

HEAD OF A WARD AS A PERSON PERFORMING A PUBLIC FUNCTION IN THE LIGHT OF ACT ON ACCESS TO PUBLIC INFORMATION

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The Act of 6 September 2001 on access to public information¹ constitutes amplification of the citizens' constitutional right to be informed by entities exercising public authority. The right is laid down in Article 61 of the Constitution of the Republic of Poland,² where para. 1 stipulates that a citizen shall have the right to obtain information on the activities of organs of public authority as well as persons discharging public functions. Such right includes also receipt of information on the activities of self-governing economic or professional organs and other persons or organisational units relating to the field in which they perform the duties of public authorities and manage communal assets or property of the State Treasury. The above-mentioned constitutional provision for the first time in history laid down a political right to direct control of public authorities. Thus, the provision is of fundamental and critical importance for the functioning of democracy in Poland as a system in which citizens and not the state or limited social groups constitute bodies that can decide on public matters. As it was indicated in the Constitutional Tribunal judgment of 9 April 2015, K 14/13, the right to information in a democratic state ruled by law serves ensuring that public authorities, within all forms and aspects, meet the requirement of transparency. Thus, what constitutes the object of public information is,

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¹ Journal of Laws [Dz.U.] of 2013, item 1330; hereinafter AAPI.

² Act of 2 April 1997: Constitution of the Republic of Poland, Journal of Laws [Dz.U.] No. 78, item 483, as amended.

first of all, the activity of all bodies listed in Article 61 para. 1 of the Constitution and, secondly, the activity of persons performing public functions. However, due to Article 47 of the Constitution, this refers to only such activity that is connected with the public functions the persons perform.³ The political right laid down in Article 61 para. 1 of the Constitution of the Republic of Poland is to ensure transparency of the functioning of the state in relation to the citizens who, having been informed about public matters, can assess the functioning of authorities in a rational way free from manipulation and thanks to that can take rational electoral decisions. This right, in the light of the above-mentioned Constitutional Tribunal judgment, covers two elements connected with the state of being informed, i.e. the right to be informed about:

- public entities' activities,
- activities of persons performing public functions.

The constitutional provision was developed in the form of the Act on access to public information in accordance with which the right to public information is subject to limitation due to a natural person's privacy or an entrepreneur's secret. The limitation does not apply to information about persons performing public functions, connected with the performance of those functions, including the conditions for entrusting them with those functions and for performing them, and a case when a natural person renounces the right (Article 5 para. 2 AAPI). Thus, a person performing a public function has a limited right to protection resulting from the right to privacy and all the information concerning their functioning in the course of dealing with public matters is subject to disclosure.

There are no doubts in case law that healthcare institutions are entities obliged to provide public information.⁴ In such entities, heads of hospital wards perform certain functions connected with ward management. Therefore, persons that are interested make requests for public information concerning those persons, e.g. the content of contracts entered into with heads of wards, the scope of their responsibilities, or even the rules of offering them bonuses. Such questions, especially those concerning salaries or the content of employment contracts, concern issues that are protected by the right to privacy, which is however limited in accordance with the above-mentioned Article 5 para. 2 AAPI in relation to persons performing public functions. Thus, a question arises to what extent a head of a ward is a person performing a public function in the light of the provisions in force.

³ OTK-A 2015, No. 4, item 45.

⁴ Compare the judgment of the Supreme Administrative Court of 15 November 2013, I OSK 1933/13; and the judgment of the Voivodeship Administrative Court in Szczecin of 25 January 2018, II SAB/Sz 100/17, where it was directly indicated that "a hospital that is an independent public healthcare institution performs actions serving maintenance, rescue, rehabilitation or improvement of health. An entity of this kind performs public tasks and is financed from public funds, thus it is governed by Article 4 para. 1(5) AAPI. Information concerning the rules of functioning of an entity performing public tasks within the scope of legal assistance for a hospital concerns the mode of action of public entities' organisational units, thus it constitutes public information referred to in Article 6 para. 1(3) AAPI"; the judgment of the Voivodeship Administrative Court in Gdańsk of 19 October 2016, II SAB/Gd 110/16, published in CBOSA.

