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The right to public information as a manifestation of citizens' constitutional right to the truth

Prawo do informacji publicznej jako przejaw konstytucyjnego prawa obywateli do prawdy

Abstract

The Constitution of the Republic of Poland contains an extensive catalog of human and citizen rights and freedoms. However, there is no provision *express verbis* that would indicate a citizen's right to the truth. The aim of the article is to demonstrate, using the example of Art. 61 of the Constitution, that in the Polish legal system, the right to the truth may be derived from some provisions even though they do not expressly state this right.

Keywords: public information, right to law, human rights, limitation of access to information.

Streszczenie

Konstytucja RP zawiera obszerny katalog praw i wolności człowieka i obywatela, jednak brak jest przepisu, który *expresiss verbis* wskazywałby na prawo obywatela do prawdy. Celem artykułu jest próba wykazania na przykładzie art. 61 Konstytucji RP, że w polskim porządku prawnym prawo do prawdy można wywieść z niektórych przepisów, mimo iż jednoznacznie tego prawa nie stanowią.

Słowa kluczowe: informacja publiczna, prawo do prawdy, prawa człowieka, ograniczenie dostępu do informacji.

1. Introduction

The Constitution of the Republic of Poland contains an extensive catalogue of individual rights and freedoms, which includes both traditional rights and those of more contemporary origin. However, there is no such catalogue that would

expressis verbis establish the right to the truth. So far, there has been no in-depth reflection on the right to the truth as a constitutional right that should be guaranteed to every citizen in a democratic state.

In the Polish legal system, the right to the truth can be derived from provisions that do not *expressis verbis* establish this right. An example of such a right is the right to access public information, which is one of the most important elements conditioning and immanently related to the functioning of a democratic state. Establishing appropriate norms in the legal system constitutes the possibility of conscious and free participation of the entire society, and not of its selected part or only of individual citizens in public life.

2. Constitutional right to public information

One of the important principles of Polish constitutional law is the principle of transparency of public authorities. In order to implement it, the legislator in Art. 61 of the Constitution defined the right of citizens to access information about the activities of broadly understood public entities. He also indicated its subjective and objective scope nature¹. This right is recognized as a subjective right. The right to public information is particularly related to freedom of expression, enshrined in the Constitution as the freedom to express one's views and to obtain and disseminate information. There are differences between the laws discussed however, there are fundamental differences. Firstly, the scope of freedom of information is obviously broader than the scope of the right to information. The constitutional scope of protection of the freedom to obtain information covers all information, while Art. 61 of the Constitution guarantees access only to specific information². The right to public information is a political right that determines the practical implementation of the principle of transparency and transparency of the government system (the principle of openness of the activities of public authorities). It is a necessary element of democracy because it enables citizens to control those in power and influence state policy. The law in question is a typical example of a public subjective right³. Access to public information is a necessary condition for subjecting public authorities to real citizen control, which is a form of citizen participation in public life.

¹ M. Jaśkowska, *O pojęciu informacji publicznej raz jeszcze*, "Zeszyty Prawnicze" 2020, No. 3, p. 205.

² W. Sokolewicz, K. Wojtyczek, *Komentarz do art. 61 Konstytucji RP* [in:] *Konstytucja Rzeczypospolitej Polskiej. Komentarz*, eds. L. Garlicki, M. Zubik, Warszawa 2016, p. 1334.

³ M. Florczak-Wątor, *Komentarz do art. 61 Konstytucji* [in:] *Konstytucja RP. Komentarz*, ed. P. Tuleja, Warszawa 2023, p. 226.

The right to public information is not one of the rights that guarantees the exercise of freedom of information (Art. 54(1)), but an independent constitutional subjective right, although related in content to, among others, provision of the constitution (i.e. Art. 54(1)). On the other hand, both laws complement each other. In the light of Art. 54 of the Constitution, no one may suffer negative consequences due to the implementation of the constitutional right to information guaranteed in Art. 61 of the Constitution, as well as due to the further dissemination of information obtained under Art. 61 of the Constitution⁴.

However, it should be remembered that “not every information that, in accordance with the freedom provided for in Art. 54 of the Constitution may be obtained and disseminated, including information relating to a person’s private sphere, may be considered information for which there is an obligation to disclose on the part of a given public authority, specified in the Act on Access to Information”⁵.

