

The Right to Information in Poland in the Context of Political Influence

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Abstract: The article addresses the issue of the media's access to public information in the context of their informational and monitoring roles vis-à-vis those in power. The hypothesis is that the normative framework in Poland was not a sufficient guarantor of such access for the media and journalists because, in practice, the authorities did not implement the statutory legal requirements in terms of providing access to public information. The case study method used in the article enables the authors to show that the barriers to access to information in recent years are mainly due to the instrumental treatment of information policy as an effective tool of governance and the perception of the media as a competitor in the creation of the public narrative.

Keywords: Poland; media law; access to information; journalism

INTRODUCTION

In a democratic state, citizens have the right to participate in the most important decisions and to exercise control over the activities of political actors of the public sphere, “where access to information affecting the public good is widely available, where discussion is free of domination [...]” (Curran, 2002, p. 233). Trends in media policies in some Central and Eastern European countries indicate the possibility of further destabilization of normative foundations of democratic media systems (Bayer, 2017, p. 39; Štětka & Mihelj, 2024).

In recent years, especially since 2015, Poland's media system has undergone gradual deregulation and political instrumentalization. As Michał Głowacki (2017, p. 176) observes, the Polish model of media transformation has been challenged

by instability and contradictions “when it comes to assessing its characteristic features concerning media/politics relations in a comparative perspective.”

Media systems theories, such as the Four Theories of the Press (Siebert et al., 1956), the well-known concepts of media systems devised by Hallin and Mancini (2004), the hybridization of media systems (Chadwick, 2013), or transitional societies (Sparks, 1998, pp. 180–182), expose issues of the relationship between politics and the media as a crucial point for the independence of the latter. In this aspect, the fragility of the system framework of post-communist countries is evident (Štětka & Mihelj, 2024). There is no doubt that recent political shifts and changes in government policies and regulations have created new trends in media policies, such as de-democratization or even a re-transition to an illiberal model (Balčytienė, 2017; Štětka & Mihelj, 2024). The effect of creeping de-democratization in the “post-truth” era, manifested in a voluntarist approach to law and civil liberties, and in the devaluation of the authority of knowledge and institutions, devalues trust in media and journalism (Splichal, 2022, p. 119).

For the present discussion, the most relevant issues are those related to regulating the media’s access to information, which consequently cuts the citizens off from pluralistic sources of information. The barriers and restrictions arising from limiting this access allow political power to diminish the power of the media and “manufacturing consent” instead (Koivunen & Vuorelma, p. 393–408).

The article presents two cases that generated broad media coverage in 2021–2022, both in Poland and abroad: the migrant crisis on the Polish-Belarusian border and the missile explosion in the small village of Przewodowo. The undertaken analysis aims to show how political influence – resulting from strong and multidimensional affiliations between the media and the structures of political and economic power in Poland in the period 2015–2023 undermined the citizens’ right to reliable and objective information. In particular, the paper addresses one main research question: Can the normative framework of the democratic state be a sufficient guarantor of the right to information for the media and journalists? The paper’s analysis aims to demonstrate, through these two case studies, that both access to and denial of public information act as highly effective tools for authorities to control the narrative and create a communications crisis.

THE RIGHT TO INFORMATION IN ACTS OF INTERNATIONAL AND EUROPEAN LAW

The right to information was recognized as one of the human rights in the regulations of international law much earlier than in the internal legal systems of democratic countries, including the European Union (EU). Legal regulations governing access to public information are found in three international legal

systems: the UN legal system, the Council of Europe (CoE) legal system, and the European Union (EU) legal system. The key standard in the UN system dedicated to the right to information is Article 19 of the Universal Declaration of Human Rights (UDHR, 1948). In Europe, access to public information is reflected in the legal system of the Council of Europe, namely in Article 10 of the European Convention on Human Rights (Convention, 1950) as a common standard, where “everyone has the right to freedom of expression” and “to receive and impart information and ideas without interference by public authority”.

