

Access to public information regarding laboratory animals: law and ethics

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Summary

Normative regulations concerning the use of animals in experiments and education raise numerous controversies and much social discussion. One of the aspects of implementing this form of social activity is the use of constitutional, subjective right of access to public information. Competent public administration authorities, and administrative courts encounter numerous difficulties related to requests for information. Attempts to assess, evaluate, and verify whether the applicants' goals and intentions are consistent with the axiological premises of the statutory norms occur. The study reveals veterinary, legal, and moral aspects of requests for access to public information related to the use of animals in testing and teaching procedures. The controversial concept of abuse/misuse of the subjective right to access information is presented in a critical, multifaceted way. Obligations of professional ethics of veterinary surgeons concerning laboratory animals and public information related to them are discussed. The effectiveness and consistency of normative regulations are assessed. Interpretational postulates are indicated.

Keywords: administrative law, rule of law, veterinary professional ethics, legislative jurisprudence

Access to public information and freedom of information regarding laboratory animals is a specific case of executing this right in the Polish law (25, 50). Use of animals for didactic or experimental purposes (51) is not only a sort of administrative action, ruled by the legal norms. It is also a socially and ethically debatable issue, evoking emotions, disputes, and even firm voices of protest in the public debate.

The discussed problem of the misused right to be informed has not yet been studied in terms of public authorities related to laboratory animals, or veterinary authorities in general. Following methods of legal analysis and interpretation were used: linguistic, axiological, functional, teleological. Legal status as of March 31st, 2023.

Right to access information

The principle of transparency of public life is recognized as an important factor in any democratic society (35, 49). The right to access public information is the political right of any citizen, as well as the political subjective right (Pol. publiczne prawo podmiotowe) in the Polish legal regime (14). Therefore, a mere request implies correlated, compulsory access to any

information which can be qualified as 'public' (4, 15, 20, 25, 29, 54). This automatic, and obligatory action leaves no place for discretionary decision-making of any public body or administrative power-holder (41). Access to public information shall be not only immediate, comprehensive, but also effective for the applicant (15, 20).

The right to access information is regulated by Art. 61 of the Constitution of the Republic of Poland (25), and the Public Information Act (54). Articles 54, and 74 Sect. 3 of the Constitution can also be summoned (15, 25, 29). This right is restricted by the Art. 61 Sect. 3 of the Constitution (25), and Articles 3 and 5 of the Public Information Act (17, 20, 54). Exceptions enumerated therein are the only-ones allowed under the statutory regulations. Importantly for further consideration: these exceptions must be considered strictly (15, 17); they may not infringe the essence of this constitutional right neither in legal theory, nor in statutory acts, nor in administrative or judiciary practice (15, 20).

The right to access information is considered a human right by some claimants (41). This is, however, definitely an isolated view. Such an interpretation is

generally not recognized in Polish judicature or legal doctrine.

Axiology

The fact that the discussed subjective right was included in the Polish Constitution (25), and that the Public Information Act (54) was issued, was motivated axiologically, ethically and in terms of the whole democratic structure of the State (15, 20).

Various general, constitutional principles are indicated as *rationes legis*: the rule of law, transparency, and the civil society (20, 49).

With regard to the subject of the current analysis, attention should be paid to the issue omitted in other studies or administrative judgments, and closely related to the problem of laboratory animals. The right to information is very important in the Polish practice due to its stimulating role in building the civil society and social activation (2, 9). Numerous activities of charitable organizations, associations, or foundations, regarding laboratory animals prove that such an axiological framework of the analyzed constitutional law is fully justified. Social interest in the use of laboratory animals, and commitment to their protection are important factors in the social debate in Poland.

Administrative mechanism

Making public information accessible is regulated in Poland as a specific administrative procedure (49, 54). That is, short deadlines for the reply of the public administration body are characteristic. Only refusal to provide information requires the form of an administrative decision, and only in this case the Code of the Administrative Procedure (50) is explicitly applied (49, 54). Nevertheless, according to the author, other norms of the mentioned Code (50) must also be applied, such as Art. 6 ff. These are the general, guiding principles of public administration each public authority is bound with, and must always apply in all its proceedings.

