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Interview of Tomasz Kwaśniewski with Agnieszka Podgórska and Szymon Osowski for Duży Format (a special supplement to Gazeta Wyborcza).

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Show us your calendar, minister

We asked all provincial marshals and governors about the salaries of managers. And while we were at it, we also asked about their education. Answers have so far been provided reluctantly. We live in a country that has a culture of secrecy.

What is a watchdog?

A: A guard dog.

S: One that barks. And bites if necessary.

And in more human terms?

S: Someone comes to us and says (or writes, because we get a lot of emails) that he has moved from a large city to a small town, he wanted to find out how the local government works so he went to a budgetary and economics committee, but he was thrown out. "You have no right to be here," the chairman told him.

But it is his right as a citizen.

S: Not in this municipality.

So he asked for the minutes from the meeting, but it turned out that he couldn't have those either. That was when he came to us. Firstly, because we always do this at the start, make sure he had the right to ask. And then we showed him what to do for him to enforce his rights. This is a case from this year, and we helped him prepare a letter to the governor with a complaint to the council. And also a letter to the court that he was entitled to see the minutes. And a notification to the prosecutor's

office about a possible crime committed by the committee chairman. Because there is criminal liability for not making information public.

You sent him prepared letters and he just signed them?

S: This often happens.

And what happened next?

S: He won a case in the administrative court on making public information available. So he took the judgment and hung it up throughout the whole municipality. On noticeboards. To show people that you can win against the mayor. Then he gave an interview to a local newspaper.

And what was the reaction of the governor?

S: He responded by saying that the man has the right to the minutes, and also has the right to attend committees, but he, the governor, can do nothing more on the matter, because he deals with the whole council and not specific committees or council members.

And what about the notification to the prosecutor's office about the possibility of committing a crime?

S: There is no decision yet about that.

Did one of you assist him in court?

S: Sometimes it happens. He was by himself in this case though. It was his first time in court. He was shocked by how fast the case was conducted. Because it took about 10-20 minutes.

How long was it from the application to the ruling?

S: Three months.

This man's example is quite typical. It often happens that someone moves to a town, goes to the council to find out something, to get involved and ask questions, and then they refuse to talk to him. The case then comes to us, then it goes to court, which says that an answer must be given. Because that is the law!

Our local governments operate on the principle of habit. So the law is the law, and habit is habit. And every council is different. So now the idea is to break this habit.

A: Let's take a different example. We found a recording online posted by a man who went to a village meeting. He set up his camera because he wanted to record it. The recording shows how they attack him and call him crazy, then call the police who lead him out. We contacted him; we said that he has the right to make such a recording and post it on the internet.

S: In general, a large part of our work is support. Because if someone is alone and struggling, it's good for them to see that there are more people who care about openness.

So how did it end?

A: He is not thrown out anymore. After this, other local authorities started to record their sessions and post them on the internet.

Do we really have the right to record council meetings and post them on the internet?

S: Sure. And we don't need any additional permission.

And school meetings?

S: No, because the law applies only to public authorities elected by universal elections.

So I can't record school board meetings?

S: No, but you can ask for the minutes of a school board meeting, which most parents don't know. We have the right to obtain any document that is generated either in the government or a public institution.

We also have the right to ask the salaries of teachers, their education, experience, and any additional courses they have completed. Also minutes from audits, copies of the register, the number of fights, drug cases, even police interventions.

A school knows all this?

S: The amount of information that public institutions and administration accumulate is incredible.

Have you had a case when someone wanted to know how much teachers earn?

S: About bonuses. Who got them, for what and on what basis. A teacher asked about that. So it was an internal matter. It is quite common. Because the law does not only work when it is in the public interest. I just want to know and that's it. So I send a request for a document to the school management, even by email: "Please send me the minutes from the school board meeting." And I am supposed to receive a response within 14 days.

And if not?

S: Then to court. Or they call us and we help them.

There must be a terrible queue.

A: No, because not many people know that there is such a thing as the right to public information.

How often do you give this kind of advice?

A: About a thousand times a year.

And how many cases do you have?

S: Last year, we initiated about 350.

Why did that teacher want to know who got a bonus?

S: I can only guess, because we, and this is very important, do not ask them why they want to know. Or who the person is who is asking. We get anonymous emails the content of which shows that an official is asking. Because they received a request asking for the disclosure of a document, but they don't know whether they can do that and their legal service cannot help.

We also get a lot of requests for help from politicians. For example, in Warsaw we helped a PiS councillor who wanted to know with whom a magistrate has signed external agreements. Specifically. For example, that Osowski took PLN 200 for training and Podgórska PLN 1000 for catering. On the other hand, in Szczecin, we assist PO councillors. Exactly the same situation, because there the president is backed by PiS.

