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**Draft report to the Task Force on Access to Justice under the Aarhus Convention**

# *Access to Justice in Information Cases*

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# *1. Introduction*

## The study and the draft synthesis report

Mandated by the sixth session of the Meeting of the Parties to the Aarhus Convention in Budva (Montenegro) in 2017, the Task Force on Access to Justice is performing a study concerning access to justice in information cases according to Articles 4, 9.1 and 9.4 of the Convention. Thus, the study deals with formal issues concerning requests for environmental information and the possibilities open for members of the public to have the decision-making of the authorities and other public bodies holding such information challenged by way of administrative appeal and judicial review in a court of law.

The relevant sections of Article 4 are the following (my italics):

> 1. Each Party *shall ensure* that, subject to the following paragraphs of this article, public authorities, in response to a *request for environmental information, make such information available to the public*, within the framework of national legislation, including, where requested and subject to subparagraph (b) below, copies of the actual documentation containing or comprising such information:
>
> (a) *Without an interest having to be stated*;
>
> (b) *In the form requested unless*:
>
> (i) It is reasonable for the public authority to make it available in another form, in which case reasons shall be given for making it available in that form; or
>
> (ii) The information is already publicly available in another form.
>
> 2. The environmental information referred to in paragraph 1 above *shall be made available as soon as possible* and at the latest within *one month* after the request has been submitted, unless the *volume and the complexity* of the information justify an *extension of this period up to two months* after the request. The applicant shall be informed of any extension and of the reasons justifying it.
>
> 3. (…)
>
> 4. (…)
>
> 5. Where a public authority does not hold the environmental information requested, this public authority shall, as promptly as possible, *inform the applicant* of the public authority to which it believes it is possible to apply for the information requested or transfer the request to that authority and inform the applicant accordingly.
>
> 6. (…)
>
> 7. *A refusal of a request shall be in writing* if the request was in writing or the applicant so requests. A refusal shall *state the reasons* for the refusal and give *information on access to the review procedure* provided for in accordance with article 9. The refusal *shall be made as soon as possible and at the latest within one month*, unless the complexity of the information justifies an extension of this period *up to two months* after the request. The applicant shall be informed of any extension and of the reasons justifying it.
>
> 8. Each Party may allow its public authorities to make a charge for supplying information, *but such charge shall not exceed a reasonable amount*. Public authorities intending to

> make such a charge for supplying information shall make available to applicants a *schedule of charges which may be levied*, indicating the circumstances in which they may be levied or waived and when the supply of information is conditional on the advance payment of such a charge.

Article 9.1 states as follows (my italics):

> 1. Each Party shall, within the framework of its national legislation, ensure that *any person* who considers that his or her request for information under article 4 has been ignored, wrongfully refused, whether in part or in full, inadequately answered, or otherwise not dealt with in accordance with the provisions of that article, *has access to a review procedure before a court of law or another independent and impartial body established by law*.
>
> In the circumstances where a Party provides for such a *review by a court of law*, it shall ensure that such a person *also has access to an expeditious procedure established by law that is free of charge or inexpensive for reconsideration by a public authority or review by an independent and impartial body other than a court of law*.
>
> Final decisions under this paragraph 1 shall be *binding on the public authority* holding the information. *Reasons* shall be stated *in writing*, at least where access to information *is refused* under this paragraph.

Further, Article 9.4 puts additional requirements on the access to justice possibilities under Article 9.1, namely (my italics):

> 4. In addition and without prejudice to paragraph 1 above, the procedures referred to in paragraphs 1, 2 and 3 above *shall provide adequate and effective remedies*, including injunctive relief as appropriate, and be *fair, equitable, timely and not prohibitively expensive*. Decisions under this article shall be given or recorded in writing. Decisions of courts, and whenever possible of other bodies, shall be publicly accessible.

