

## RIGHT TO PUBLIC INFORMATION IN THE DEMOCRACY

**Summary.** Presenting the mode to public information and ways is a purpose of this paper of his realization. The access to public information constitutes one of cardinal principles of the contemporary democracy and the civil society. The author indicated ways of giving public information, organs obligated for granting her and manners in the case refusals to give public information.

**Keywords:** law, public information, openness, state agencies.

The principle of openness is a political principle which means the right to information. This law in democracies is usually being raised to the rank of the constitutional principle which next is being developed by crystallizing acts.

The right to information is constituting the basis of functioning of states, and international institutions in contemporary democracies. In many countries the exercise of the same law is differently regulation. But being of the right to information, making available to everyone the knowledge about functionings of the authority chosen by them, as well as providing for the transparency the public life, isn't changing.

In the Polish law civil rights for the first time were enrolled in information in the Constitution from 2 April 1997<sup>1</sup>. According to the Art. of 54 Constitutions a freedom of recruiting and the dissemination of information is provided for everyone, the preventive censorship of means of the social form is forbidden. The provision constitutes Art. 61, that the citizen has the right to get information about the operations of public authorities and persons performing public functions. Also getting information about the operations of self-government bodies includes this law economic and professional, as well as of other persons and organizational units in the scope, in which they are performing tasks of the official authority and are managing the municipal property or the assets of the state treasury. The right to obtain information includes the access to documents and the admission moreover to sittings of joint public authorities coming from the general elections, with the possibility of the registration of sound or the image. Limiting above laws, can take place exclusively on account of determined in acts: the protection of the freedom of both laws of other persons and business entities and the protection of the public order, the safety or important business interests of the state. To determine the mode of the provision of information they have acts, in case of the Sejm and the senate appropriate regulation should be included in their regulations.

With act from 11 April 2001<sup>2</sup> to political self-government acts given implementing provisions stayed principle of openness of the functioning of bodies of self-government units. According to records of the act activity of the commune, the district and the self-government province is open, and restrictions of the openness can arise only from acts. The openness of the functioning of bodies of self-government units includes the right of citizens to obtain information in particular, of admission to the session of constituting organs and the access to documents incurred as a result of the performance of tasks public. Access rules to above documents and using them should enter articles of association of self-government units into<sup>3</sup>.

Only however with act from 6 September 2001 about the access to public information (farther Access to Public Information Act) developing of the constitutional right to public



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<sup>1</sup> The Polish Constitution, Acts. Laws of 2009 No. 114, item. 946.

<sup>2</sup> The Act of 11 April 2001. to change the laws: the Local Government, of the county government, provincial self-government, government administration in the region and on amendments to certain acts, Dz. Laws No. 45, item. 497.

<sup>3</sup> A. Korzeniowska, ABC Local government, Publishing Publishing Brant, Lodz 2005, p. 270.

information included in Art. 61 the mouth of 1 Constitution took place. The legislator entered 1 Access to Public Information Act into the Art. very much broad legal definition of public information, acknowledging that every information about public affairs is her. Act every message produced or taken back would be public information to official authorities and every message produced or taken back to other operators carrying public functions out in performing tasks by them of the official authority and the management of the municipal property or possessions of the state treasury<sup>1</sup>. The act on the access to public information is also applicable to not-announced acts and their projects<sup>2</sup>.

The Polish constitution is guaranteeing everyone the right to public information making the request impossible of indicating the legal interest or actual. Everyone can and so demand making available to public information irrespective of the citizenship, not justifying one's request<sup>3</sup>. In accordance with the Art. of 3 mouth the right to public information is entering 1 Access to Public Information Act into right to obtain public information in it of obtaining information processed in such a step, in which it is particularly essential for the public interest.

In accordance with the Art. of 61 mouth 1. Of constitution official authorities and all other operators performing public tasks and managing are entities obliged to make available to public information both with public property as well as council which are in possession of such information. However in the Art. of 4 Access to Public Information Act examples of entities obliged to grant were given of public information and are it in particular: public authorities, bodies of economic self-governments and professional, entities representing the state treasury according to separate laws and regulations. Moreover for making public information available trade union organisations are obliged and employers and political parties.

Publishing in the Public Information Bulletin (BIP) is an essential way of making available to public information, making available through the Internet what the fastest straightest access to public information enables. The disclosure of the information in the Public Information Bulletin (BIP) which is official publikatorem teleinformatic, he has general character and doesn't require filing no application. He is a completion of the statutory obligation, and thanks to the Internet the access to public information is 24-hour.

Information should be in a Public Information Bulletin (BIP) in particular about: for internal policy and foreign, entities counted among official authorities and other operators performing public tasks, principles of operation of subjects recognised as official authorities and other operators performing public tasks, public data, public wealth<sup>4</sup>. The above list of information isn't closed, furthermore the local self-government can on the principle make other public information available also to the freedom.