The Act of 15 April 2011 on healthcare services⁵ is a kind of constitution for healthcare institutions in Poland. However, its regulations refer to the position of a head of a ward in a rather insufficient way. In accordance with its wording, a healthcare institution that is not an entrepreneur (e.g. Samodzielny Publiczny Zakład Opieki Zdrowotnej – SPZOZ, i.e. an independent public healthcare institution) is obliged to hold a contest for the position of a head of a ward in accordance with Article 49 para. 1(3) AHS. On the other hand, in accordance with Article 49 para. 7 AHS, if a department in a healthcare institution that is not an entrepreneur is managed by a physician who is not a head of a ward in accordance with its organisational rules, the institution is not obliged to hold a contest for the head of this ward. Thus, the Act on healthcare services only indicates that a head of a ward is such a manager only in some types healthcare institutions.

In literature, consideration is given⁶ to the nature of the function connected with the performance of the obligations of a head of a ward or a physician managing it. There is a debate over the issue concerning the characteristic features of a person performing the function of a head or a manager of a ward as a public official or a person performing a public function, and a person who has no such features. A definition of a public official or a person performing a public function is laid down in the Act of 6 June 1997: Criminal Code.⁷ In accordance with Article 115 §13 CC, a public official is: (1) the President of the Republic of Poland; (2) a member of Parliament, a senator and a councillor; (2a) a member of the European Parliament; (3) a judge, a lay-judge, a prosecutor, an officer of a financial organ for preparatory proceedings or its superior body, a notary, a bailiff, a probation officer, an official receiver, a supervisor appointed by a court and a trustee, and a person adjudicating within disciplinary bodies acting based on statute; (4) a person who is an employee of state administration, another state organ or territorial self-government, except those who only perform service-related activities, as well as another person within the scope he/she is authorised to issue administrative decisions; (5) a person who is an employee of a state control organ or an organ of territorial self-government control, except those that only perform service-related activities; (6) a person holding a managerial position in another state institution; (7) an officer of an organ appointed to protect public security or the Penitentiary Service officer; (8) a person serving in the armed forces with the exception of the territorial military service performed on demand; (9) an employee of an international criminal court except those who only perform service-related activities. In accordance with Article 115 §19 CC, a person performing a public function is a public official, a member of a self-government body, a person employed in an organisational unit that manages public funds, except one who only performs service-related activities, as well as

⁵ Journal of Laws [Dz.U.] of 2018, No. 160; hereinafter AHS.

⁶ Thus, e.g. A Marcinkowska, *Lekarz jako osoba pełniąca funkcję publiczną*, Czasopismo Prawa Karnego i Nauk Penalnych, Year XVIII, No. 1, 2014; R. Krajewski, *Funkcjonariusz publiczny i osoba pełniąca funkcję publiczną jako kategorie prawa karnego istotne z perspektywy funkcjonowania administracji publicznej*, Studia z Zakresu Prawa, Administracji i Zarządzania Uniwersytetu Kazimierza Wielkiego Vol. 1, 2012.

⁷ Journal of Laws [Dz.U.] of 2018, item 1600; hereinafter CC.

any other person whose rights and obligations in the field of public activities are defined or recognised by statute or an international agreement binding the Republic of Poland.

As far as criminal liability of a physician as a public official is concerned, the Supreme Court stated in its judgment of 27 November 2000, WKN 27/00, that a physician employed in a public healthcare institution may be recognised as a public official within the meaning of Article 115 §13 CC only in case the job is linked with an administrative function. It should be emphasised that the definitions of some terms and phrases in the Criminal Code (called glossary) are binding in nature and this, as a result, fulfils the guarantee functions of law by limiting the possibility of applying broadened interpretation of regulations. In order to recognise someone as a public official or not, it is necessary, *inter alia*, to establish the scope of their duties and rights. Thus, vocational activities do not become administrative functions only because they are performed within the state (as well as self-government) administrative structures of the healthcare system. A physician might be recognised as a public official only if he/she performed vocational activities in the administrative structure of the healthcare system, i.e. if he/she combined the job of a physician with a public (administrative) function. Thus, the circle of such persons includes, e.g. a hospital director, a doctor employed in the voivode's office or a healthcare fund. They would be public officials because being physicians they would perform specified administrative functions.⁸ The Voivodeship Administrative Court in Kraków issued a similar judgment on 14 December 2016, II SA/Kr 1323/16, concerning a decision on refusal to provide public information, and stated that in some circumstances, in case of some functions performed together with a job of a doctor, it is possible to attribute such a feature to them. This is possible when a doctor at the same time:

- is an employee of, e.g. the Ministry of Health or self-government administration, except when he/she performs exclusively service-related functions;
- performs a function of a manager of a healthcare entity that is not an entrepreneur, e.g. SPZOZ;
- is an employee of the National Health Fund (Narodowy Fundusz Zdrowia – NFZ) or is a board member of a voivodeship branch of the NFZ;
- adjudicates in disciplinary bodies operating based on the Act on physicians and dentists' self-government;
- within the scope in which physicians are entitled to take administrative decisions (Article 115 §13(4) CC), i.e. members of physicians' self-government bodies, e.g. making decisions on granting the right to perform a medical job.⁹

With regard to the determination of the function of a head of a ward as a person performing a public function, the Supreme Court issued a judgment of seven judges on 20 June 2001, I KZP 5/2001, where it stated that doctors' activities consisting in the provision of healthcare services in public healthcare institutions performed within the scope of healthcare services financed from public funds for the insured

⁸ OSNKW of 2001, No. 3–4, item 21.

⁹ Published in CBOSA.

and other entitled persons pursuant to other regulations are included in the scope of the performance of a public function within the meaning of Article 228 CC. Due to the fact that healthcare services financed from public funds may be also provided by non-public healthcare institutions, a physician employed in such an institution and performing vocational activities listed in Article 2 of the Act on medical professions is also a person performing a public function referred to in Article 228 CC. What plays a decisive role in recognising healthcare services as ones covered by the concept of performing a public function is not the type of healthcare institution they are provided in, i.e. whether in a public or a non-public healthcare institution, but whether they are provided for a person entitled (a patient) within the healthcare services financed from public funds.¹⁰ The Supreme Court decided that a public healthcare institution the aim of which is to provide healthcare services cannot be recognised as “another state institution” within the meaning of Article 115 §13(6) CC, even if a state administration body were its founding organ, and thus, holding a managerial position in this institution does not result in being a public official. Based on this assumption, the Supreme Court decided that performing a public function referred to in Article 228 §1 CC covers the performance of the function of a head of a ward in a public healthcare institution connected with both managing and providing healthcare services referred to in Article 2 of the Act of 5 December 1996 on medical professions¹¹ and Article 3 of the Act of 30 August 1991 on healthcare institutions¹², financed from public funds. According to R.A. Stefański, the Supreme Court judgment means that: “it is rightly indicated that a person performs a public function only in case the tasks assigned to them serve those institutions’ authoritative activities. It concerns functions that require special trust to persons who perform them, and their violation directly endangers the functioning of state institutions that in general perform them and only occasionally entrust them to other institutions, and which are performed on their behalf by persons who are not public officials within the meaning of Article 115 §13 CC”.¹³

Thus, it should be recognised that performance of a public function is connected with the implementation of specific tasks in an office within the structure of public authorities or holding another post connected with a decision-making process in the structure of public administration as well as other public institutions. As the Constitutional Tribunal raised in its judgment of 20 March 2006, K 17/05, where it interpreted the concept of a “person performing a public function” in the light of Article 5 para. 2 AAPL, it is not possible to precisely and unambiguously determine whether and in what circumstances a person functioning within the structure of a public institution may be recognised as one performing a public function. Not every public person will be one that performs public functions. Performing a public function is connected with the fulfilment of specified tasks in an office within the structure of public authorities or holding another post connected with

¹⁰ OSKW of 2001, No. 3–4, item 21.

¹¹ Journal of Laws [Dz.U.] of 1997, No. 28, item 152, as amended.

¹² Journal of Laws [Dz.U.] No. 91, item 408, as amended.

