

Asymmetric Information in Public Administration

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Preface

Information asymmetry – a situation where one of the parties involved in exchange processes has more information than the other,¹ leads to distortions in the operation of various markets through the inefficient allocation of resources, as the market mechanism does not ensure their efficient distribution. Information asymmetry involves having unequal information resources and, in itself, generates an imbalance of information. This imbalance puts one of the parties to the transaction in a privileged position with respect to the other, which is being forced to rely on limited information resources and therefore to act on conditions of insufficient information for correct decision-making. Asymmetry means a lack or breach of symmetry; it is a feature of a relationship whereby if this relationship takes place between x and y , it does not take place between y and x . In a world characterized by an increasing degree of complexity and an increase in the intensity of competition, the possibility of obtaining and properly using information constitutes the basis of functioning and decision-making by individuals in various spheres of socio-economic life.

Many economists had already drawn attention to the presence of information asymmetry as early as in the 1950s, although it was still an unnamed phenomenon at that time. Friedrich A. Hayek emphasized that information asymmetry does not arise in the model of perfect competition and in fact perfect information, because all elements of actual competition, such as advertising, innovation and price reductions, do not arise under the assumption of the existence of perfect information.² The theory of information asymmetry took shape in the 1960s and 1970s. The concept of information asymmetry was introduced into economic sciences by James A. Mirrles,³ who received the Nobel Prize in 1996 for his research on information asymmetry arising between government administration and private enterprises. The Nobel Prize was also awarded in the same year to William S. Vickrey, the creator of the

¹ George A. Akerlof, “The Market for ‘Lemons’: Quality Uncertainty and the Market Mechanism,” *The Quarterly Journal of Economics* 84, no. 3 (1978): 488–500.

² Friedrich A. Hayek, *Individualism and Economic Order* (Chicago: The University of Chicago Press, 1948).

³ James A. Mirrles, “Information and Incentives: The Economics of Carrots and Sticks,” *The Economic Journal* 107, no. 444 (1997): 1311–1329.

model of conducting auctions referred to as the “Vickrey auction” and a model of taxation in conditions of asymmetric information.⁴ However, the creation of the fundamental grounds for analyzing the phenomenon of asymmetric information is attributed to George A. Akerlof, Andrew Spence and Joseph E. Stiglitz, who received the Nobel Prize in Economics in 2001 for laying the foundations of the general theory of markets characterized by asymmetry of information.⁵ The appearance of differences in information resources among market participants today is a common phenomenon, which is why an attribute of information asymmetry is its universality – the ability to apply it in various research areas: strategic management,⁶ human resources management,⁷ corporate social responsibility,⁸ organizational behavior,⁹ public procurement,¹⁰ and the bank consumer credit market.¹¹

This monograph addresses the issue of information asymmetry as a phenomenon accompanying various activities of bodies of public administration, the sources of which are of a diverse nature. The diagnosis

⁴ William S. Vickrey, “Counterspeculation, Auctions and Competitive Sealed Tenders,” *The Journal of Finance* 16, no. 1 (1961): 8–37.

⁵ Karl-Gustaf Lofgen, Torsten Persson and Jorgen W. Weibull, “Markets with Asymmetric Information: The Contributions of George Akerlof, Michael Spence and Joseph Stiglitz,” *The Scandinavian Journal of Economics* 104, no. 2 (2002): 195–211.

⁶ Praveen R. Nayyar, “Information Asymmetries: A Source of Competitive Advantage for Diversified Service Firms,” *Strategic Management Journal* 11, no. 7 (1990): 513–519; Donald D. Bergh, Richard Johnson and Rocki-Lee DeWitt, “Restructuring through Spin-off or Sell-off: Transforming Information Asymmetries into Financial Gain,” *Strategic Management Journal* 29, no. 2 (2008): 133–148.

⁷ Costas Azariadis, “Employment with Asymmetric Information,” *The Quarterly Journal of Economics* 98, no. 4 (1983): 157–172; Carlos Baldo, Ramón Valle-Cabrera and Miguel Olivas-Lujan, “Executive Recruitment Triads from an Agency Theory Perspective,” *Administrative Issues Journal: Connecting Education, Practice, and Research* 9, no. 1 (2019): 1–18.