For this study, a draft questionnaire was discussed by the Task Force on its 11$^{th}$ meeting in Geneva in February 2018. The questionnaire deals with procedural matters concerning requests for and review of environmental information. Thus, even though the questions focus on Articles 9.1 and 9.4 of the Aarhus Convention, they also cover formal issues under Article 4. Having said this, the delineating between substantive and procedural aspects on access to environmental information is not always easy to draw. For example, the questionnaire includes a request for information about the most common derogation grounds used in the studied countries. In my view, this is clearly a substantial issue, but here one may have a different viewpoint. However, the labelling of the different aspects are not be decisive for the evaluation of how different legal systems have implemented the obligations concerning the availability of environmental information, and the possibilities open for the public to challenge administrative decision-making in this context. In any event, from the Task Force on Access to Justice's viewpoint, it is natural to focus on what we regard as procedural matters.

After the 11$^{th}$ meeting of the Task Force, the questionnaire was concluded and distributed by the secretariat to a number of key institutions, experts and non-governmental organizations from 13 Parties to the Convention in the spring of 2018 as suggested by their national focal points. The aim was to cover a limited number of countries, representing the different Parties and sub-regions, including: (a) the European Union (EU) together with six of its Member States, namely Germany (DE), Ireland (IE), Portugal (PT), Slovakia (SK), Malta (MT), and

Sweden (SE); (b) Switzerland (CH); (c) Serbia (RS) and Montenegro (ME) from South-Eastern Europe; (d) the Republic of Moldova (MD) from Eastern Europe; (e) Georgia (GE) from the Caucasus and (f) Kazakhstan (KZ) from Central Asia. The institutions which were addressed included relevant ministries, administrative authorities, specialized bodies such as the Parliamentary Ombudsman and Information Commissioner, national courts, public stakeholders and their organisations (ENGOs) and academia. During the fall of 2018, we received completed questionnaires from 12 out of the 13 Parties, only Malta missing. Of course, the responses vary in coverage and quality. This is mainly due to the number of responses from each country, ranging from 4 (SE), 3 (IE, RS and SK), 2 (GE, KZ and PT) and down to 1 (EU, DE, MD, ME and CH). It is quite obvious that the quality of the answers from a country improves when there are many respondents from a variety of actors dealing with environmental information matters.

In this report, I have tried to summarize the responses given so far in order to provide a platform for the discussion on the coming 12th meeting of the Task Force on Access to Justice (Geneva, 28 February – 1 March). After having received comments on the meeting, it will be communicated with the National Focal Points and other stakeholders to the Convention in order to secure the quality of the text. The aim is to conclude the report in time for next meeting of the Working Group of the Parties in June 2019.

The report is structured as follows. In addition to this introduction (1), it contains a summary of the responses under each of the twelve questions posed (2). Thereafter I make a couple of remarks in a concluding section about good examples, main barriers and discussion points on access to justice in information cases (3). In addition to this, the report contains an Annex with my notes from country report with question marks and comments on the key issues therein.

Finally, although I have received all help needed from the secretariat in performing this task, the viewpoints expressed in the report belongs to the author only. The same can be said about shortcomings and errors in the text, the responsibility rests solely on me. I and the secretariat look forward to receive comments and proposals on the text in order to improve its accuracy and quality.

## *2. Questions concerning access to justice in cases on the right to environmental information:*

1. Please indicate *time limits* for public authorities holding environmental information to respond to requests for environmental information. Is there a requirement for the issuance of a *refusal in writing and stating reasons* for the decision? How is the applicant *informed* about the possibilities to appeal the decision?

