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The Right to Information in the Light of European Standards of Human Rights

Abstract. *Information, being an interdisciplinary term, plays an important role in the process of communication forming, thus, the structure of knowledge.* The notion of information should be understood as ordered data, or decontextualised sequences of signs that, in a defined set and together with some rules, create a set of information. When attempting to analyse the right to information, one should familiarise with that right in the context of freedom of expression, which implies the right to possess one's own opinions, to pass, search and obtain information and ideas, as well as the right to the freedom of media. Considering the fact that the right to information discussed in international documents refers to various aspects of life and situational contexts, it is necessary to constantly fine-tune regulations included both in the international standards of human rights in the universal system, as well as in the norms of the local law. The content of the right to information requires some improvements in the times of the information society for the notion of information has been evolving together with the civilisation progress. What has also been evolving is the feeling of endangerment as many modern mass media, including the internet, have occurred which triggered a kind of an explosion of information causing a lot of most varied emotions.

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Information, being an interdisciplinary term, plays an important role in the process of communication forming, thus, the structure of knowledge². The notion of information should be understood as ordered data, or decontextualised sequences of signs that, in a defined set and together with some rules, create a set of information³. In etymologic sense, information has got its equivalents in the Latin terminology as it represented an image as *informatio* and as *informare* it meant: to shape, to present⁴. Throughout the ages information has been evolving being directly connected with civilisation progress and shaping structures of the information society.

When attempting to analyse the right to information, one should familiarise with that right in the context of freedom of expression, which implies the right to hold opinions, to pass, seek and obtain information and ideas, as well as the right to the freedom of media, being at the same time *lex generalis* towards the freedom of religion, freedom of public meetings and association, the right to privacy of correspondence or the right to free elections, which, in a way, protect expression of opinion and passing of information⁵. However, when defining the frames of the right to information, one should focus on the right to the freedom of opinion that correlates directly with that right, being its derivative.

The right to possess one's own opinions co-dependent with the right to information, manifesting its absolute nature that excludes any intervention⁶, is applied to both individual evaluations and judgements of every human, as well to someone else's opinions and views⁷. It is necessary here to mention the crucial role of media that spread ideas and information⁸. Those are media that condition passing information on various issues and are obliged to perform their functions with respect to rights and freedoms of other people⁹. Also, their mission should be based on action in good will, facts and trustworthy and accurate information¹⁰.

Both, the right to information and the freedom of opinions, playing significant roles in the system of human rights, are included in the resolutions of the standards of the universal and European system of protection. Among the universal standards, attention should be paid at

2) Red: D. Jemielniak, A. K. Koźmiński, *Zarządzanie wiedzą. Podręcznik akademicki*, Warsaw 2008, p. 23

3) *Ibidem*, p. 25

4) <http://pl.wikipedia.org/wiki/Informacja>.

5) B. Gronowska, T. Jasudowicz, M. Balcerzak, M. Lubiszewski, R. Mizerski, *Prawa człowieka i ich ochrona*. Podręcznik dla studentów prawa, administracji i europeistyki, Toruń 2010, p. 386.

6) The Human Rights Committee, General Comment 10, 1983, point 1, in: *Ibidem*.

7) B. Gronowska, T. Jasudowicz, M. Balcerzak, M. Lubiszewski, R. Mizerski, *Prawa...* op. cit., p. 387.

8) *Ibidem*, p. 392.

9) The European Court of Human Rights, *Ukrainian Media Group v. Ukraine*, 2005 r., point 38, in: *Ibidem*, p. 393.

10) The European Court of Human Rights, *Pedersen and Baadsgaard v. Denmark*, 2004 r., point 78, in: *Ibidem*, p. 393.

the regulations of the Universal Declaration of Human Rights as of the 10th of December 1948 that, being the first act discussing the rights of an individual in a complex way, stresses the significance of everybody's right to the freedom of opinions and expression recognizing its independence, together with seeking, receiving and imparting information and ideas by any means and regardless of the frontiers¹¹.

The International Covenant on Civil and Political Rights as of the 19th of December 1966 ratified by Poland on the 18th of June 1997, similarly as the Declaration, emphasised the significance of everybody's right to hold opinions without interference as well as freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice¹². The Covenant has acknowledged that exercise of those rights carries with it special duties and responsibilities that may therefore be subject to certain restrictions, but these shall only be such as are provided by law for respect of the rights or reputations of others and for protection of national security or of public order, or of public health or morals¹³.