Some elements of this procedure are *prima facie* clear, but in fact they give rise to numerous doubts, and problems: First, in case of a 'simple public information' (that is, one which can be made public right away, without further preparation) any calling on the applicant to justify his interest, motives, goals, intentions is directly and expressly prohibited by the Art. 2 Sect. 2 of the Public Information Act (6, 25, 29, 38, 54). *A maiori*: neither administrative authorities, nor administrative courts are empowered to any form of research, analysis, assessment, or evaluation of the application or applicant him/herself.

Second, in case of a 'processed public information' (which requires preparation, processing, privacy-censoring, statistical analysis, etc.) (27), the claimant is obliged to prove his/her interest. It is a special, qualified form of interest, which shall be cumulatively:

particularly important (from a social point of view), and public (non-private) (27).

Within the scope of the current study, the following particular interests are often proved (or at least indicated) in practice: animal protection, animal health protection, laboratory animal protection and welfare, 3R rule (replacement, reduction, refinement), public health protection, patients' rights, proper public money spending, etc.

On the other hand, often the applicant indicates only that the statutory goal of his/her foundation or association is the protection of animals, without any further explanation. Such a statement definitely cannot be assessed as a proof of the qualified, particular interest (8).

Entities obliged to make public information accessible

Polish law (54) defines public authority obliged to make information accessible in a broad, functional way. This category includes not only typical administrative authorities, but also other bodies undertaking public tasks or spending public money.

In the analyzed problem, the most typical authority is the Local Ethics Committee for Animal Testing (Pol. Lokalna Komisja Etyczna ds. doświadczeń na zwierzętach), which is the competent authority for axiological, ethical, and scientific assessment, as well as expressing consent to the use of animals in procedures, experiments, and in education, including veterinary university, and post-graduate education (51).

The legal nature of the committee is disputable: whether it is a functional (16, 18) authority (body with accidental administrative functions, and powers resulting from these functions), or rather a standard administrative authority? The argument in favour of the first option is that the committee is a collegial, specialistic, professional, scientific-and-ethical body. Moreover, the committee has no office, no advanced administrative staff, nothing that can be named 'administrative apparatus'. In practice, the administrative activities of the committee are contracted out to one, part-time secretary, while legal, and accounting services are outsourced to an adjacent university or scientific institute (civil contracts). The lack of an office, and staff are very important issues when it comes to providing public information, and especially its processing.

Nevertheless, arguments in favour of the second option prevail. The Local Ethics Committee for Animal Testing is a standard administrative authority. Its competence, and empowerment are defined in the statutory acts (50, 51). Administrative procedures are observed, individual administrative cases are considered, and administrative decisions are issued (50). Without doubt: this body operates on the basis, and within the limits of the law (50).

Other authorities obliged to provide information may also be indicated: users, centres, in which laboratory

animals are kept, universities, scientific institutes, pharmaceutical laboratories, pharmaceutical companies, and other bodies spending public money (statutory research, grants, applied dissertations, drug testing, etc.) in animal research, and in public education.

Who is entitled?

The right to information and access to public information covers Polish citizens (according to the Art. 61 of the Constitution)/any natural or legal person (according to the Public Information Act (25, 29, 54). Often, such applicants are social or charity organisations, foundations, associations, as well as natural persons, who have certain legal or factual connections with such organisations.

Personal conflicts (9, 27, 41, 44, 47) and – even more often – moral conflicts, may arise between the applicant, and the person acting as the authority. From the point of view of many applicants requesting access to public information, the moral principle is to minimize, or even completely eliminate any animal testing. Usage of laboratory animals is assessed by them as ethically reprehensible, by all means, and at all costs they seek to limit it. Notwithstanding that the authority has no official knowledge of such ethical dissension, the very same person may have such actual knowledge. Hence, anxiety, or suspicion as to the motivation of the applicant, may arise.

