



Name of the recording: Andrzej Poglódek PhD - right of access to environmental information

Duration of the recording: 0:18:03

(ns) - inaudible fragment
<i>italics</i> - uncertain spelling of a word, phonetic notation
... - an interrupted thought, an interrupted statement
☺ – laugh

And the last thing we have here. Well, I will make it recovering those minutes. Yes, I will. It is this access to environmental information that is guaranteed separately. Because it can be found in law almost nowhere, therefore I will make it. Namely, it is available in the Czech Republic. Everyone has the right to full information on the state of the environment and natural sources provided in due time. This is guaranteed by the Czechs. Then we have it only in... Slovakia. Our neighbours here repeat the same thing as the Czechs, i.e. The right derived from the Charter of Rights and Freedoms. It is also implemented in Russia. Russia guarantees everyone the right to reliable information on the state of the environment. As simple as that. I am pointing out this premise of the reliability of such information, which seems important here. That this information should, however, be reliable. Apart from that, Scandinavia appears here and Norway appears here. It is true that Norway has an old constitution, but for the sake of this environment, the Norwegians added this provision. It is simply that... firstly, they have guaranteed... that, by the way, this is guaranteed by most of the constitutions. The right to the natural environment that supports health and to a nature whose resources and diversity are protected. And that natural resources are exploited on the basis of long-term and multilateral considerations, so that this right is also preserved for the next generations (ns). That is essentially the norm in the constitutions. However, they supplement this by saying that, in order to protect the rights referred to above, that is to say, the Norwegian right to this natural environment, to use this welfare reasonably, for the benefit of these Norwegians and to preserve it for future generations, citizens have the right to be informed about the state of the environment and about the consequences of planned and started interventions in the nature. And there is also the obligation for the state authorities to issue additional regulations to implement these principles. So they think that the guarantee itself... just like the Russians wrote that the information should be reliable, but it is not clear how we guarantee it... they have not developed it... it may not be enough. The Norwegians have it in place. And so do the Finns who indicate what exists (ns) for the environment. Obviously, the responsibility lies with everyone. But it would also simply ... the authorities here provide everyone with the opportunity to influence decisions on matters concerning the environment in which they live. It also means that they simply provide everyone with information about it. That is the kind of thing. Again, this is something that may surprise us, since green environmental topics are both current and increasingly fashionable, yes. So one could probably expect that somewhere in the world, the constitutions represent a very broadly defined law ... because they are entitled to this information on the state of the environment, which is complete and reliable... that they guarantee that it is somehow very common and that they even mention it separately. Meanwhile, this right, as we can see, is rather captured at a constitutional level somewhere in the broader right of access to public information. And separately it is rarely mentioned. Although this has consequences. Please note that it will often be the case, however, that providing access to public information does not give us full information about the state of the environment at all, since





absolutely non-public entities are also responsible for the state of the environment, yes they are. Thus, here we may have incomplete information. So it certainly serves to guarantee this separately. Again, there is a trend to guarantee this environmental information separately, which is emerging. It is actually a standard in newly adopted constitutions, yes. It appears. It is precisely the Hungarians, I do not know why they have not written it somewhere. But they have included water, cloning and so on. It is somewhere there... they just included it in something broader. In some general right to information in the media. This is simply how it is put in Hungary. That which is somehow there... also a sign of the times. But here, of course, with this right to the environment, we have a common key, it's true. How these countries appear to us... Czechoslovakia, it is obvious. In the 1990s Then Norway and Finland. And there is this Russia in all this. Does Russia implement this right to reliable information for its citizens, well ... the majority of Russian citizens, I think even according to their surveys, say it does not. Since even today, there were some natural disasters there, which... which were somehow simply hidden there and it was impossible to learn in reliable way what was going on. For example, with (ns), where the accident occurred and the local authorities were hiding it for a very long time. There, of course, the media tried to calm down the information at all costs. This, of course, is much more difficult today. It ended up there... with dismissals in the authorities. Since the President eliminated those responsible for hiding and so on, after it simply emerged. It had to become known in the times of the Internet. That was quite a big failure. The Norwegians and Finns simply take care of the environment. That is a bit of an approach. Surprisingly, the Slovenians, who have the right to water, do not have this right published separately and they even have a constitutional provision on the protection of animal rights. I mean, different. Caring for animal welfare. Because that is how it sounds. That the state has a duty to look after the welfare of animals. And for this purpose, the act of law will be passed. There is, of course, such a law. And about the natural world. Because there are animals and the natural world. What they actually use, literally speaking, is simply the concept of the living world. Other than human. It should be all protected there. That is the law existing there. Obviously, the majority of modern countries guarantee that it is clear, at a lower... statutory, sub-statutory level, the right to this environmental information in broad terms. I am sure it is. But here we had this constitutional subject. So, in theory, I think there are still a few minutes left for me to recover. So maybe there are some questions? About five minutes of this extension, probably.

