ISSN 1392-1592 (print). ISSN 2351-6364 (online). TEISĖS PROBLEMOS. 2015. Nr. 1 (87)

*Dr. Joanna LEMAŃSKA*
Jagiellonian University in Cracow
E-mail: *joannalemanska@wp.pl*

*Dr. Marcelina STOLARSKA*
Jagiellonian University in Cracow
E-mail: *marcelina.stolarska@gmail.com*

# COLLISION OF PUBLIC INTEREST AND LEGITIMATE INTEREST OF THE CITIZEN IN POLISH ADMINISTRATIVE LAW

*The article seeks to explore the links between public interest and legitimate interest of the citizen in the context of their collision in Polish law. For better explanation of its subject the article bases on the examples placed in the judicature of Polish courts as well as on the particular regulations of Polish law such as: act on land management and planning or act on natural environment's protection. Among others, the article comes forward with a conclusion that even though the wording of article 7 of Code of Administrative Procedure*[1] *referring to public interest and legitimate interest of the citizen has not altered since 1960, the way these two interests are understood in Polish law was changing along with the changes of the political system in Poland.*

A legal interest is considered as a key problem from the perspective of administrative law studies. It is a statutory requisite for seeking protection of an entity's legal position in the Polish administrative law system.

The starting point for further deliberations should however be the notion of „interest". It is a theoretical concept, which allows to determine the legal position of one entity towards another on the level of a particular system of law and its norms[2]. From an etymological point of view, the word "interest" derives from the Latin word "interes", meaning: "it is an important thing, important to someone/something, it

[1] Code of Administrative Procedure of 14 June 1960, Journal of Laws 1960, No 30, pos. 168.

[2] *Duda A*. Interes prawny w polskim prawie administracyjnym. Warsaw, 2008, p. IX.

concerns something"[3]. In legal terms it is described as a right to have the advantage accruing from anything, any right in the nature of property, but less than title; a partial or undivided right; a title to a share[4].

A legal interest is, however, an interest which has a basis, a support in law. It is something a law recognizes, as in an advantage, profit, right, or share[5]. It means that this interest is somehow determined by law, it is something more than a factual interest. Referring to the views of E. Bernatzik[6], M. Zimmermann stated that the latter can lead to the assumption, that the legal interest is based on substantive law, since this author regarded legal interest as something existing irrespective of the will of the entity equipped with that interest, as something existing objectively[7]. Therefore, a legal interest can be defined as the need of an individual to obtain an advantage in the form of an objective (a state of affairs) which is recognized in the normative system as a given value. A legal interest, however, refers not only to this value, but also to an individual's need, recognized from the normative point of view. Such a need therefore loses its subjective character[8]. Thus, a legal interest is not an imaginary notion, but a notion connected with law, on which a competent authority is to rule in an administrative decision, invoking the legal basis for such decision, in other words: citing the specific regulations of the positive law (*ius positivum*)[9]. It should be also noted that it is assumed that only a legal interest (or public subjective right, being its qualified form) can be at the same time a private interest (legitimate interest of citizen), which can remain in potential collision with public (social) interest. The interest of a citizen should be in this case "legitimate" in an objective sense, and therefore it cannot be derived only from the citizen's own conviction based on the feelings of grievance and inequality[10].

---

[3] *Pieńkos J.* Słownik łacińsko-polski. Łacina w nauce i kulturze. Warsaw, 1996, p. 216.

[4] The definition by *Black's Law Dictionary* [last visited on 17th of February 2015]. Available on internet: <*http://thelawdictionary.org*>

[5] Ibid.

[6] *Bigo T.* Ochrona interesu indywidualnego w projekcie kodeksu postępowania administracyjnego // Państwo i Prawo 1960, no 3, p. 466.

[7] *Zimmermann M.* Z rozważań nad postępowaniem jurysdykcyjnym i pojęciem strony w Kodeksie postępowania administracyjnego. In: Księga pamiątkowa ku czci Kamila Stefki. Warsaw-Wroclaw, 1967, p. 443

[8] *Duda A.* Op. cit., p. 77.

[9] *Borkowski J.* Aspekty podmiotowe regulacji prawa procesowego. In: Ed: *Hauser R., Niewiadomski Z., Wróbel A.* Prawo procesowe administracyjne. Tom 9. System prawa administracyjnego. Warsaw, 2010, p.118.

[10] Judgement of Supreme Administrative Court in Katowice of 20 May 1998, I SA/Ka 1744/96. Judgement

The notion of the public interest has an arguable nature, as to both its meaning and its scope, as well as relation to other interests[11]. This term is treated as an undefined term that can be subject to the interpretation or as a general clause referring to non-legal evaluations. However, in any case it is difficult to assign a general meaning to it, and it is even indicated that there is no need for that, since the content of this notion is determined by the changing social context[12]. Also the notion of social interest, being often related to or even identified with public interest[13], is an undefined notion. The term "social interest" should therefore be concretised by the public authority in the law application process, thus it is not allowed to cite social interest in its abstractive sense in the process of issuing decisions which are negative from the party's point of view, without proving and comprehensive justification, in what this interest consists in a specific case and why this interest advises against settling a procedural case pursuant to how a party requested[14].

It is widely accepted that particular interests can be weighed in the light of specific acts of law. As M. Jaśkowska indicates, in "weighing" such interests, it is above all necessary to determine their content and scope (including both individual and public), then examine if in given circumstances a conflict occurs or if their simultaneous fulfilling is possible. In the event of the conflict between individual interest and public interest, it is necessary to make their gradation, verifying which of them is preferred under a given regulation[15]. The test of the possible collision between private and public interest can be undertaken only in reference to the process of issuing administrative decisions by the public authority on the basis of so-called "administrative discretion". When the public authority is authorised by substantive law to act on the principle of discretion, it is given an area of so-called "decision making margin" which can be partially determined by the principle of having regard to the public interest and the legitimate interests of members of the public. On the other hand, in cases of so-called

of Supreme Administrative Court in Warsaw of 6 February 1995, II SA 1835/93, ONSA 1996, No 1, pos. 36.

[11] *Jaśkowska M*. Pojęcie interesu publicznego i jego funkcje w prawie administracyjnym. In: Ed: *Niczyporuk J*. Teoria Instytucji Prawa administracyjnego. Księga pamiątkowa Profesora Jerzego Stefana Langroda. PAN Paris, 2011, p. 288.

[12] Ibid. p. 292.

[13] Ibid. p. 294-295.