Pursuant to Art. 61 section 1 of the Constitution, a citizen has the right to obtain information about the activities of public authorities and persons performing public functions. This provision clearly mentions the rights of citizens, but the ordinary legislator extended this right to everyone. It is clear from the very beginning that the legislator’s will was to create conditions for the widest possible transparency of public life by equipping society with instruments enabling it to obtain information about current activities⁶. This provision clearly mentions the rights of citizens, but the ordinary legislator extended this right to everyone. It is clear from the very beginning that the legislator’s will was to create conditions for the widest possible transparency of public life by equipping society with instruments enabling it to obtain information on the current activities of public entities⁷.

This obligation is therefore not so much about the availability of specific information for the recipient, but, at least in principle, it means the need for active action on the part of the authority providing the information, which consists in providing the interested person with a certain scope of information upon request. The information should be related to public activities⁸. In the judgment of September 16, 2002, the Constitutional Tribunal stated that “the analysis of Article 61,

⁴ W. Sokolewicz, K. Wojtyczek, *Komentarz do art. 61...*, p. 1336.

⁵ Judgment of the Constitutional Tribunal of March 20, 2006, file reference no. ActK 17/05, OTK-A 2006/3/30.

⁶ Constitution of the Republic of Poland of April 2, 1997 (Journal of Laws 1997, No. 78, item 483).

⁷ A. Kwaśniak, *Faktyczne i prawne ograniczenia w dostępie do informacji publicznej na tle rodzimego ustawodawstwa*, “Roczniki Administracji i Prawa” 2019, No. 19, p. 193.

⁸ Judgment of the Constitutional Tribunal of March 20, 2006, file reference no. K 17/05, OTK-A 2006/3/30.

paragraph 1 and paragraph 2 of the Constitution indicates that the scope of the right to information specified therein is determined, to a large extent, by the Constitution itself. These provisions define, what rights are associated with the validity of this right, and indicate which entities are obliged to take such actions so that this civil right can be implemented”⁹.

The basic legal act regulating access to public information is the Act of September 6, 2001 on access to public information¹⁰ which, as we know, was supposed to be the implementation of the provisions of Art. 61 section 4 of the Constitution and referred to the information specified in the Constitution. As stated in Art. 1 section 1 of the cited Act, “every information on public matters constitutes public information within the meaning of the Act and is subject to disclosure on the terms and in the manner specified in the Act”¹¹.

As J. Cwalińska notes, the right to public information is a *sine qua non* condition and at the same time a guarantee of the remaining subjective rights of the individual. As a result of access to public information, the entity becomes a partner of administrative bodies. By enabling citizens to access public information, the legislator means that public administration is no longer the only initiator of the defense of the public interest¹². The right to access public information is a consequence of a systemic principle, not expressly expressed in the provisions of the Constitution, but derived from it – the principle of openness of the activities of public authorities (or transparency of the system of exercising power). This principle is intended to facilitate the implementation of social control of power and prevent its abuse, counteract corruption of officials and improve the quality of public administration work¹³.

Such a broadly defined right to public information does not mean that it is absolute and an unlimited right. The provision of Art. 61 section 3 of the Constitution constitutes a limitation by introducing the provision “solely for the protection of the freedoms and rights of other persons and economic entities specified in the laws and the protection of public order, security or important economic interest of the state”¹⁴.

⁹ Judgment of the Constitutional Tribunal of September 16, 2006, file reference no. K 38/0, OTK-A 2002/5/59.

¹⁰ Act of September 6, 2001 on access to public information (Journal of Laws 2022, item 902, as amended).

¹¹ Judgment of the Constitutional Tribunal of December 18, 2018, file reference no. SK 27/14.

¹² J. Cwalińska, *Czy dostęp do informacji publicznej stanowi gwarancję praw podmiotowych jednostki? Zagadnienia wybrane [in:] Prawo do informacji publicznej. Efektywność regulacji i perspektywy jej rozwoju*, ed. M. Maciejewski, Warszawa 2014, pp. 80–81.

¹³ Judgment of the Constitutional Tribunal of December 18, 2018, file reference no. SK 27/14.

¹⁴ A. Kwaśniak, *Faktyczne i prawne ograniczenia...*, p. 194.