The exercise of these freedoms may be subject to such limitations as are necessary in a democratic society in the public interest, in the context of state and public security, territorial integrity, the protection of order, health and morals, the reputation and rights of others, and the protection of secret information and the impartiality of the judiciary. Based on the CoE recommendations, the Convention on Access to Official Documents was adopted in Tromsø in 2009 (CoE, 2009). The provisions of this document impose an obligation on public authority institutions at the governmental, regional, and local levels to make official documents available to interested parties. The convention has not been ratified by the Republic of Poland (Bednarczyk, 2014).

In accordance with the law of the European Union, all its citizens and all legal persons residing or having their registered office in a member state have the right to access the documents of the European Parliament, the Council, and the Commission, under the rules established by law. It is the duty of each of the aforementioned institutions to determine, in its rules of procedure, the specific procedure for access to its documents. This “transparency principle” was first introduced under the Maastricht Treaty. Its goals were to strengthen the democratic character of the administration and increase public confidence in it.

The consequence of this was the Code of Conduct on Access to Documents introduced by the Commission and the European Council (Regulation, 2001). Article 11 of the Charter of Fundamental Rights (CFR, 2012) guarantees freedom of expression and information “without interference from public authorities and regardless of national borders.” According to Article 42, every citizen of the EU has the right of access to “documents of the institutions, bodies, offices and agencies of the Union”. Citizens of the European Union gained access to the documents of the Council, the Commission, and the European Parliament under the Treaty of Amsterdam. It provides that any EU citizen or legal entity established in a member state has the right to information, including access to the institution’s documents.

THE RIGHT TO PUBLIC INFORMATION IN POLAND – THE LEGAL BASIS

The Polish media system experienced, like other post-communist countries in Europe, a radical transformation in the 1990s – from a state monopoly to a pluralistic system with private and public sector media (Balčytienė et al., 2015; Dobek-Ostrowska, 2012). Both public and private media have been subject to political pressure (Głowacki, 2017; Jaskiernia & Pokorna-Ignatowicz, 2017), which negatively affected the independence of the media and the level of editorial autonomy (Donders, 2021, pp. 272–288; Klimkiewicz, 2023).

The fundamental regulation of public information is provided for in the Constitution of the Republic of Poland (Constitution of the Republic of Poland, 1997) and in the law on access to public information (Act on Access to Public Information, 2001), as the fundamental rights of citizens. Article 61 of the Constitution entitles everyone “to obtain information about the activities of public authorities and persons performing public functions”. It also includes guarantees of access to documents and the ability to enter meetings of public authorities.

For journalists, access to information is additionally guaranteed by the media law (Act of Press Law, 1984). The regulations specify both the subject and object aspects of this obligation and define the scope of the information. Restrictions on the right to public information may be imposed only on grounds and in accordance with the values outlined in the laws. These are: the protection of the freedoms and rights of other persons and business entities, and the protection of public order, security, or an important economic interest of the state.

This restriction is also related to the principle of proportionality, established in Article 31(3) of the Constitution, regarding restrictions on the exercise of constitutional freedoms and rights. Each time, the authority should assess *ex officio* whether there are statutory grounds for refusing to release public information. Refusal to provide access to information takes the form of a decision, which means that its issuance requires a special procedure (Act on Access to Public Information, 2001). The legislation also regulates the procedure for releasing public information, including the time allowed for entities – individuals, institutions, and organizations – to respond to the press.

CASE STUDY (1): IMMIGRANT CRISIS ON POLAND'S BORDER WITH BELARUS

As indicated above, the normative basis of a declaratory nature in practice faces numerous restrictions, which, between 2015 and 2023, became increasingly severe, the most serious being the denial of information through the authority's silence. The case studies presented here illustrate the problems of access to information

faced by journalists and foreign correspondents in Poland in situations related to state security.

In mid-2021, large groups of migrants from various regions of the world appeared at the Polish border with Belarus, lured by promises from Alexander Lukashenko's regime of easy access to Europe. Groups of men, women, and children, mainly from the Middle East and Africa, gathered at the border on the Belarusian side (Reuters, 2021). The Polish government denied the refugees any right to cross to the Polish side and seek asylum, so Border Guard officers sent them back to Belarus using the pushback strategy. The growing humanitarian crisis attracted media attention from around the world, presenting the actions of the government and Poland in a very critical light. The Polish side portrayed the situation as part of a "hybrid war", waged by Russia with the help of Lukashenko's regime.

