

UNIVERSITY OF WARMIA AND MAZURY IN OLSZTYN
LAW REVIEW

VOL. 1 (2008), PP. 36 – 49

SOCIETY'S RIGHT TO INFORMATION ON THE
NATURAL ENVIRONMENT UNDER EU AND
POLISH LAW

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APRIL 2008 (REVISED JULY 14, 2008)

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§1 INTRODUCTION

The natural environment is a common good of both present and future generations. While this truth has been obvious since ancient times¹, it is particularly relevant at the present time. The behavior of the natural environment, on which the survival of the human species depends, has been raising ideological, political, economic and legal dilemmas that are also the basis of scientific research. Clearly, the value of natural environment for people is tremendous, since it is hard to imagine human's existence without such crucial natural elements such as water and air.

Each human activity affects the environment but the nature itself forces certain activities as well². We can talk about positive and negative interaction between nature and human beings. Negative interaction means the conflict of interests between humans and nature. Such conflict may concern economics (natural resources exploitation in order to improve economic results), politics (wasting the environment in poorer regions through the movement of industrial production from developed countries into the developing ones), and culture (ideological and historical).

Positive interaction means cooperation between human activity and the natural environment. This encompasses the creation of parks and nature reserves, as well as the implementation of environmental protection programs that are the basis of environmental protection policy of certain states or international organizations, including the European Union. Therefore, we can speak about the balanced development of the economy or society, which means observing rights or, better, the interests of the natural environment.

1 IJ. 2,1: *Et quidem naturali iure communia sunt omnium haec: aer et aqua profluens et mare et per hoc litora maris. nemo igitur ad litus maris accedere prohibetur, dum tamen villis et monumentis et aedificiis abstineat, quia non sunt iuris gentium, sicut et mare.*

2 The influence of the environment on human activity is visible mostly in the change of the degree of societal awareness. Therefore, we can speak about how the ecology of state, ethics, politics, ecology law and the need to protect environment is spreading over all continents and has become one of the most crucial elements of globalisation. See H. Juros, *Ochrona środowiska naturalnego a redefinicja państwa (Natural environment protection and redefinition of state)*, [in:] *Prawa człowieka w państwie ekologicznym (Human rights in ecological state)*, Warsaw 1998, p. 67 n.

§2 THE NOTION OF INFORMATION CONCERNING THE ENVIRONMENT

According to Art. 2 of the directive of the Council on 7 June 1990 *concerning the freedom of access to information on the environment*, "information concerning environment" means any available information in written, visual or oral form or databases including the condition of waters, air, soil, the flora and fauna, the Earth's surface and particularly valuable regions as well as activities (including those resulting in the increase of nuisance such as noise) or means which have or may have unfavourable impact on them as well as on activities or means aiming at protection of the above mentioned elements of environment including the administrative means and environmental management programs³.

The definition consists of 2 parts. The first one concerns the form of transmitting environmental information, while the second part concerns the content of such information. Information on environment may be transmitted in written, oral or visual form and as well as through databases.

Information concerning the environment should contain first of all data on the condition of waters, air, the flora and fauna, the Earth's surface and particularly valuable regions. "The condition" means the quality of these elements of the natural environment.

Information concerning the environment should also contain data on human activities that cause or may cause a nuisance to the natural environment itself and to humans (for example noise). Moreover, information concerning the environment may contain data on administrative means and environment management programs that may affect the environment.

According to this definition, society has a right to require authorities to provide them with faithful information on the condition of the environment and activities or means related to its management. It essentially affects the societal unit's choices on the quality of lifestyle and therefore their health.

3 <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:1990:158:0056:066:PL:HTML> [31.03.2008]. This is the Polish translation of the legal act.

Transmitting information concerning the environment to society enables it to overcome the dangers posed by poor quality air and water, or to decrease the hazard of the use of harmful substances in consumer production. Recent research on the connection between environment and health estimate that every year 6 to 9 thousand inhabitants of French cities die because of air pollution⁴ and about 1/6 of the total number of the deaths and diseases among children may be caused by environmental factors⁵.