The Human Rights Committee obliging the States Parties of the Covenant, to protect the right to hold opinions without interference does not foresee any exemptions nor limitations obliging at the same time the States Parties to present information on the exercise of the resolutions of Article 19 of the Covenant¹⁴. Emphasising the significance of that right, the Committee holds the view that the States Parties should pay more attention to the issues connected with the development of modern mass media taking into consideration preventing any forms of limitation or control that are contradictory to the freedom expression¹⁵.

According to the Committee's General Comments, reports by many States Parties are limited only to stating that the freedom of speech is guaranteed by constitutional regulations and acts that do not define the scope of freedom of expression by introducing limitations. A factual scope of freedom of expression, in the opinion of the Committee, depends on the shape of the general rule of freedom of expression, as well as on the imposed normative limitations and conditions that affect its practical use¹⁶.

The Committee emphasises that exercising the right to freedom of

11) Article 19 of the Universal Declaration of Human Rights as of the 10th of December 1948, text in:

B. Gronowska, T. Jasudowicz, C. Mik, *Prawa człowieka. Dokumenty międzynarodowe*, Toruń 1993.

12) Article 19 Points 1 and 2 of the International Covenant on Civil and Political Rights as of the 19th of December 1966, in: the Official Journal as of the 29th of December 1977, No. 38, pos. 167.

13) *Ibidem*, Article 19 Point 3 a), b).

14) Point 1 of General Comments of the Human Rights Committee as of the 19th of July 1983, in: ed: T. Jasudowicz, *Wspólny standard do osiągnięcia - Stan urzeczywistnienia. W pięćdziesięciolecie Powszechnej Deklaracji Praw Człowieka z 10 grudnia 1948 r.*, Toruń 1998, p. 420.

15) *Ibidem*, Point 2.

16) *Ibidem*, Point 3.

expression carries with it special duties and responsibilities and particular responsibilities. Thus, the Committee notices a possibility to limit that right due to the interest of other people or the interest of the society as a whole. However, the limitations imposed by the States Parties may not menace the merit of the right to expression and should be foreseen by an act and introduced to exercise the aims included in the Covenant, on the conditions of a given State.¹⁷

The Committee holds the view that the freedom of holding and expressing own opinions, together with obtaining and imparting information, should be guaranteed by constitutional regulations, similarly as the freedom of press and other mass media, and at the same time any censorship or press licensing should be banned.¹⁸ When discussing the access to information, the Committee notices a need for ensuring openness and transparency of decisions made in public life and a need for proper control of authorities to avoid abuses. The proper mode of providing information should be defined by acts or statutes - also in respect of the right of every patient subjected to medical care to access personal medical documentation.¹⁹

When discussing the acceptable intervention of the State, the Covenant emphasises that any propaganda for war shall be prohibited by law,²⁰ similarly as any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law.²¹

In the opinion of the Human Rights Committee, the Covenant by obliging the States Parties to accept necessary legal means prohibiting those types of activity²² stimulates to prevent from any form of propaganda posing a threat, acts of violence or violation of peace.²³ According to the Committee comments, the ban is in accordance with the freedom of expression as the exercise of that right carries with it special duties and responsibilities and the cautions referring to Article 20 of the Covenant may be of both internal and external character and does not interfere with cases of supporting the sovereign right of every State to self-defence nor with the rights of nations to self-determination.²⁴ In terms of that

17) *Ibidem*, Point 4.

18) The Ministry of Justice, Department of International Cooperation and European Law, Poland's Realisation of the Resolution of the International Covenant on Civil and Political Rights. The 5th Periodical Report of the Realisation of the Resolution of the International Covenant on Civil and Political Rights by the Republic of Poland, Warsaw 2005, pp. 125 - 126.

19) *Ibidem*, pp. 126 - 128.

20) Article 20 Point 1 of the International Covenant on Civil and Political Rights.

21) *Ibidem*, Article 20 Point 2.

22) Point 1 General Comments of the Human Rights Committee as of the 27th of July 1983 in: ed: T. Jasudowicz, op. cit., p. 421.

23) *Ibidem*, Point 2.