- I have a question here about checking the correctness of the public information provided. In my personal activities I have encountered twice both at regional level and at the level of the state constitutional programmes, where I was aware of the situation when the public information was made available. And this public information was clearly untrue. What can we do in this situation? Are there any tools to help us check such information?

I understand that it was incomplete or outdated, wasn't it? In this sense?

- In general, not compliant with the law.

Illegal, that's... but not. Because some information has been made available. So yes. Either outdated, or incomplete, or misleading, as I understand it. Something like that. Well, then, there is the whole procedure which is initiated and ends up in an administrative court in Polish conditions. If someone provides incorrect, incomplete, out-of-date information, then such proceedings are pending. It is the same situation as if someone were to refuse it. It is at some point after appeals in instances with this authority, unless there are no instances available, that ends up simply in the administrative court that resolves the case. This is, after all, the case in





most countries, where the courts, of course, secure this right. Not always administrative courts, since a separate administrative judiciary does not exist everywhere. You should also bear in mind that the administrative judiciary is an idea that originated in Austria and Germany. So it did not spread everywhere there and it does not exist everywhere. And it has not been preserved everywhere. For example, it used to operate and nowadays it has disappeared. But it is at some point that this court action before an administrative court remains if anyone thinks that this information has not been... that this right has not really been ensured to them.

- Is it possible?

Yes, yes.

- I have such a question about the actual practice of public information made available. Such a legal and comparative issue, as you have presented it. Were such studies carried out with the aim of making a comparison between countries? Firstly, for example, the time when the information is made available, and secondly, the extent of the information made available? I am asking from the perspective of my own experience and what is known to me. The regular method, for example, is that if we talk about resolutions such as those between pharmaceutical companies and the state administration, then actually the pharmaceutical companies indicate in any way that this is a business secret. A public entity states... makes available what it has, in fact, received from the company, doesn't it? Such a marking. So, in extreme cases, this even leads to the marking of the whole decision. They are simply all black. So... what, by the way, I publish on my website. So the question is, what is the practice in other countries? Have you conducted such research?

To be honest..

- (ns) in the sense of these provisions. The question is how they are applied and what do they actually lead to, isn't it?

Frankly speaking, I have not personally conducted such research and such studies, at least in Poland. Sometimes such studies were, of course, carried out in some of these countries. Just like they are conducted in Poland somewhere. But usually, however, it is a fragmented scope. As far as I can recall, no one has studied this issue globally, what kind of practice it is. We do, of course, have a certain idea. Since certain things appear somewhere in some international reports, based on reports from various organisations. These reports are later elaborated, as far as this is guaranteed, as far as not, yes. Sometimes we can see this after some complaints that go through to international tribunals somewhere, to what extent this case is guaranteed. And that, of course, also depends on what someone asks for, yes. Since, if someone asks for something that might be inconvenient for the authority or for some of the actors interacting with the authority, such as some reimbursement decisions indicated here, then the practice will probably be more stringent in the direction that we try not to make information available. Such cases occurred in some countries. A premise would be found, yes. I understand that this is part of the state's economic policy or health protection and it limits our access to public information. We could invoke this directly. This is already part of a certain policy that we pursue. And, of course, this is not the case if somebody is asking for things that, let's say, are not somehow ... not economically relevant, for example, to say that there was some lobbying or corruption in the case. Or, I do not know, someone is asking for providing him/her with statistical data on how many constitutional complaints there were in a given country during a given period, how long they were processes, let's assume, how these cases were concluded. That is, with award or by cancellation. For what reasons? That is a typical statistics, yes. Let's assume that the