And what can we ask hospitals about?

S: In general, we should not ask the question: "What can I ask?". We live in a free country, we have the right to information, we can ask about everything. It is for the administration to find the provision that says they cannot disclose something. And then justify it. Of course, we can disagree with this and ask the court to settle the dispute.

Hospitals in general are not accustomed to openness. The law on public information states, for example, that when the National Health Fund audits a hospital, its results should be on its website. The hospital should also post them on its website. Now go and look at your National Health Fund or hospital site and check whether there are any records of audits. NHF's were terribly surprised when we asked them about it. And then we heard: "We do so many of them, how can we post all of them?"

What in particular did you ask about?

A: In what hospital was an audit carried out last year and what are the post-audit conclusions.

And?

S: First, we heard that we can't ask about that, and then they began to hide behind legalities. That we we're asking about processed information. Information that they would have to process for us. It's

true that if the information is processed, the law allows them to refuse to provide it. The thing is that these minutes exist and we can find out by ourselves what we need.

One NHF gave us these documents, but redacted which hospitals they concerned.

So why did they give them to you?

S: Exactly (*laughs*).

What can people ask hospitals about?

S: What is the mortality rate? How often do errors occur? What compensation was paid? Is the registrar on a contract or fully employed? How many hours do doctors work? etc.

But if everything was open, then...

A: We would all go to the best hospital. But what's wrong with that? The hospital would have more money, it would evolve, and others would have to follow in its footsteps.

The ideal situation that we are striving for in this dispute with the NHFs would be that when I go to hospital I wouldn't have to ask anything, I would just go on the website and everything would be there.

And what do people want to know from public offices?

S: Maybe because of the upcoming local elections there is a wave of questions about pay and bonuses. Who got one? How much? For what?

And they provide this information?

S: No, of course not. That is why we asked all provincial marshals and governors about the salaries of managers. And while we were at it, we also asked about their education. The answers have so far been provided reluctantly. Because some people do not want to answer, while others hide behind privacy. So now we are going to court with almost every marshal. And we have already won a few cases. For example, with the governor of Mazovia and the marshals of Gdansk and Opole. We will probably soon win with Marshal Struzik.

And what do you do when you win?

S: We post it on our website, because people are interested who earns how much and what their education is. And we want those who fight for this information in their municipality to see that there are already judgments in similar cases.

Why do people want this information?

S: Firstly, we have the right to know. Secondly, all the time people are saying that mayors employ friends and family – maybe it is worth dispelling this rumour? Or confirming it.

But how can you check on what basis someone was employed?

S: If one of the factors of employment is education, we can ask about that. And then you can see something.

And if a marshal gives you information about education and salary, do you verify it?

S: No, because it is presumed that this information is true. So, I have to believe it. And I do believe it.

And why do they not want to give it?

S: Because we live in a country that has a culture of secrecy.

That is what they say?

S: No, that is my way of putting it.

Officials often think they don't have to provide information. Or that it is better not to provide it.

How long do these cases go on for?

S: Judgments are passed about six months after submitting an application. So quite quickly. Although, proceedings can also take a long time. We have actually just finished a case with some railway companies. A councillor from Radom wanted to know why some connections were withdrawn. They said it was because of passenger flows. That research showed that there were fewer passengers on those lines. He asked to see the research. They said it was a commercial secret. Although it is a public company.

We were in court for four and a half years, but we finally succeeded. However, the information was no longer needed by anyone, because the connections were restored.

Recently, the Panoptykon foundation asked the railway where they deployed cameras. Especially those that record sound. PKP SA refused. Panoptykon took the matter to court, which stated that PKP SA as a public company is obliged to provide information, but added that the questions were too general.

S: When the dispute over open pension funds was going on, the President asked for a legal opinion from three people. We asked who those people were. He refused, the case went to court, and it finally decided that we had no right to ask. So, citizens do not have the right to know who advises the President of the Republic of Poland – it's bizarre. Therefore, this issue is likely to go to the European Court of Human Rights.

We don't want to give up. Especially because political parties also have a rather confused attitude to transparency. We asked all the major parties about expenses. For one month. And all of them refused. We have been pursuing this for a year now. I mean with PO, PiS, PSL and SLD we won at the court of first-instance. Because Your Movement didn't even send documents to the court. So, we are waiting and at some point we apply for it to be punished by a fine.

SLD gave us the documents after the first-instance judgment. And the others filed appeals to the Supreme Administrative Court, which means they still believe that you cannot ask them what they spend taxpayers' money on.

