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The State Commission to Investigate Russian Influence and the Universal Right to Public Information[2]

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Abstract

The entry into force of the Act of 14 April 2023 on the State Commission for the Investigation of Russian Influence on the Internal Security of the Republic of Poland in the Years 2007–2022 was met with huge criticism not only from politicians from the camp opposing the ruling party but also from average individuals. It was emphasized that these regulations violate the universal right to information because the activities of the State Commission in the light of the regulations in question are not covered by full transparency. This is even though the legislator has explicitly classified it as a public authority. The main objective of the article is to compare the status, organization, and functioning of the authority with the subjective and objective premises for making public information available, and then to determine whether the legislator intended to shape a new restriction on access to information, or whether these regulations can be included in the group of separate provisions to which the Act of 6 September 2001 on access to public information gives priority to application.

Keywords: commission, right to information, access to public information, restriction.

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Państwowa Komisja do spraw badania wpływów rosyjskich a powszechne prawo do informacji publicznej[3]

Streszczenie

Wejście w życie ustawy z dnia 14 kwietnia 2023 r. o Państwowej Komisji do spraw badania wpływów rosyjskich na bezpieczeństwo wewnętrzne Rzeczypospolitej Polskiej w latach 2007–2022 spotkało się z ogromną krytyką nie tylko ze strony polityków obozu przeciwnego wobec rządzących, ale i ze strony przeciętnych jednostek. Podkreślano, iż regulacje te uderzają w powszechne prawo do informacji, albowiem działalność Państwowej Komisji w świetle omawianych regulacji nie jest objęta pełną jawnością. Dzieje się tak pomimo wyraźnego zakwalifikowania jej przez ustawodawcę do grupy organów władzy publicznej. Zasadniczym celem artykułu jest zestawienie statusu, organizacji i funkcjonowania organu z podmiotowymi i przedmiotowymi przesłankami udostępniania informacji publicznej, a następnie określenie, czy w zakresie tych regulacji ustawodawcy chodziło o ukształtowanie nowego ograniczenia w dostępie do informacji, czy regulacje te można zaliczyć do grupy przepisów odrębnych, którym ustawa z dnia 6 września 2001 r. o dostępie do informacji publicznej przyznaje pierwszeństwo zastosowania.

Słowa kluczowe: komisja, prawo do informacji, dostęp do informacji publicznej, ograniczenie.

[3] Badania wykorzystane w artykule nie zostały sfinansowane przez żadną instytucję.

Introduction

The universal right to information, as a special right within the set of fundamental human rights,[4] creates an opportunity for individuals to acquire knowledge about the activities of specific entities (Article 61(1) of the Constitution of the Republic of Poland[5]). This is an elementary component of the so-called open government and transparency of public authorities[6] because, as M.M. Semwal and S. Khosia emphasize, democracy requires conscious citizenship and transparency.[7] Thanks to this right, an individual can feel more confident and secure in the country of which he or she is a citizen. It is not without reason that in the literature one can find statements indicating the defensive nature of the discussed entitlement[8] because the awareness of the surrounding world has an impact on the formation of social assessments and the making of future decisions about the legitimacy to exercise power. Transparent public information, of appropriate quality, verified, and easily accessible, can humanize communication, is the basis of public trust, makes it possible to conduct a truly democratic policy and results in a higher level of citizen participation in the governance of the state.[9] Access to information is an important tool in the fight against inappropriate behaviour by public authorities, as individuals are allowed to control and form judgments as to the correctness of their work.[10] It is

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4 R. Sabic, *Right to Free Access to Information of Public Importance*, https://bezbednost.org/en/publication/right-to-free-access-to-information-of-public-importance/ (access: 5.10.2023).