4 Report of French Environmental Health Protection Agency on 2004 (http://www.aiffe.fr/documents/Rapport_1.pdf)

5 See T1=V5&T2=2004&T3=416&RechType=RECH_naturel&Submit=Szukaj [28.03.2008].

§3 THE LEGAL BASIS OF THE RIGHT TO INFORMATION ON THE NATURAL ENVIRONMENT

No founding treaty mentions society's right to information on the environment. Such a right has also not been defined in the Uniform European Act, which was the first to include regulations reflecting the developed European ecological policy. Consequently, the right is not mentioned in the subsequent treaties, including the Lisbon treaty. The sole exception is the Basis Rights Charter, in which Art. 11, clause 1 discusses the right of each human to receive and transmit information and ideas without any interference of authorities and regardless of state borders. However, this is a general statement and may also provide each human (and thus to society) the right to information on the natural environment. That analogy applies to Art 73 of the Charter, which mentions environmental protection⁶.

The directive of the Council on 7 June 1990 on free access to information on the environment is the legal basis of the obligation to provide society information concerning the environment⁷. The directive was issued on the basis of the Art. 130 s TWE and other documents, including the opinion of the European Parliament and the European Economy and Social Committee⁸.

The above mentioned legal solutions are the result of the EU's ecological policy worked out in the European Unions' activity programs in the area of the environment. In the fourth European Union activity program on the natural environment issued on 19 October 1987 and effective from 1987 to 1992, the Council of the European Union and the representatives of the Member States' governments gathered on the Council declared that within the range of responsibility of the Union and Member States, it is crucial to concentrate the united activities on some priorities including the improvement of access to information on the environment⁹. Next, the European Parliament highlighted in its opinion on the fourth European Union

6 The content of the Basic Human Right Charter see A. Bałaban, *Ochrona praw człowieka. Wprowadzenie oraz wybrane teksty źródłowe (Human rights protection. Introduction and selected source texts)*, Gorzów Wielkopolski 2003, p. 76 n.

7 <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:1990:158:0056:066:PL:HTML> [29.03.2008].

8 Dz.U.WE C 335 on 30.12.1988, p. 5; Dz.U.WE C 120 on 16.5.1989, p. 231; Dz.U.We C 139 on 5.6.1989, p. 47.

9 Dz.U.WE C 289 on 29.10.1987, p. 3. See S. Mailet, *Quelle politique communautaire en matière d'environnement? Reflexions sur un projet de quatrième programme*, w *Revue du Marché Commun*, 1987, p. 69; L. Maggiani, *Il quattro programma della Comunità Economica Europea in materia di ambiente*, w *Diritto dell'Economia*, 1990, p. 129.

activity program on environment that "the access to information must be provided to all through the special Union's program"¹⁰. The access to information on the environment which is owned by authorities influences the improvement of environmental protection.

¹⁰ Dz.U. C 156 on 156.1987, p. 138. A. E. Boyle, *Environmental Regulation and Economic Growth*, Oxford 1994, p. 3.

§4 THE SUBJECT OF INFORMATION ON THE ENVIRONMENT – SOCIETY OR UNIT?

Numerous Union papers discuss society's right to information on the natural environment. Such a formulation is in distinct conflict of the unit right to information in general, including information on the natural environment. Therefore, can we speak in this case only about the unit right, human right or rather society that is the subject of this Union right? Such a conclusion is justified in all international legal acts concerning human rights in which there is no right to information on the environment for a human, and therefore for a unit.

In the so-called western legal culture, influenced to certain extent by the ideas from the French Revolution and Enlightenment, there is no space for rights of society, i.e., for a group. A great philosopher of those times, Pothier, claimed that human rights are reflection of subjective law, particularly individual property¹¹. The human right to information on environment should also be understood in that perspective, since environment and health are ascribed to a unit and not to society.

The right to information on the environment should be separated from the human right to a habitable environment, which belongs to the human social and basic rights. That distinction of the right to environment from the right to information on the environment is rather crucial. In the first case, the addressee is a unit, a human because of personal good, particularly health, which a human deserves (Art. 23 of Civil Code). In case of the right to information on the environment, the addressee is a whole society because of public health. The object of public health is not a unit but the whole society. The character of threats to civilization arouses danger not to a unit but to whole human groups, even societies. Therefore, society has the right to information on the condition of the environment and different activities or hazardous measures applied to the environment.

