

THE NATURE AND ESSENCE OF THE LIMITATION OF THE GENERAL RIGHT TO INFORMATION DUE TO THE FORCED RESTRUCTURING PROVISIONS

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Abstract. The general right to information, which guarantees individuals the ability to reach for public information, is not absolute. It is subject to many limitations, which are provided for by both the legislator and the legislature. The need to protect certain kinds of goods and values leads to various ways of limiting access to public knowledge. One of them is to give priority to special regulations that introduce different principles and procedures of access to public knowledge. Such regulations are the provisions on forced restructuring to which the legislator refers in the text of the Act on Access to Public Information of 6 September 2001. It makes them one of the restrictions distinguished in the catalogue of Article 5. This study is devoted to determining the nature of this type of restriction and its essence.

Keywords: public information, access, restriction, forced restructuring, right to information

INTRODUCTION

The long-term validity of the Act of 6 September 2001 on Access to Public Information¹ made it possible to develop a catalogue of the properties of the universal right to information (Article 61 of the Constitution of the Republic of Poland of 2 April 1997²). Importantly, it is not just a matter of characterizing the legal right by isolating simple adjectival terms associated with it or applicable to it, but also (if not primarily) of referring to the utility of the right in question as an information tool with multifaceted significance. The universal right to information, remaining in close relation with the concept of a democratic state of law, constitutes a tool for the realization of widely understood disclosure and is a testimony to the democratization of social relations [Górzyńska 1999, 11; Bernaczyk 2008, 24; Mucha 2002, 57; Zaremba 2009, 15; Kędzierska 2015, 1; Opaliński 2016, 25]. Being a universal right of a political nature, it also fulfils the prerequisites of a public subjective right, which

¹ Journal of Laws of 2020, item 2176 [hereinafter: u.d.i.p.].

² Journal of Laws No. 78, item 483 as amended.

in its assumption provides a guarantee that the entitled person will achieve the desired response from the state and the bodies acting on its behalf [Bernaczyk 2008, 26–27; Banaszak 2004, 447; Garlicki 2007, 5; Bidziński, Chmaj, and Szustakiewicz 2018; Czarnow 2007; Kłaczyński and Szuster 2003]. It is not, however, an absolute right of an absolute nature, and for this reason, it is subject to the limitation in situations envisaged by the law and for the protection of values and goods specified therein. This property is of particular importance from the point of view of the carried-out analysis. This is because it indicates the existence of a legally regulated level related to limiting access to public knowledge. It encompasses a range of rights, for whose protection the obligation to respect public and private secrets is activated. Moreover, the legislator, being aware of the importance and significance of certain regulations in a democratic state under the rule of law, gives them priority of respect, thus leading to the restriction of access to information. As is clear from the content of Article 5 u.d.i.p. the right to public information is limited to the extent and on the principles set out in the provisions of compulsory restructuring. The study is devoted to determining the essence and nature of this type of restriction. In doing so, it will be helpful to define the concept of restriction in its general meaning and to determine its basic function. It is also important to classify all legally defined grounds for limiting access to public knowledge and to place among these the limitation dictated by the content of the regulations on forced restructuring.

1. THE NATURE OF THE RESTRICTION UNDER ARTICLE 5(2A) U.D.I.P.

A colloquial understanding of limitation reduces its meaning to the inability to act in a certain sphere, or at least to the presence of a certain type of impediment to the proceedings. A restriction is identified by the existence of obstacles that prevent the achievement of the desired goal, which deprive the person concerned of the opportunity to obtain the desired state of affairs. According to the PWN dictionary, a restriction means a norm, regulation, or order that restrains someone's freedom of action.³ Such understanding of the concept reflects the essence of restrictions on the availability of public information. It justifies the position in light of which, "all restrictions are exceptions [...]"⁴ and their introduction should take place only when there are

³ See <https://sjp.pwn.pl/slowniki/ograniczenie.html> [accessed: 20.04.2021].