[14] Judgement of Supreme Administrative Court in Warsaw of 11 June 1981, SA 820/81, ONSA 1981, No 1, pos. 57.

[15] *Jaśkowska M*. Op. cit., p. 291.

"automatic decision"[16] there is no basis for applying art. 7 of Code of Administrative Procedure[17]. The same was stated in the sentence of Supreme Administrative Court in Warsaw of 23 June 1995[18]. The Court indicated that the principle stated in art. 7 of Code of Administrative Procedure (CAP) applies to all such circumstances, in which settlement of the case depends on so-called administrative discretion, what occurs when the rule of law does not predict the obligation of the public authority's specific act, but the possibility of choosing the way the case will be settled.

The original text of the CAP already provided for regard to public interest and legitimate interests of citizens. According to the former formulation of art. 5[19], public administration bodies were to uphold the rule of law during proceedings and were to take all necessary steps to clarify the facts of a case and to resolve it, having regard to public interest and legitimate interests of citizens. In 1980 an essential revision of the CAP was made, but apart from changing numeration (since then art. 5 became art. 7), no changes were made in contest of the norm. The norm in its present wording states that public administration bodies shall uphold the rule of law during proceedings and shall take ex officio or upon parties' request all necessary actions to clarify the facts of a case and to resolve it, having regard to public interest and legitimate interests of the citizens. As we can see, the expression: "having regard to the public interest and the legitimate interests of members of the public" has not changed since 1960.

The essence of the problem was therefore not reduced to the wording of the norm, but it was strictly related to the way in which it should be understood. The latter changed along with the changes of the political system in Poland. Art. 7 *in fine*, which states the principle of having regard to public interest and legitimate interests of citizens, does not determine, however, the hierarchy of these values nor the rules of resolving conflicts between them[20].

Initially the judicature stated that in the relation between public interest and legitimate interest of the citizens, the first one has in fact prevalence over the latter.

---

[16] The so-called „automatic decisions" appear in those situations when the provisions do not allow the administration body to choose the way the case will be settled if all prerequisites determined by law are fulfilled.

[17] Judgement of Supreme Administrative Court in Katowice of 18 December 1995, SA/Ka 2198/94, Lex no. 27111.

[18] SA/Wr 2744/94, Lex no. 26845.

[19] As of 14 June 1960.

[20] *Wróbel A*. Komentarz aktualizowany do art.7 Kodeksu postępowania administracyjnego, teza 1. Lex as of December, 2014.

One of the rulings of the Supreme Administrative Court (until 31 December 2003[21]) in Warsaw - the ruling of 14 September 1982[22] - was symptomatic for the earlier jurisprudence approach. In this ruling the Court emphasized its jurisdiction related to art. 7 of CAP. According to it, a party's legitimate interest should be taken into consideration by public authorities as long as the collision with public interest does not arise. Also in the ruling of 18 January 1995[23] the Supreme Administrative Court stated, that the limit in having regard to legitimate interest of citizens in administrative procedure (art. 7 CAP) is the moment when the collision with the public interest arises. The Supreme Administrative Court in Warsaw stated the same in the ruling of 11 June 1981[24], according to which the administrative procedure's principle expressed in art. 7 CAP means that the wording and scope of the legitimate individual interest's protection in the activity of the public administration bodies go to the limits of the collision with public interest, which has to be a supreme value in the socialist state. If in the cases left by the substantive law to the public authorities' discretion public interest do not stay in the way and if it does not exceed the capabilities of the public administration body resulting from its powers and measures, the public authority is obliged to settle the case in accordance to legitimate interest of citizens.

The turning point for understanding the relation between these two interests was the judgement of the Supreme Court of 18 November 1993[25]. The Court declared that in the rule of law there is no space for the rigidly and mechanically understood superiority of general interest over individual interest. In means that in each case the acting public authority is obliged to indicate the general (public) interest that matters in given case and prove that it is so important and significant that it is absolutely essential to limit the individual rights of the members of the public. Both, the existence and significance of such interest, as well as the prerequisites requiring giving in specific circumstances prevalence to public interest over individual interest, must be always subject to strict control on both administrative and court level, especially when it comes to proving that it is in public interest to limit (or deprive) ownership protected by the Polish Constitution[26].

---

[21] On 1 January 2004 a reform of the judicial system was undertaken in Poland. As a result, from that day the voivodship administrative courts are the first level courts and Supreme Administrative Court became a second level court.

[22] I SA 708/82, published in: „Organizacja-Metody-Technika" 1983, no 7.

[23] SA/Wr 1386/94, POP 1996, jour. 6, p. 181.

[24] SA 820/81, ONSA 1981, No 1, pos. 57, OSP 1982, jour. 1-2, pos. 22, with gloss of J. Łętowski.

[25] III ARN 49/93, OSNCP 1994, No 9, pos. 181.

[26] Ibid.

What is currently indicated is that from the point of view of the administrative procedure's objectives it can be assumed that the interests listed in the above-mentioned article are legally equal. This means that in the process of the interpretation of the procedural norms, the public authority cannot be bound by the assumption of the hierarchy established *a priori* for those two interests. The regulation of art. 7 obliges the proceeding authorities to harmonize public interest and individual interest if in specific case they are contradictory[27].

The term of public interest can be understood broadly – as a criterion and consequences of the application of social relations' administrative regulation and narrowly – through the concretisation of that interest in the light of applied norms of administrative law[28].

In a broad sense public interest is one of the basis' for the legitimization of the public authorities' activity. On one hand it manifests in the powerful and unilateral way of regulating the individuals' legal situation in relation to public administration, justifying different positions of these two subjects. On the other hand - through the regulatory actions – it indicates the purposes of service for which the public administrative bodies were created as well as the values these purposes serve. On this ground can we speak of the general principle of the public interest's supremacy in administrative law[29].

In the case of the aforementioned narrow understanding of the public interest's term it is different, especially in those situations when norms pertain explicitly to that notion as the requisite for decisions that are issued.

The term public interest appears in regulations of different levels, starting from the Constitution and it is above all connected with public law: mainly administrative law, to a lesser extent with penal law, especially procedural. It is worth mentioning here that the notion of public interest is often identified with such terms as: "public objective", "social interest" and "common good". In view of the literal interpretation, these terms can be construed as collectively referring to one concept: a certain community and its social values, serving some unlimited, undefined group of people. As has been said, the notion of public interest is frequently treated as an opposition to the notion of private interest, which may lead to their collision or even conflict. It is worth analysing the most important examples of the joint appearance of these two notions in Polish legislation.