And what did you find in SLD's papers?

S: Well, nothing special. And that happens a lot. But they themselves cause the tension. Because when someone comes and says that he would like a list of expenses, and they refuse, what would that person think? Bandits!

Of course, if you already have these documents, you can start talking about the effectiveness of the expenditures. So, what are the authorities are afraid of? A conversation about the facts? Or, for example, whether the closure of a school made sense? Because if the mayor says: "My economic analysis says we need to close the school," it may be that this analysis is not so unambiguous. If it exists at all.

The problem of access to public information thus results from the arrogance of the authorities. Because the law itself is good.

What do you mean?

S: That we can ask in an informal way. In person, by email, letter.

The time for a response may not exceed 14 days. So quite quickly.

The information is free. So, I cannot be ordered to pay for its preparation. At most, I would have to pay for the medium it is stored on, like a CD.

If an institution does not want to give me an answer or the answer does not satisfy me, taking the case to court will cost me PLN 100. And if I lose, then I lose that PLN 100, but if I win I get it back.

From the point of view of the citizen, it is a revelation.

Are you not worried that if people start to ask on mass, officials will do nothing other than answer questions?

S: There is the Public Information Bulletin. A special place on the internet to share information with the public. If kindergartens, schools, hospitals, generally institutions publicly funded, post information about themselves, they won't have any more trouble. Because if we ask them, they can

send us there. Of course, if what we are asking about is there.

Is it?

S: Very rarely. When it comes to schools or kindergartens, hardly any have pages in the Public Information Bulletin. Though they have a duty to.

Let's go back to the courts. Where is the problem?

S: At the level of the Supreme Administrative Court. In particular, one judge who passes judgement in a lot of matters regarding access to information, making judgments that often in our opinion go against the idea of transparency. She finds restrictions which do not exist in the law.

For example?

S: The calendars of ministers.

A citizen asked, and we helped him, who the minister meets with. Of course, when he is at work. We went to the Supreme Administrative Court and that judge ruled that you cannot ask for that information. Because it belongs to the inner sphere. There is nothing like that in the law on access to public information. Moreover, this is categorically negated by a different Supreme Administrative Court judge.

And what is this inner sphere?

S: I do not know, because the judge did not define it. She says only that it is a working sphere that citizens cannot ask about. But even so, information about who a member of the Polish government is meeting is not a working sphere, but a typical sphere of activity.

So what happened?

S: We lost. We will probably also take it to the European Court of Human Rights.

Calendars should be online. There would be no misunderstandings and the minister would also function differently – the right to public information is there, after all as a preventive measure.

The problem is that bringing a case to the ECHR is difficult. So far, we have submitted one, but it was not accepted.

What was the case?

S: In 2011, in connection with the EU directive, the law on access to public information was updated. The government took the opportunity to add an amendment giving the opportunity not to disclose certain documents, if the authorities consider that it might be detrimental to the national interest. And it was dangerous also because it was imprecise.

Non-governmental organisations raised a cry, and the government backed down. The bill returned to parliament and in the Senate, Senator Rocki introduced an amendment to the draft similar to that of the government. Parliament, despite the negative opinion of the Legislative Office, adopted it, the President signed it, then sent it to the Constitutional Court, which held that the Senate violated its right to make amendments. And the wrong provision was cancelled.

Versions of successive amendments were consulted by the government with selected NGOs in a closed discussion group. I know, because we got some of the emails. So, we asked the government for access to all correspondence. And the government refused. So, we went to court. And we lost.

Because?

S: The Court said that we are not allowed to know about every stage of the legislative process. And that was after all the decisions and we just wanted to review them.

We would like documents related to the legislative process to be mostly available online. To that everything can be checked step by step. Because our experience shows, and we have already participated in three updates, that decisions are made somewhere along the way, in certain bodies, which are hard to find.

And did the European Court of Human Rights not accept this case?

S: The Court did not explain. It just sent a form saying that the application does not meet the criteria indicated in such and such an article. A one-page document, and that was it.

And when are you effective?

S: With the Polish government, we rather lose. With mayors, marshals, governors and city presidents we rather win. Although the cases are similar.

The government has better lawyers?

S: I think that these cases get more attention and are more significant. So, if someone won with the minister about his calendar, it would be too dangerous for the authorities.

What have you won against the government?

S: In 2009, the Prime Minister on the occasion of five hundred days of government boasted that the government had created an anti-corruption shield. We really wanted to see that document and as part of the Anti-Corruption Coalition of Non-Governmental Organisations we asked to see it. But they refused saying that its disclosure would threaten national security.