Therefore, the limitation of the right to information must be formulated in accordance with the content of Art. 31 section 3 of the Constitution and Art. 61 section 3 of the Constitution. Pursuant to Art. 31 section 3 of the Constitution, restrictions may be established only by statute and only when they are necessary in a democratic state for its security or public order, or for the protection of the environment, public health and morals or the freedoms and rights of other persons. Restrictions introduced in this manner may not violate the essence of freedoms and rights¹⁵. As indicated in the jurisprudence of the Constitutional Tribunal, under Art. 61 of the Constitution of the Republic of Poland, it cannot be ruled out that the implementation of the right to information will affect circumstances bordering the public and private lives of persons performing public functions. The “interpenetration” of the above-mentioned spheres may result, for example, from the nature of public activity, contacts with specific entities, performing private activities in the course of performing public tasks, etc. The provision of Art. 61 section 3, pointing in particular to the rights and freedoms of other persons as the basis for limiting the availability of public information, cannot in this context be understood as containing a categorical prohibition of any interference in the privacy sphere of persons performing public functions¹⁶. Intrusion into the sphere of private life of persons performing public functions is considered permissible under the Constitution of the Republic of Poland. As noted in the jurisprudence of the Constitutional Tribunal, persons performing public functions “due to the right of citizens to obtain information on the activities of public authorities, must take into account the obligation to disclose at least some aspects of their private life”¹⁷.

The right to access information is not absolute and its limits are defined, among others, by: by the need to respect the rights and freedoms of other entities, including the constitutionally guaranteed right to protect private life¹⁸. The jurisprudence of the Constitutional Tribunal formulated the following grounds for recognizing the interest related to access to public information as outweighing the interest related to the privacy of individuals. Access to information cannot, first of all, go beyond what is necessary resulting from the need for transparency

¹⁵ M. Bidziński, *Konstytucyjne prawo dostępu do informacji publicznej*, “Przegląd Prawa Konstytucyjnego” 2012, No. 4, p. 125.

¹⁶ Judgment of the Constitutional Tribunal of March 20, 2006, file reference no. K 17/05, OTK-A 2006, No. 3, item 30.

¹⁷ Judgment of the Constitutional Tribunal of July 13, 2004, file reference no. K 20/03, OTK-A 2004, No. 7, item 63.

¹⁸ Judgment of the Constitutional Tribunal of March 20, 2006, file reference no. K 17/05, OTK-A 2006, No. 3, item 20.

of public life, assessed in accordance with the standards adopted in a democratic state. Secondly, public information must be important for assessing the functioning of institutions and persons performing public functions, and thirdly, access to the indicated information cannot eliminate the meaning (essence) of protecting the right to private life¹⁹.

3. Access to public information as the implementation of the right to truth

The universal values underlying the Constitution of the Republic of Poland include truth, justice, goodness and beauty in the preamble²⁰. The inclusion of the right to truth in the preamble highlights its legal importance²¹.

The systemic anchoring of the citizen's right to the truth can also be sought in general constitutional principles, among which the principle of the democratic state of law established by Art. 2 of the Constitution of the Republic of Poland. Democracy is a system based on truth, in which the principle of transparency of public life applies and there are mechanisms that guarantee effective control of those in power. The principle of citizens' trust in the state and its laws is derived from the principle of a democratic state of law. This principle obliges the state to build trust in public institutions in the minds of its citizens, and this goal can only be achieved by basing mutual relations on truth, openness and honesty. The obligation of public authorities to act based on the truth may also be derived from the principle of fair operation of public institutions, which is expressed in the preamble to the Constitution of the Republic of Poland²².

In the constitutional approach, truth is, therefore, primarily an intellectual category – a category of knowledge, including the knowledge of good and evil (con-scientia), and at the same time, the goal of man and the communities created by him, directly recognized by the legal order, protected by the guarantee of human dignity and resulting from it. fundamental freedoms and human rights. Man's pursuit of truth can therefore be considered the goal of the entire legal order. It should be provided and implemented in every type of legal relationship.

¹⁹ M. Wild, *Komentarz do art. 61 Konstytucji RP* [in:] *Konstytucja RP*, Vol. I: *Komentarz do art. 1–86*, eds. M. Safjan, L. Bosek, Warszawa 2016, p.

²⁰ M. Florczak-Wątor, *O potrzebie konstytucjonalizacji prawa obywateli do prawdy i konieczności poszerzenia ustawowego zakresu jego ochrony w czasach postprawdy*, "Przegląd Prawa Publicznego" 2023, No. 11, p. 3

²¹ L. Bosek, *Konstytucyjna zasada prawdy*, "Forum Prawnicze" 2022, No. 3, p. 71.

²² M. Florczak-Wątor, *O potrzebie konstytucjonalizacji...*, p. 77.

The constitutionally defined category of truth determines to a significant extent the subjective position of an individual in a pluralistic society and a democratic state of law. It guarantees the opportunity to learn about the actual system of relations concerning the individual and the communities in which he or she realizes his or her basic freedoms and rights.