The notion of public interest already appears in the regulations of the Polish

[27] *Wróbel A*. Op. cit.

[28] *Jaśkowska M*. Op. cit., p. 288.

[29] Ibid. p. 289.

Constitution of 2 April 1997[30]. This term is included in art. 17(1)[31] (right to create self-governments), art. 22[32] (admissibility of the limitations of the freedom of economic activity), art. 63[33] (right to submit petitions, proposals and complaints) and art. 213(1)[34] (freedom of speech). As we can see, the analysed term, in the light of the Constitution, is on the one hand a basis for limitation of the citizens' rights and freedoms, art. 22 being the example, on the other hand it is a prerequisite for introducing mechanisms which serve protection of the chosen values (for example art. 213). Public interest is not separated from private interest, but has a servant role towards the latter. The state, using the term of the public interest, is therefore obliged to strive equally for maintenance the rights of both – communities and particular individuals. As a matter of fact, possible limitations in this area must lead to real maintenance of rights of both – communities and particular individuals, because of the protection of goods (such as clean natural environment, possibility of making use of the social services, right to good administration, etc.), which could be lost by the individual if particular, private interest prevailed over public interest. As it is thus indicated, even if the Constitution does not define the term public interest, it is widely accepted in the Constitutional Tribunal's rulings and in jurisprudence that the public interest includes: public safety, public order, protection of the natural environment, of the public health and the public morality[35]. The limits of that term are set by indicating the positive, demanding values as well as in a negative way – by determining the phenomena and contexts which - despite the endeavours of mainly public authority bodies involved - should not be treated as a part of designates of

[30] Journal of Laws No 78, pos. 483.

[31] *Article 17.1 of Constitution;* By means of a statute, self-governments may be created within a profession in which the public repose confidence, and such self-governments shall concern themselves with the proper practice of such professions in accordance with, and for the purpose of protecting, the public interest.

[32] *Article 22 of Constitution:* Limitations upon the freedom of economic activity may be imposed only by means of statute and only for important public reasons.

[33] *Article 63 of Constitution;* Everyone shall have the right to submit petitions, proposals and complaints in the public interest, in his own interest or in the interests of another person - with his consent - to organs of public authority, as well as to organizations and social institutions in connection with the performance of their prescribed duties within the field of public administration. The procedures for considering petitions, proposals and complaints shall be specified by statute.

[34] *Article 213 of Constitution;* The National Council of Radio Broadcasting and Television shall safeguard the freedom of speech, the right to information as well as safeguard the public interest regarding radio broadcasting and television.

[35] *Garlicki L.* Przesłanki ograniczania konstytucyjnych praw i wolności na tle orzecznictwa Trybunału Konstytucyjnego. Państwo i Prawo 2001, jour. 10, p. 5 et seqq.

that name (for example interests of particular political parties). Because of the risks of wrong understanding (misusing of understanding) of public interest, there is need for maintaining the most desirable precision possible in given circumstances[36].

Discussing the possible contact between private interest and public interest in the light of Polish legislation, in the first place we should refer to the act on land management and planning of 27 March 2003[37]. The act contains the definition of public interest. That definition does not demonstrate a common quality, since it was created towards the needs of this act, which uses the notion of the public interest frequently. Nonetheless, because the above-mentioned act, unlike other regulations, does define the term "public interest", it is worthwhile to discuss that definition.

According to the art. 2(4) of this act, public interest is the generalized objective of aspirations and activities, considering objective needs of the general of the public or local communities, in connection with land management and planning. As we can see, that definition in the act on land management and planning also hardly clarifies what public interest means. H. Izdebski places the emphasis on exceptionally narrow understanding of public interest in this act[38]. In contrast, T. Bąkowski notes that the attempt of defining public interest in the act on land management and planning cannot be declared as fully successful. The explanation of how public interest should be understood has been therefore undertaken by using the terms for which clarification is still required[39]. Thus the meaning of the notion of public interest contained in art. 2 can be treated only as a certain amplification which however does not alter the fundamental character of that term as an undefined and requiring the interpretation for a specific case on the basis of the non-legal knowledge[40]. For these reasons it is necessary to invoke the judicial practice developed by the courts and the facts of particular cases in which the courts had ruled.

According to art. 6 of the act on land management and planning, the contents of the local area management plan, together with other regulations, form the way in which the ownership of real estate is exercised. Moreover, as stated in art. 6(2) of that act, everybody has the right, in the limits determined by law, to manage the area, to which he has a legal title, according to the conditions established in the local

---

[36] *Banaszak B.* Konstytucja Rzeczypospolitej Polskiej. Komentarz. C.H. Beck, 2009, p. 136-137.

[37] Journal of Laws 2003, No 80, pos. 717.

[38] *Izdebski H.* Komentarz do art.1 ustawy o planowaniu i zagospodarowaniu przestrzennym, teza 8. Lex as of December, 2014.

[39] *Bąkowski T.* Komentarz do art.2 ustawy o planowaniu i zagospodarowaniu przestrzennym, teza 5. Lex as of December, 2014.

[40] *Niewiadomski Z.* Planowanie i zagospodarowanie przestrzenne. Komentarz. C.H. Beck Warsaw, 2009, p. 22.

plan or in the planning decision, if it does not breach public interest protected by law and the interest of third parties. This regulation is crucial for the examination of the possible collision between public interest and private interest, since it concerns the sphere of ownership or even more – the possibility of using property freely, which is regarded to be one of the individual's essential rights.

Discussing the above-mentioned matters, first of all it is helpful to refer to the Constitutional Tribunal's jurisprudence emphasizing that interference with the nature of the ownership occurs when it is impossible to exercise all rights allowing the use of an object or all rights allowing disposal of an object or all rights allowing use and disposal of an object[41]. Depriving the owner of the part (even significant) of the attributes such as usage or disposal of a object – does not have to be equivalent of the interference in the nature of his ownership, provided that this interference is justified enough by social interest. Therefore there might be a situation when even exclusion of the possibility of building on the real estate's or its development will not be considered as violation of the ownership. In reference to that it should be however noted that these limitations should be explicitly justified by such public interest, that could counterbalance the fact the negation of the owner's rights is partially or even significantly admissible[42].