We fought for two years and when we won it turned out that it was a less than one-and-a-half-page description of what that service deals with. As if someone took the law and transcribed it. So, the

Prime Minister messed up then it was difficult for them to admit it. I was a pity because a lot of time, money and work went into it.

A: I would add that we don't think about losing with the government as a failure. Sometimes we know we will lose immediately, but we still go to court, because doing so opens the way for a change in the law.

For example?

S: A prisoner applied to the Ministry of Justice for public information and was told that it was in the Public Information Bulletin. So, it kept to the procedures. The problem is that prisoners do not have access to the internet. And this prisoner, we helped him in this, went to court about it. Where he heard that he should organise a computer for himself. Then the Commissioner for Human Rights got involved, because it can't be like that. And it's not just about that prisoner, but all those who do not have access to the internet.

We opened a kind of Pandora's box.

Carry on.

S: There was such a funny situation that the judges of the Constitutional Tribunal wrote the draft act on the Constitutional Tribunal. Last year I think. And then the president of the Constitutional Tribunal delivered it to the President so that he could submit it as a legislative initiative. So, the judges wrote the law for themselves. So, we asked them what they had written. And then we Tribunal said that we have no right to ask.

Why?

S: Because it was not a draft act, just some guidelines. Only they did not not know that we at the same time had asked the same thing of the president. And he gave it to us. And it was a draft act, point by point, with justification.

We went to an administrative court with a complaint against the Constitutional Tribunal that it did not want to make the document available to us. We lost. We appealed and during the hearing, when the Tribunal claimed that it is a working document, we submitted to the high court as an attachment what we got from the President: "Your Honour, we have here a document that the president sent to us, perhaps it is the same, except that these are not guidelines, just the whole act?"

And we won.

What do you mean?

S: The court ordered the Constitutional Tribunal to make available its document in order to compare it with the one that we received from the President. The Tribunal sent it, paid PLN 500 court costs, and that's all.

I also have a bone to pick with you journalists, that you let things go. That you print in newspapers sentences like: "The Ministry refused to give us an answer," and you leave it like that. Of course I understand that for the media, and issue that emerges over three or six months is not very attractive, but if you took each case to court, then the minister, the prime minister or the president could not just refuse like that.

A: Our experience is that very often simply submitting a complaint to the court is enough to make an office start to respond.

S: So, I urge you: don't let things go. After all, I've been successful several times now. For example, in Lidzbark there was a case in which a journalist asked the local authority about who went on a study visit.

A study visit?

S: A trip to see how something works in another municipality. In this case, the trip was to Germany and it was organised that the local government employees could take an accompanying person. So, he asked for a list and, of course, he was refused it. We persuaded him to appeal. And he won.

Did he find anything sensational?

A: No, but voters found out that people were taking accompanying persons on study trips.

S: They explained that there was an official part and an unofficial banquet with accompanying persons. Okay, but if someone decides to go on something like that why hide it?

Any other cases?

S: A local governor refused to disclose his own attendance list. And a citizen with our help went to court over it. He won in two instances, and then the governor once again refused, arguing that due to his privacy he could not release it. Because it contained his details, and besides, whether he goes to work or not is his private matter.

I don't understand.

S: Don't even try. Sometimes it's bad for your health.

He ignored court rulings?

S: The administrative court issuing the judgment said: "This is public information, but you may find a reason for not sharing it." So, the governor cited privacy. He then appealed to the local government appeal tribunal, which commented as follows: 'Governor, you are a person who exercises a public function, there is no question of any violation of your privacy.'

So, what did the governor do?

He ate the list.

S: He sent a protocol of the destruction of the attendance list. Two years have passed since the courts gave their rulings and we still don't have this information.

So what now?

S: We submitted a notification about the possibility that he committed a crime.

A: The attendance letters of mayors, local governors etc. are important in the context of the upcoming local elections. Because if a person performing a public function has unused vacation and loses an election, he is owed a lot of pay. Up to PLN 40,000. So, it is worth asking how much leave they have left. Or ask for attendance lists.

What else should ask local authorities be asked before the election?

S: A lot of people want to know when something that has been promised to them will be realised. For example, a year ago the mayor promised a new road, and now he says: "Unfortunately, we don't have enough money." And then it's worth asking: "So what was it spent on? Why on that? Please provide the relevant documents."

A: Szymon is talking about court cases, and we primarily teach people how to exercise their rights. Since 2011, we have been conducting the civic monitoring of the cork fund within which residents check how money is spent on the prevention of alcohol problems. Because the signals from Poland were that the money was spent on everything but that.

We start from posting information in the local media, on local blogs and on the websites of public offices encouraging people to contact us if they want to check their local authority. And then we ask those who contact us why they want to do this, whether they have any conflict with their local authority, or whether they have some kind of relationship.