The principle of truth primarily guides the interpretation and application of the Constitution of the Republic of Poland. If the Constitution of the Republic of Poland does not define a random set of regulations, but creates a complete and coherent system of norms with the highest force and importance in the legal order, it can be concluded that the principle of truth plays an important role in organizing the process of interpretation and application of its norms. The principle of truth should therefore be applied in connection with other principles, fundamental freedoms and human rights, determining the direction of their interpretation²³. This truth is the axiological foundation of the Constitution of the Republic of Poland. Truth as an individual right is referred to in Art. 51 section 4 of the Constitution, which, under the right to personal data protection, grants everyone the right to request rectification and deletion of information that is false, incomplete or collected contrary to the Act.

The right to truth is usually implemented through the right to seek and obtain information that allows respect for knowledge and understanding of the mechanisms of action in the modern world. The right to truth understood in this way means, among others: in art. 61 of the Constitution by ensuring freedom of access to public information. It can be assumed that this provision provides citizens with the right to seek the truth about the functioning of public authorities and persons performing public functions as well as entities that perform public authority tasks or manage property²⁴.

A manifestation of the implementation of the constitutional right to the truth is citizens' access to public information in the light of the Act of September 6, 2001 on access to public information. Access to the truth and transparency of the activities of state bodies are important for the proper functioning of democratic mechanisms, social control over the exercise of power and protection of citizens' health. Access to information about public affairs determines the ability to control whether the state actually serves the interests of its citizens. This information has value only if it is actually consistent with reality, i.e. verifiable and objective. The basic features of a democratic state are: openness, transparency and striving to find out the truth, and the exceptions – allowed in a few cases and provided for by law –

²³ L. Bosek, *Konstytucyjna zasada...*, p. 77.

²⁴ M. Florczak-Wątor, *O potrzebie konstytucjonalizacji...*, p. 75.

are confidentiality, secrecy and the prohibition of disseminating knowledge on a specific topic. The degree of belief in the validity of this view also determines the systemic importance of the right to access public information. The right to public information is one of the elements of the exercise of sovereign power by the Nation in the Republic of Poland. The indicated right may be limited only for the sake of goods specified in the laws, i.e. protection of freedoms and rights of other persons and economic entities and protection of public order, security or important economic interest of the state²⁵. As the Constitutional Tribunal has repeatedly pointed out in its rulings, in a situation of clash and conflict of two values: the citizen's right to information and the right to privacy, priority cannot be given to the former at the expense of completely negating the protection of the sphere of private life. Citizens cannot be guaranteed access to information at all costs²⁶. The Constitutional Tribunal pointed to the method of resolving the conflict based on the principle of proportionality, emphasizing that the mechanism and structure of proportionality are based on the assumption of weighing the goods in conflict, clearly defining the limits of the necessity of interference in the sphere of protected law and on determining the scope of the prohibition of such interference. The outcome of the resolution of a conflict of principles may under no circumstances lead to the complete elimination of one of the rights in conflict²⁷.

4. Conclusions

The Preamble to the Constitution of the Republic of Poland defines truth as the first of the basic constitutional values, pointing to the universal foundations of the Constitution of the Republic of Poland. Truth, goodness, justice and beauty, in accordance with the clearly expressed will of the constitutional legislator, define the absolutely protected normative concept of man and his dignity, thus acquiring the character of basic constitutional principles. The above findings lead to the conclusion that the right to truth has a solid legal basis in the Polish Constitution and can be treated as an individual right of constitutional importance, with all the resulting consequences. The right to truth is a fundamental right of citizens in a democratic state ruled by law and as such should be subject to a process of its explicit constitutionalization. The Constitution of the Republic of Poland does not explicitly provide for such a right, although an analysis of its

²⁵ *Ibidem*, p. 76.

²⁶ Judgment of the Constitutional Tribunal of June 19, 2002, file reference no. K 11/02.

²⁷ Judgment of the Constitutional Tribunal of March 20, 2006, file reference no. K 17/05,

various provisions, including systemic principles and regulations regarding individual rights and freedoms, leads to the conclusion that the right to the truth is covered by constitutional protection. An extension of this right are statutory regulations enabling the pursuit of the truth, an example of which is the Act on Access to Public Information, according to which state authorities are obliged to provide individuals with information that is public information. However, this obligation applies only to information that is related to the activities of public authorities and persons performing public functions, which creates conditions for broad transparency of political life in the state.

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