¹³ R.A. Stefański, *Glosa do postanowienia SN z dnia 15 listopada 2002 r., IV KKN 570/99*, OSP of 2003, No. 9, item 106, after LEX.

decision-making in the structure of public administration as well as other public institutions. Indication whether we deal with a public function should refer to examination whether a given person in a public institution to some extent performs public tasks imposed on this institution. Thus, it concerns entities that are entitled to at least narrow discretion to take decisions in a public institution. Hence, not every employee of such an institution will be a public official whose sphere of protected privacy may be limited from the perspective of the justified interest of third parties materialised in the right to public information. Making an attempt to indicate general features that are decisive factors in determining that a given entity performs a public function, without the risk of error, one can assume that it concerns posts and functions the performance of which means undertaking activities directly influencing the legal situation of other people or is at least connected with the preparation of decisions concerning other entities. Therefore, the scope of public functions does not include such posts as, e.g. those performed within public authority bodies that are technical or services-related in nature.¹⁴ Thus, anyone who performs a function in public authority bodies or in the structures of legal persons and organisational units that are not legal persons should be recognised as a person performing a public function if it is connected with having control over the disposal of state or self-government property or management of matters connected with the performance of tasks by public authorities or other entities that exercise that power or manage public or State Treasury's property. Legal grounds for performing a public function by a person are not important.¹⁵

The above-presented stand seems to mean that when analysing whether a head of a ward or a physician managing a ward performs a public function, it is necessary to take into account his/her competences determined in the employing entity's organisational rules and regulations and its statute, and first of all the scope of activities (duties correlated with competences). As practice shows, the head of a ward performs a hospital's public tasks by performing managerial functions in a hospital ward. As the Supreme Administrative Court stated in its judgment of 21 June 2018, I OSK 166/18, "in the Court's opinion, there are no doubts that a person employed as a head of a ward in a public hospital, a coordinator of healthcare services provided in a hospital ward, is a person performing a public function. Performing managerial functions in a hospital ward, the head of a ward performs a public task imposed on that hospital. It is confirmed by the content of contracts included in the files, according to which the tasks of persons employed as heads of a ward – coordinators of healthcare services provided in hospital wards – include, inter alia, management, organisation, coordination and supervision of medical activities in the ward in order to ensure permanent medical healthcare for hospitalised patients".¹⁶ The Supreme Administrative Court decided in the above-mentioned judgment that the data contained in the contracts entered into with heads of a ward – coordinators of healthcare services provided in a ward – concerning the number of a physician's

¹⁴ OTK-A 2006, No. 3, item 30.

¹⁵ Compare the judgment of the Supreme Administrative Court of 8 July 2015, I OSK 1530/14, CBOSA.

¹⁶ Published in CBOSA.

diploma, the number of entry to the Businesses Registry and the salary constitute data connected with the performance of the function and the conditions for assigning those functions and their performance. Thus, they cannot be subject to protection due to the privacy of those persons and shall be subject to disclosure in the mode determined in the provisions of the Act on access to public information.

However, it is worth indicating that, as the Supreme Administrative Court emphasised in the above-quoted judgment of 8 July 2015, including a head of a ward in the category of persons performing public functions does not mean that all information about them may be disclosed because in the course of preparing an answer to a motion to provide public information, it is necessary to establish whether the requested information is connected with the performance of a public function by a person referred to in Article 5 para. 2 second sentence AAPI. It should be taken into account that even if a given person is recognised as a person performing a public function at the moment when the motion is filed or in the past, this does not mean, in the light of Article 5 para. 2 AAPI, that each piece of information concerning that person is subject to availability regardless of that person's privacy protection. As it has been indicated, it concerns only information connected with the person's performance of a public function. Article 5 para. 2 AAPI should be carefully applied to limit the right to privacy. It is absolutely required that the requested information about a person performing a public function should be connected with the performance of that function. In other words, there must be an adequate relation between information concerning a given person and this person's functioning in the public sphere.¹⁷ Proper protection of the right to privacy of people performing public functions should be based on appropriate and precise determination of the limits of such a relation.

A head of a ward or another person holding a managerial position in a healthcare institution is in general a "person performing a public function" unless their activities, based on internal regulations that are in force in a particular healthcare institution, are service-related or technical and not connected with performing a public function in the ward. From the point of view of the judiciary, a person performing a public function is anyone who performs a function in public authorities or in the structures of legal persons and organisational units that do not have legal personality in case the function is connected with managing the state or self-government property or managing matters connected with fulfilling tasks of public authorities or other entities that exercise these powers or manage public property or the property of the State Treasury. It is so regardless of what legal basis authorises a person to perform a public function.¹⁸ What deserves special emphasis is the fact that classifying a person within the group referred to in Article 5 para. 2 second sentence AAPI does not mean that a head of a ward is completely excluded from the right to privacy. The right constitutes a type of obligation for an entity providing public information to consider the nature of information to be provided and the context of

¹⁷ Compare the judgment of the Supreme Administrative Court of 18 February 2015, I OSK 695/14.