24) *Ibidem*.

right, the Committee holds the opinion that the most often discloses and particularly dangerous violations are made writings, leaflets, slogans, and publications with nationalistic, fascist, or racist contents²⁵. Thus, the international judicature, confirming the protection of political texts, acknowledges the need for excluding from the guarantees propaganda for war and expressions imparting national, racial or religious hatred or that incite to discrimination, hostility or violence²⁶.

When discussing the freedom of opinion, expression and information, it is impossible to omit the resolutions of the International Convention on the Elimination of All Forms of Racial Discrimination as of the 7th of March 1966 ratified by Poland on the 4th of January 1969²⁷ that together with the Declaration and the Covenant constitutes the rights to freedom of opinion and expression without any racial discrimination, providing guarantees to everyone without distinction as to race, colour, or national or ethnic origin²⁸. The exercise of that right, according to the Convention, should be supervised by the Committee on the Elimination of Racial Discrimination²⁹ established to examine the implementation of the resolutions of the Convention by its States Parties.

The Convention on the Rights of the Child as of the 20th of November 1989 ratified by Poland on the 30th of April 1991 is also a document of the universal system that in discusses in detail both the right to information and the right to freedom of opinion³⁰. The Convention, emphasising the significance of assuring to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, stresses the importance of the age and maturity of the child³¹. According to the Convention, the child shall be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law³². In the light of the Convention, the child's right to free expression includes freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of the child's choice³³. The exercise of

25) The Ministry of Justice, Department of International Cooperation and European Law, Poland's op. cit., p. 128.

26) B. Gronowska, T. Jasudowicz, M. Balcerzak, M. Lubiszewski, R. Mizerski, op. cit., p. 389.

27) Article 5 Point d viii) of the International Convention on the Elimination of All Forms of Racial Discrimination as of the 7th of March 1966, in: the Official Journal as of 1969, No. 25, pos. 187 (attachment).

28) *Ibidem*.

29) *Ibidem*, Article 8 Point 1.

30) The Convention on the Rights of the Child as of the 20th of November 1989, in: the Official Journal as of 1991, No. 120, pos. 526.

31) *Ibidem*, Article 12, Point 1.

32) *Ibidem*, Article 12, Point 2.

33) *Ibidem*, Article 13, Point 1.

this right may be subject to some restrictions, that are provided by law and are necessary for respect of the rights or reputations of others or for the protection of national security or of public order or of public health or morals³⁴.

The Convention emphasises the important function performed by the mass media to ensure that the child has access to information and material from a diversity of national and international sources, especially those aimed at the promotion of his or her social, spiritual and moral well-being and physical and mental health³⁵. For that purposes the Convention obliges the States Parties to encourage the mass media to disseminate information and material of social and cultural benefit to the child³⁶, directed to the development of the child's personality, talents and mental and physical abilities to their fullest potential³⁷, the development of respect for human rights and fundamental freedoms³⁸, the development of respect for the child's parents, his or her own cultural identity, language and values³⁹, the preparation of the child for responsible life in a free society, in the spirit of understanding, peace, tolerance, equality of sexes, and friendship among all peoples, ethnic, national and religious groups and persons of indigenous origin⁴⁰, and the development of respect for the natural environment⁴¹. When discussing the right to information that is closely related to the child's right to education, the Convention emphasises that its States Parties recognize the right of the child to education and are obliged to make educational and vocational information and guidance available and accessible to all children⁴².

The Convention obliges the States Parties to develop international co-operation in the production, exchange and dissemination of information and material aimed at proper child development⁴³, to the production and dissemination of children's books⁴⁴, to have particular regard to the linguistic needs of the child who belongs to a minority group or who is indigenous⁴⁵, and to the development of appropriate guidelines for the protection of the child from information and material injurious to his or her well-being, bearing in mind the provisions referring to both the child's rights and the freedom of expression⁴⁶ as well as recognizing the rule that both parents have common

34) *Ibidem*, Article 13, Point 2.

35) *Ibidem*, Article 17.

36) *Ibidem*, Article 17, Point a).

37) *Ibidem*, Article 29, Point 1 a).

38) *Ibidem*, Article 29, Point 1 b).

39) *Ibidem*, Article 29, Point 1 c).

40) *Ibidem*, Article 29, Point 1 d).

41) *Ibidem*, Article 29, Point 1 e).

42) *Ibidem*, Article 28, Point 1 d).

43) *Ibidem*, Article 17, Point b).

44) *Ibidem*, Article 17, Point c).

45) *Ibidem*, Article 17, Point d).

