of law (clause 2).

The right for public information is restricted due to the privacy with regards to a physical person (article 5 clause 2 of the aforementioned Act). To sum up, the right for privacy has been guaranteed by the Constitution of the Republic of Poland. Transparency of public life cannot bring about the unconditional deprivation of private life protection for an individual. Information to be demanded cannot surpass the sphere demarcated by the transparency of public life, it must always be meaningful to evaluate the functioning of public institutions or figures and cannot distort the essence of private life protection.

It must be highlighted that the persons performing public functions must accept a wider range of intrusion into their privacy compared to other people.

4. COURT RULING AS PUBLIC INFORMATION

Numerous controversies have arisen with regards to the dissemination of rulings of common courts and grounds for such ones. Some presidents of the courts refused to disseminate the rulings and regarded them as not being public information.

A literal interpretation of article 1 clause 1 of the aforementioned Act reveals that a court sentence remains public information as it has been passed by an organ of public authority (judicial one) and within the activities performed in a public manner.

Administrative courts have been of the opinion that court judicial decisions are passed in a case by the court within its jurisprudence based on the provisions of commonly binding legislation and, as such ones, shall remain public data and may be subject to dissemination once having been anonymised due to the privacy of physical persons involved, as set forth by article 5 clause 2 of the aforementioned Act.

Summarising, one must state that, on the one hand, court ruling and its grounds constitute public information but, on the other, they cannot be disclosed in the same form as to the parties in the proceedings. Disclosure should occur once the personal details have been erased from the wording. The personal details are understood as “any information regarding a physical person identified or to be identified” (article 6 clause 1 of the Personal Data Protection Act) [12].

Under some circumstances, anonymization (removal of personal data) of a court ruling or its grounds does not provide full protection of the right for individual’s privacy.

Depriving a ruling, or its grounds, of such data does not guarantee in every case that the parties, participants, witnesses will not be recognised without noticeable means been incurred. The context of a case, the factual state or court divagations can easily guide us into a person to whom they refer. The aforementioned opinion seems to be proper, especially in controversial or medial cases or the cases decided by the court in small town where achieving anonymity is more difficult. The aforementioned circumstances would be highly undesirable in the cases tackling upon an intimate sphere. The right for intimacy should be protected unconditionally as a rule and may be restricted under special circumstances, e.g. when it so required by public interest.

It must be noted however that the parties or participants in the case may give up the protection of their right for privacy, which is not the case with regards to people specified in the grounds for the ruling. Their statements might be related to sensitive and intimate aspects
of life and once revealed they might face being ostracised or excluded from the society. Hence, a wronged person’s consent may not constitute an absolute positive prerequisite resulting in the applicant been given the grounds for the ruling as it may lead to the infringement of the privacy right with regards to third parties, for example witnesses.

It must be considered whether, pursuant to article 5 clause 2 of the Act on public information accessing, disclosure of information must be refused due to the protection of the right for privacy or whether the grounds for a ruling must be disclosed but to a limited extent, i.e. without such excerpts that could identify the individuals or that would discuss about intimate questions.

Applying a solution of this sort will not always be desired by a applicant. Removal of entire excerpts from the grounds for a ruling could prevent the court reasoning from being followed. Therefore, getting acquainted with the decision motifs and making their evaluation will be hampered, if not impossible sometimes.

5. CONCLUSIONS

The value which the state transparency represents justifies an individual’s willingness to know public information [5]. In every case, however, we have to consider whether providing an applicant with a piece of public information demanded by them will not bring about the infringement on the privacy right for the persons to whom the said piece of information refers or for the persons mentioned therein. The persons whose privacy has been infringed would sustain noticeable harm that could not be rectified whatsoever.

Biography

Ewa Haratym PhD candidate at University of Gdansk, specializes in privacy law and children’s privacy.

References


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