Moreover, the administrative authority could have official knowledge of other questionable factors:

- seriality of numerous requests of the same claimant (9, 35, 40), or by a related applicant (e.g. organisation, president, member of the same organisation, or even members of the same claimant organisation being contemporaneously members of the collegial administrative authority obliged to make information accessible), to the same or other official bodies; identical requests in many cases (e.g. the same applications in each local committee, in each institute, in each case considered by the very same authority);
- submitting applications for access to public information, and for admission of a social organisation to participate in the administrative proceeding empowered as a party (50) in each case proceeded by the same authority;
- very broad, and deep questions, including many variable factors, multi-year (e.g. 5, 10, 15 years) reporting periods, large scope of information processing;
- sending complex, multi-question applications via e-mail, which on the one hand – risks ending up in spam (34, 37), and on the other hand – what has not been noted yet – shortens response period, e.g. when an e-mail was sent at 11.55 p.m., etc.

All these, and other similar circumstances, raise numerous ethical, and legal questions. Are the real intentions of the applicant for the public good? Is it rather about paralyzing the work of the administrative

authority (especially such as the local committee). How far can social control go? Does abuse of the right of access to public information occur?

Abuse/misuse of a subjective right

Many areas of public administration have been struggling for several years in Poland with the ‘flood of requests’ for public information access. Hereof, numerous litigations have arisen. Therefore, creative germs of thought expressed in legal literature have been taken up, and developed by some administrative courts, and the Supreme Administrative Court of Poland (5, 9, 14, 22, 26, 27, 32, 33, 39, 47, 49).

To date, the jurisprudence applied the general, civilian concept of the abuse of right to the discussed subjective right to access public information (25, 39, 49, 53). General axiological, ethical concepts, and general rules of law, were the factors of this legal concept (25, 39, 49, 53).

It provides the basis for the moral, and axiological evaluation of requests, which has normative consequences. The following criteria are indicated: the public good, the principle of transparency of public life, and equity (9, 14, 19, 23, 35, 47, 49). These are the criteria for evaluating justness, pertinence, legitimacy, and, finally, the validity of the application (39, 49). These are also the *rationes legis* of Art. 61 of the Polish Constitution (25), of the whole Public Information Act (18, 21, 31, 54), as well as basic axiological rules of the democratic society (15, 20).

Some – but not all – Polish administrative courts indicate that such evaluation is desirable, and proper – both from the social, and legal, points of view (27, 46, 47, 49). Evaluation makes it possible to determine when the applicant abuses (or rather: misuses) his constitutional rights, i.e. when he does not enjoy legal protection, and, therefore, does not have access to the given information (47). Requesting access for the purpose/for reasons of legal compliance, obstructing the work of administrative authority, to actually thwart, and prevent the use of laboratory animals in experimental, or didactic procedures are considered to be abuse (misuse) of the discussed right (9, 47). The same is assessed when the exercise of the right by one applicant would actually hinder, or prevent, the exercise of their rights by other claimants (9, 31, 47), or reduces the efficiency of the administrative work (18, 27, 42).

Proponents of this theory argue that it actually protects – not limits – constitutional rights (47), and that transparency of public life should be well-balanced with other factors important in democratic society, such as proper functioning of public administration (18, 35, 42, 47).

Misuse of the right to access information is a theoretical concept that is cognitively, and scientifically interesting (27). Potentially, it is practically significant

from the point of view of both administrative authorities, and administrative courts. Nevertheless, it raises numerous controversies in terms of equity, pertinence, fairness, validity, and legality.

The most important weakness is the lack of a direct, clear, and express legal basis in statutory acts. Moreover, it is an example of a non-statutory limitation of constitutional rights of citizens (3, 9, 12, 16, 27, 48). Many formal and procedural difficulties in the application of this theory are reported.

Opponents of the discussed theory indicate that neither administrative courts, nor the public authorities have the competence to execute any ethical, functional, or axiological assessment of the applicant's motivation, or of his/her real goals (2, 3, 7, 9, 11, 12, 29).

In the processing procedure it is possible to justify such a possibility (based on legal provisions) (54). There is, however, no such possibility in case of the simple public information. Polish legislators, as shown above, explicitly excluded this possibility (6, 29, 38, 54). Therefore, subsequent doubt shall be presented: whether actual abuse, such as litigiousness or obstructing work of the Local Committee or scientific institution, could be possible only in case of submitting requests for information that the competent authority must process? Both an affirmative, and a negative answer seem to refute the concept of the right abuse. Out of numerous possible arguments, the author will mention only the following: the applicant does not know (at the time of submitting the application) whether the authority would have to process the information, or not. Moreover, a large number of 'simple' requests are equally effective in obstructing the work of the authority as those 'processed', and is complex, and – in fact – processed (36, 43, 45).