Summary of the responses

All the studied countries have time frames in law for how soon a request for environmental information must be answered, either by expressions such as "promptly", "immediately" or "as soon as possible" or stated in number of days. In Swedish law, the requirement is to disclose the requested information "forthwith". According to the Parliamentary Ombudsman, this shall be understood as a couple of days, unless special circumstances are at hand. Those countries applying numeric criteria range from 48 hours to one month, but most lie in the range of 8, 10 or 15 calendar or working days. All of the studied countries also leave room for extending the time frame due to reasons such as complexity, volume, the need to consult between authorities or to collect data, etc. The extension period commonly is the same as the first time frame, for example 15 days on top of the first 15 days. It is often stated in law that an extension must be communicated with the applicant some time before the first deadline expires. Of the studied countries, Germany, Ireland and Portugal seem to have the longest formal time frames, allowing over two months in complex cases. In quite a few countries, the consequence of not meeting the deadline is that this "silence" is regarded as a refusal (EU, RS, ME, PT, MD, SK, CH), enabling the applicant to appeal that "decision" by the authority. I will return to these so-called "negative silence rules" in section 3.

2. What are the *time limits to appeal* a decision on access to environmental information? What are the most frequently used grounds for appeal? Are there any issues concerning *who has standing* in such cases? To *what body and in which form* is the appeal made; recourse for review within the public authority or to the higher authority; Information Commissioner, Ombudsman or any other independent and impartial body; or directly to court of law? If appeal to the review body other than a court of law is available in any form, does that request *suspend the time limits* to appeal to the court? Is there a requirement of *exhaustion* of administrative review procedures prior to bringing the case to court?

Summary of the responses

First of all, there are no "standing issues" reported in the study. All the countries allow "anyone" to request environmental information and there does not seem to be any restriction to this in administrative practice or case-law. In fact, as all members of the public irrespective of nationality, residence or other belonging are allowed to make such a request without stating an interest, one can question whether it is correct to label this as "standing". Be that as it may, in this study, there are no issues reported concerning applicants for environmental information in this respect. Moreover, most studied countries give standing to those whose interests may be impacted negatively by the disclosure of the requested information, which seems to be a

reasonable point of view from an "equality of arms" perspective. It is also a requirement expressed in the EU law implementing Article 9.1 of Aarhus.[1]

Appeals against decisions on – including silence – a request for environmental information can be made in a variety of ways. Commonly, there is a possibility to ask for administrative reconsideration and/or appeal to a specialized body, created for the purpose of handling complaints in information cases (information tribunals). The time frames for such appeals in the studied countries lie between 15 days and three months. In addition, there is a possibility to go to court within a similar or slightly longer time limit (one to three months). Normally, these procedures must be made in succession, meaning that the reconsideration process or the review in the information tribunal shall be concluded before the discontented party can appeal to a court of law. As thus the administrative process is a prerequisite for judicial review, one can say that most systems have an "exhaustion obligation". Under these circumstances, it is consequential that the administrative phase has a "suspensive effect" on the appeal to court, meaning that there are separate time limits for both procedures. However, as the information on such an effect given in the responses is meagre, one cannot draw any firm conclusions on this issue. There are also exceptions to this overall picture, where the discontented applicant can either demand administrative reconsideration or go directly to court. The reporters from Kazakhstan give such an example. Further, Sweden stands out in that the applicant is referred to go directly to court, although the appeal should be submitted to the authority that made the first decision. When the written appeal arrives to that authority, it undertakes administrative reconsideration of the decision. If the appeal is not satisfied in this procedure, the documents are forwarded to the relevant court. In this way, the administrative phase in the appeal process to court is a mandatory part in the proceedings and has a suspensive effect.

According to the responses, Ireland, Montenegro, Portugal, Serbia and Switzerland have created special information tribunals for dealing with appeals in environmental cases. The aim with setting up such bodies is to simplify and speed up the conflict handling in these cases, as well as keeping down the costs for the parties involved. Specialization seems to be another reason, as those bodies can be staffed with experts on the area. Decisions made by the information tribunals are commonly binding upon the administration. Besides, all or almost all of the studied countries have a Parliamentary Ombudsman or a similar organ for administrative complaints. Unlike the information tribunals, the Ombudsman's function is mainly disciplinary and his or her decisions are commonly regarded as recommendations only. It is also interesting to note that the information tribunals in Ireland, Serbia and Switzerland can undertake mediation in information cases. This is also possible in the Kazak and Moldavan courts by way of settlements between the parties to the proceedings in information cases. I will return to the relationship between administrative reconsideration, information tribunals and judicial review, as well as mediation in section 3.