⁴ Judgement of the Constitutional Tribunal [hereinafter: CT] of 27 June 2008, ref. no. K 51/07, OTK ZU 5A/2008, item 87, see also judgement of CT of 26 April 1995, ref. no. K 11/94, OTK ZU 1995, item 12; judgement of CT of 28 May 1997, ref. no. K 26/96, OTK ZU 2/1997, item 19.

special reasons for it. It also confirms the legitimacy of the use of the concept of secrecy in the case of complete exclusion of admissibility of reaching or applying for specific information covered by a special protection regime, despite having the status of public knowledge. M. Brzozowska and K. Pawlik indicate that the limitation is a situation in which it is necessary to take certain actions that inhibit the disclosure of information particularly protected by the legislator due to public interest or private interest [Brzozowska and Pawlik 2019]. The attribute of secrecy is confidentiality, which implies the state of non-disclosure to the public and at the same time taking appropriate steps to guarantee its protection [Taczowska–Olszewska 2014, 196]. What is more, it allows treating the limitation as a tool influencing the content of the right subject to limitation. M. Wyrzykowski rightly points out: “[...] that limitations of the right to information, in fact, determine the content of this right, because the essence of rights and freedoms, in fact, depends on legally permissible limitation of them” [Wyrzykowski 1998, 48]. It is also at this level that the functionality of the legally guaranteed limitations on rights and freedoms becomes apparent. Particularly noteworthy is the fact that, despite the highly pejorative meaning of the term itself, doctrine attributes to all premises limiting freedom the role of an ordering factor in the process in which persons entitled to exercise their legally guaranteed rights (rights and freedoms). This is because striving to extend the scope of exercising freedoms and rights (characteristic of democratic societies) requires the simultaneous delimitation of their implementation because unlimited freedom in the exercise of rights and the exercise of freedom by everyone would result or could result in conflicts between authorized persons acting in the same time and in the same way [Walaszak–Pyziół 1995, 14].

The analysis of all regulations relating to the general right (right of access) to public information makes it possible to work out several classifications leading to the following categories of limitations: 1) due to the location of the legal grounds for the restriction, we can distinguish constitutional restrictions resulting from Article 61(3) and Article 31(3) of the Polish Constitution and statutory restrictions based, *inter alia*, on Article 5 u.d.i.p.; 2) due to the properties possessed, or due to the values (goods) that are to be protected in connection with the restriction, as well as due to the way the restriction itself is shaped – we can distinguish statutory and contractual restrictions (the so-called public and private secrets); 3) due to having a clear or only apparent nature, we can distinguish statutory restrictions to which the legislator in u.d.i.p. refers directly and explicitly as well as quasi limitations, the distinction of which is closely related to the content of Article 1(2) sentence 1 u.d.i.p. According to its content: “The provisions of the Act do not infringe the provisions of other acts specifying different rules and mode of access to information that is public information.” U.d.i.p. although it is a set of general regulations in the field

of access to public knowledge, however, as T. Górzyńska points out, it is not an organic law that comprehensively regulates all accessibility rules and all legally permitted exceptions to its implementation⁵ [Tarnacka 2009, 270]. The clause determined by the content of Article 1(2) u.d.i.p. is a verbalization of the generally applicable *rule lex primaria derogat legi subsidiariae* [Trzaska and Żurek 2003; Tarnacka 2009, 270], but at the same time it creates a special type of restriction, which, as a rule, is not to lead to the exclusion of publicity, but to give priority to other regulations that provide for specific contents – other than u.d.i.p. the rules and modes of sharing. Therefore, it is a kind of limitation in the application of regulations in certain situations, and not limiting the mere availability to public knowledge.

The typology of limitations presented in point 3 is of particular importance from the point of view of this study, although qualifying the restriction resulting from the content of Article 5 (2a) u.d.i.p. to a group of clear or only quasi-limitations is not so simple and unambiguous. Referring to the content of the cited regulation and the legislator's procedure itself consisting in introducing the regulation of Article 5(2a) u.d.i.p. one may even be tempted to say that an intermediate category should be developed between the limitations to which the legislator refers directly and which are the actual premises for excluding access to public information and those which are not explicitly mentioned by the legislator, but are subject to the general clause specified in Article 1(2) u.d.i.p. Reference to the provisions of the Act of June 10th 2016 on the Bank Guarantee Fund, the deposit guarantee system and resolution⁶ due to the limitation resulting from the content of Article 5(2a) of the Act on Compulsory Restructuring, shows the existence of specific rules for disclosing public information, although the wording adopted by the legislator, according to which the right to public information is limited to the extent and on the terms specified in the provisions on resolution, also allows for the adoption of the statement that there is a presence based on the Act on Compulsory Restructuring specific rules for limiting access to public content itself. This is confirmed by, inter alia, stipulated admissibility of sharing certain public content only after the compulsory restructuring process has been completed (Article 322(1) u.b.f.g.), publication of analyzes and forecasts referred to in Article 325(4) u.b.f.g. in the form that ensures information protection and the right to disclose the information referred to in Article 325(1)(3) u.b.f.g. only in cases specified in the Act.