In the context of the growing migrant crisis, in the autumn of 2021, a decision was made to impose a state of emergency in the border strip, based on a presidential decree for 30 days (Prezydent RP, 2021). The parliament amended the law on the protection of the state border (Sejm, 2021) at an accelerated pace, allowing the Minister of the Interior to impose a ban on people in the border area. Various types of restrictions covered almost 200 towns and cities along a strip about 3 km wide from the border with Belarus. In the zone, by law, the ability of outsiders to stay in the zone was suspended, with no exception for the media. There was an almost complete information embargo due to the „threat to the security of citizens and public order.” After a month, the Sejm decided to extend the state of emergency for 60 days. Poland and the other Baltic states received support for border protection from the EU's institutions, which condemned the actions of the Lukashenko regime as an anti-EU action (Grzywaczewski, 2021).

The imposition of the state of emergency, although raising doubts about its actual expediency and effectiveness, was not perceived negatively by the public or legal authorities. However, the restrictions on media access to the border zone provoked critical comments and protests. The only form of news coverage from the border zone with Belarus comprised official announcements by a government spokesperson, broadcast on public media. Many editors of the largest Polish media and journalistic organizations protested against the ban on journalists working in the zone (Erling, 2022a). Media from around the world were also interested in the migrant crisis and the authorities' actions against the media (Falon, 2021). Paradoxically, foreign media were forced to organize coverage from the territory of Belarus rather than Poland, thereby strengthening Russian-Belarusian propaganda regarding the border crisis (Legucka & Bryjka, 2021).

Media freedom monitoring organizations called the restrictions arbitrary and disproportionate (IPI, 2021), while Reporters Without Borders (RSF, 2021) urged the Polish parliament to assess the legality and proportionality of the

measures taken, arguing that “[a]lthough it is legitimate for the Polish state to address security risks in the border area, the media must be able to cover police and military operations and migration, which is a public interest issue.”

The Organization for Security and Co-operation in Europe (OSCE) stressed that restricting access to information in the state of emergency area is disproportionate to the threat’s degree and nature (OSCE, 2021). Furthermore, the OSCE recommended revising the regulation, among other things, to address barriers to accessing information on monitoring and reporting human rights violations in the border zone proportionately.

The Polish Ombudsman asked Prime Minister Mateusz Morawiecki for an initiative to remove flaws in the State of Emergency Regulation regarding information barriers caused by the bans (RPO, 2023). In the ombudsman’s view, the ordinance went beyond the limits of the State of Emergency Law and consequently violated the Constitution. Doubts about the constitutionality of these legal acts involved both the prerequisites provided by the Constitution and the effectiveness of introducing the state of emergency, its subsequent extension, and the creation of an “extra-constitutional state of emergency,” which interfered with civil rights and freedoms, disregarding the statutory form (Zajadło, 2021).

The Ombudsman stated that, regarding access to information and journalists’ freedom of entry into the border zone, the measures introduced were not proportionate. There was not only no provision for the media to be included in the “pass mechanism,” but a “general and abstract, absolute ban on the release of information” was adopted, in addition to official government communications. The Ombudsman stressed that such a practice leads to the “exclusion from any basic social control of the actions of public bodies” and opens the field to disinformation activities, which “paradoxically can ultimately lead to additional threats to public security and order” (RPO, 2021).

In the absence of independent media coverage, the Polish public had to rely on materials prepared by the Border Guard and the Polish Armed Forces, as well as on amateur photos and videos, surreptitiously created and often at risk of repercussions from law enforcement. The government made official announcements during press conferences and via social media. The Border Guard was responsible for organizing the concessionary “media visits” after being notified via email by the editorial staff (Erling, 2022b).

The stay in the so-called zone was thus completely subordinated to the authorities’ intentions, who, without public scrutiny through independent media, were free to maintain the „information cordon sanitaire”. A few months later, the position of Government Plenipotentiary for Information Space Security (GPISS) was established (Rada Ministrów, 2022) to fight against disinformation and monitor activities „against the security, interests and image of the Republic of Poland”, abolished by the next government in 2024 (Rada Ministrów, 2024).