5 Journal of Laws of 1997, No. 78 item 483, as amended.

6 D. Sybilski, *Od dostępu do informacji publicznej do ponownego wykorzystywania informacji sektora publicznego i otwartych danych. Ewolucja praw informacyjnych*, [in:] M. Błachucki, G. Sibiga (eds.), *20 lat ustawy o dostępie do informacji publicznej. Podsumowanie i perspektywy ustawowej regulacji prawa do informacji publicznej*, Warszawa 2022, p. 285.

7 M.M. Semwal, S. Khosia, *Right to Information and the Judiciary*, "The Indian Journal of Political Science" 2008, 69(2), https://www.jstor.org/stable/41856475?searchText=right%20to%20information&searchUri=%2Faction%2FdoBasicSearch%3FQuery%3Dright%2Bto%2Binformation&ab_segments=0%2Fbasic_search_gsv2%2Fcontrol&refreqid=fastly-default%3A59730969082b56c8902253e720bb39b7 (access: 5.10.2023).

8 R. Castilla, A. Pacheco, J. Franco, *Digital Government: Mobile Applications and Impact on Access to Public Information*, https://www.sciencedirect.com/science/article/pii/S235271102300078X (access: 5.10.2023).

9 W.-R. Steudt, N.J. Medranda Morales, R. Sanchez Montoya, *Evaluation of Transparency of Public Information on Canadian Mining Projects in Ecuador*, https://www.sciencedirect.com/science/article/pii/S2214790X20302720 (access: 5.10.2023).

10 L. Staniszewska, *Ochrona wnioskodawcy przed bezczynnością bądź odmowa udzielenia informacji publicznej w przypadku podmiotów niepublicznych (zagadnienia wybrane)*, [in:] M. Błachucki, G. Sibiga (eds.), op. cit., p. 479; see also: M. Godbole, *Right to Information: Write the Law Right*, "Economic and Political Weekly"

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regulated by the Act of 6 September 2001 on Access to Information (hereinafter referred to as the u.d.i.p.).[11] The u.d.i.p. determines the basic principles of the sharing process, the requesting and non-requesting modes of information communication, but also the legally provided restrictions on access to public information. This is particularly important, as it is clear from the constitutional regulations that the right to information is not absolute and is subject to limitations because there are values that should be given priority and guaranteed protection in the face of legally regulated access to information. The legislator defines two categories of restrictions in the content of the u.d.i.p. These restrictions are of a legal nature. It is worth noting, however, that in addition to the above, in practice there is also an extra-legal desire to limit accessibility, which is closely related to the negative attitude of the authorities to the dissemination of what concerns their work. It follows from the essence of exercising power that those who wield it do not want to disseminate information about their actions or passivity.[12] The author rightly points out that even though social control, which is a consequence of the acquisition of public knowledge, has a positive, mobilizing effect on public institutions, the natural reflex of all those entities that are or are to be verified is to avoid control by all available means, as well as to have a negative attitude towards innocent, objectively acting controlling entities.[13] One might be tempted to say that such an attitude is evident in the Act of 14 April 2023 on the State Commission for the Investigation of Russian Influence on the Internal Security of the Republic of Poland in the Years 2007–2022 (hereinafter referred to as the u.p.k.).[14] Its adoption and entry into force moved the Polish society, arousing a lot of negative emotions. The study aims to determine whether these regulations create further restrictions for the process of making public information available or whether they constitute special regulations to which the u.d.i.p. gives priority to apply. The determination of this requires a comparison of the status, organization, and activities of the Commission with the subjective and objective premises for making public information available.

2000, 35(17), https://www.jstor.org/stable/4409194?searchText=right%20to%20information&searchUri=%2Faction%2FdoBasicSearch%3FQuery%3Dright%2Bto%2Binformation&ab_segments=0%2Fbasic_search_gsv2%2Fcontrol&refreqid=fastly-default%3A1ac6edd3addbd4f079227a5220997ab0 (access: 5.10.2023).

11 Journal of Laws of 2022, item 902.

12 A. Korzeniewska-Polak, *Nielegalne pozostawianie bez rozpoznania wniosków o udostępnienie informacji publicznej*, [in:] M. Błachucki, G. Sibiga (eds.), op. cit., p. 448.