Therefore, it should be pointed out that on the one hand the legislator (perhaps to emphasize the legitimacy of this type of restriction) names it directly and lists it in the catalogue of legally permissible limitations of access to

⁵ This was the position taken by T. Górzyńska in an interview with the Rzeczpospolita journal on 27 July 2001.

⁶ Journal of Laws of 2020, item 2176 [hereinafter: u.b.f.g.].

public information (Article 5 u.d.i.p.), although on the other hand refers to separate legislation, which in its content creates its own rules and modes of access,⁷ but at the same time refers to the u.d.i.p. to a quite significant extent. In the light of Article 322(1) u.b.f.g. information on the resolution may be made available based on u.d.i.p. after the end of compulsory restructuring.⁸ In addition, it is impossible to ignore the reference in the text of the u.b.f.g. to the obligation to observe banking secrecy, professional secrecy and the need to guarantee the protection of classified information (Article 181(7) u.b.f.g., Article 327(2) u.b.f.g.).⁹ In fact, the regulations of u.b.f.g. related to the restriction referred to in Article 5(2a) u.d.i.p. also exhaust the premises of the legislation referred to by the legislator in Article 1(2) u.d.i.p. Thus, they are a manifestation of a quasi-restriction which leads to the exclusion of the application of the u.d.i.p. by invoking the primacy of special regulations. However, it has a unique dimension due to the statutory, although indirect separation in Article 5 u.d.i.p. It should not be forgotten that apart from the acts which, in essence, were enacted to exhaustively regulate the issues related to access to information, there are several provisions contained in various legal acts in the field of administrative law, criminal law and systemic law [Taczowska–Olszewska 2014, 139], which also create different rules, forms and methods of sharing public information. All of them together and each such act separately create a plane of quasi-limitations. However, neither u.d.i.p. nor the Act of October 3th 2008 on the provision of information on the environment and its protection, public participation in environmental protection and on environmental impact assessments¹⁰ do not refer to such acts directly and individually (as is the case indirectly in the case of the u.b.f.g.), although they were also given priority based on the already mentioned Article 1(2) u.d.i.p.

2. BANK GUARANTEE FUND (HEREINAFTER REFERRED TO AS BFG OR FUND) AS AN ENTITY OBLIGED TO PROVIDE INFORMATION

The regulation contained in Article 1(2) u.d.i.p. apart from having the status of a quasi-restriction of access to public knowledge, it fulfils one more important function, namely, it determines the substantive scope of the regulations on u.d.i.p. It does not do it explicitly and unambiguously, nevertheless,

⁷ A. Fornalik points to these special forms and ways of making available [Fornalik 2021].

⁸ Judgement of Voivodship Administrative Court in Warsaw of 11 December 2020, ref. no. II SA/Wa 1066/20, <http://orzeczenia.nsa.gov.pl/cbo/search> [accessed: 17.04.2021].

⁹ These are basic secrets that the regulations require to be respected based on u.d.i.p. Article 5(1).

¹⁰ Journal of Laws of 2021, item 247. J. Taczowska–Olszewska refers to this act, also comprehensively regulating the issue of access to information – information about the environment.

