

Judgment of 20th March 2006, [K 17/05](#)
**LIMITING PROTECTION OF THE PRIVACY OF PERSONS
DISCHARGING PUBLIC FUNCTIONS**

Type of proceedings: Abstract review Initiator: President of the Supreme Administrative Court	Composition of Tribunal: 5-judge panel	Dissenting opinions: 0
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Legal provisions under review	Basis of review
Limitations on the protection of privacy as regards persons discharging public functions, in connection with citizens' right of access to public information [Access to Public Information Act 2001: second sentence of Article 5(2)]	Prerequisites for limitations on the exercising of constitutional rights and freedoms Protection of privacy Scope of permissible limitations on citizens' access to public information Legal reservation (i.e. exclusivity of statutes) in relation to the manner of accessing public information [Constitution: Articles 31(3), 47, 61(3) and (4)]

Article 61(1) of the Constitution guarantees citizens the right to obtain information on the activities of organs of public authority, as well as on persons discharging public functions. This right may be subject to limitations by reason of, inter alia, the protection of freedoms and rights of other persons, as specified by statutes (Article 61(3)).

The manner in which citizens may exercise the right guaranteed in Article 61 of the Constitution, and the duties of public authorities in connection therewith, have been laid down in the Access to Public Information Act 2001 (hereinafter "the 2001 Act"). Pursuant to Article 5(2) thereof, the right to public information is subject to limitation by virtue of the privacy of a natural person or a trade secret. However, in the second sentence of the same section – challenged in the present case by the President of the Supreme Administrative Court – the legislator adds that the limitation specified in the first sentence "does not concern information about persons discharging public functions, being connected with the discharge of such functions, including information on the conditions under which such functions may be conferred and discharged".

In the view of the applicant, the constitutional right to privacy (Article 47) constitutes a greater value than the right to public information. This is said to be reflected, inter alia, in the fact that the legislator may not impose special limitations upon this right even in times of martial law and states of emergency (cf. Article 233(1) of the Constitution). According to the President of the Supreme Court, while limitations on the right to privacy in relation to persons discharging public functions are necessary, those introduced in the challenged

provision may not be justified by reference to any of the premises enumerated in Article 31(3) of the Constitution (the principle of proportionality).

In its reasoning for the present judgment, the Tribunal makes broad reference to the jurisprudence of Polish courts and the European Court of Human Rights, as well as to European Community law.

RULING

The challenged regulation conforms to Articles 31(3), 47 and 61(3) of the Constitution and is not inconsistent with Article 61(4) of the Constitution.

PRINCIPAL REASONS FOR THE RULING

1. Two assumptions should be applied in resolving a problem whereby there is a collision between rights or principles at constitutional level (in this case: the right to information, on the one hand, and the right to privacy, on the other). First of all, as neither of the rights remaining in conflict may be eliminated completely, it is necessary to reach a certain balance and to determine the scope of application of each of the conflicting rights. Secondly, what are of significant importance in such cases are the existing fundamental axiological preferences which may be established through analysis of the values deemed directional or principal at the level of the Constitution's general principles.
2. As the challenged provision of the 2001 Act is assessed, a balance needs to be sought between the principal values of the common good (Article 1 of the Constitution) and the dignity of the person (Article 30 of the Constitution). The former constitutes a significant axiological justification for the introduction of guarantees as regards access to information on the activities of organs of public authority. It is the common good which is involved in the proper functioning of institutions in public life, the latter's fundamental prerequisite being the transparency of activities undertaken within the public domain.
3. Article 61 of the Constitution provides no grounds upon which to exclude the possibility that the exercising of the right to information will have an indirect effect not only on the public activities of persons discharging public functions (which is obvious when the activity is performed within, and in direct connection with, the functioning of a given public institution) but also on the borderline sphere between their public and private lives. In practice, it will not always be possible to achieve distinct and precise separation of the spheres of public activity and private life in the cases of persons discharging public functions. Such "overlapping" of the two spheres may reflect a variety of factors – the nature of public activities, contacts with other entities in connection with the undertaking of such activities, the need or desire to undertake certain activities from the sphere of private life while performing public activities, etc.
4. It is characteristic for European jurisprudence and legislation to strive to secure the broadest possible access to public information, since this constitutes a significant guarantee of transparency in the public life of a democratic state. It is consequently acknowledged that

the privacy of persons discharging public functions, while remaining under the protection of guarantees envisaged by conventions (particularly Article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms), may be subject to limitations justified by virtue of such values as openness and the availability of information on the functioning of public institutions in a democratic state. The value connected with the transparency of public life may not lead, however, to the complete rejection and negation of the protection afforded to the private lives of persons discharging public functions. Nonetheless, those deciding to discharge such functions must accept a wider scope of interference into the sphere of their privacy than is the case for other persons.

