

# Clause of abuse of the right to public information - theoretical framework and practice on the example of Polish court jurisprudence

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**Abstract:** The objective of the proposed paper is to verify the following research hypothesis: although the Polish law, unlike in other European Union countries, the abuse of the right to information was not regulated as a restriction of the right to information, various ways of responding to the abuse of the right to public information were created by practice.

The abuse of law, considered in the context of various branches of law, has a very rich doctrine. In Poland, this applies mainly to civil law, which contains a general abuse clause in Article 5 of the Civil Code. Nevertheless, the study of administrative law also deals with the issue of abuse of law, especially the abuse of the right to court. The abuse of the right to information is also a subject of study. In Poland, the first mentions are found shortly after the entry into force of the Act of 2001 on access to public information (A. Knopkiewicz, *O nadużyciu prawa do informacji publicznej* [The Abuse of the Right to Public Information], "Państwo i Prawo", no. 10/2004, pp. 69-81).

The issue of abuse of the right to information is discussed from a doctrinal point of view and compared with the activity of administrative courts. Although literature deals extensively with issues of the right to public information, there is no systematic study on the abuse of this right. Current scientific publications are limited to dogmatic and legal analysis as well as modest comparative law analysis.

Due to the fact that the proposed research relates to limiting human rights, it is necessary to reconstruct the standards for limiting this right. The starting point will be the analysis of the general conditions for limiting human rights. The research will cover constitutional law and administrative law (analysis of the case law of the European Court of Human Rights, the Polish Supreme Court, and the Supreme Administrative Court, as well as an analysis of the literature on the subject – domestic and foreign). The result of this part of the proposed paper will be the definition of a standard for limiting the right to public information – which conditions must be met by their limitation and due to what legal values.

Then, the proposed paper will review the literature on the subject in terms of standards for limiting the right to public information and abuse of the right to information.

The proposed paper will present empirical research, i.e. all judgments of administrative courts relating to the abuse clause in Poland. The search engine, available in the database of administrative court rulings, available on the Internet, allows us to isolate all cases regarding access to information (case symbol: "648"). Judgments will be examined in which the courts will use both direct and indirect references to the abuse clause (cases regarding the inactivity of authorities, complaints about administrative decisions, as well as complaints about acts determining the fee for access to public information).

Based on the data obtained (analyzed using MAXQDA), the main legal instruments will be diagnosed that are used when the court finds that the right to public information has been abused. Then, in the discussion part, individual judicial approaches will be critically assessed.

Finally, the decoded standard of the clause on abuse of the right to public information will be confronted with Polish practice.