If public information wasn't made available in the mentioned above messenger is being made available to the conclusion. In accordance with the Art. of 7 mouth of 2 Access to Public Information Act the access to public information is free of charge, the exception to this principle is determining the Art. of 15 mouth 1 Access to Public Information Act, according to which, if as a result of making available to public information to the conclusion, the obliged entity for making available is supposed to incur the extra costs associated with the way indicated in the conclusion of making available or with the need to convert information into the form indicated in the conclusion, this subject can charge the payment from the petitioner of the amount corresponding to these costs.

However it doesn't mean that it is possible to demand making public information available in every form. Other provisions or technical considerations can stand on the obstacle. The duty

<sup>1</sup> II SA 4059/02, „Lex”, No. 78063.

<sup>2</sup> II SAB „Cause list”, No 11, p. 31.

<sup>3</sup> K. Tarnacka, Right to information in Poland, PIP 2003, No. 5, p. 36.

<sup>4</sup> Ruling on the Public Information Bulletin (BIP), the D. U. No. of 67 pos. 145.

then having a subject to grant such information must notify in writing about the refusal to fulfil the conclusion in the demanded form and point other<sup>1</sup>.

According to the Art. of 10 mouth 2 public information which can immediately be made available, is being made available to the Access to Public Information Act in the form oral or written without the written request. 13 Access to Public Information Act constitutes the Art., that making available to public information to the conclusion is taking place without the inessential delay, not later however than within 14 days of the motion date. If however public information cannot be made available in the above time, the obliged subject for making available to her is notifying about reasons for the delay and about the date, in which he will provide with information, not longer however than 2 months of the motion date.

In accordance with the Art. of 16 mouth 1 Access to Public Information Act the refusal to give information by the body of public authority is taking place by way of a decision. Provisions of the Code of Administrative Procedure are applicable to these decisions. The rationale about the refusal of the disclosure of the information must contain name, surnames and posts of persons which occupied a position in the course of proceedings and the expression of entities, on account of goods which were given decision on the refusal of the disclosure of the information. The right to privacy of the natural person or the secret of the entrepreneur can be justifying here.

According to Art. 23 but the Access to Public Information Act using public information or every her part, being in possession prime minister, units of the sector of the public finance, or other State organisational bodies, irrespective of the way for her of strengthening, to the purposes, different from her primitive public purpose of using, for which information was produced, new using public information constitutes.

As for the principle in accordance with Art. 23 b public information is being made available to the Access to Public Information Act to the purpose of their new using without limitation with conditions and free of charge. However the obliged entity can determine conditions concerning new using public information in particular: of duty of informing of source, time of producing and obtaining public information, duty further making available to other users information, or the duty of announcing processing information.

In exceptional cases entity obliged in accordance with Art. 23 the Access to Public Information Act can put c payment for making new using available to the purpose to public information, if preparing information in the way indicated in the conclusion requires incurring extra costs. One should include costs of preparing and handing over to public information in the determined way and in the determined form. The total amount of payment cannot exceed the sum of costs incurred in order to prepare and communicating public information.

Provision the Art. of 23 g constitutes the Access to Public Information Act, that passing new using on to the purpose for her to public information is taking place to the conclusion which is being considered without the inessential delay, not later however than within 20 days of the date of receiving of the conclusion. In peculiarly complicated matters the obliged entity can prolong settling the case of 20 consecutive days. The obliged entity has the right to refuse new using public information, in particular in the event that: the access to public information is subject to restrictions which are being talked about in provisions of separate acts, new using public information will violate rights to the intellectual property it being entitled to the third entities.

According to above with article the access to public information is subject to restrictions, place in distinct regulations. Informing the side, that due to the regulation entered into separate act an act on the access to public information isn't finding application he isn't taking place by way of a decision, because it is activity materialno - technical. Information for the citizen must have individualized character that is should be marked in the allowing way to determine the granting

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<sup>1</sup> II SAB, 137 / 03, "Community" 2003, No. 20, p. 54.

identity of a person or the granting entity or also an entity producing this information. Moreover he must be supplied with date<sup>1</sup>.

To the decision on the refusal to hand over to public information to the purpose of new using and to the decision on conditions new using public information is applicable provisions of the Code of Administrative Procedure. According to Art. 23 and the Access to Public Information Act in proceedings for new using public information provisions of the Act are applicable to investigated complaints from 30 August 2002 - Law on proceedings before administrative tribunals.

### ***Summary***

Amongst experts of the subject the act on the access to public information is giving rise to the number of the doubt<sup>2</sup>. To state belongs, that passing a bill about the access to public information, constitutes the realization of constitutional norms. On the other however many authors are appointing sides, that applying norms realizing the principle of openness of public information is causing a lot of problem due to numerous derogations from the general rules included in the act.

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<sup>1</sup> M. Jaškowska, Access to public information in the light of the case law of the Supreme Administrative court, Toruń 2002, p. 62.

<sup>2</sup> M. Mucha, Duties of the civil service in the sphere of the access to the information, Wrocław 2002, p. 20 and u.