13 Ibidem.

14 Journal of Laws of 2023, item 1030, as amended.

Commission for the Investigation of Russian Influence and the Subjective and Objective Conditions for Access to Public Information

Focusing on the process of defining public information, over more than twenty years of access regulations (u.d.i.p.), constitutional, statutory, and doctrinal definitions have been formed, as well as those that are a consequence of the judicature's actions in connection with the inaction of the obliged entity or the refusal to provide access to information subject to the information expectation. Despite various discrepancies resulting from, i.a. subjective or objective approach to public information, all of them refer to knowledge coming from entities that are organizationally or functionally public. The constitutional reference to public information shows that it is, i.a. information about the activities of public authorities or persons performing public functions (subjective approach). On the other hand, the objective approach in Article 1(1) of the u.d.i.p. suggests that public information is any information relating to the performance of public tasks or concerning the disposal of public funds. In the Polish jurisprudence, it has been clearly emphasized that: 'when defining the concept of public information, the legislator referred to the category of a public matter. According to the well-established views of the judicature, public information is any information created or referred to public authorities, as well as created or referred to other entities performing public functions within the scope of their performance of public authority tasks and management of municipal property or property of the State Treasury.'[15]

Under Article 3(1) of the u.p.k., the Commission is a public administration body guarding the public interest in investigating Russian influence on the internal security of the Republic of Poland. It conducts investigations and investigations aimed at clarifying whether there was any Russian influence in the activities of persons who are public officials or members of senior management or whether Russian influence did not involve activities referred to in Article 4(1)(1–9) of the u.p.k. This body issues administrative decisions, orders, and resolutions (Article 14(1) of the u.p.k.). The Commission, being a public administration body (control body), is part of the structure of the executive power, and therefore it constitutes a public authority whose activities are made public in Article 61(1) of the Constitution of the Republic of Poland and Article 4(1)(1) of the u.d.i.p. According to J. Trzciński, a public authority

[15] See: judgment of the Voivodship Administrative Court in Wroclaw of 30 August 2023, IV SAB/Wr 167/23, CBOSA (access: 3.10.2023) and judgment of the Supreme Administrative Court of 21 July 2011, I OSK 638/11, CBOSA (access: 3.10.2023).

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is a state or local government body.[16] The list of obliged entities in Article 4 of the u.d.i.p. is illustrative, but at the same time, it is extensive. When indicating entities obliged to provide information, the legislator mentions public authorities first. The purpose of the u.d.i.p. was to extend the information obligation to public entities exercising executive, legislative, and judicial powers, and when talking about public authorities, the legislator had in mind any organ of power functioning in the existing apparatus of power, including those that are not in the organizational sense, but that are part of this apparatus of state governance only in the functional sense, through the implementation of public tasks.[17] To qualify the Commission as an entity obliged to provide information, the public-law nature of the activity of a given entity (which is a determinant of public information)[18] is also important or, as B. Dolnicki points out, the performance of public administration regardless of the legal or organizational form of this activity.[19]

In the deliberations on the characteristics of the authority, it is also worth noting the wording in Article 3(1) of the u.p.k. referring to the exercise of supervision over the protection of the public interest.[20] Focusing on this expression, one cannot ignore the notion of a public task developed in the doctrine. As a rule, this concept is defined to the category of the common good, i.e. the public interest, because public tasks are shaped based on the adopted and implemented vision of the public interest and are supposed to lead to the achievement of that interest.[21] Will its protection not be related to the performance of a public task, especially if it is to be guaranteed by a public administration body? What kind of tasks can be expected from a body which is clearly defined as a public administration body by the provisions constituting its existence and functioning? At this point, it seems appropriate to point to the subject–object definition of administration presented by H. Izdebski and M. Kulesza in the light of which it is a set of activities, actions, and organizational

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16 J. Trzciński, *Komentarz do art. 80 Konstytucji*, [in:] L. Garlicki (ed.), *Konstytucja Rzeczypospolitej Polskiej. Komentarz*, Warszawa 2001, pp. 4–6.