46) *Ibidem*, Article 17, Point 17 e).

responsibilities for the upbringing and development of the child⁴⁷.

The child's right to information correlates directly with the child's right to a name and identity, thus, the Convention contains regulations according to which the child shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality and, as far as possible, the right to know and be cared for by his or her parents⁴⁸. The Convention obliges its States Parties to ensure the implementation of these rights in accordance with their national law and their obligations under the relevant international instruments in this field, in particular where the child would otherwise be stateless⁴⁹. The Convention states that the States Parties should respect the right of the child to preserve his or her identity, including nationality, name and family relations as recognized by law without unlawful interference⁵⁰. In cases where a child is illegally deprived of some or all of the elements of his or her identity, the States Parties shall provide appropriate assistance and protection, with a view to re-establishing speedily his or her identity⁵¹.

In the light of the Strasbourg judicature, it is necessary to comply with the rules connected with the duty of drawing a birth certificate for the child as a rightful member of the society has the right to possess such a document. The birth certificate should be factually accessible with a detailed entry on the child's parents. In the opinion of the Court, it is a crucial element for the future in a situation where the child being an adult is going to need his or her birth certificate⁵². The right to information obliges the States to pose a documentation of the child's development, in which information on the personal aspects of the childhood, development and history is included⁵³. The Court obliges competent authorities to register the birth of the child and acknowledges the parents' right to choose the child's name or names⁵⁴.

The Convention, when establishing the child's right to information for protection of his or her security, emphasises the significance of protecting the child from the illicit use of narcotic drugs and psychotropic substances by appropriate education⁵⁵. The Convention obliges the States to protect the child from all forms of sexual exploitation and sexual abuse

47) *Ibidem*, Article 18.

48) *Ibidem*, Article 7, Point 1.

49) *Ibidem*, Article 7, Point 2.

50) *Ibidem*, Article 8, Point 1.

51) *Ibidem*, Article 8, Point 2.

52) 48 *Kalderas Gipsie v. Germany and Netherlands*, Adm. Dec., the 6th of July 1977, Appl. No. 7823-24/77, text in: T. Jasudowicz, *Prawa rodziny - prawa w rodzinie w świetle standardów międzynarodowych. Orzecznictwo Strasburskie*, Toruń 1999, p. 27.

53) *Graham Baskin v. the United Kingdom*, Adm. Dec., the 23rd of January 1986, Appl. No. 10454/83, text in: *Ibidem*.

54) Adm. Dec., Appl. No. 7440/76, the 5th of October 1977, text in: *Ibidem*.

55) *Ibidem*, Article 33.

by the inducement or coercion of a child to engage in any unlawful sexual activity⁵⁶, from the exploitative use of children in prostitution or other unlawful sexual practices⁵⁷, and from the exploitative use of children in pornographic performances and materials⁵⁸.

The Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography as of the 25th of May 2000, ratified by Poland on the 31st of December 2004 confirms the right of the child to information emphasising the need to inform child victims of their rights⁵⁹, as well as to provide a possibility be present and consider their opinions⁶⁰, and to protect properly their privacy and identity⁶¹. The Protocol obliges States Parties to promote awareness in the public at large, including children, through information by all appropriate means, education and training on the national and international levels⁶².

Among the European Standards, attention should be paid at the resolutions of the Convention for the Protection of Human Rights and Fundamental Freedoms as of the 4th of November 1950 ratified by Poland on the 19th of January 1993 that contains the rights to expression and to information in its Article 10. Everyone's right to freedom of expression, according to the Convention, includes both the freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers⁶³. The Convention points out that the resolutions of Article 10 do not prevent States from requiring the licensing of broadcasting, television or cinema enterprises. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary⁶⁴.

Many times the European Court of Human Rights has discussed the freedom of expression that in its opinion is a fundamental and condition

56) *Ibidem*, Article 34, Point a).

57) *Ibidem*, Article 34, Point b).

58) *Ibidem*, Article 34, Point c).

59) Article 8 Point 1 b) of the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography as of the 25th of May 2000 in: the Official Journal as of 2007, No. 76 pos. 494.

60) *Ibidem*, Article 8 c).

61) *Ibidem*, Article 8 e).

62) *Ibidem*, Article 9, Point 2.

63) *Ibidem*, Article, 10 Point 1.