5. Where permissible limitations on the right to public information are concerned, the regulation contained in Article 31(3) of the Constitution is modified by Article 61(3) of the Constitution only as regards the prerequisites for interference. The application of the remaining, i.e. not expressed in Article 61(3), elements of proportionality thus remains fully applicable – in particular as regards the necessity in a democratic state and the prohibition of interference in the essence of the right. A premise common to both legal constructs and capable of justifying limitations is the necessity of protecting the rights and freedoms of other persons.
6. The protection of private life (Article 47 of the Constitution) encompasses autonomy as regards information, which is taken to mean an individual's right to decide whether or not to disclose personal information, as well as the right to review such information where it comes into the possession of other entities (cf. Article 51 of the Constitution).
7. Limitations upon the exercising of the right to privacy, as guaranteed in Article 47 of the Constitution, are permissible where there is compliance with the prerequisites set out in Article 31(3) of the Constitution.
8. Analysis of the constitutional provisions invoked hitherto generates several conclusions regarding the scope of the right to information on the activities of organs of public authority and persons discharging public functions. Firstly, the information whose nature and character may violate the interests and rights of other persons may not go beyond what is indispensable in terms of the need for transparency in public life, as evaluated in line with the standards of a democratic state. Secondly, the information must always be significant in any evaluation of the functioning of institutions and persons discharging public functions. Thirdly, the information may not be of such a nature and scope as to undermine the sense (essence) of the protection of the right to privacy, should it be disclosed.
9. The scope of the notion of “person discharging public functions”, used in Article 61(1) of the Constitution and in the challenged provision of the 2001 Act, is not identical to that of the notion of “public person”, since the latter additionally includes persons holding positions of significance as regards the shaping of people's attitudes and opinions, encouraging widespread interest on account of achievements in, for instance, the arts, sport or science. The analysed notion of a person discharging public functions encompasses those related to a public institution (organ of public authority) by formal ties. It is thus concerned with persons within public institutions in whom there are vested at least a narrow range of decision-making powers, i.e. those holding positions and discharging functions that equate to

the pursuit of activities directly influencing the legal situation of other persons, or, at least, entailing the preparation of decisions concerning other entities.

10. The interpretation and application of the reviewed statutory provision must take account of the exceptional nature and constitutional context thereof. Any interference in the sphere of the private lives of persons discharging public functions undertaken in connection with citizens' right of access to public information may only gain constitutional justification where the disclosed events from the private life exert an influence on the sphere of the public functioning of the person concerned. The impassable limit on such interference is then the obligation to respect that person's dignity (Article 30 of the Constitution).
11. Article 61(4) of the Constitution, as indicated by the applicant, concerns the procedure within which information is provided. Accordingly, it may not constitute an adequate basis upon which the constitutionality of the challenged regulation may be reviewed.

Provisions of the Constitution and the (European) Convention for the Protection of Human Rights and Fundamental Freedoms

Constitution

Art. 1. The Republic of Poland shall be the common good of all its citizens.

Art. 30. The inherent and inalienable dignity of the person shall constitute a source of freedoms and rights of persons and citizens. It shall be inviolable. The respect and protection thereof shall be the obligation of public authorities.

Art. 31. [...] 3. Any limitation upon the exercise of constitutional freedoms and rights may be imposed only by statute, and only when necessary in a democratic state for the protection of its security or public order, or to protect the natural environment, health or public morals, or the freedoms and rights of other persons. Such limitations shall not violate the essence of freedoms and rights.

Art. 47. Everyone shall have the right to legal protection of his private and family life, of his honour and good reputation and to make decisions about his personal life.

Art. 51. 1. No one may be obliged, except on the basis of statute, to disclose information concerning his person.

2. Public authorities shall not acquire, collect nor make accessible information on citizens other than that which is necessary in a democratic state governed by the rule of law.

3. Everyone shall have a right of access to official documents and data collections concerning himself. Limitations upon such rights may be established by statute.

4. Everyone shall have the right to demand the correction or deletion of untrue or incomplete information, or information acquired by means contrary to statute.

5. Principles and procedures for collection of and access to information shall be specified by statute.

Art. 61. 1. A citizen shall have the right to obtain information on the activities of organs of public authority as well as persons discharging public functions. Such right shall also include receipt of information on the activities of self-governing economic or professional organs and other persons or organizational units relating to the field in which they perform the duties of public authorities and manage communal assets or property of the State Treasury.

2. The right to obtain information shall ensure access to documents and entry to sittings of collective organs of public authority formed by universal elections, with the opportunity to make sound and visual recordings.

3. Limitations upon the rights referred to in paras. 1 and 2 above, may be imposed by statute solely to protect freedoms and rights of other persons and economic subjects, public order, security or important economic interests of the State.

4. The procedure for the provision of information, referred to in paras. 1 and 2 above shall be specified by statute, and regarding the Sejm and the Senate by their rules of procedure.

Art. 233. 1. The statute specifying the scope of limitation of the freedoms and rights of persons and citizens in times of martial law and states of emergency shall not limit the freedoms and rights specified in Article 30 (the dignity of the person), Article 34 and Article 36 (citizenship), Article 38 (protection of life), Article 39, Article 40 and Article 41, para.4 (humane treatment), Article 42 (ascription of criminal liability), Article 45 (access to a court), Article 47 (personal rights), Article 53 (conscience and religion), Article 63 (petitions), as well as Article 48 and Article 72 (family and children).

European Convention

Art. 8. 1. Everyone has the right to respect for his private and family life, his home and his correspondence.

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law

and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.