17 A. Piskorz-Ryń, M. Sakowska-Baryła (eds.), *Ustawa o dostępie do informacji publicznej. Komentarz*, SIP LEX; see also: judgment of the Supreme Administrative Court of 6 March 2008, I OSK 1918/07, CBOSA (access: 21.09.2023).

18 See: K. Tarnacka, *Prawo do informacji w polskim prawie konstytucyjnym*, Warszawa 2009, p. 138; E. Jarzęcka-Siwik, *Dostęp do informacji publicznej (uwagi krytyczne)*, "Kontrola Państwowa" 2002, 1, p. 31.

19 B. Dolnicki, *Ograniczenie dostępu do spisu wyborców jako informacji publicznej*, [in:] P.J. Suwaj, D.R. Kijowski (eds.), *Patologie w administracji publicznej*, Warszawa 2009, p. 134.

20 For the views of M. Bernaczyk, K. Wygoda, and M. Jabłoński on the criterion of public interest, see: M. Bernaczyk, K. Wygoda, M. Jabłoński, *Biuletyn Informacji Publicznej. Informatyzacja administracji*, Wrocław 2005, p. 61.

21 M. Małecka-Łyszczek, *Pojęcie i podziały zadań publicznych ze szczególnym uwzględnieniem zadań samorządu terytorialnego*, "Zeszyty Naukowe Uniwersytetu Ekonomicznego w Krakowie. Problemy Społeczne, Polityczne i Prawne" 2013, 921, p. 57.

and executive undertakings, carried out for the realization of the public interest by various entities, bodies, and institutions, based on the law and in the forms prescribed by law.[22] This objective aspect, which also supports the existence of an obligation to provide information, and which is apparent in connection with the terms relevant to administrative law presented above, is further strengthened by Article 3(3) of the u.p.k. It refers to covering the costs of the authority's activities with the use of public funds. Expenses related to the activities of the Commission are covered by part of the state budget managed by the Head of the Chancellery of the Prime Minister. Thus, there is a disposition of public funds which, according to Article 4(3) of the u.d.i.p., should not remain hidden. According to Article 33(1) of the Public Finance Act of 27 August 2009,[23] the management of public funds is public.

Analysing the u.p.k., one may be tempted to argue that the legislator itself is aware of the admissibility of classifying the Commission as an entity obliged to provide information. On the one hand, this is evidenced by Article 8(3) of the u.p.k., which is a kind of defence against possible information claims. On the other hand, the wording of the same act shows various manifestations of access to information that should be classified as public information. At the level of the u.p.k., there is a clear desire to keep hidden what is supposed to be the basis for the activity (verification activities) of the authority, but not the effects of the body itself. What is more, the fact that there are such extreme information levels (classified and undisclosed) gives rise to several doubts as to the correctness of the structure of the u.p.k. and the determination of its status concerning the u.d.i.p. regulations. Recalling a fairly common position in the jurisprudence, in the light of which '[p]ublic information is any information produced by public authorities (…), as well as information relating to said authorities, (…) regardless of who produced it,'[24] it can be assumed that the data contained in the documentation collected in the course of the authority's proceedings meet the criteria of public knowledge and should be made available.[25] As pointed out by A. Piskorz-Ryń and M. Sakowska-Baryła, the definition of public information should also be applied to other data that the obligated party uses in the performance of tasks provided for by law, even if they do not come directly from the obligated party (they were not created by the obligated party).[26]

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22 H. Izdebski, M. Kulesza, *Administracja publiczna. Zagadnienia ogólne*, Warszawa 2004, p. 93.

23 Journal of Laws of 2023, item 1270, as amended.

24 Judgement of the Voivodship Administrative Court in Kielce of 30.08.2023, II SAB/Ke 69/23, CBOSA (access: 19.09.2023).