¹⁸ M. Bidziński, [in:] M. Bidziński, M. Chmaj, P. Szustakiewicz, *Ustawa o dostępie do informacji publicznej. Komentarz*, Warsaw 2010, pp. 73–74.

its provision consisting in the scope of competences of a head of a ward (a physician managing a ward). Information that is not directly connected with the function he/she performs is subject to protection connected with the right to privacy.

BIBLIOGRAPHY

- Bidziński M., [in:] M. Bidziński, M. Chmaj, P. Szustakiewicz, *Ustawa o dostępie do informacji publicznej. Komentarz*, Warsaw 2010.
- Krajewski R., *Funkcjonariusz publiczny i osoba pełniąca funkcję publiczną jako kategorie prawa karnego istotne z perspektywy funkcjonowania administracji publicznej*, *Studia z Zakresu Prawa, Administracji i Zarządzania Uniwersytetu Kazimierza Wielkiego* Vol. 1, 2012.
- Marcinkowska A., *Lekarz jako osoba pełniąca funkcję publiczną*, *Czasopismo Prawa Karnego i Nauk Penalnych*, Year XVIII, No. 1, 2014.
- Stefański R.A., *Glosa do postanowienia SN z dnia 15 listopada 2002 r.*, IV KKN 570/99, OSP 2003, No. 9, item 106, LEX.

Legal regulations

- Act of 2 April 1997: Constitution of the Republic of Poland, *Journal of Laws [Dz.U.]* No. 78, item 483, as amended.
- Act of 30 August 1991 on healthcare institutions, *Journal of Laws [Dz.U.]* No. 91, item 408, as amended.
- Act of 5 December 1996 on medical professions, *Journal of Laws [Dz.U.]* of 1997, No. 28, item 152, as amended.
- Act of 6 June 1997: Criminal Code, *Journal of Laws [Dz.U.]* of 2018, item 1600.
- Act of 6 September 2001 on access to public information, *Journal of Laws [Dz.U.]* of 2013, item 1330.
- Act of 15 April 2011 on healthcare services, *Journal of Laws [Dz.U.]* of 2018, No. 160.

Case law

- Judgment of the Supreme Court of 27 November 2000, WKN 27/00, OSNKW 2001, No. 3–4, item 21.
- Judgment of the Supreme Court, of seven judges, of 20 June 2001, I KZP 5/2001, OSKW 2001, No. 3–4, item 21.
- Judgment of the Constitutional Tribunal of 20 March 2006, K 17/05, OTK-A 2006, No. 3, item 30.
- Judgment of the Supreme Administrative Court of 15 November 2013, I OSK 1933/13, CBOSA.
- Judgment of the Supreme Administrative Court of 18 February 2015, I OSK 695/14, CBOSA.
- Judgment of the Constitutional Tribunal of 9 April 2015, K 14/13, OTK-A 2015, No. 4, item 45.
- Judgment of the Supreme Administrative Court of 8 July 2015, I OSK 1530/14, CBOSA.
- Judgment of the Voivodeship Administrative Court in Gdańsk of 19 October 2016, II SAB/Gd 110/16, CBOSA.
- Judgment of the Voivodeship Administrative Court in Kraków of 14 December 2016, II SA/Kr 1323/16, CBOSA.
- Judgment of the Voivodeship Administrative Court in Szczecin of 25 January 2018, II SAB/Sz 100/17, CBOSA.
- Judgment of the Supreme Administrative Court of 21 June 2018, I OSK 166/18, CBOSA.