It is emphasized in doctrine that municipal authorities are empowered to decide in a sovereign manner the intended use of an area for specific purposes, even against the will of the owners of the areas included in the plan. The bodies' right has basis in art. 4 of the act on land management and planning[43]. Again it should be however stressed that the above-mentioned rights of the local self-government unit should be on one hand justified by the public interest, but on the other hand they cannot undermine the individual's right to use or dispose of the real estate owned by it, accordingly to the local area management plan. As it results from the judgement of Voivodship Administrative Court of Wroclaw of 25 April 2013[44], the public interest permitting the interference with the individual's ownership, i.e. with his private interest, is justified by the protection of such values as: public security and public order, protection of natural environment, public health and public morality or freedoms and rights of other individuals.

The collision between private interest and public interest served as a basis for the

---

[41] Judgement of Constitutional Tribunal of 25 March 1999, SK 9/98, OTK1999 r. No 4, pos. 78. Judgement of Constitutional Tribunal of 12 January 1999, P 2/98, OTK 1999, No 1, pos. 2.

[42] Judgement of Voivodship Administrative Court in Cracow, II SA/Kr 968/09, Lex no 634071.

[43] *Niewiadomski Z.* Planowanie przestrzenne. C.H. Beck, 2002, p. 109.

[44] II SA/Wr 803/12, Lex no 1330034.

judgement of the Voivodship Administrative Court of Lodz of 11 April 2011[45]. In the case considered by the Court the complainant contested the decision of the local self-government appeal authority and claimed that the decisions of both – first and second instance administrative bodies – lead to unequal treatment of the citizens and infringe ownership by accepting the planned widening of the communal road, by which the complainant's buildings were about to be elevated and then must have been reduced in their dimensions. In said circumstances the Voivodship Administrative Court held that the owner's right to dispose of the plot and its buildings is not absolute and that the owner's right to invest in it must not be in conflict with other principles referring to land management, with the public interest protected by law and with the interests of other subjects. The consequences of the overlap between private interest and public interest were clearly explained by the Supreme Administrative Court in its judgement of 28 March 2014[46]. The Court considered a complaint against a resolution on the subject of the adoption the local area management plan and stated that planning power cannot be treated as an unconvincingly motivated interference in the owner's rights by the local community. Although this interference is allowed, it must however respect public interest proportionally balanced with owner's rights. It is therefore required from the community that it considers individual interest and public interest carefully and comprehensively and that it proves the correctness of the planning solutions adopted as well as their relevance and fairness. As the Voivodship Administrative Court of Cracow stressed in its judgement of 11 July 2013[47], public interest does not have an automatic and absolute priority over individual interest. Since the planning interference of the community forms an exception to the principle that the land's ownership is inviolable by public authorities, establishing the limitations of the ownership's exercising in the local area management plan should have a special justification. This applies in particular to the situation when the public objectives were planned to be realised within the significant areas of the private lands or when these lands were intended to be used for the purposes, the realisation of which the community is responsible. The land management in the municipality cannot thus ignore the ownership, on the contrary – it should seek the solutions, which will resolve the conflict between the public interests and the interests of the owners of particular lands as effectively as possible.

Another example is the act on environmental protection of 27 April 2001[48],

[45] II SA/Łd 139/12, Lex no 1145949.

[46] II OSK 518/13, Lex no 1483388.

[47] II SA/Kr 508/13.

[48] Journal of Laws 2001, No 62, pos. 627.

wherein there is no direct mentioning of the term public interest. Therefore in that act the legislator uses the term social interest. Moreover, in view of the said act the possible appearance of the collision between private and public interests is recognized. It is visible for instance in Part IX of the act: "Limitation of the methods of using real estate in reference to the environmental protection" and in Chapter 3 of the act: "Area of restricted use". In relation to these matters we should highlight the judgment of Supreme Administrative Court in Warsaw of 17 March 2009,[49] which refers to creating an area of restricted use for an airport. The Supreme Administrative Court stated that the inconveniences described in a complaint are clear consequences of creating an area of restricted use, since it concerns determining the manner in which the real estate can be used within this area. However not in every case it is possible to limit the negative influence of the undertaking to the boundaries of the real estate, within which this undertaking is localized. For this reason for the general interest it is justified to limit the usage of the real estate in such circumstances. The judicature often links public interest with the need of the natural environment's protection. In the judgement of the Appeal Court of Warsaw of 15 November 2011[50], concerning a claim for damages (for reduction of the real estate's value) due to incorporation into a natural landscape park, the Court noted that the ownership is not an absolute right. In the light of the regulations existing currently as well as in earlier periods, the owner's rights, including these referring to the free disposal of real estate and its development, were and still are being limited. The legislator introduces such limitations giving full consideration especially to the protection of the public good and the interest of the public in general, to which in some cases it should be given priority to the individual's interest. One of the categories of such limitations are those relating to the natural environment's protection.

Analysing the cases of collision between public interest and private interest, it is also worth to consider the regulations of the act on the access to public information of 6 September 2001[51]. The aforesaid act provides for the possibility of limitation of private interest, which consists in the right to demand public information, on the grounds of the necessity to safeguard public interest. The objective scope of that right was determined accordingly to art. 3(1) as a combination of the following rights: right to obtain public information including processed information, right to access official documents and sessions of the authority's collegial bodies coming from general elections. The right to access processed information is limited to situations when such

[49] II OSK 1195/08, Lex no 525853.

[50] I ACa 254/11, Lex no 1129958.

[51] Journal of Laws 2001, No 112, pos. 1198.

access is essential from the public interest's perspective. As T.R. Aleksandrowicz notes, this limitation is regarded as a consequence of the principle of the private interest's subordination to public interest. This principle is to protect the entities obliged to provide public information from the necessity of reorganizing their structure and principles of their work when they have an obligation to process the information provided to the applicant for his private purposes (for example for the scientific work of the latter)[52]. The above finds the confirmation in the judgment of the Supreme Administrative Court in Warsaw of 10 January 2014[53]. In this judgment the Court stated that essentially the right to obtain processed public information can be held only by such applicant who is able to prove in the moment he applies that he has individual, real and concrete opportunities to use the processed public information for the public good, in other words that he can use the processed public information the preparation of which he demands for public good in such a manner that is not accessible for every holder of public information. This right should not, however, be granted to all persons potentially interested in obtaining public information in order to make it then available to the general public, since those purposes are at best aimed to ensure the basic, "non-qualified" embodiment of the public interest. Exercising of the other rights constituting the right to public information is not thus subject to evaluation from the perspective of their coherence with public interest[54].