25 See also the judgment of the Supreme Administrative Court of 21.06.2022, III OSK 4743/21, CBOSA (access: 21.09.2023).

26 A. Piskorz-Ryń, M. Sakowska-Baryła (eds.), op. cit., SIP LEX.

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The legislator, being aware of this type of evaluation, decided to explicitly deny that the information collected in the documentation has the status of knowledge subject to disclosure. The doubts surrounding the very existence of that provision are further aggravated by the unnecessary statement that the documentation collected in the course of the Commission's procedure is not subject to disclosure. Since the legislator has stated unequivocally that this type of data does not constitute public information, it is logical that it will not be made available at all (not only under the u.d.i.p. procedure). This part of the wording regarding non-disclosure of documentation would be valid if it were not so clearly stated that it is not public information. As public information, it could then be subject to separate disclosure rules stipulated in Article 1(2) u.d.i.p., where the legislator assigns priority of application to these specific rules and modes of publication. Moreover, it seems that a better solution would be to assume that this documentation, or more precisely, its content, is not deprived of the status of public information by law, but it is not subject to disclosure due to ongoing activities in the course of the authority's proceedings (to ensure its correctness). This would allow for the assumption that there is an additional restriction in the process of access to public information. Undoubtedly, the fact that a piece of information constitutes public information does not mean that it will always be public, nor does it mean that the procedure for providing it will always be regulated by the u.d.i.p.[27]

In addition, since in the context of eliminating the status of public knowledge, the legislator uses a collective category, referring to documentation (plural as a set of various types of documents and various types of data) and does not refer specifically to its content, one could be tempted to interpret it in the light of which, though the entire documentation cannot constitute public information, the same cannot be said about individual pieces of information or documents that may be included in this documentation (in which they are found). A similar interpretation of administrative files has been in place for many years, and one can risk a claim that it is permissible to apply a certain kind of analogy in this case. It has been accepted that such files cannot be regarded as public information, but that individual elements of the content will not deserve to be disqualified as not exhaustive of the status of public knowledge in every case.[28] This assumption seems to be correct if we also consider the fact that the content of this documentation may include official documents. Under Article 3(1)(2) of the u.d.i.p., these documents

[27] M. Zaremba, *Prawo dostępu do informacji publicznej*, Warszawa 2009, p. 56.

[28] See the decision of the Supreme Administrative Court of 19 October 2011, I OSK 1987/11, CBOSA (access: 20.09.2023). The opposite position results from the judgment of the Supreme Administrative Court of 30 October 2002, II SA 1956/02, CBOSA (access: 4.10.2023).

are subject to disclosure as long as they are in possession, regardless of whether the entity is obliged to prepare and store them.[29]

Manifestations of Access to Public Information in the Activities of the Commission to Study Russian Influence

Despite the legislator's explicit exclusion from the disclosure of the documentation collected by the authority in the course of the proceedings, the activities of the Commission are not covered by full secrecy. When talking about publicity, it is important to take into account the legally guaranteed availability of a hearing conducted by the Commission in the course of the proceedings, if as a result of the verification activities it has become probable that there has been Russian influence. Under Article 22(2) of the u.p.k., the hearing held before the authority is public. That publicity may be considered in two ways: as the availability for any interested person to take part in it as an observer, and as the provision of an opportunity for representatives of the mass media to enter the hearing. In this respect, the right to record video and sound with the use of appropriate equipment and based on the consent to broadcast the proceedings of the trial via the internet was provided.

However, this publicity is not absolute, as the trial may be excluded in whole or in part when it is dictated by the following considerations: national security, a threat to peace, morality, and public order, as well as when the details of family life are discussed during the trial or information referred to as sensitive personal data is considered. It is worth pointing out that neither the quantity nor the specific content of the exonerating circumstances supporting a complete limitation of the public hearing is very surprising. What is at stake is the desire to secure both public and private values. In this case, the grounds justifying the exclusion of the public hearing are not significantly different from the circumstances conditioning the admissibility of the exclusion of the public hearing in criminal proceedings.[30] A hearing before the Commission shall be excluded from the public by order. The content of the decision shall be made public.