the use by the legislator of the wording according to which: “the provisions of the act do not infringe the provisions of other acts specifying different rules and procedures for access to information that is public information,” makes the subject of the regulation of the Act on Laws clear and indicates the functions of “access control.” In this case, it is about designating the subjective side and the objective of the disclosure process, including legally permissible forms and methods of access to information that exhaust the features of public knowledge. Among these, the rule of the universality of the subject matter, which is derived by the doctrine and the judicature from the content of Articles 2 and 4 u.d.i.p., creates a broad framework of the party entitled and, more importantly, obliged to provide information, is dominant. According to Article 4, sentence 1 u.d.i.p., public authorities and other entities performing public tasks are obliged to make public information available. The openness of the catalogue of entities obliged to provide information, which causes problems but also entails many benefits in the process of making it available, makes it possible to include in this group also such entities which seemingly or actually do not meet the conditions of having a public status or character. Such an assertion is of particular significance in the process of qualifying the BFG as an obliged entity, especially if we take into account the content of Article 3(3) u.b.f.g. Following the cited regulation, the fund is not a state legal person or a unit of the public finance sector. It is also not a state special purpose fund referred to in Article 29 of the Act of August 27th 2009 on public finances,¹¹ and finding its place among financial administration entities such as the Polish Financial Supervision Authority or the National Bank of Poland, it does not exhaust the features of a public authority, taking into account Article 4(1)(1) u.d.i.p.¹² [Szczęśniak 2018; Sura 2012, 87–97; Zawadzka, Zimmerman, and Sura 2017]. This happens even though it has public authority over the entities covered by the deposit guarantee scheme, although it has the authority to decide, within the framework of its administrative discretion, whether a particular method of influencing the other party (the bank) should be applied, and despite its complete independence from the discretion granted to it as to whether the initiation of compulsory restructuring is necessary to guarantee the protection of the public interest [Zawadzka, Zimmerman, and Sura 2017; Burzyńska 2014, 76–97; Szczęśniak 2018]. The status of the BFG depicted in such a way, taking into account only the structural aspect, eliminates the admissibility of its qualification as an obliged informational entity following the regulations of the u.d.i.p. It should not be forgotten that both the system legislator in the content of Article 61(1) of the Constitution of the Republic of Poland, as well

¹¹ Journal of Laws of 2021, item 305.

¹² A different standpoint is presented by P. Szczęśniak, who directly calls the BFG a public administration body. However, he further indicates the necessity of recognising the BFG as an entity of public law performing tasks within the scope of public administration.

as the legislator, distinguish two groups of “institutions” qualified as obliged to provide information. The first group consists of entities (or, more precisely, specific categories of entities), which are directly defined as information obligations. In this case, it is about bodies of public authority, persons performing public functions, bodies of economic and professional self-government. Therefore, having a specific status that allows being included in one of the indicated categories is absolutely decisive for the existence of the information obligation. This manifests the aforementioned structural aspect treated as a premise for the existence of an information obligation. Inability to fulfil it requires recourse to conditions of a different kind – the functional aspect. The second group, a much larger group, but at the same time heterogeneous and ambiguous in meaning, is based on undertaking specific activities related to the implementation of public tasks or the disposal of public funds. According to Article 61(1) sentence 2, a citizen has the right to obtain information about the activities of other persons and organizational units to the extent that they perform tasks of public authority and manage municipal property or the property of the State Treasury. In this case, it is about entities doctrinally defined as administering because they perform public tasks and spend public funds, or fulfil at least one of the above conditions in their activities [Zimmermann 2008, 101]. As J. Zimmermann points out, this is a concept that covers entities that are not administrative authorities but have legally vested powers to act as authorities or are entities that actually exercise such competence [ibid.; Hauser, Wróbel, and Niewiadomski 2011].

Pursuant to Article 3(2)(3) of Directive 2014/59/EU of the European Parliament and of the Council of May 15th 2014 establishing a framework for the recovery and resolution of credit institutions and investment firms,¹³ national resolution authority in the individual Member States it must be a public administration body or body entrusted with the exercise of administrative powers. “Resolution authorities may be national central banks, competent ministries or other public administrations or authorities entrusted with powers in the field of public administration.” BFG, not being a public administration body, fulfils the conditions of the entity with the information obligation due to the

¹³ Directive of European Parliament and Council 2014/59/UE of May 15th 2014, establishing a framework for the recovery and resolution of credit institutions and investment firms and amending Directive of Council 82/891/EWG and directive of European Parliament and Council 2001/24/WE, 2002/47/WE, 2004/25/WE, 2005/56/WE, 2007/36/WE, 2011/35/UE, 2012/30/UE and 2013/36/EU and the Regulation of the European Parliament and of the Council (EU) no. 1093/2010 and (UE) no. 648/2012, Official Journal of the European Union L 173 of June 12th 2014, p. 190–348, Directive of European Parliament and Council 2014/49/UE of April 16th 2014, on deposit guarantee schemes, Official Journal of the European Union L 173, of June 12th 2014, p. 149–78.