64) *Ibidem*, Article, 10 Point 2.

of progress⁶⁵ and implies human personal development by satisfying his curiosity, stimulating to learn the world in communication with other people, as well as conscious living own existence⁶⁶.

Abundant judicature of the Court in terms of the right to information and freedom of opinion confirms the significance of that right in the times of the information society, as the presently noticeable explosion in accessing information is connected with a huge responsibility of both authorities and the society itself. The Court holds the view that information and ideas favourably received by the receiver or deemed harmless as well as offensive, scandalous and creating anxiety in the State and within the members of the society should be protected because, according to the Court's judicature, pluralism, tolerance and openness for various views constitute the criteria that a democratic society cannot exist without⁶⁷.

The court emphasises that in respect of acceptability of criticism of the groups in office and politicians, slandering, groundless charges or ones formulated in an ill will are unacceptable⁶⁸, and paid attention at the necessity of taking control measures towards public individuals by journalist and public opinion⁶⁹. According to Article 10 of the European Convention journalists bear special duties and a particular responsibility obliging them to act in a good will and providing precise and trustworthy information⁷⁰.

The Court, when stressing the need for necessary non-intervention in to the field of freedom of artistic expression⁷¹, has stated that the freedom of expression should be contained within some borders with a full responsibility of the person who creates that utterance without an attempt to expose to ungrounded offence to anyone⁷² for the right protects not only the content of the utterance but also the form of communication⁷³. In the Court's opinion, politicians in a democratic country should accept criticism even if it was based on an 'irritating' comparison of incidents that crates doubts for the borders of acceptable criticism in a political debate seem to be commonly known and raise general interest, however, what is the most important is a good will that seems to be a factor crucial

65) The European Court of Human Rights, *Castells v. Spain*, 1992, Point 42, in: B. Gronowska, T. Jasudowicz, M. Balcerzak, M. Lubiszewski, R. Mizerski, op. cit., p. 387.

66) *Ibidem*.

67) The European Court of Human Rights, *Handyside v. the United Kingdom*, 1976, Point 49, in: *Ibidem*, p. 389.

68) The European Court of Human Rights, *Castells v. Spain*, 1992, Point 46, in: *Ibidem*, p. 390.

69) The European Court of Human Rights, *Lingens v. Austria*, 1986, Point 42, in: *Ibidem*.

70) *Fressoz and Roire v. France*, Judgement as of the 21st of January 1999, Appl. No. 29183/95, text in: I. C. Kamiński, *Swoboda wypowiedzi w orzeczeniach Europejskiego Trybunału Praw Człowieka w Strasburgu*, Kraków 2003, pp. 419 - 426.

71) Judgement of the European Court of Human Rights as of the 29th of March 2005, Appl. No. 40287/98, text in: LEX No. 149053.

72) The European Court of Human Rights, *Lingens v. Austria*, 1986, Point 43, *Oberschlich v. Austria*, 1997, Point 33, in: ed: T. Jasudowicz, op. cit., p. 390.

73) *News Verlags GmbH v. Austria* (2000), Point 39, in: *Ibidem*.

for accessing the ability to perform public functions⁷⁴.

The Court holds the view that, when considering the interest of the society as a whole, it is a necessity to exercise the freedom in a way that guarantees respect to the rights and freedoms of other people also in the area of exercising the right to expression⁷⁵, for methods of objective and balanced relations may vary depending on the elements the media have at their disposal⁷⁶. The Court's assessment should consider the way of preparing the material by the media, its content, context and objective, due to successful elimination of any form of racial discrimination and preventing and fighting racist doctrines. Thus, the Court notices the need for considering the problem as a whole⁷⁷.

In the aspect of seeking and obtaining information and ideas, the Court notices the necessity to interpret that right in the context of access to information and public information⁷⁸, to radio and TV programmes, as well as to written materials with some restrictions even in the case of serving the a sentence of imprisonment⁷⁹, treating in a particular way information that is possessed by the army, the intelligence or the police⁸⁰ which often is a secret of confidential nature without possibility of making it public⁸¹.

The Court holds the view that the freedom of expression is applied to official people similarly as to other people subjected to the jurisdiction of the States Parties of the Convention for Article 10 does not limit information to some categories, however, according to the judicature of the Court, revealing the State's interest in weapon or appropriate technical knowledge may present its advances in producing it, and thus such a situation is connected to a significant harm to the national security. Special living conditions of army people and duties and responsibilities that are borne by members of military forces occur in a close relation with the duty of keeping secrets both in the question of experimental programmes on missiles and other duties connected with inviolability of frontiers⁸².