The right to information on the environment is a basic instrument of protection of society against public health threats resulting from activities undertaken by public administration, enterprises or other entities that have the capacity to interfere with the natural environment.

11 See P. Maddalena, *Il diritto all'ambiente come diritto inviolabile dell'uomo*, [w:] *I diritti fondamentali dell'uomo e dell'ambiente nei cambiamenti dell'Europa Centro-Orientale*, Varsavia 1995.

§5 THE OBJECTIVE RANGE OF INFORMATION ON THE ENVIRONMENT

The right to information on the environment raises another question that concerns the objective range of this information, and therefore what kind of information on the environment should be transmitted to society. The question is quite fundamental since the amount of information on the environment gathered by European institutions is considerable. It demands proper selection according to criteria defined by law.

The legal basis to statistical activity in the European Union is Art. 284 and 285 of TWE. According to Art. 284 of TWE "The Commission may collect any necessary information and check it within and on conditions set by the Council, according to treaty provisions". Art. 285, clause 1 of TWE further provides that the Council "undertakes measures in order to complete statistics, if it is necessary, for the purposes of the EU's activities". Clause 2 of the Article includes certain recommendations on which the statistical activity should be based, that is: "The decisions of the EU's statistics are made with preserving objectivity, credibility, freedom of science, efficiency in relation to costs and confidentiality of the statistic data; they should not result in excessive charges for enterprises"¹².

Nevertheless, the creation of an information system in the EU is limited. First of all, there is the matter of stopping the process of collecting unnecessary information transmitted by the Member States. Information collected by the Commission according to the directive 96/62/WE on 27 September 1996 on assessment and management of surrounding air quality is used by the European Environmental Agency (EEA). Moreover, the criteria and techniques used to describe the usefulness of information and providing necessary conditions to exchange the information provided according to the directive 96/62 have been worked out. In order to facilitate the work of collecting information, a procedure enabling close cooperation between the Member States and the Commission has been implemented. So, in order to support mutual information exchange between the Member States and EEA, the Commission, cooperating with the EEA, is obliged to publish a report on the quality of surrounding air in the area of the EU every three years¹³.

¹² The Polish translation by: A. Przyborowska-Klimczak, A. Skrzydło-Tafelską, *Dokumenty Europejskie (The European Documents)*, p. 319.

¹³ See M. Sitek, ssss

The right of the access to information on the environment does not include all information collected by the EU's bodies, especially that collected by the EEA. The right of the access to information on the environment does not include information collected in order to draw up the EU's strategy of environmental policy, including information used in the legislative process by national or EU legislators. Nevertheless, information on environment transmitted to legislators should be clear and comprehensible for an average person who is interested in the *ratio legis* of a legislator.

It is the matter of information on the condition of environment and perceptible tendencies in the environment, for example, climate warming and the melting of glaciers. From that perspective, we can speak about a globalisation of law concerning information on the environment. Trans-border results of activities or applied measures arouse a necessity to inform society not only about the condition of environment in the EU but also in other parts of the world.

Moreover, according to the Art. 3 of the fourth Union's activity program on natural environment, the object of the right to information on the environment is to improve information transmission techniques, especially when it is the matter of good practice to protect the environment mainly through the assistance of the European network IMPEL. In the same Article, the EU is also obliged to create proper and suitable mechanisms within the EU's institutions in order to promote the development of the clear access to information on the environment. The point is that the decisions made by the EU's bodies should fully respect environmental demands. All the EU's sector policies should be filled with environmental protection policies.

The right to information on the environment particularly includes:

- noise,
- water pollution,
- electromagnetic fields and radiation, and
- chemical threats

§6 SUBJECTS OBLIGED TO PROVIDE INFORMATION ON THE NATURAL ENVIRONMENT

First of all, the public authorities of the Member States are the subjects obliged to provide information on the condition of environment. The obligation was clearly defined in the directive of the Council on 7 June 1990 on freedom of access to information on the environment. It states that the Member States are obliged to provide information on the environment to each legal person or individual upon their request and without necessity to give any reasons for their interest. The Member States have been obliged to define practical rules according to which information shall be effectively provided.