performance of tasks in the public interest.¹⁴ According to Article 101(8) and, above all, section 10 u.b.f.g, the BFG's activities are undertaken in the public interest if they are necessary to ensure the achievement of at least one of the objectives of resolution, and achieving these objectives to the same extent is not possible under the supervision or bankruptcy proceedings. The statement that the compulsory restructuring plans prepared by the BFG are an important element of guaranteeing state security following the content of the Act of April 26th 2007 on crisis management is also not without significance here.¹⁵ [Szczeńiak 2018]. As R. Sura points out: the protection of depositors, financial stability or the security of public finances are goods of great importance to protect them in the public interest [Zawadzka, Zimmermann, and Sura 2017].¹⁶ Based on the law and prejudging its belonging to the group of administering entities, the activities of the BFG [Sura 2013, 175ff] in favour of satisfying the needs of individuals resulting from coexistence in society come down to the fulfilment of the restructuring function (Article 5(1)(3–4) u.b.f.g.), the guarantee function (Article 5(1)(1) u.b.f.g.), the analytical and control function (Article 5(1)(5–6) u.b.f.g.) and the stabilisation function (Article 5(1)(7) u.b.f.g.) [Zawadzka, Zimmermann, and Sura 2017; Fedorowicz 2017, 405ff]. Their implementation is closely related to the pursuit of a specific goal, to following the specific (because public) establishment of the fund. According to Article 4 u.b.f.g.: the main goal of the BFG's activity is to take measures to develop and maintain the stability of the domestic financial system, in particular by ensuring the functioning of the obligatory deposit guarantee system and as a result of forced restructuring. Its active participation in the prevention and elimination of threats related to the insolvency of banks, which comes down to the performance of activities referred to in Article 4 u.b.f.g. is closely related to the establishment by the BFG of relations of a sovereign type (based on the superiority and subordination of the other party), where binding decisions are made within the framework of separate, administrative jurisdiction proceedings and have a unidirectional and arbitrary impact on the property rights of the bank itself, its shareholders, members, creditors, as well as debtors (See. Article 11(5) u.b.f.g) [Zawadzka, Zimmermann, and Sura 2017; Szczeńiak 2018; Kielkowski 1997, 86ff].

The functionality of the BFG presented above confirms the legitimacy of the statement that the decisions of the BFG, including those on forced restructuring in connection with the content of Article 1(1) u.d.i.p. constitute information on public matters subject to disclosure. Support for the above may

¹⁴ At this point, it is worth referring to A. Jakubowski's views on the administrative facility [Jakubowski 2018, 527ff].

¹⁵ Journal of Laws of 2020, item 1856 as amended.

¹⁶ Individual interpretation of November 4th 2020, 0114-KDIP2-2.4017.2.2020.2. RK, SIP Legalis.

be found in the content of Article 6(1)(6) u.d.i.p., providing for accessibility to the content of administrative acts and other similar decisions being public data. In this scope, however, the universality of access understood as a guarantee of providing specific knowledge to each interested party (Article 2(1) u.d.i.p.) is conditioned not only by provisions of the u.d.i.p., but, according to Article 1(2) u.d.i.p., first and foremost by the content of the u.b.f.g.

3. LEGALLY PERMISSIBLE FORMS AND WAYS OF MAKING PUBLIC INFORMATION AVAILABLE IN THE LIGHT OF THE RULES ON FORCED RESTRUCTURING

Under Article 61(2) of the Constitution of the Republic of Poland, the right to obtain information shall include access to documents and entry to meetings of collective organs of public authority coming from universal elections, with the possibility of sound or image recording. This regulation presents a set of legal possibilities for the individual to exercise his constitutional right. Their scope is subject to development and specification on the grounds of the regulations of the u.d.i.p. W. Skrzydło rightly emphasizes that the discussed law can also be implemented using other forms because the basic law distinguishes only those that are most important without closing their extensive catalogue based on the regulations of the such as u.b.f.g. [Skrzydło 2002, 1ff]. Their role is by no means to interfere with the material substrate of this law and reduce it or lower it below the level set by the constitution [Karsznicki 2015, 112–22], on the contrary, it is about specifying the actual means and methods by which an individual can approach information he expects and achieve full informational satisfaction.