Another problem covers the practical consequences of assessing the motivation of the applicant, and evaluating his/her attitude as improper. Indeed, there is no consensus on the procedural aspects, and form of the procedure termination in case of abuse of the right to be informed: numerous, more or less accurate, attempts at answers are proposed (10, 27, 30).

Moreover, both lack of competence, and lack of real possibilities to evaluate 'related' applications are pointed out (5, 13). For instance, previous applications by the same applicant to the same authority, previous applications by the same applicant to other public authorities, applications in which the applicant is a social organisation, applications in which the applicant is a member of such organisation, or, last but not least, private life animosities.

Veterinary professional ethics

Apart from the *par excellence* ethical nature of the work of the committee, and the need to comply with the ethical, and axiological principles of conducting experiments according to the law (51), the author

would like to draw attention to another element of specifically veterinary obligations.

Veterinary surgeons may act as various entities in the analysed area: they may be members of the Committee, they may be animal users, they may conduct animal tests, they may teach veterinary medicine, and they may be applicants requesting public information.

Regardless of which of these positions he/she occupy, every veterinarian has an obligation to comply with the law related to the practice of the veterinary profession, and the principles of ethics, and deontology (24, 52). The author indicates hereby three main spheres of professional moral duties:

First, usage of the current scientific knowledge in each case: not only in diagnostics, therapy, but also in animal testing, in education, and in requesting/providing public information (24, 52). This knowledge includes, e.g. principles of ethical animal testing, the 3R rule, and animal welfare (28, 34).

Second, every veterinary surgeon in his/her actions is to clearly distinguish between opinions and statements: purely personal, as a member of the professional corporation, as a public authority, or as a member of a social organisation. He/she should avoid conflicts of interest, according to Articles 24, 40 Sect. 1, and 45 of the Polish Veterinary Surgeons' Professional Ethics Code (24).

Third, Chapter III, Articles 31-33 of the Code (24) regulates ethics in animal testing. Legal norms decoded from these articles limits the scope of veterinary surgeons' involvement in animal testing to actions which are, cumulatively, and *sine qua non*: legal, and *lege artis*; harmless to men, animals, and the environment; devoid of pain, suffering, injury, or animal distress; beneficial for public health, or animal health; necessary for future diagnostics, or education. These rules are accompanied by: Art. 15, 30 Sect. 3 (animal welfare), 42 (public authorities), and 44 (higher education), of the same act (24).

Veterinary medicine is a profession of public trust, and all activities of veterinary surgeons must comply with above-average ethical standards. This rule applies to conducting procedures on laboratory animals, as well as to requests for access to information, and responses to such requests. If the abuse theory is accepted – the consequences of failure to comply with the above-mentioned ethical principles tighten the criteria for assessing veterinary surgeon's malperformance.

Conclusions

The analysis revealed veterinary, legal, as well as moral aspects of requests for access to public information related to the use of animals in testing and teaching procedures. Significant contentious points, triggering legal, administrative, and ethical discussion were indicated. Professional ethical obligations of veterinary surgeons related to broadly understood

access to public information concerning laboratory animals were indicated.

The concept of abuse of the subjective right to access information was presented in a critical, multi-faceted way. The conducted analysis made it possible to conclude that this concept – although cognitively, and practically interesting for administrative authorities and courts – cannot be considered unquestionably right.

The author does not intend to adjudge this problem categorically, but only to indicate the important arguments of all sides. Becoming acquainted with these premises allows the veterinary community to take these concepts under consideration, social discussion, or to propose legislative initiatives.

This dispute is, in fact, an element of a wider, world-view conflict. A conflict of different axiological, and moral values. A conflict between different ways of practicing law, different views on the role of courts, and legislative jurisprudence. And what is more important: the spirit of the law or its letter. One can ask, paraphrasing St. Paul, 2 Corinthians 3, 6: *an littera occidit, spiritus vivificat?* – or is it just the opposite?

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