Restrictions on the general availability of hearings before the Commission may affect not only the average individual but also the media. These limitations can be divided into permanent and ongoing. The former is closely related to the admissibility of the Commission to lay down specific conditions for participation in the

[29] M. Bernaczyk, M. Jabłoński, K. Wygoda, op. cit., p. 95.

[30] See: Article 360 of the Act of 6 June 1997 Code of Criminal Procedure (Journal of Laws of 2022, item 1375, as amended).

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hearing, which apply to representatives of the press, television and internet portals. The essence of creating conditions results in the creation of certain kinds of restrictions, the limitation of certain types of freedoms or the imposition of specific restrictions that limit the possibilities of action of a specific entity. In general, it is about formulating a certain kind of difficulty. It is in this context that the authority in question should be considered as a condition for the participation of the mass media in a hearing, where the legislator, in creating such legitimacy, refrains from determining its specific scope. Arbitrariness in this area may be a significant factor inhibiting availability and at the same time limiting the possibility of social control.

On the other hand, the current restrictions on the participation of the mass media in the trial concern the authority's finding that the participation of the media may hinder the course of the trial (for technical and organizational reasons) and the determination that their participation may have an embarrassing effect on the witness's testimony. In the first case, the number of representatives of the so-called fourth power in the courtroom is limited and specific persons authorised to record video and audio of the trial and to broadcast the proceedings via the Internet are indicated. In order to guarantee objectivity and fairness in the formulation of such a restriction, the selection of media representatives who are assured of presence at the hearing is made based on the order of applications submitted to the Commission or by drawing lots. In the latter case, i.e. if the presence of representatives of the mass media could have an embarrassing effect on a witness, the President of the Commission may order the media to leave the courtroom for the duration of the witness's hearing.

Regarding the construction of openness in the Commission's activities, it is not without significance that decisions originating from the authority, issued in the course of ongoing proceedings or constituting the culmination of the procedure carried out, are not without significance. In this case, these are administrative decisions subject to publication in the Public Information Bulletin (hereinafter referred to as the BIP) on the website of the Chancellery of the Prime Minister. The BIP also publishes the decision to exclude the hearing from the public. Importantly, this official publishing ICT system, designed to make public knowledge available to the public without request, has also been used by the legislature as an efficient instrument for making public the Commission's annual activity reports (partial and final reports). Under Article 41(3) of the u.p.k., the Commission shall, at the request of the Chairman, make a partial report available in the BIP on the subject page of the Prime Minister's Office. The same happens with the final report, i.e. the report on the Commission's activities, which was adopted by the body and presented to the Parliament. In this situation, its publication to the public is not covered by the obligatory request of the Chairman (Article 41(4) of the u.p.k.).

The use of the BIP as an efficient instrument for communicating information confirms the procedure of making public information available in the activities of the body in question. This is also evidence that the Commission has the status of an entity obliged to provide information. These regulations, which determine the placement of relevant messages in the BIP, determine the scope of the authority's absolute obligation. In these cases, there is no discretion in the procedure, the legislator directly indicates that the authority makes available and cannot make available a specific type of information in an electronic publication. This corresponds to the legal distinction between obligatory and optional publication of information in the BIP, though the provisions of the Act refer only to the former. The catalogue of information that should be included in the BIP is defined in Article 6 of the u.d.i.p. The above-discussed regulations of the law u.p.k., which are flagship examples of publicizing information in the BIP, belong to this catalogue – to the catalogue of data subject to mandatory publication in the electronic publication. Although it is possible to find positions in the doctrine in the light of which other pieces of information may also be placed in the BIP, i.e. information that does not exhaust the features of public knowledge, it cannot be denied that the authority's reports or other decisions have a public status.