The 2023 migrant crisis continued, and the issue of journalists' access to the zone remained unresolved, as government-affiliated politicians sought to dramatize the situation. The GPISS sounded an alarm on Twitter: "In 2021, Poland was attacked via an artificial migration route. Aggressive foreigners massively attacked the Polish border, officers and soldiers hoping to get to the West. This operation continues to this day" (Wprost, 2023).

The media did not have any opportunities to counterbalance this GPISS statement by either independent news reports or interviews with people at the border. This was because the border zone, which incorporated a 186-kilometer-long, 5.5 m wall saturated with cameras, separated journalists from the immigrants. It was useful for the authorities to maintain an atmosphere of fear centered on a wave of "strangers", especially since this crisis appeared to be shrouded in secrecy, which occurred in a virgin forest somewhere on the edge of Europe, which was difficult for anyone, let alone journalists, to reach (Perez-Peña, 2021). Under such conditions, acquiring information was a challenge, with the exception of perfunctory announcements by formally authorized Border Guard officers in the public media.

The atmosphere at the border was recreated in Agnieszka Holland's latest film *Green Border* from 2023. The GPISS accused her of „detachment from reality” and „insinuations that serve to attack Poland, Poles, and the government” (Dróżdż & Staniszevska, 2023).

CASE STUDY (2): MISSILE STRIKE IN PRZEWODOWO

The incident with a stray missile in Przewodowo on November 15, 2022, right on the border with Ukraine, had all the characteristics of an event of extraordinary importance, with unforeseeable international repercussions. Indeed, at stake were the possible response of NATO, Polish-Ukrainian relations with a hot war on the territory of a neighboring state, and the sense among the Polish public of the imminent threat of war. That was why the leaking of information to the public, albeit unrelated, but also disturbing, was so important. Radio journalist Mateusz Gierszewski was the first to write about it in the afternoon of November 15 on his private Twitter account: "Something has happened in the village of Przewodowo in the Lublin Voivodeship near the border with Ukraine. There was an explosion in a grain dryer. The cause is unknown. Can this be linked to the sudden convening of the committee?" (Gierszewski, 2022).

The question Gierszewski asked concerned information that GPISS gave about the sudden convening on the same day of the Committee of the Council of Ministers for National Security and Defense Affairs. The GPISS did not give

any reason for convening the committee, which sat the following day (November 16), during which President Andrzej Duda was rumored to have admitted that he was tempted to quickly announce that the missile which fell in Przewodowo was Russian, but military officials advised him to be cautious (PAP, 2022 November 18). The public media, including the evening TV services and the state agency PAP, were dominated by the GPISS' plea "not to publish unconfirmed information," which triggered a wave of speculation, especially in Poland's online media.

Foreign media initially published information about the missile—BBC World News and Al Jazeera—followed by Polish media (Onet, 2022), primarily by Polish private media, including the most popular television news channel TVN24, which reported that "Russian missiles fell on Polish territory, killing two people" (AP, 2022). US intelligence intel about two Russian missiles was also erroneously reported by the CNN, but the Pentagon had not officially confirmed this (Stepanenko, 2022). Both TVN24 and CNN belong to Warner Bros Discovery. Other major media outlets in Poland provided coverage from Przewodowo in the late evening hours.

Polish public television, which was entirely under the control of the government at that time, in a special edition on the TVP Info news channel at 22.30, reported that "according to unconfirmed information, Russian missiles fell on Polish territory." Such an approach condemned Polish public opinion to uncertainty about the actual situation and could even have potentially spread panic. Access to further information was difficult even for local journalists, because the military and police blocked off the area around the village, and most of their spokespersons remained silent. Journalists from independent commercial media were therefore unable to verify information, even when it appeared online. As a consequence, some commercial media decided to publish an amateur video of the explosion that appeared on Facebook and was later used by Poland's mainstream and foreign television channels. Nevertheless, none of the media channels published statements by the Prime Minister and the President until midnight.