In the first campaign, we got about 80 submissions. We chose 25 people, invited them to Warsaw, we showed how to write a request for information and what to do if they didn't get an answer. They also met with experts in preventing alcohol problems, who explained to them why this is important and what money should be spent on. And then we equipped them with web tools – each person when they got home and turns on their computer has a schedule of activities, application forms and guidance on how to carry out monitoring. And then they begin to gather information. And then they write a report with recommendations, organise meetings with residents and the authorities, saying what works, what does not work, how it can be improved, and how to monitor it. A result of this process they become a watchdog.

Can you give an example?

A: Last year in Bielsko-Biala, it turned out that more than PLN 600,000 from the cork fund was spent on the municipal police, including uniforms and fuel. Ania, a person with no legal experience, caused these funds in the following year to be used for what they should have been used for.

This year, we are also running courses for local organisations and associations who wish to carry out watchdog activities. Except that it is worth considering before applying, because if an association receives funding from the local authority it could have problems.

What?

A: In 2011, some men from Rabka who ran activities for children took part in the monitoring. We warned them, but they said that they had received funding for years so it wouldn't make a difference. They found nothing terrible in the monitoring, just two things for improvement, but the following year they had a problem with their subsidy.

Acting as a watchdog, especially in small towns, often brings with it unpleasant consequences. For example, someone receives an email: "Do you know that your mother works in the school, and the school is under the mayor?"

And then what?

A: And then they often stop asking.

S: For many years, I did nothing in Szczecin, mainly because I live there. But one day the situation forced me to act. Because the city got EU money to adopt a resolution on public consultations, and they prepared it without public consultation. So, we started to fight, and they had to hurry because they left it to the last moment and to make proper accounting for the subsidy they had to pass the resolution fast - then I got a call from an official saying that if I did not calm down, everyone would lose.

Because the resolution would not be passed?

S: I don't know, he didn't explain, but my wife works in an NGO that receives public funds from the city. So maybe that's what he meant.

And what did you do?

S: My own thing, but it is easier for me because I live in a big city, and work in another big city, I'm independent. On the other hand, there are many people who do not have that comfort and are rightly afraid, because the municipality and the town are often the largest employers.

Are there any other threats?

S: Apparently, even the minister Maciej Berek, the head of the Government Legislative Centre, assured us that before the election there will not be any amendments to the law on public

information, but I don't really believe it. Because there are continual proposals in that direction. For example, the Association of Polish Counties, and the judges of administrative courts even have a research project, the effect of which is to be - as they call it - managing restrictions on access to public information.

In my experience, that if someone wants to manage something, it probably doesn't mean expanding it, rather narrowing it. Besides, the Association of Polish Counties even says that the right to information is over exploited. That a lot of people are asking questions. So, we asked all municipalities how many requests they receive, and it turned out that only 3 percent get more than a hundred applications per year. And on average, it is around a dozen.

Each year.

A report by legal experts from the Polish Academy of Sciences on access to public information in Poland and in Europe was prepared and I couldn't find in it any conclusion that there is a problem regarding this in Poland or that any procedures need to be introduced to facilitate it. On the contrary. It says that further restrictions should be introduced.

Which?

S: First, the introduction of a mechanism so that only one application per year can be submitted. Or that for every request should be paid for. This would immediately block people.

Second, this unfortunate inner sphere will be introduced, and in such a way that it cannot be used transparently. So, there will be a lot of discretion on the part of the courts and the administration.

A: But I don't think this will happen. Because more and more people are asking questions, and they know they have the right to check the authorities. A critical mass is forming - they know that knowledge is power.

Are there many of you?

A: 50 members throughout the country. Besides this, we have trained more than 200 people.

Where did you get the money to operate?

A: Mainly from grants. At the moment, Norwegian and Swiss grants.

Do you receive salaries?

A: Yes, because this is our job. I receive approximately 3,300 after tax.

S: Me too.

Do you work anywhere else?

A: No, because we spend the whole day doing this work.

Do you have a family?

A: I have a husband.

And what does he say about it?

A: He also works in an NGO, so he understands.

S: My wife also works in an NGO, so she understands.

And salaries should be disclosed?

A: They should, but we don't push this. In contrast, it's definitely worthwhile for non-governmental organisations, even those that do not receive public funds, to say what they spend money on.

I understand that your work applies only to the public sector?

A: There are also watchdogs controlling the private sector, there aren't many in Poland. They focus mainly on employment issues. So maybe someone wants to start doing it?

All specific information can be found at: www.siecobywatelska.pl