authority has not published it, so we are asking for something like that. It is like a body, its interests are not affected. Therefore, the authority will respond. However, if I were to ask, probably, how much was spent on catering in the Constitutional Tribunal, for example, who received the order there, in what way, what was ordered? Of course, in practice, there have been these cases of disclosure in our country. However, that is already less convenient, isn't it? We may wonder why there was such a thing here, or something else, why so expensive, why them. I think, this is the issue of the cases. In such a global context, it has not been studied, and for the time being, I think... it would... it would require the creation of some kind of team, in fact... international. So that everyone in their own country... knowing what the practice is really about. Since, let 's remember that if we want to acquire a certain practice... we could, of course, ask you in that country what your practice is, what it looks like and make it available. They would, of course, write back. There are so many of these applications. We deal with them, we answer. And we would say that yes, of course, everything is fine. We would describe it anyway. I have even deliberately given this example of the Tribunal and these statistical data to the complaint. I did not apply to the Polish Tribunal for this since I think it more or less publishes such data. But I needed such data from the Ukrainian tribunal once. So I wrote to them. As a foreigner, I could speak Russian. So I wrote to them in Russian. They replied to me. Of course, they wrote me back in Ukrainian, because that is the practice. That is not a problem there. But they provided full accurate information and they did it quickly. So they had it. There was simply nothing on the website. All such specification. I say, as someone would ask them, even a Ukrainian, about some kind of tender for cars, issues of employment, the level of earnings, so it is different, yes. After all, even when asked in Poland about employment in offices and the breakdown of wages, some ministries responded in such a way that they provided an average salary for the entire ministry. Although the question was about the breakdown into individual groups of employees exactly. This is a significant difference. So that depends on the issue, simply. That is why there is a lot of work to be done in this... in actual implementation, yes. Particularly, on such more specific issues, where there this contact exists between the state and some economic sphere. Because I say these typically official things, statistics and statements, I think that nowadays, this is simply not a problem. There is, of course, probably a problem here all the time with the provision of legal opinions. Since we are constantly being told that these opinions ordered by public authorities are private. That is the practice. After all, it was already before the administrative courts that the previous president's office there did not want to make the opinion available. However, this practice is repeated that someone does not want to make legal opinions available by saying that the opinions they ordered were private. Or they would say in general that they were actually collecting verbal opinions, as a result of which he did not archive them and is unable to reproduce their content. It started to happen now. It was the Ministry of Health, even during the term of office of the previous minister, when asked about the data on which it relied, that there were some experts who had expressed an opinion. After having been asked for informing in that case who were the experts, what opinions they expressed, it turned out that the opinions had been verbal while the experts were individuals and their names could not be disclosed. But they did received some remuneration, didn't they? It was revealed. They have waived their privacy, in my opinion. I think this was referred to the court and the case is still pending concerning revealing even a list of those people who were consulted in those cases. I will say this for the sake of curiosity, since it is also perhaps a matter of access to public information. There are international acts in the area of the WLP which prohibit very interesting things. Namely, by guaranteeing certain access to public information,





they prohibit ... otherwise. They impose a restriction on anonymous participation in the drafting of legislation. I think it is also important to know who actually created an act of law. Let's note that the major part of our legislation is developed by the governmental administration. However, usually we do not have a clear indication of who exactly drafted it. We do not have it, don't we? And this is essential who wrote it, who participated in the work. After all, these are not always officials. Very often there are some experts involved in this work. And this is not revealed. Claiming that there were private individuals who were consulted. After all, lobbying might as well had been there, ladies and gentlemen. Someone was sitting, writing. And then some authority presents the act of law. Well, we do not really know who wrote it or where it was written. It is passed. What was the motivation of the author? The justification is brief. But there is an act in the area there... issued by the parliamentary assembly of the WLP, which specifies exactly this case. That anonymous legislation must be eradicated. This is also important public information, so realistically speaking, from the practical point of view. Who actually wrote it personally. So that we know. Since we know who issued the judgement, we know which judge since this information is public. But who exactly in a given ministry had drafted an act of law or an amendment, who was consulted, we do not know. We have a signature of a minister or a vice-minister who did not write this personally. He/she assumes political responsibility. After all, he/she is not a real author. This is also an important piece of information, which has probably not been noticed so far, in the sense that someone demands disclosure intensively. Time for that will probably come. In my opinion, important information, very often, who ... especially in economic matters, where ... after all, creating regulations can serve someone or may harm someone. So it depends who writes it there.

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