However, regardless of the area within which the examination of the collision between the individuals' legitimate interest and social (public) interest takes place, it should be noted that the individuals' legitimate interest cannot be contrary to the clarity of the wording of the regulation nor substitute it, since the rule of legality, stated in art. 6 of CAP, commits the public authorities to act in accordance with the law[55]. The individuals' legitimate interest cannot also lead to bypass the regulations. When it comes to assessing if in a given case the individuals' legitimate interest arises, we should consider not the individuals' subjective belief about his grievance, but the circumstances referring to the party, proving that the party's demand is rightful and deserves public approval[56].

---

[52] *Aleksandrowicz T. R*. Komentarz do ustawy o dostępie informacji publicznej. Warsaw, 2002, p. 85-86.

[53] I OSK 2111/13, Lex no 1477545.

[54] *Kłaczyński M*. Komentarz do ustawy o dostępie do informacji publicznej, teza 1. LEX, 2014.

[55] Judgement of Voivodship Administrative Court in Wroclaw of 19 September 2008, IV SA/Wr 113/08, Lex no 527584. Judgement of Supreme Administrative Court of 18 December 2002, II SA/Gd 1892/02, Lex no 698333. Judgement of Voivodship Administrative Court in Warsaw of 4 October 2005, V SA/Wa 1658/05, Lex no188729.

[56] Judgement of Supreme Administrative Court in Warsaw of 18 October 2007, II OSK 1406/06, Lex nr 427601.

What is worth considering is the interesting jurisdiction approach according to which a tax authority, issuing a decision - with use of administrative discretion - which is negative for a tax-payer, has a special obligation to prove in the substantiation of the decision, why the case was not settled in accordance with the legitimate interest of the citizen. The statement of reasons in such decision cannot be in these cases laconic or based on wording that do not explain the motives of the decision which has been issued[57]. The Supreme Administrative Court stated similarly in the judgement of 30 June 2000[58]. The Court noted that if in the cases left by the law to the public authorities' discretion, the public interest does not stand in the way and if it is possible, the public authority is obliged to settle the case in the positive way for the individuals. It creates the presumption of the positive settlement, unless the positive settlement cannot be made due to unquestionable public interest.

The problem of the settlement of collision between private interest and public interest is one of the key matters which the administration addresses during the law application process. Those interests are weighed always in the light of the facts of particular cases. In the event of the conflict between private interest and public interest, it is necessary to make their gradation in order to verify, which of them is preferred under a given regulation. Even though the wording of the legal norm (art. 7 of CAP), obliging the administration bodies to weigh the social (public) interest and legitimate interest of the citizen (individual), remains the same in Polish legislation since '60s, the interpretation of that norm has been changing. The content of the public interest - which is an undefined term – is always determined by the changing social context. Therefore, it should be noted that in Poland, in political situation before 1989, there was a principle of giving automatic priority to the public interest over private interest. Later, the understanding of the relation between public interest and private interest gradually started to alter towards assuming equality of those two interests. Currently, we can find such rulings of Polish courts, which even indicate the prevalence of the private interest over public interest, although it is not concerned as a dominant jurisdiction approach. In addition, given how significant public interest is for the administration, it should be assumed that this approach will not increase in significance. Nevertheless, in any case it is clear that the individuals' legitimate interest cannot be contrary to the clarity of the wording of the regulation nor substitute it.

[57] Judgment of Supreme Administrative Court (until 31 December 2001) in Poznan of 21 April 1994, SA/Po 3423/93, Lex no 62429.

[58] V SA 2880/99, Lex no 79239. Also in the judgement of Supreme Administrative Court of 20 March 2002, V SA 2036/01, Lex no 82004.

## CONCLUSIONS

The problem of the settlement of collision between private interest and public interest is one of the key matters which the administration addresses during the law application process. Those interests are weighed always in the light of the facts of particular cases. In the event of the conflict between private interest and public interest, it is necessary to make their gradation in order to verify, which of them is preferred under a given regulation. Even though the wording of the legal norm (art. 7 of CAP), obliging the administration bodies to weigh the social (public) interest and legitimate interest of the citizen (individual), remains the same in Polish legislation since '60s, the interpretation of that norm has been changing.

The content of the public interest - which is an undefined term – is always determined by the changing social context. Therefore, it should be noted that in Poland, in political situation before 1989, there was a principle of giving automatic priority to the public interest over private interest. Later, the understanding of the relation between public interest and private interest gradually started to alter towards assuming equality of those two interests. Currently, we can find such rulings of Polish courts, which even indicate the prevalence of the private interest over public interest, although it is not concerned as a dominant jurisdiction approach. In addition, given how significant public interest is for the administration, it should be assumed that this approach will not increase in significance. Nevertheless, in any case it is clear that the individuals' legitimate interest cannot be contrary to the clarity of the wording of the regulation nor substitute it.

## BIBLIOGRAPHY

**I. Legal acts**

1. Constitution of Republic of Poland of 2 April 1997, Journal of Laws 1997, No 78, pos. 483.
2. Code of Administrative Procedure of 14 June 1960, Journal of Laws 1960, No 30, pos. 168.
3. Act on land management and planning of 27 March 2003, Journal of Laws 2003, No 80, pos. 717.
4. Act on environmental protection of 27 April 2001, Journal of Laws 2001, No 62, pos. 627.
5. Act on the access to public information of 6 September 2001, Journal of Laws 2001, No 112, pos. 1198.

**II. Research works**

6. *Aleksandrowicz T.R.* Komentarz do ustawy o dostępie informacji publicznej. Warsaw, 2002.

7. *Banaszak B.* Konstytucja Rzeczypospolitej Polskiej. Komentarz. C.H. Beck, 2009

8. *Bąkowski T.* Komentarz do art.2 ustawy o planowaniu i zagospodarowaniu przestrzennym, teza 5. Lex as of December, 2014.

9. *Bigo T.* Ochrona interesu indywidualnego w projekcie kodeksu postępowania administracyjnego, Państwo i Prawo 1960, no 3.

10. *Borkowski J.* Aspekty podmiotowe regulacji prawa procesowego. In: Ed: *Hauser R., Niewiadomski Z., Wróbel A*. Prawo procesowe administracyjne. Tom 9. System prawa administracyjnego. Warsaw, 2010.

11. *Duda A*. Interes prawny w polskim prawie administracyjnym. Warsaw, 2008.