Limiting Access to Public Information in Connection with the Existence and Functioning of the Commission for the Investigation of Russian Influence

The legislator in Article 61(3) of the Constitution of the Republic of Poland indicates the goods that need to be protected, even if this involves weakening the legitimacy of obtaining information that exhausts the qualification of public knowledge.[31] The necessity to protect the values presented above corresponds to the limitations constituted at the level of statutory regulations. When talking about plural limitations, it is important not only to emphasize that in the content of the u.d.i.p. itself, the legislator creates a specific range of limits on the availability of public information, but also to point to the fact that there are many regulations specific to the u.d.i.p., which provide for the inhibition of the process of making public knowledge available. This implies that it is permissible to distinguish two categories of restrictions on access to public information: restrictions specific to the content of Article 5 of the u.d.i.p. and *quasi-restrictions* based on the content of Article 1(2) of the u.d.i.p. Adequately to the content of Article 5(1) of the u.d.i.p., the right to public information

[31] See also: T. Górzyńska, *Prawo do informacji i zasada jawności administracyjnej*, Zakamycze 1999, p. 93.

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is subject to restriction to the extent and under the rules outlined in the regulations on the protection of classified information and the protection of other statutorily protected secrets. The group of so-called other statutorily protected secrets is undefined, extensive, dispersed, and ambiguous.[32] It encompasses a variety of legal acts which, in their content, while considering substantive and formal premises, formulate certain types of secrets.[33] G. Sibiga includes in this group of acts laws which introduce any state of confidentiality of information, including those which provide only for its partial availability.[34]

Undoubtedly, relying on the content of Article 8(3) of the AIA, it should be said that the legislator aims to keep certain information hidden, and one may be tempted to say that it aims to form a new category of secrecy – the secrecy of the Commission's inspection proceedings. Unambiguously prejudging this, however, is not a simple procedure. Difficulties in this regard should be sought on the one hand, in the explicit specification by the legislator in Article 8(3) of the u.p.k. that the documentation held by the Commission and collected in connection with the proceedings not only is not subject to disclosure, but even does not constitute public information, and on the other hand, in the previously discussed elements of open operation of the authority. In this case, it is about active availability in the form of a public hearing or a follow-up related to the Commission's reports to be published in BIP. Referring to the general notion of secrecy, as well as considering the construction of other secrets existing in the Polish legislation, it should be pointed out that, as a rule, within them, the legislator designates a specific catalogue of entities to which information is transferred, defines the catalogue of those entities that can count on the availability of this type of information. In this type of secrecy, however, it is difficult to find an explicit statement that certain data is not public information. Statutory secrecy is a restriction on the general availability of certain information,[35] which is dictated by the need to protect goods considered more valuable than the availability of knowledge. Thus, doubts may arise when, to create secrecy, the legislature itself explicitly states that information is not public and that its availability cannot be mentioned at all regardless of the circumstances, regardless of the existence of more important or less important values and goods.

As is evident from previous considerations, the content of the u.p.k. is not devoid of elements inherent in the sharing process, which allows us to move the analysis in the direction of Article 1(2) of the u.d.i.p. Speaking of the second category of

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32 G. Szpor, A. Gryszczyńska (eds.), *Leksykon tajemnic*, Warszawa 2016, p. 12.

33 Ibidem.

34 G. Sibiga, *Obowiązek tajemnicy informacji i jego konsekwencje dla wykonywania zadań administracji publicznej*, [in:] P.J. Suwaj, D.R. Kijowski (eds.), op. cit., p. 633.