What regards the issues of selection of means for maintaining the peace, the Court notices that it is necessary to establish what their type should be and if it is right to apply means that destroy expression of opinions. Reinforcing the powers used by the authorities should be exercised according to a lawful aim, and thus, a necessary one for the

74) Case of Schwabe v. Austria, Court Judgement, 28 August 1992, in: *Ibidem*, p. 432.

75) Case of Otto-Preminger Institute v. Austria, Court Judgement, 20 September 1994, in: *Ibidem*, p. 440.

76) Case of Jersild v. Denmark, Court Judgement, 23 September 1994, in: *Ibidem*, p. 443.

77) *Ibidem*, p. 442.

78) The European Court of Human Rights, *Struženi Jihočeske Matky v. the Czech Republic*, 2006, in: *Ibidem*, p. 392.

79) The European Court of Human Rights, *Herczegfalvy v. Austria*, 1992, Points 38 and 94, in: *Ibidem*.

80) The European Court of Human Rights, *Sirbu and others v. Moldova*, 2004, Point 18, in: *Ibidem*, p. 393.

81) *Weber Case*, Court Judgement, 22 May 1990, in: ed: T. Jasudowicz, op. cit., pp. 424 - 425.

82) Case of *Hadjianastassiou v. Greece*, Court Judgement, 16 December 1992, in: *Ibidem*, p. 435.

democratic society. In the opinion of the Court, if there is no such an aim, applying reinforced powers and means of that type for ensuring peace is not in compliance with Article 10 of the Convention for it violates the right to the freedom of expression⁸³. The Court holds the view that any attempt to limit the right to the freedom of expression while referring to the duties and responsibilities is possible only in situation where there exist conditions foreseen in Article 10, Point 2, that constitute the limitations to the freedom of expression due to interests of national security, territorial integrity, or public safety, and thus the intervention should be proportional to the lawful aim and be necessary in a democratic society⁸⁴. Limitations to the information on activities that in spite of moral implication is tolerated by the authorities requires a detailed control in terms of compliance of such actions with Article 10 of the Convention, including the compliance with the dogmas of democratic society⁸⁵.

While implementing the rules on media and press, the judgements of the Court on freedom of expression recognize as their basic duty passing information and ideas in matters of public interest in a way compliant with national safety and maintaining the authority of judiciary⁸⁶. In the opinion of the Court, the press should pass information and ideas and the public opinion should obtain them, however, a supervisory jurisdiction of the Court does not aim at replacing authorities in fulfilling their duties but is used to carry out examinations of their actions with Article 10 of the European Convention. The Court is obliged to verify if the State has used its discretionary competences carefully and in a good will, or if the intervention was proportional in relation to the implemented lawful aim and if the arguments provided by the national authorities were important and satisfactory⁸⁷.

What regards fulfilling its controlling and advisory functions, the Court holds the opinion that Article 10 of the Convention does not forbid previous imposing limitations for it is a nature of the press that it requires quick reaction and delaying publication of materials act to its disadvantage and makes information not up-to-date depriving it of its value and interest in it⁸⁸. An outstanding role of the press is visible in a situation of passing information and ideas referring to political issues and those of public interest for it is the freedom of press that provides the society with means of revealing and shaping opinion on political leaders, which facilitates participation in a free political debate for everyone⁸⁹.

83) Case of Choherr v. Austria, Court Judgement, 25 August 1993, in: *Ibidem*.

84) Case of Thorgeir Thorgeirson v. Iceland, Court Judgement, 25 June 1992, in: *Ibidem*, p. 431.

85) Case of Open Door and Dublin Well Woman v. Ireland, Court Judgement, 29 October 1992, in: *Ibidem*, p. 434.

86) ed.: T. Jasudowicz, op. cit., p. 427.

87) *Ibidem*.

88) *Ibidem*, p. 428.

89) Case of Castells v. Spain, Court Judgement, 23 April 1992, in: *Ibidem*, p. 430.

The Court reminds that the subject of Article 10 of the Convention should be settled in a context of the fundamental role of the freedom of expression in the democratic society, considering particularly the freedom of press that is used for passing information and ideas of general interest to the society. That type of enterprise should be based on the rules of pluralism, which should be finally guaranteed by the State⁹⁰.