Taking into account the content of the regulations of the u.d.i.p., the regulations of Articles 3 and 7 deserve special emphasis. In their content, there is a distinction between legally guaranteed forms and ways of making public information available. Answering a question from the person concerned (orally, in writing, electronically); guaranteeing the possibility of consulting the content of an official document; and access to meetings of collegiate bodies, in the broad sense, constitute a catalogue of forms of access, i.e. legally regulated rights which an individual can use in order to satisfy his or her information needs [Tomaszewska 2019, 131]. These include publishing information in the BIP; displaying or posting information in places accessible to the public; or installing devices that allow the public to read the information; placing a specific type of public information in the central repository is the means of making available, i.e. a set of activities of the obligated person performed one after the other (or activities limited to a single act of action), thanks to which it

becomes possible to use legally permissible forms of fulfilling an information claim [*ibid.*, 131–32].¹⁷

Considering Article 322 u.b.f.g., the actions and powers presented above may theoretically find their application as forms and ways of making public also in the scope of making available information concerning forced restructuring. According to the cited regulation, information on the forced restructuring may be made available based on the u.d.i.p. after the completion of the forced restructuring. Therefore, the u.b.f.g., being specific legislation, provides for the admissibility of referring to generally defined principles of the access process, including the forms and ways of access to public knowledge provided in the u.d.i.p. This implies the validity of the statements about the occurrence in the content of u.b.f.g. two types of the disclosure process, i.e. based on the regulations of the u.d.i.p., which is optional, and based on the so-called own regulations (obligatory disclosure based on u.b.f.g.). In this case, the optionality is based on the possibility of acting and only on the possible publication of the information referred to in Article 322(1) u.b.f.g. and not on a specifically defined obligation of the BFG from which there is no possibility to evade. Information relating to the forced restructuring may or may not be made available on the basis of the u.d.i.p., which is further conditioned by the completion of the forced restructuring. So presented in the light of Article 322(1) u.b.f.g. the nature of the disclosure process cannot be changed by the exception referred to by the legislator in Article 322(2) u.b.f.g. On the contrary, with its help, it expresses the existence of an obligatory publicity process separate from the content of the u.d.i.p.

As follows from Article 5(4) u.b.f.g. BFG within the scope of the fulfilment of its tasks, as well as within the scope of cooperation with other entities that operate for the benefit of the national financial system and that operate deposit guarantee schemes, may conduct information activities. Irrespective of the above, the whole of the regulations of the u.b.f.g. shows the information activity of the BFG of a slightly different nature. In this case, it concerns the implementation of the information activities of the forced restructuring authority, which, despite not being subject to the regulations of the u.d.i.p., fall within the broadly considered category of access to public knowledge. Regardless of their different nature and course, their implementation fulfils the essence of the universal right to the information referred to in Article 61(1) of the Polish Constitution. Their analysis makes it possible to work out a catalogue that determines the specific methods of making available information

¹⁷ P. Sitniewski presents a different meaning of the form and the way of sharing [*Sitniewski* 2016, 213–14].

connected with forced restructuring – methods not infrequently accompanying those forms and methods which result from general regulations (u.d.i.p.).¹⁸

The analysis of the entirety of the provisions of the u.b.f.g., referring to the process of the obligatory disclosure of information (taking into account the definition of the notions of form and manner presented above) allows us to state that the regulations of the u.b.f.g. only emphasize the existence of specific methods (ways) of disclosure, and not forms, as it might initially seem. Therefore, it should be concluded that the legislator, in Article 1(1) u.d.i.p., referring to special rules and procedures of making available, resulting, *inter alia*, from the u.b.f.g., had in mind all activities of the authority aimed directly at transferring or creating the possibility for interested entities to become acquainted with a particular type of public information.¹⁹ These specific modalities are inevitably linked to the BFG's information activities for the public at large, but also for each individual. They are visible when announcing the resolutions referred to in Article 47 u.b.f.g.; decisions referred to in Article 109(1) (2) u.b.f.g. (or only information on the causes and effects of the decision on resolution); information on the establishment by a decision of the administrator of an entity under restructuring (Article 153 u.b.f.g.); information on searching for bids for the takeover of the enterprise (Article 178(7) u.b.f.g.); information on the non-collection of contributions to the obligatory deposit guarantee scheme (Article 294(2) u.b.f.g. and Article 302(2) u.b.f.g.); information on the principles of the functioning of the mandatory deposit guarantee system, including the subjective and objective scope of protection, and information on the rules of disbursement of guaranteed funds, resolutions and information on the amount of the rates of guaranteed funds protection funds (para. 8(2) and para. 30(2) of the BFG statute²⁰).

