Public Interest in the Context of the Right to Access Official Information

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1. Introduction
Public interest has become a favourite slogan in the mass media. The right to access official information is one of the areas where public interest is extremely important. It is expected that openness will help to erase the distance between government and society, increase institutional accountability, encourage citizens to take an active part in the decision making process and bring other positive results. However, greater transparency may diminish public trust if media uses it for the formation of public opinion. Furthermore, different attitudes of States as regards access to official information are well-known – some perceive it as fundamental, some as a plain procedural right. Relevant provisions in international documents are uneven as well. Is the problem really in the different public needs? May the public interest serve as a solid ground to assess various traditions of information access? The answer would be very useful for Baltic States that are still forming their openness traditions. For this reason the author examines international documents, access of information in the European Union (EU) and summarises the Baltic experience in the field.¹

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¹ The analysis in the article is limited to the general right to access official documents; the author does not assess the specific aspects of the right to information. Specific aspects, such as environmental information, are often related to other free standing rights. Con-
2. The Concept of Public, Interest, and Public Interest

Primarily, the concept of public interest derives from the political domain and is of an open nature. Multiple theories present the public interest as the interest of the public, as the expression of maximum benefits, as balance and as a higher objective. In public administration, the concept of public interest helps to define the relationship between the representatives and the represented: is the government by the people or for the people? In the legal context, multiple terms are used to describe the public interest as public, general, State, collective interest, but no concrete definition is given. The definition may vary because of the State regime type, a specific background of a case and the nature of public policy. In these circumstances the induction method, i.e. analysis of the public interest concept through separate elements, is chosen to answer the question – what is the public interest in the legal domain?

In a general sense the notion of interest combines a result – some important, interesting, cared issues, benefits, and a process of taking interest or concern. Both elements are necessary for the concept of public interest. If the public interests would be defined merely as specific values, the list of them would be exhaustive and the notion would not reflect the dynamic attitudes of society. If the public interests would be defined just as a process, it would be complicated to distinguish a genuine public interest from plain public curiosity. Uerpmann concludes that interest is a psychical-emotional subjective connection with the object, but not the object itself or the objective of the connection; secondly, these general notions are described by different intensity and nature of connection.

The purpose of all public interests is public welfare that depends on the protection of most critical values. Welfare is described as a general, objective, immaterial object, and public interest is one of the expression forms (difference through objective/subjective and material/ideal). Specifically, such values as international security or public health contribute to the general welfare and public interest is to ensure the protection of them. Typically the public interest objects are widely recognised as having fundamental importance and are listed in the international treaties and con-

\[\text{4 R. Uerpmann, Das öffentliche Interesse: seine Bedeutung als Tatbestandsmerkmal und als dogmatischer Begriff (Mohr Siebeck, Tübingen, 1999) p. 23.}\]
\[\text{5 Ibid., p. 24.}\]