The media's silence, partly enforced by the authorities and partly caused by self-censorship, was damaging and discrediting for the media. The government delayed the official announcement for too long, forcing the media to wait for official confirmation about the explosion.

Evaluating the exceptional severity of media self-censorship in this case was not easy considering the release of unverified news in a situation of possible conflict escalation. Therefore, scholars and media experts have refrain from general criticism and have expressed alternative ways of managing communications in such circumstances. Undoubtedly, here the "chilling effect" was the consequence of not only the attitude of the authorities, but also the spontaneous self-restraint of the media, which Sajor, the head of information at the RMF FM radio station, related: "I do not think that our listener was not informed.

For that, he was certainly not exposed to speculation. [...] A certain restraint was not a disgrace. It was just responsibility for the word and for the listeners” (Sajór, 2023)

But speculation occurred anyway, and the mainstream media, especially the public media, adopted a “client” attitude, waiting for hours for an official confirmation of their own information from the authorities, which had repeatedly blocked journalists’ access to information. The media silence was all the more incomprehensible given that social networks and foreign media reported about the explosion just minutes after the incident. Internet users noted this and deemed it discrediting for the Polish media, who, despite being able to gather information on the spot, drew it from foreign media.

The attitude of the government, which delayed confirming the information about the incident to the public, should be interpreted as a fundamental error in crisis communication. This is the assessment of media representatives and experts, who at the same time believe that the media also showed too much docility, because “the media are not for silence,” so it was naive to wait for information from the government, which “is extremely effective in blocking information” (Sajór, 2023).

CONCLUSIONS

The barriers to media access to information in Poland, as shown in the two examples discussed, are vexing to the media but, happily, are also ineffective. Even the enormous obstacles to journalists’ access to the zone on the border with Belarus cannot completely block information. Through Polish and foreign media as well as amateur coverage, a stream of messages flowed to the Polish and foreign public. Thus, the government was unable to either completely control or impose the “only correct” propaganda narrative in the public media on the issue of illegal immigration. It did, however, consistently make it difficult for the media to carry out their news mission, and sometimes journalists were even met with violence. Examples widely reported by Polish and foreign media as well as media freedom monitoring organizations included the detention of an ARTE TV crew and the brutal treatment of three reporters, including a Czech photographer working for the NYT (Klimowicz, 2021). The journalists were questioned, searched, and handcuffed and deprived of their equipment, documents, and phones, while not given information about their situation. Human rights activists, doctors, and journalists had very limited access to events in the border zone. But despite the “information wall,” journalistic reportage did breach the tight wall of insinuation and lies (Mazuś & Kołodziejczyk, 2022).

The arbitrariness of the authorities and the lack of proportionality in imposing restrictions on the media's access to information are at odds with Polish law and international standards, including the Council of Europe conventions (ECHR) and EU law ratified by Poland. It is, therefore, legitimate to conclude that the normative framework in Poland was not a sufficient guarantor of the independence of the media and journalists, as in practice the authorities did not implement the statutory legal requirements in terms of providing access to public information. Barriers to access to information in the period of PiS' governance was due primarily to the vision of "sovereign media policy" created by the authorities and public media favorable to those in power (Jaskiernia & Pokorna-Ignatowicz, 2017; Klimkiewicz, 2023). The authorities also had the useful narrative of disputes with the European Commission and in covering up real problems by hysterical reactions to illegal immigration.

At the same time, because of self-censorship, Poland's media system could not react properly and undermined confidence in itself. The Przewodowo incident exposed the cowardliness and ineffectiveness of the government's information policy. The game changer turned out to be a solitary journalist with a Twitter account and not any of the nation's large legacy media. Restricting citizens' access to reliable and credible information via media also questions one of the main fundamentals of participation in public life.

Limiting access to information for media, while authorities remain silent, may have dangerous effects, because, as Štětka and Mihelj (p. 232) argue, "the lack of independent media can encourage distrust of government crisis communication". Exerting greater control over the media landscape and the distribution of public information in the specific situation that Poland has found itself after Russia's aggression against Ukraine should be judged as not merely irresponsible but downright dangerous by exposing the public to vulnerability to disinformation.

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