¹⁸ The use of the term “accompaniment” in this case is not entirely appropriate, because it may erroneously suggest that the so-called special activities of making the forced restructuring organ available, regulated by the provisions of the u.b.f.g., take precedence or are of secondary importance in relation to the rights and activities defined in the provisions of Articles 3 and 7 u.d.i.p. It should not be forgotten, after all, that it is the BFG's information activities set out in the u.b.f.g. that are of an obligatory nature, and the provision of information about the forced restructuring in the spring mode may, but does not have to take place and, as a rule, takes place only after the completion of the forced restructuring.

¹⁹ The creation of grounds for individuals to reach for public information should be seen in connection with the BFG's provision of the decisions referred to in Article 109(1) and (2) of the BFG and information on the establishment of the administrator (Article 153 of the BFG) to the KNF and the entity under restructuring, which subsequently publish them on their websites. The implementation of such obligations of the fund is closely related to the indirect impact of the forced restructuring authority on public awareness. This is due to the creation of additional possibilities of accessing public information made available also through the websites of entities which are not obliged to provide information.

²⁰ Appendix to the Regulation of the Minister of Development and Finance of 25 January 2017 on the granting of the statutes of the Bank Guarantee Fund, Journal of Laws of 2017, item 203.

Importantly, concerning the implementation of the BFG's information obligations, the legislator does not use a uniform nomenclature to define the means by which information is made available, although in all cases the aim is to provide information to all potentially interested parties in a universal and general manner, even if the information is first addressed to direct interested parties (the banks themselves). Making information available to the public (by publishing it in a nationwide daily newspaper), publishing or announcing information on the fund's website as specific (because regulated in the u.b.f.g.) ways of making information available have the same effect – they give everyone (Article 1(1) u.d.i.p.), who shows even the slightest interest in the information and reaches for the public data made available to the public on their own. This type of information is of particular importance concerning the decision on the initiation of compulsory restructuring or conversion of capital instruments in connection with the content of Article 103(5) of the BFG because it allows anyone whose legal interest has been infringed by a decision of the BFG to appeal against the decision.²¹ Apart from delivering the decision to the entity under restructuring, the publication of its content on the fund's website gives real opportunities to take steps to protect the legal interest of those who invoke its violation. Moreover, irrespective of the above, it confirms the view in the literature that access to public knowledge possesses the importance of the institution of protection of the legal interest of an individual and that the forms and methods leading to the act of making available are treated as tools for the implementation of the universal right to information.

CONCLUSION

The constitutional right to information is subject to various restrictions and, contrary to appearances, such regulations which, in essence, establish or are intended to establish obstacles to the process of seeking public knowledge are numerous. It should be remembered, however, that a significant part of them are regulations which, despite being qualified as limiting access to information, in fact, provide for specific rules for the disclosure process, and do not exclude its existence. Regulations of the u.b.f.g., which confirm the existence of information obligations on the part of the BFG, also have such a character. The legislator refers to the provisions on forced restructuring, making them one of the basic restrictions located in the catalogue of Article 5 u.d.i.p. A closer look at their content, however, reveals that they are not a restriction in the strict sense and that this limitation comes down to the shaping of specific rules for the process of making access available and the distinction of specific

²¹ Decision of Voivodship Administrative Court of 8 October 2020, ref. no. II GZ 293/20, <http://orzeczenia.nsa.gov.pl/doc/58BDF3E2B0> [accessed: 21.04.2020].

ways of doing it. The use of the term “special ways” in this case is not entirely accurate either, because, despite the atypical naming, the characteristics of publishing certain information on the website, in a nationwide daily newspaper or, generally speaking, making information public, are similar and, above all, lead, or are supposed to lead, to the same results as publishing data in the BIP (bulletin of public information) or displaying or posting information in generally accessible places. It is about reaching the widest possible circle of entities interested in information with specific information, which has all the features of public knowledge. Taking into account the content of the regulations of the u.b.f.g. itself, it is also worth noting that the fund’s informational activity in many cases has a conditioning character. Moreover, the publication of information is not infrequently treated as a means of determining the timing of application of certain actions by the BFG to an entity under restructuring (e.g. Article 143(1) and Article 144(1) u.b.f.g.).

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