The notion of public authorities means any bodies of public authorities on the national, regional or local level that are obliged to collect and possess information on the environment, excluding institutions that act within their respective jurisdiction and legislation. These are the bodies responsible for providing society information on the condition of the environment.

The main area of activity of the EU bodies, especially the EEA, is not only collecting the data but also monitoring the process of collecting it by the Member States or their bodies responsible for the task. The EU bodies are therefore obliged to catch any irregularities in the process of transmitting information on the environment or in the process of informing society on health and environmental threats.

The Member States' public authorities are obliged to provide enquirers replies as soon as possible, but no later than within two months. A refusal to provide the requested information must be justified. Moreover, the Member States may implement an obligation of paying certain charges for providing such information, but the charges must be reasonable¹⁴.

The Member States are obliged to undertake necessary activities in order to provide general information on the condition of the environment to the public published in periodic descriptive reports¹⁵.

The EU bodies are aware of present differences between the Member States' statutory regulations on the access to information on the environment possessed by public authorities. It

14 Art. 5

15 Art. 7.

may cause discrepancies within the EU in relation to the access to information. Therefore, it is necessary to guarantee to each individual or legal person throughout the EU free access to information on the environment possessed by public authorities in the written, visual, oral form or in databases concerning the condition of environment, activities or measures which influence or may influence unfavourably on the environment or aim at its protection.

Not only information possessed by the Member States' public bodies, but also that possessed by institutions publicly responsible for environment and controlled by public authorities should be available.

The Announcement of the European Commission to the Council, European Parliament, European Economy and Social Commission "The Plan of Activity for Environment and Health for the years 2004-2010", the main slogan of which is "Better health in better environment – challenges for future" imposes an obligation also on legal entities, especially those organised as companies, to inform society about any health threats caused by a polluted environment. "Industrial or civil companies which play a main role in transforming information on identified threats into preventive activities and innovative reactions"¹⁶. A similar task is ascribed to international organizations, especially WHO and OECD.

¹⁶ http://eur-lex.europa.eu/Result.do?T1=V5&T2=2004&T3=416&RechType=RECH_naturel&Submit=Szukaj [28.03.2008].

§7 THE REFUSAL TO PROVIDE INFORMATION ON THE ENVIRONMENT

The obligation to inform society on the condition of the environment is not, however, absolute. According to the Art. 296 of TWE, any Member State is not obliged to provide information if it would expose the state to danger. Similarly, according to the Art. 287, EU authorities must not reveal any secrets and known information concerning the Member States and enterprises.

In some particular and clearly defined cases, a refusal to grant access to requested information on the environment may be reasonable. In these cases, however, the Member States must enable the petitioner to appeal against the decision of the local authority.

Appropriate bodies may refuse to provide an individual or legal person information on the environment. The Member States may provide for the denial of motions to provide information if the information requested concerns:

- the confidential character of activities of local authorities, international relationships and a country's defences,
- public defence,
- matters being examined (including disciplinary proceedings) or being in a preliminary investigative proceeding,
- the protection of trade and industrial secrets, including intellectual property,
- data and/or personal files of a confidential character,
- papers provided by a third party if the party is not legally obliged to do it,
- papers whose disclosure could increase the possibility of damage to the environment.

Moreover, access to the requested information may be refused if it demanded providing uncompleted papers, data or information for external use or if the request is obviously unreasonable or formulated in too general a way.

Information possessed by public authorities may be provided partially, excluding the secret or confidential information as mentioned above.

A person who claims an unreasonable refusal of a request for information, or alleges that the request has been ignored or that the reply has been insufficient, may demand investigation of the decision on the legal or administrative determination according to the binding legal system in that state.

§8 CONCLUSIONS

The access of society to information on the natural environment aims at public health. That information should be clear and simple and therefore comprehensible for each recipient. Nevertheless, it is not a matter of providing society all information but only such information that is crucial for the society itself. The transmission of information may be done through various techniques, including the visual ones. However, certain information may be kept secret or the access to it may be limited. In these cases appeal proceedings should be provided.

The right to information on the environment is first provided to society and then to a unit who may make certain decisions according to the information received.

It is first of all the obligation of the EU's bodies or regional public authorities to provide information about the environment. In certain cases, however, it is also the obligation of companies, management or other enterprises or social subjects, who are required to collect information on the natural environment.