According to the judgement of the Court, broadcasting news based on interviews, both published and not, constitutes one of the most important means used by the press to fulfil its public function⁹¹. Protection of journalists' sources makes one of the conditions of the freedom of press and should be based on legal acts and professional codes of conducts of the States, which is confirmed in the international documents on the freedoms of journalists. In the opinion of the Court, without that protection the sources would be deferred from supporting the press in informing the public opinion on the issues of public interest. The necessity for protection of press sources is, according to the Court, crucial for the freedom of press in a democratic society⁹².

According to the judgements of the Court, Article 10 of the Convention should be applied to information of political and artistic nature, as well as that of economical nature for advertisement is a means of revealing the features of any offered services or goods to the customer. In the Court's opinion, advertisement may be subjected to limitations in situations of preventing unjust competition or difference to the truth and misinforming the customer. Thus, in some context, publishing the real advertisement should be subjected to limitations in order to ensure respect for the rights of the others or due to special circumstances of a given profession or economic activity⁹³.

In the documents of European system of human rights protection that discuss the right to information attention should be paid to the resolutions of European Convention on the Exercise of Children's Rights as drawn on the 25th of January 1996 in Strasbourg and ratified by Poland on the 28th of November 1997. While stating that children's rights and well-being should be protected and promoted, the convention emphasises the necessity of obtaining by them crucial information and giving due weight to their views⁹⁴.

When emphasising that objective, the Convention grants procedural rights to children as well as a facilitation of the exercise of these rights

90) Case of Informationsvere-in Lentia and others v. Austria, Court Judgement, 24 November 1993, in: *Ibidem*, p. 436.

91) Case of Jersild v. Denmark, Court Judgement, 23 September 1994, in: *Ibidem*, p. 443.

92) Case of Goodwin v. the United Kingdom, Court Judgement, 27 March 1996, in: *Ibidem*, p. 450.

93) Case of Casado Coca v. Spain, Court Judgement, 24 February 1994, *Ibidem*, p. 438.

94) The European Convention on the Exercise of Children's Rights as of the 25th of January 1996, in: the Official Journal as of 2000, No. 107 pos. 1128.

by ensuring that children are, themselves or through other persons or bodies, informed and allowed to participate in proceedings affecting them before a judicial authority⁹⁵. While granting procedural rights to children, the Convention emphasises the child's right to receive all relevant information and to be consulted and express his or her views in proceedings⁹⁶. The child, according to the resolutions of the Convention, if considered as having sufficient understanding, in the case of proceedings before a judicial authority affecting him or her, shall be granted the right to receive all relevant information⁹⁷, to be consulted and express his or her views⁹⁸, and to be informed of the possible consequences of compliance with these views and the possible consequences of any decision⁹⁹.

When discussing the process of decision making, the Convention emphasises the consideration whether the child has sufficient information at its disposal in order to take a decision in his or her best interests, whether the child should obtain further information, in particular from the holders of parental responsibilities¹⁰⁰. When ensuring that the child has received all the necessary information, it is necessary to consult the child in person or through other persons or bodies, in a manner appropriate to his or her understanding and to allow the child to express his or her views¹⁰¹, as well as to give due weight to the views expressed by the child¹⁰².

According to the Convention, the representatives' duties should include providing all relevant information to the child¹⁰³, providing explanations concerning the possible consequences of compliance with his or her views¹⁰⁴, as well as presenting these views to the judicial authority¹⁰⁵. The Convention obliges the States Parties to encourage and exercise children's rights by bodies whose duties include making proposals to strengthen the law relating to the exercise of children's rights¹⁰⁶, giving opinions concerning draft legislation relating to the exercise of those rights¹⁰⁷, providing general information concerning the exercise of children's rights to the media, the public and persons and bodies dealing with questions relating to children¹⁰⁸, seeking the views of

95) *Ibidem*, Article 1, Point 2.

96) *Ibidem*, Article 3.

97) *Ibidem*, Article 3, Point a).

98) *Ibidem*, Article 3, Point b).

99) *Ibidem*, Article 3, Point c).

100) *Ibidem*, Article 6, Point a).

101) *Ibidem*, Article 6, Point b).

102) *Ibidem*, Article 6, Point c).

103) *Ibidem*, Article 10, Point a).

104) *Ibidem*, Article 10, Point b).