⁸ Abigail McWilliams, Donald S. Siegel and Patrick M. Wright, “Corporate Social Responsibility: Strategic Implications,” *Journal of Management Studies* 43, no. 1 (2006): 1–18; Seong Y. Cho, Cheol Lee and Ray J. Pfeiffer Jr., “Corporate Social Responsibility Performance and Information Asymmetry,” *Journal of Accounting and Public Policy* 32, no. 1 (2013): 71–83; Jinhua Cui, Hoje Jo and Haejung Na, “Does Corporate Social Responsibility Affect Information Asymmetry?,” *Journal of Business Ethics* 148, no. 3 (2018): 549–572.

⁹ Felix Brodbeck, Rudolf Kerschreiter, Andreas Mojzisch and Stefan Schulz-Hardt, “Group Decision Making under Conditions of Distributed Knowledge: The Information Asymmetries Model,” *Academy of Management Review* 32, no. 2 (2007): 459–479.

¹⁰ Christopher R. Yukins, “A Versatile Prism: Assessing Procurement Law through the Principal-Agent Model,” *Public Contract Law Journal* 40, no. 1 (2010): 64–86; Agnieszka Chrisidu-Budnik and Justyna Przedańska, “The Agency Theory Approach to the Public Procurement System,” *Wroclaw Review of Law, Administration and Economics* 7, no. 1 (2017): 154–165; Yuting Zhang and Lau Xu, “Quality Incentive Contract Design in Government Procurement of Public Services under Dual Asymmetric Information,” *Managerial and Decision Economics* 42, no. 1 (2021): 34–44.

¹¹ Ewelina Pawłowska-Szawara, *Asymetria informacji na rynku bankowych kredytów konsumenckich w Polsce* (Difin: Warszawa, 2020).

of the phenomenon of asymmetry of information in public administration is a particularly interesting research task, which has so far been poorly addressed.¹² It can be observed in such areas of operation of public administration as spatial planning, public procurement, contractualization of public services, energy transformation, and in relations between public administration and entrepreneurs. Asymmetry of information is also present within the function of serving public administration. This phenomenon can also be observed in the administrative procedures that are intended for a body of public administration to settle an individual case by way of an administrative decision, authoritatively and unilaterally shaping the legal situation of a citizen who is a party to it.

The monograph identifies various sources of the phenomenon of information asymmetry in the activities of public administration. They doubtlessly include the application by the public administration of provisions of the law which are often unknown to and incomprehensible for the recipients of its activities, as well as the possibility of the bodies of public administration using administrative authority, which is expressed in the possibility of authoritatively and unilaterally shaping the citizen's legal situation, but in accordance with the substantive law and the resulting obligation for the public administration to respect the rule of law.¹³

In this monograph, the notion of information asymmetry is referred, in particular, to the relations appearing between the public administration and the citizens and to the resulting implications for citizens, who are placed in a less privileged position with respect to the bodies of public administration regarding the information they possess about their activities in individual areas of their functioning, determined by substantive law.

While trying to put order to the materials collected in the monograph, it would be appropriate to start from the problems of the chapters contained in the first part of the work. The large capacity and general nature of the concept of asymmetry of information in public administration enabled **Piotr Lisowski** to draw attention to the essence of the processes related to obtaining and processing various types of data for correctly exercising public authority. The information needs of public administration constitute a kind of topos of the legal order, which is not weakened by the awareness of the threats and risks that are increased by the currently observed crisis of standards of democratic states of law accompanying its acquisition and processing of information.

¹² See for example: Claudia Lubk, "Information Asymmetries in the Communication between Bureaucracy and Citizens," *Wrocław Review of Law, Administration and Economics* 7, no. 1 (2017): 145–153.

¹³ Jan Boć, "Cechy realizacji norm prawa administracyjnego regulujących sytuację podmiotów zewnętrznych," in *Prawo administracyjne*, ed. Jan Boć (Wrocław: Kolonia Limited, 2010), 40–43.

Jolanta Blicharz and **Lidia Zacharko** point out that the computerization of public administration is a unique remedy to the phenomenon of information asymmetry. **Jan Gola** analyzes the phenomenon of information asymmetry in light of the obligation of public officials to submit asset declarations. In turn, **Justyna Przedańska** addresses the issue of the relations between the representatives of central and local government within the body of public administration, namely the Joint Central and Local Government Commission, based on the concept of information asymmetry. **Jolanta Behr** considers the problem of information asymmetry in relation to the theory of local government in the light of the relations between the municipality and external entities, as well as with respect to the internal relations within the municipality itself. In the last chapter of this section, while discussing the important problem of information asymmetry in spatial planning, **Justyna Mielczarek-Mikołajów** combines this with considerations about conflicts appearing in this area of operation of public administration.