12. *Garlicki L.* Przesłanki ograniczania konstytucyjnych praw i wolności na tle orzecznictwa Trybunału Konstytucyjnego. Państwo i Prawo 2001, jour. 10.

13. *Izdebski H.* Komentarz do art.1 ustawy o planowaniu i zagospodarowaniu przestrzennym, teza 8. Lex as of December, 2014.

14. *Jaśkowska M*. Pojęcie interesu publicznego i jego funkcje w prawie administracyjnym. In: Ed: *Niczyporuk J.* Teoria Instytucji Prawa administracyjnego. Księga pamiątkowa Profesora Jerzego Stefana Langroda. PAN Paris, 2011.

15. *Kłaczyński M.* Komentarz do ustawy o dostępie do informacji publicznej, teza 1. LEX, 2014.

16. *Niewiadomski Z.* Planowanie i zagospodarowanie przestrzenne. Komentarz. C.H. Beck Warsaw, 2009.

17. *Niewiadomski Z*. Planowanie przestrzenne. C.H. Beck, 2002.

18. *Pieńkos J.* Słownik łacińsko-polski. Łacina w nauce i kulturze. Warsaw, 1996.

19. *Wróbel A*. Komentarz aktualizowany do art.7 Kodeksu postępowania administracyjnego, teza 1. Lex as of December, 2014.

20. *Zimmermann M.:* Z rozważań nad postępowaniem jurysdykcyjnym i pojęciem strony w Kodeksie postępowania administracyjnego. In: Księga pamiątkowa ku czci Kamila Stefki. Warsaw-Wroclaw, 1967.

**III. Case law**

21. Ruling of Constitutional Tribunal of 12 January 1999, P 2/98, OTK 1999, No 1, pos. 2.

22. Ruling of Constitutional Tribunal of 25 March 1999, SK 9/98, OTK1999 r. No 4, pos. 78.

23. Ruling of Supreme Administrative Court in Warsaw of 11 June 1981, SA 820/81, ONSA 1981, No 1, pos. 57, OSP 1982, jour. 1-2, pos. 22, with gloss of J. Łętowski.

24. Ruling of Supreme Administrative Court in Warsaw of 14 September 1982, I SA 708/82, „Organizacja-Metody-Technika" 1983, no 7.

25. Ruling of Supreme Administrative Court in Poznan of 21 April 1994, SA/Po 3423/93, Lex no 62429.

26. Ruling of Supreme Administrative Court in Warsaw of 18 January 1995, SA/Wr 1386/94, POP 1996, jour. 6, p. 181.

27. Ruling of Supreme Administrative Court in Warsaw of 6 February 1995, II SA 1835/93, ONSA 1996, No 1, pos. 36.

28. Ruling of Supreme Administrative Court in Warsaw of 23 June 1995, SA/Wr 2744/94, Lex no. 26845.

29. Ruling of Supreme Administrative Court in Katowice of 18 December 1995, SA/Ka 2198/94, Lex no. 27111.

30. Ruling of Supreme Administrative Court in Katowice of 20 May 1998, I SA/Ka 1744/96.

31. Ruling of Supreme Administrative Court in Warsaw of 11 June 1998, SA 820/81, ONSA 1981, No 1, pos. 57.

32. Ruling of Supreme Administrative Court of Warsaw of 30 June 2000, V SA 2880/99, Lex no 79239.

33. Ruling of Supreme Administrative Court of Warsaw 20 March 2002, V SA 2036/01, Lex no 82004.

34. Ruling of Supreme Administrative Court of Gdansk of 18 December 2002, II SA/Gd 1892/02, Lex no 698333.

35. Ruling of Supreme Administrative Court of 18 October 2007, II OSK 1406/06, Lex nr 427601.

36. Ruling of Supreme Administrative Court of 17 March 2009, II OSK 1195/08, Lex no 525853.

37. Ruling of Supreme Administrative Court of 10 January 2014, I OSK 2111/13, Lex no 1477545.

38. Ruling of Supreme Administrative Court of 28 March 2014, II OSK 518/13, Lex no 1483388.

39. Ruling of Voivodship Administrative Court in Warsaw of 4 October 2005, V SA/Wa 1658/05, Lex no188729.

40. Ruling of Voivodship Administrative Court in Wroclaw of 19 September 2008, IV SA/Wr 113/08, Lex no 527584.

41. Ruling of Voivodship Administrative Court in Cracow of 29 September 2009, II SA/Kr 968/09, Lex no 634071.

42. Ruling of the Voivodship Administrative Court of Lodz of 11 April 2011, II SA/Łd 139/12, Lex no 1145949.

43. Ruling of Voivodship Administrative Court of Wroclaw of 25 April 2013, II SA/Wr 803/12, Lex no 1330034.

44. Ruling of the Voivodship Administrative Court of Cracow of 11 July 2013, II SA/Kr 508/13 [last visited on 17th of February 2015]. Available on internet: <*www.orzeczenia.nsa.gov.pl*>.

45. Ruling of the Supreme Court of 18 November 1993, III ARN 49/93, OSNCP 1994, No 9, pos. 181.

46. Ruling of the Appeal Court of Warsaw of 15 November 2011, I ACa 254/11, Lex no 1129958.

**IV. Others**

47. Black's Law Dictionary: [last visited on 17th of February 2015]. Available on internet: <*http://thelawdictionary.org*>.

*Dr. Joanna LEMAŃSKA*
Krokuvos Jogailos universitetas

*Dr. Marcelina STOLARSKA*
Krokuvos Jogailos universitetas

# VIEŠŲJŲ INTERESŲ IR PILIEČIŲ TEISĖTŲ INTERESŲ SUSIKIRTIMAS LENKIJOS ADMINISTRACINĖJE TEISĖJE

*Santrauka*

Viešojo intereso ir piliečių teisėtų interesų santykis yra vienas svarbiausių Lenkijos administracinės teisės klausimų. Šio straipsnio autorės pabandė pristatyti pagrindines su šiuo santykiu siejamas problemas, ypač tas, kurios susijusios su galima kolizija tarp viešojo intereso ir piliečių teisėtų interesų. Siekdamos paaiškinti šiuos klausimus, autorės rėmėsi Lenkijos teisės aktais, Lenkijos teismų praktika bei Lenkijos doktrina, aiškinančia viešąjį interesą, teisėtus piliečių lūkesčius bei ryšių tarp jų pobūdį.