HEAD OF A WARD AS A PERSON PERFORMING A PUBLIC FUNCTION IN THE LIGHT OF ACT ON ACCESS TO PUBLIC INFORMATION

Summary

The article is aimed at presenting, analysing and assessing legal aspects of classifying a head of a ward as a person performing a public function in the light of the Act on access to public information. Access to public information is a citizen's right of key importance in a democratic state ruled by law. The right has its basis in the Constitution of the Republic of Poland, where in accordance with Article 61 para. 1, "A citizen shall have the right to obtain information on the activities of organs of public authority as well as persons discharging public functions. Such right shall also include receipt of information on the activities of self-governing economic or professional organs and other persons or organizational units relating to the field in which they perform the duties of public authorities and manage communal assets or property of the State Treasury." The right to healthcare is also a constitutional right laid down in Article 68 para. 1 of the Constitution. Healthcare services are financed from public funds. The function of the head of a ward is deeply rooted in the practice of hospital functioning and plays a significant role in the organisation of 24-hour inpatient healthcare. In case law and literature, there are differences in the classification of heads of a ward as persons performing public functions. The article presents an analysis of the status of the head of a ward as an obliged entity in the light of the Act on access to public information.

Keywords: head of a ward, access to public information, health protection, hospital, healthcare institution, healthcare services, physician managing a ward, Constitution

ORDYNATOR JAKO OSOBA PEŁNIĄCA FUNKCJĘ PUBLICZNĄ W ŚWIECIE USTAWY O DOSTĘPIE DO INFORMACJI PUBLICZNEJ

Streszczenie

Przedmiotem artykułu jest prezentacja, analiza i ocena prawna kwalifikacji ordynatora jako osoby pełniącej funkcję publiczną w świetle ustawy o dostępie do informacji publicznej. Dostęp do informacji publicznej należy do praw obywatela o kluczowym znaczeniu w demokratycznym państwie prawa. Prawo to znajduje oparcie w Konstytucji, gdzie zgodnie z art. 61 ust. 1 "Obywatel ma prawo do uzyskiwania informacji o działalności organów władzy publicznej oraz osób pełniących funkcje publiczne. Prawo to obejmuje również uzyskiwanie informacji o działalności organów samorządu gospodarczego i zawodowego, a także innych osób oraz jednostek organizacyjnych w zakresie, w jakim wykonują one zadania władzy publicznej i gospodarują mieniem komunalnym lub majątkiem Skarbu Państwa". Prawo do ochrony zdrowia jest również prawem konstytucyjnym, określonym w art. 68 ust. 1 Konstytucji. Świadczenia ochrony zdrowia finansowane są ze środków publicznych. Funkcja ordynatorska jest głęboko zakorzeniona w praktyce funkcjonowania szpitali, pełniąc doniosłą rolę w organizacji całodobowej stacjonarnej opieki zdrowotnej. W orzecznictwie i literaturze istnieją rozbieżności co do zakwalifikowania ordynatorów do grupy osób, których działalność jest pełnieniem funkcji publicznej. W niniejszym artykule przedstawiono analizę statusu ordynatora jako podmiotu zobowiązanego w świetle ustawy o dostępie do informacji publicznej.

Słowa kluczowe: ordynator, dostęp do informacji publicznej, ochrona zdrowia, szpital, zakład opieki zdrowotnej, działalność lecznicza, lekarz kierujący oddziałem, Konstytucja

EL DIRECTOR MÉDICO COMO PERSONA QUE DESEMPEÑA FUNCIÓN PÚBLICA A LA LUZ DE LA LEY DE ACCESO A LA INFORMACIÓN PÚBLICA

Resumen

El artículo presenta, analiza y valora la calificación legal del director médico como persona que desempeña función pública a la luz de la ley de acceso a la información pública. El acceso a la información pública es un derecho de ciudadano de máxima importancia en el estado democrático de derecho. Este derecho tiene su respaldo en la Constitución, ya que conforme con el art. 61 ap. 1, el ciudadano tiene derecho a obtener información sobre actividad de órganos de autoridad pública y de personas que desempeñan funciones públicas. Este derecho comprende también la obtención de la información sobre la actividad de órganos de autogobierno económico y profesional y de otras personas o unidades de organización en el ámbito en el cual ejercen funciones de autoridad pública y gestionan bienes comunales o el patrimonio de la Tesorería del Estado. El derecho a la protección de la salud es también un derecho constitucional determinado en el art. 68 ap. 1 de la Constitución. Las prestaciones relativas a la protección de salud son financiadas de los fondos públicos. La función del director médico es profundamente arraigada en la práctica de funcionamiento de hospitales y desempeña importante papel en organizar el servicio médico que dura todo el día y la noche. En la doctrina y jurisprudencia existen discrepancias en cuanto a la inclusión de los directores médicos al grupo de personas cuya actividad constituye el desempeño de la función pública. El presente artículo analiza el estatus del director médico como sujeto obligado a la luz de la ley de acceso a la información pública.