105) *Ibidem*, Article 10, Point c).

106) *Ibidem*, Article 12, Points 1, 2 a).

107) *Ibidem*, Article 12, Point 2 b).

108) *Ibidem*, Article 12, Point 2 c).

children and provide them with relevant information¹⁰⁹.

When discussing the issues of everyone's right to information, it is impossible to omit the resolution of the Convention for the Protection of Human Rights and Dignity of the Human Being with Regard to the Application of Biology and Medicine as of the 4th of April 1997¹¹⁰ signed by Poland on the 7th of May 1999 and currently being in the phase of ratification. While stressing the advances in biology and medicine, as well as the need for taking measures guaranteeing human dignity and basic rights and freedoms of humans, the Convention states that any medical intervention may only be carried out after the person concerned has given free and informed consent to it and this person shall beforehand be given appropriate information as to the purpose and nature of the intervention as well as on its consequences and risks taking into consideration the fact that the person concerned may freely withdraw consent at any time¹¹¹. An intervention may only be carried out on a person who does not have the capacity to consent, for his or her direct benefit¹¹², and in case of a minor who does not have the capacity to consent to an intervention, the intervention may only be carried out with the authorisation of his or her representative or an authority or a person or body provided for by law¹¹³. The Convention establishes the privacy and everyone's right to information by stating that everyone has the right to respect for private life in relation to information about his or her health¹¹⁴, to know any information collected about his or her health, observing also the wishes of individuals who do not want to be informed¹¹⁵, however, restrictions may be placed by law on the exercise of those rights in the interests of the patient¹¹⁶. The Convention imposes on medical personnel a duty of responsible and objective information on the patient's health for what makes its consequence is the patient's free and informed consent for intervention¹¹⁷. Patients, when informed on the improvement of their health resulting from the treatment and on the risk that is connected with their consent to the intervention, should be also informed on the

109) *Ibidem*, Article 12, Point 2 d).

110) The Convention for the Protection of Human Rights and Dignity of the Human Being with Regard to the Application of Biology and Medicine, in: M. Balcerzak, *Międzynarodowa ochrona praw człowieka*. Wybór źródeł, Toruń 2007.

111) *Ibidem*, Article 5.

112) *Ibidem*, Article 6, Point 1.

113) *Ibidem*, Article 6, Point 2.

114) *Ibidem*, Article 10, Point 1.

115) *Ibidem*, Article 10, Point 2.

116) *Ibidem*, Article 10, Point 3.

117) Art. 5 Point 35 General Rule, Chapter II Agreement of the Explanatory Report to the Convention for the Protection of Human Rights and Dignity of the Human Being with regard to the Application of Biology and Medicine: Convention on Human Rights and Biomedicine (The European Convention on Bioethics), in: T. Jasudowicz, *Europejskie Standardy Bioetyczne*, Wybór materiałów, Toruń 1998, p.24.

sots of the treatment¹¹⁸. This information must be sufficiently clear and suitably worded for the person who is to undergo the intervention and the patient's consent must have clear or implied forms¹¹⁹.

Considering the fact that the right to information contained in the international document refers to various aspects of life and situational contexts that occur in every field that requires possessing knowledge, it is impossible to fully analyse that problem. The content of that right contained in the documents that I have tried to familiarise with seems to be the most adequate for the issues discussed in them are the most crucial in the era of democracy and information society. The notion of information has been evolving together with the civilisation progress, but what has also been evolving is the feeling of endangerment as many modern mass media, including the internet, have occurred which triggered a kind of an explosion of information causing a lot of most varied emotions.

Summing up, one would like to pose a question: are there any limits in the right to information? The knowledge marked with an element of infinity seems to be unlimited and access to it sometimes starts to be dangerous. So, there are great tasks awaiting legislator and fighters for human rights for it is in their hands, as well as in the hands of the State authorities, that the good of the subject of information lies. The borders of that right must be clearly defined and the human communication must be safe, similarly as processing the knowledge and its proper distribution. The freedom of expression, being a wonderful blessing of democracy, should correlate with the feeling of safety, which is discussed in detail in the documents that I have quoted above. In all the civilisation rush, the role of a human being, human dignity and respect to the right of the others cannot be forgotten, which seems to be the most precious thing in the era of explosion of information.

118) *Ibidem*.

119) *Ibidem*, Article 5, Point 36.

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