Straipsnis pradedamas paaiškinimu, kaip mes suprantame sąvoką „interesas“. Kitoje straipsnio dalyje dėstoma, kaip „teisėtas interesas“ suprantamas Lenkijos doktrinoje ir koks skirtumas egzistuoja tarp teisėto intereso ir faktinio intereso remiantis Lenkijos administracine teise. Svarbu pastebėti, kad teisėtas interesas, priešingai nei faktinis interesas, yra grindžiamas teise. Tai reiškia, kad teisėtas interesas yra individo poreikis gauti naudą, kuri yra normatyvinėje sistemoje pripažįstama vertybė. Todėl teisėtas interesas yra kokiu nors būdu įtvirtintas teisėje, jis egzistuoja objektyviai. Taigi tai yra daugiau nei faktinis interesas (pastarasis kyla tik iš piliečių įsitikinimų, grindžiamų skriaudos ar nelygybės jausmais, tačiau neturi jokio teisinio pagrindo). Laikoma, kad tik teisėtas interesas (arba vieša subjektyvioji teisė kaip išraiškos forma) tuo pačiu metu gali būti ir privatus interesas (teisėtas piliečio interesas), kuris galimai gali konfliktuoti su viešuoju (socialiniu) interesu.

Kalbėdamos apie „viešojo intereso“ sąvoką (ir laikydamosi nuomonės, kad „socialinis interesas“ dažnai yra susijęs ar net sutapatinamas su viešuoju interesu), straipsnio autorės pabrėžia, kad Lenkijos administracinėje teisėje ši sąvoka yra neapibrėžta ir kad jos turinys priklauso nuo besikeičiančio socialinio konteksto. Todėl sąvoka „socialinis interesas“ turėtų būti sukonkretinta viešojo administravimo institucijoms taikant teisės aktus. Kitaip tariant, priimdamos sprendimus, turinčius neigiamos įtakos konkrečioms šalims, viešosios valdžios institucijos neturi abstrakčiai vartoti socialinio intereso sąvokos, nepateikdamos išsamaus paaiškinimo, kaip šis interesas suvokiamas konkrečiu atveju, ir todėl šis interesas neleidžia veikti taip, kaip pageidauja konkreti šalis.

Vienas pagrindinių šio straipsnio tikslų buvo parodyti, kaip viešojo intereso ir piliečių teisėtų lūkesčių principai buvo apibrėžiami Lenkijoje per pastaruosius penkiasdešimt metų ir kaip kito jų santykis. Autorės pabrėžė, kad 1960 m. birželio 14 d. Administracinio proceso kodekso (1960 m. Teisės aktų sąvado Nr. 30, 168 p.) 7 straipsnio (anksčiau – 5 straipsnio) formuluotė („Viešojo administravimo institucijos proceso metu laikosi teisinės valstybės principo ir *ex officio* arba šalių prašymu imasi visų būtinų veiksmų, kad būtų išsiaiškinti bylos

faktai ir byla išspręsta atsižvelgiant į viešąjį interesą ir teisėtus piliečių lūkesčius“) iš esmės nepasikeitė nuo 1960 metų. Nepaisant to, supratimas apie šiuos interesus Lenkijos teisėje keitėsi kartu su Lenkijos politine sistema.

Šiuo metu Lenkijos doktrinoje plačiai pripažįstama, kad konkretūs interesai gali būti pasverti atsižvelgiant į teisės aktų specifiką. „Sveriant“ tokius interesus svarbiausia apibrėžti jų turinį ir apimtį (kalbant tiek apie individualius interesus, tiek apie viešąjį interesą), tada išsiaiškinti, ar pagal esančias aplinkybes egzistuoja interesų konfliktas, ar abu interesai gali būti įgyvendinami kartu. Konflikto tarp privataus intereso ir viešojo intereso atveju būtina įvertinti jų svarbą, patikrinant, kuris iš jų yra prioritetinis pagal konkretų teisinį reguliavimą. Tačiau būtina paminėti, kad, remiantis Aukščiausiojo administracinio teismo praktika, 7 straipsnis galiausiai tapo taikomas tik tais atvejais, kai bylos išsprendimas priklauso nuo vadinamosios administracinės diskrecijos, kuri atsiranda, kai teisėje nenumatytas įpareigojimas viešojo administravimo institucijai vadovautis konkrečiu teisės aktu, o palikta galimybė pasirinkti, kaip klausimas turėtų būti išspręstas.

Svarbu pabrėžti, kad *in fine* 7 straipsnis, kuriame įtvirtintas principas atsižvelgti į viešąjį interesą ir teisėtus piliečių interesus, neapibrėžia nei šių vertybių hierarchijos, nei taisyklių, kuriomis remiantis konfliktas turėtų būti išspręstas. Todėl autorės rėmėsi doktrininiu išaiškinimu bei teismų praktika, kurioje tokie konfliktai yra sprendžiami.

Anksčiau teismai teigė, kad viešojo intereso ir piliečių teisėtų lūkesčių santykyje pirmasis yra viršesnis už antrąjį. Remiantis tokiu teismo išaiškinimu, viešojo administravimo institucijos turėtų atsižvelgti į šalies teisėtus interesus tik tiek, kiek neegzistuoja šio intereso konfliktas su viešuoju interesu. Kitaip tariant, jeigu atvejai, kurių sprendimas materialinės teisės normomis paliktas viešojo administravimo institucijų diskrecijai, nesusiję su viešuoju interesu ir jeigu tai neviršija viešojo administravimo institucijos galimybių, suteiktų remiantis įgaliojimais ir turimomis priemonėmis, viešosios valdžios institucija privalo spręsti klausimą remdamasi piliečių teisėtų lūkesčių principu.

Praėjusio amžiaus dešimtojo dešimtmečio pradžioje supratimas apie šių interesų santykį pasikeitė. Lūžio taškas buvo 1993 m. lapkričio 18 d. Aukščiausiojo Teismo sprendimas (1993 (III ARN 49/93, OSNCP 1994, No 9, pos. 181), kuriame Teismas nurodė, kad, remiantis teisinės valstybės principu, negalima griežtai ir mechaniškai taikyti viešojo intereso prioritetą prieš individualų interesą. Tai reiškia, kad kiekvienu atveju veikdama viešojo administravimo institucija privalo nurodyti, koks viešasis interesas yra svarbus konkrečiu atveju, ir įrodyti, kad jis yra toks svarbus ir reikšmingas, kad būtina riboti individualias visuomenės narių teises.