The monograph's second area of research is the problem of information asymmetry in the activities of serving administration, where it is understood as one of the imperfections of public administration. The legal regulation related to serving administration is plentiful, whereby the chapters contained in the second part of the monograph refer to the appearance of asymmetry of information in the area of social welfare and public education. The chapter by **Dominika Cendrowicz** addresses the issue of the reasons for the appearance of information asymmetry in social welfare and the ways in which information is distributed by bodies of public administration in administrative proceedings intended to issue decisions granting or refusing to grant social welfare benefits. Meanwhile, **Renata Raszewska-Skałeczka** relates the theme of information asymmetry to the issue of remote teaching in the era of the COVID-19 epidemic and decisions made in this period with regard to restricting or suspending the operation of schools and educational establishments.

Another category of information asymmetry is related to the relationship between public administration and entrepreneurs. The chapters positioned in this part of the monograph have been connected with a specific area of law, namely public commercial law. And therefore, the chapter by **Karol Kiczka** draws attention to the undoubted disadvantage related to the asymmetry of information in the relations between public administration and entrepreneurs, which is time. This is because it cannot be ruled out that the final information will be communicated to the entrepreneur with a delay, which means that it will cease to be of any value to him. This state of affairs does not serve the manifestation of the principle of business activity freedom, which, in the conditions of the EU internal market, requires Polish entrepreneurs to be able

to make decisions on the basis of the necessary information, including the content of the norms of law that are binding on them, and the ways in which it is applied by the bodies of public administration. **Witold Małecki** discusses the issue of technical norms, which are issued by certain public authorities to ensure an adequate level of protection of human safety, life, and health against threats that can arise as a result of conducting specific types of business activity. Meanwhile, **Agnieszka Chrisidu-Budnik** and **Jerzy Korczak** focus on the issue of information asymmetry in the energy transformation process.

The next category of problems related to information asymmetry, which has a well-established place in administrative law studies, is related to the problem of public procurement. **Tadeusz Kocowski** emphasizes that the procedure for awarding public contracts differs from actions customarily taken by the participants of business trading when entering into contracts. Information influences the behavior and decisions of contractors, both at the stage preceding the conclusion of a contract, as well as during its performance and after its completion. In public procurement, it is exchanged through various documents, among which electronic documents are currently playing an important role. **Krzysztof Horubski** points out that the analysis of the signs of information asymmetry in the contract award procedure reveals that the contracting activity of public administration, which has the purpose of implementing such procedures on principles that are similar to the exchange of goods and services on the private market, does not constitute a “happy medium” in terms of organizing the performance of public tasks and poses specific problems of a legal nature. **Michał Raduła** then discusses the asymmetry of information in public procurement in relation to the matter of personal data protection, which, in his opinion, appears in particular in the contracting authority’s obligation to specify the activities, the performance of which requires the contractor or subcontractor to employ people on employment contracts in public procurement.

Finally, at the next level of detail of the legal problems caused by the asymmetry of information is the issue of administrative procedures, which, in today’s globalized world, is not only presented from the point of view of national law but also EU (and even global) law. In this part of the monograph, **Jerzy Supernat** reviews and analyzes the principles of the Polish Administrative Procedure Code, viewing them as legal instruments enabling the reduction of information asymmetry. **Krzysztof Sobieralski** looks at information asymmetry in the context of the examination of a case in administrative and administrative court proceedings. In turn, **Łukasz Prus** draws attention to the role of the individual’s fundamental procedural rights as a tool used to reduce information asymmetry in European Union law. **Karolina Kulińska-Jachowska** emphasizes the importance of the principle of providing information

and the involvement of an interpreter in administrative proceedings being held with non-Polish speakers as a tool for reducing the information asymmetry in proceedings of this type. Finally, **Małgorzata Kozłowska** makes an interesting attempt to identify asymmetry of information in the context of the procedure of issuing an administrative decision on the temporary seizure of real estate.

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