Palabras claves: director médico, acceso a la información pública, protección de la salud, hospital, centro de atención médica, actividad médica, médico que dirige un servicio, Constitución

ОРДИНАТОР КАК СУБЪЕКТ, ВЫПОЛНЯЮЩИЙ ПУБЛИЧНУЮ ФУНКЦИЮ В СВЕТЕ ЗАКОНА О ДОСТУПЕ К ПУБЛИЧНОЙ ИНФОРМАЦИИ

Резюме

Предметом статьи является представление, анализ и правовая оценка квалификации ординатора как субъекта, выполняющего публичную функцию в свете Закона о доступе к публичной информации. Доступ к публичной информации является одним из гражданских прав, имеющих ключевое значение в демократическом правовом государстве. Данное право находит отражение в Конституции, в которой, в соответствии со ст. 61 п. 1 гражданин имеет право получать информацию о деятельности органов государственной власти. Данное право касается также получения информации о деятельности органов хозяйственного и профессионального самоуправления и других лиц и организационных подразделений в том объеме, в котором они выполняют задачи органов государственной власти и управляют муниципальной собственностью или имуществом, принадлежащим Государственной казне. Право на охрану здоровья также является конституционным правом, определяемым в ст. 68 п. 1 Конституции. Медицинские услуги финансируются из государственных средств. Ординаторская функция глубоко укоренилась в практике функционирования больничных учреждений, выполняя значительную роль в организации круглосуточной стационарной медицинской помощи. В судебной практике и предметной литературе наблюдаются расхождения в вопросе о квалификации ординатора как представителя той или иной группы лиц, чья деятельность представляет собой выполнение

публичной функции. В данной статье представлен анализ статуса ординатора как субъекта, несущего ответственность в свете Закона о доступе к публичной информации.

Ключевые слова: ординатор, доступ к публичной информации, здравоохранение, больница, медицинское учреждение, медицинская деятельность, врач – заведующий отделением, Конституция

CHEFARZT ALS PERSON DES ÖFFENTLICHEN LEBENS ANGESICHTS DES GESETZES ÜBER ZUGANG ZU ÖFFENTLICHEN INFORMATIONEN

Zusammenfassung

Gegenstand dieses Artikels ist eine Analyse und rechtliche Beurteilung des Chefarztes als Person des öffentlichen Lebens angesichts des Gesetzes über Zugang zu öffentlichen Informationen. Der Zugang zu öffentlichen Informationen gehört zu Staatsbürgerrechten von Schlüsselbedeutung im demokratischen Rechtsstaat. Dieses Recht stützt sich auf dem Grundgesetz (GG), wo unter Art. 61 Abschn. 1 der Staatsbürger das Recht zum Erlangen von Informationen über die Aktivitäten der öffentlichen Gewaltorgane und über eine Person des öffentlichen Lebens besitzt. Dieses Recht umfasst auch die Erlangung über Aktivitäten der wirtschaftlichen und berufsbezogenen Selbstverwaltungsorgane, darüber hinaus über andere Personen und Organisationseinheiten in demjenigen Bereich, in welchem sie Aufgaben der öffentlichen Gewalt ausführen und worin sie mit dem Kommunalgut oder mit dem Staatsschatz wirtschaften. Das Recht zum Gesundheitsschutz bildet auch ein grundgesetzliches Recht, bestimmt im Art. 68 Abschn. 1 des GG. Die Leistungen des Gesundheitsschutzes werden von öffentlichen Mitteln finanziert. Die Funktion eines Chefarztes ist profund in der Praxis des Krankenhäuserfunktionierens eingebettet, indem diese Funktion eine bedeutungsschwere Rolle in dem 24-stündigen stationären Gesundheitsschutz spielt. In der Rechtsprechung und in der Literatur gibt es Diskrepanzen, ob die Chefarzte zu einer Personengruppe eingestuft werden sollen, welcher Aktivität in der Tat eine öffentliche Funktion darstellt. In diesem Artikel wurde die Analyse des Chefarztstatus als subjektpflichtig angesichts des Zugangs zu öffentlichen Informationen durchgeführt.