Šiuo metu galima teigti, kad administracinio proceso prasme laikoma, kad 7 straipsnyje nurodyti interesai teisiškai yra vienodos svarbos. Tai reiškia, kad aiškindama procesines taisykles viešojo administravimo institucija negali būti įpareigota prielaidos, kad tarp šių interesų egzistuoja *a priori* nustatyta hierarchija. Taigi 7 straipsnyje įtvirtinta taisyklė įpareigoja procese dalyvaujančias institucijas suderinti viešąjį interesą ir privatų interesą konkrečiais atvejais, kai tarp jų egzistuoja prieštaravimas.

Autorių nuomone, svarbu pastebėti, kad sąvoka „viešasis interesas“ gali būti suprantama plačiai arba siaurai. Plačiąja prasme viešasis interesas yra viešojo administravimo institucijos veiklos legitimizavimo pagrindas. Jis pasireiškia galingai ir vienašališkai reguliuojant teisinę individų padėtį santykiuose su viešojo administravimo institucijomis, pateisinant

skirtingas šių dviejų šalių pozicijas. Tuo pat metu – per reguliavimo veiklą – jis apibūdina paslaugų, dėl kurių teikimo buvo įsteigtos viešojo administravimo institucijos, tikslus bei jų ginamas vertybes. Taigi plačiąja prasme kalbame apie viešojo intereso administracinėje teisėje viršenybės bendrąjį principą. Siaurąja prasme viešasis interesas suvokiamas kitaip, nes jis apibūdina intereso konkretizavimą taikomų administracinių teisės normų kontekste (kitaip tariant, jis susijęs su tomis situacijomis, kai normos eksplicitiškai išreiškia šią sąvoką kaip būtiną priimamų sprendimų sąlygą).

Lenkijos teisės aktuose egzistuoja daug nuorodų į viešąjį interesą ir privatų interesą (arba piliečių teisėtus lūkesčius). Šiame straipsnyje autorės analizuoja svarbiausius pavyzdžius, kai šios dvi sąvokos vartojamos kartu Lenkijos teisės aktuose, pradedant nuo 1997 m. balandžio 2 d. Lenkijos Konstitucijos (Teisės aktų sąvado Nr. 87, 483 p.). Remiantis pastaraja nuostata, viešasis interesas neatskiriamas nuo privataus intereso, tačiau jo atžvilgiu turi pagalbinį vaidmenį. Todėl vartodama sąvoką „viešasis interesas" valstybė privalo vienodai siekti užtikrinti tiek bendruomenių, tiek konkrečių individų teises.

Straipsnyje autorės remiasi 2003 m. kovo 27 d. Žemės valdymo ir planavimo įstatymu (2003 m. Teisės aktų sąvado Nr. 80, 717 p.), kuriame numatytas viešojo intereso apibrėžimas. Remiantis šio įstatymo 2 straipsnio 4 dalimi, viešasis interesas yra generalizuotas lūkesčių ir veiklos tikslas, apibūdinantis objektyvius visos visuomenės ar vietinių bendruomenių poreikius, susijusius su žemės valdymu ir planavimu. Šis apibrėžimas neapibūdina bendros vertybės, nes jis buvo sukurtas tik šio įstatymo tikslais ir jame yra dažnai vartojamas. Nepaisant to, dėl to, kad kituose įstatymuose, skirtingai nei anksčiau minėtame, nepateikiamas joks viešojo intereso apibrėžimas, yra pagrįsta remtis pastarajame pateikiamu apibrėžimu.

Kitas straipsnyje pateiktas pavyzdys numatytas 2001 m. balandžio 27 d. Aplinkos apsaugos įstatyme (2001 m. Teisės aktų sąvadas Nr. 62, p. 627), kuriame nėra tiesioginio viešojo intereso sąvokos paminėjimo. Todėl šiame teisės akte įstatymų leidėjas vartoja socialinio intereso sąvoką. Be to, šiame įstatyme pripažįstamas galimas privataus ir viešojo intereso konfliktas. Pavyzdžiui, tą galima įžvelgti šio įstatymo IX dalyje „Nekilnojamojo turto naudojimo ribojimai dėl aplinkos apsaugos" ir įstatymo 3 skyriuje „Ribojamo naudojimo zonos".

Autorės taip pat remiasi 2001 m. rugsėjo 6 d. Įstatymo dėl teisės susipažinti su viešąja informacija (2001 m. Teisės aktų sąvado Nr. 112, p. 1198) nuostatomis. Šiame įstatyme numatyta galimybė riboti privatų interesą dėl teisės prašyti viešosios informacijos remiantis būtinybe apsaugoti viešąjį interesą.

Galiausiai autorės pabrėžia, kas yra būdinga viešojo administravimo institucijoms veikiant viešojo intereso sumetimais ir siekiant šį interesą išsaugoti. Neabejojama, kad šis interesas yra esminis viešojo administravimo institucijų veiklos pagrindas. Tuo pat metu teisinės valstybės principas taip pat įpareigoja viešojo administravimo institucijas veikti gerbiant individualių asmenų interesus. Remiantis Aukščiausiuoju administraciniu teismu, jeigu įstatymai numato atvejus, kai viešojo administravimo institucijos turi diskreciją priimti sprendimus, tokiais atvejais, jei neegzistuoja konfliktas su viešuoju interesu, ir viešojo administravimo institucija, jei tai įmanoma, privalo išspręsti klausimą individualių interesų naudai. Tai sukuria pozityvaus išnagrinėjimo prezumpciją, išskyrus atvejus, kai pozityviai ginčo negalima išspręsti dėl neginčijamo viešojo intereso. Antra vertus, autorės pažymi, kad, nepaisant srities, kurioje egzistuoja kolizija tarp teisėtų individų interesų ir socialinio (viešojo) intereso, individų

teisėti interesai negali prieštarauti įstatymo raidei nei jos pakeisti, atsižvelgiant į teisėtumo taisyklę, numatytą Administracinio proceso kodekso 6 straipsnyje, kuri įpareigoja viešojo administravimo institucijas veikti remiantis įstatymais. Asmenų teisėti interesai taip pat negali vesti prie teisės aktų nepaisymo. Taigi, kai konkrečiu atveju reikia vertinti, ar kyla klausimas dėl individų teisėtų interesų, turėtume svarstyti ne subjektyvius individų jausmus dėl jiems padarytos skriaudos, bet su šalimi susijusias aplinkybes, įrodančias, kad šalies reikalavimas yra teisėtas ir nusipelno viešo pritarimo.