35 Ibidem.

restrictions, it is not really about limiting the availability of information, but about limiting the application of u.d.i.p. and giving priority to separate regulations. In this case, a variety of legislation comes into play, which, due to the nomenclature adopted, often does not even refer to the institution of making knowledge public, but in its content, statutes the process of access prejudging its belonging to the catalogue of provisions of Article 1(2) of the u.d.i.p. The provisions of the u.d.i.p. do not violate the provisions of other laws defining different rules and procedures for access to information that is public (Article 1(2) of the u.d.i.p.). This does not mean, obviously, that these regulations, in the face of which the u.d.i.p. 'removes itself into the background,' create and use only new tools for providing access to information. They, too, use instruments already familiar to access public knowledge in the general sense. A typical example is the BIP, recurring in the content of various regulations on access to information (including the u.p.k.). Through the prism of this, one can attempt to qualify the u.p.k. precisely to this particular group of regulations, to which the u.d.i.p. gives priority. Undoubtedly, as has already been pointed out, the content of the regulations determining the status, organization, and activities of the Commission is evident in the publication of specific documentation using the BIP, under certain conditions and because of specific circumstances. It would be recalled that this refers to reports on the Commission's activities and decisions taken during and after the examination procedure. Their publication in the bulletin not only confirms the public nature of the information itself but also prejudges the existence of an access procedure, not subject, however, to the u.d.i.p. regulations. The legally guaranteed openness of the hearing before the Commission, along with the accompanying independent limiting grounds, is also not without significance in this case.

What is important, however, is that giving priority to separate regulations entails certain consequences. They boil down to regulated by the content of the u.d.i.p. all those cases of access in which the special legislation does not provide for specific rules or a specific procedure for making the public available. Guided by the content of this principle, it seems difficult for the u.p.k. to live up to its expectations in the face of the already indicated problematic regulation concerning the lack of public character of the documentation gathered during the Commission's proceedings (Article 8(3) of the u.p.k.). Indeed, in any case, it is not possible to speak of the application of the u.d.i.p. regulations in this case, and, on the contrary, one can note a kind of inconsistency with their content. At this point, it is worth noting the statement of K. Kędzierska and P. Szustakiewicz, in which it is emphasized that if the legal act based on which the obligation to provide public information operates does not provide for any separate type of secrecy or procedure for making information

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available, then it cannot be interpreted as such.[36] Not without significance in this case is also the statement in the light of which all kinds of regulations treating the process of making public knowledge differently must be interpreted strictly.[37] An interpretation that would broaden the scope of permissible secrets, thus formulating grounds for refraining from making information public, is inadmissible.[38]

Conclusion

The State Commission for Investigating Russian Influences, as a newly created body, was received with scepticism and criticized by the public. This assessment was based on the content of the u.p.k., where, among other things, an incomprehensible intra-regulatory contradiction was perceived, particularly while considering regulations on the release of public knowledge. Indeed, because of the above and based on the general characteristics of the body presented in the u.p.k., it becomes possible to accept the claim that the Commission fulfils the characteristics of an entity burdened with information obligations. Speaking of prerequisites, it is necessary to consider both subject and object aspects supporting the existence of public information, and thus information obligations, in the activities of the entity. The content of the u.d.i.p. imposes an obligation to make available all public information held by public authorities or other entities unless separate regulations provide otherwise.[39] An analysis of Article 8(3) of the u.p.k. allows one to conclude that this regulation undeniably claims special status concerning the content of the u.d.i.p. This raises several doubts when taking into account all subject and object aspects of the process of making public information available. Despite the regulations of the u.p.k. indicating the openness of the body's activities, while confirming the status of the Commission as an entity obliged to provide information, the view that there can be no question as to the full openness of the body's activities cannot be refuted. It should be assumed that this is a fundamental reason for the negative attitude towards the u.p.k. and the critical assessment of the authority itself.

36 K. Kędzierska, P. Szustakiewicz, *Pojęcie informacji publicznej*, [in:] P. Szustakiewicz (ed.), *Dostęp do informacji publicznej*, Warszawa 2019, p. 45.

37 Ibidem.

38 K. Kędzierska, P. Szustakiewicz, op. cit., p. 45.

39 B. Dolnicki, op. cit., p. 235.

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