Schlüsselwörter: Chefarzt, Zugang zu öffentlichen Informationen, Gesundheitsschutz, Krankenhaus, Gesundheitszentrum, Gesundheitsaktivität, leitender Abteilungsarzt, Grundgesetz (GG)

LE MÉDECIN EN CHEF EN TANT QUE PERSONNE EXERÇANT UNE FONCTION PUBLIQUE AU REGARD DE LA LOI SUR L'ACCÈS À L'INFORMATION PUBLIQUE

Résumé

Le sujet de l'article est la présentation, l'analyse et l'évaluation juridique des qualifications du médecin en chef en tant que personne exerçant une fonction publique à la lumière de la loi sur l'accès à l'information publique. L'accès à l'information publique fait partie des droits d'un citoyen d'importance capitale dans un État de droit démocratique. Ce droit trouve son appui dans la Constitution où, conformément à l'article 61 alinéa 1 un citoyen a le droit d'obtenir des

informations sur les activités des autorités publiques et des personnes exerçant des fonctions publiques. Ce droit comprend également l'obtention d'informations sur les activités des organes de l'autonomie économique et professionnelle, ainsi que des autres personnes et unités organisationnelles, dans la mesure où elles exécutent de tâches d'autorité publique et gèrent des biens municipaux ou des biens du Trésor. Le droit à la protection de la santé est également un droit constitutionnel prévu à l'article 68 paragraphe 1 de la Constitution. Les services de santé sont financés par des fonds publics. La fonction du médecin en chef est profondément enracinée dans la pratique du fonctionnement des hôpitaux et joue un rôle majeur dans l'organisation des soins de santé stationnaires 24 heures sur 24. Dans la jurisprudence et la littérature, il existe des divergences quant à la classification des médecins en chef à un groupe de personnes dont l'activité est l'exercice de la fonction publique. Cet article présente une analyse du statut du médecin en chef en tant qu'entité soumise à l'obligation au regard de la loi sur l'accès à l'information publique.

Mots-clés: le médecin en chef, accès à l'information publique, protection de la santé, hôpital, établissement de santé, hôpital, activité médicale, médecin responsable du service, la Constitution

PRIMARIO COME PERSONA CHE SVOLGE UNA FUNZIONE PUBBLICA ALLA LUCE DELLA LEGGE SULL'ACCESSO ALL'INFORMAZIONE PUBBLICA

Sintesi

L'oggetto dell'articolo è la presentazione, l'analisi e la valutazione giuridica dell'abilitazione del primario in quanto una persona che svolge una funzione pubblica alla luce della legge sull'accesso all'informazione pubblica. L'accesso all'informazione pubblica è un diritto fondamentale di un cittadino in uno stato di diritto democratico. Tale diritto si basa sulla Costituzione, dove, conformemente all'articolo 61. paragrafo 1, un cittadino ha diritto di ottenere informazioni sulle attività delle autorità pubbliche e delle persone che esercitano funzioni pubbliche. Tale diritto comprende anche l'ottenimento di informazioni sulle attività degli organi di autogoverno commerciale e professionale, nonché di altre persone e unità organizzative nell'ambito delle quali svolgono compiti di pubblica autorità e gestiscono beni comunali o del Tesoro. Il diritto all'assistenza sanitaria è anche un diritto costituzionale definito all'articolo 68. paragrafo 1 della Costituzione. I servizi sanitari sono finanziati con fondi pubblici. Il primario, svolgendo un ruolo significativo nell'organizzazione dell'assistenza sanitaria stazionaria H24, è profondamente radicato nella pratica del funzionamento degli ospedali. Nella giurisprudenza e nella letteratura, vi sono discrepanze per quanto riguarda la classificazione dei primari al gruppo di persone la cui attività consiste nell'esercizio di una funzione pubblica. Questo articolo presenta un'analisi dello status del primario in quanto soggetto obbligato alla luce della legge sull'accesso all'informazione pubblica.

Parole chiave: primario, accesso all'informazione pubblica, assistenza sanitaria, ospedale, unità sanitaria, attività medica, medico responsabile del reparto, Costituzione

Cytuj jako:

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