### 3. If appeal is made to an independent body mentioned above, how is the *independence and impartiality* of that body ensured?

Summary of the responses

Unfortunately, this question is not well formulated as it is too imprecise. Also, one can trust that when posing a question like this, the answer will be what you asked for. Consequently, most respondents just make a blank statement that the reviewing bodies in their country either

[1] See Article 6.2 in the Environmental Information Directive (2003/4).

are independent and impartial or – in some cases – quite the opposite. In most cases, little support is given for any of these viewpoints. Some of the answers, however, provide a little more food for thought.

For example, the respondent from the EU claims that the reconsideration by the Secretary-General of the Commission is independent and impartial, as there is no link between the deciding section within the authority and that higher level of administration performing a fresh review of the decision. The German reporters claim that the special body within the administration – die Wiederspruchsbehörde – is independent and impartial, as it is unheard of that the administration does not abide to its decision. Other country reporters reported that the independence is guaranteed by law. However, in some of the responses, the analysis is further developed as to why the information tribunal in their country is independent and impartial from the administration. In Ireland, the reporters seem to agree that the Commissioner for Environmental Information (CEI) was created in order to have such a status and to focus on customer services, fairness, empathy and innovation. Further, the independence of the Commission for Access to Administrative Documents (CADA) in Portugal is guaranteed by law and its decisions cannot be altered by other authorities. CADA is chaired by a justice from the Supreme Administrative Court and consists of members from different sectors of society, who cannot be questioned or removed from their positions. Finally, the Commissioner for Information of Public Importance and Personal Data Protection in Serbia is autonomous and independent according to law. This Commissioner must not take instructions from other parts of the administration and can be made liable or be prosecuted only with the consent of the National Parliament.

Without any doubt, some of these information tribunals can be regarded as independent and impartial even to the level that they would be regarded as a "court or tribunal" according to Article 6 of the European Convention of Human Rights and Fundamental Freedoms (ECHMR). Others may not be in a formal sense, but society places such a high degree of trust in them within the administration, that the actual effect is similar. However, a conclusive evaluation on this issue cannot be done within the framework of this study, as we have not provided with any criteria for this in the questions posed. So for now at least, it will have to suffice with these remarks on the responses, in addition to the discussion below.

## 4. What *costs (fees, charges)* are connected to review before the court of law or other review bodies in these cases?

Summary of the responses

To begin with, it should be noted that the question concerns litigation costs in information cases, not the costs for copying or otherwise providing the requested documents. As for the responses, they mirror the general picture among the Parties to the Convention as regards the different kinds of costs that exist in environmental litigation (court fees and other court costs, lawyers' fees and experts' and witness' fees). However, the overall cost level seems to be lower compared with other kinds of environmental cases. This may of course be attributed to the fact that information cases in general are "simpler" than other environmental cases on permits, EIAs, infrastructural projects, mines, etc. In addition to this, in many of the studied countries there is a requirement for the courts to deal with information cases as expediently as possible (fast-tracked, prioritized) or even to use written procedures. Moreover, there do not appear to be any costs in the administrative appeal phase, irrespective of whether this is performed as administrative reconsideration or review by an information tribunal.

Concerning costs in judicial review proceedings in information cases, the responses are not very elaborate, but court fees seem to be common. However, they seem to be at a rather low level, ranging from €3,50 (RS) to €50 (IE), €70 (SK), €150 (GE) and €210-300 (IE). Having said that, the Loser Pays Principle (LPP) seems also to be quite common (EU, DE, IE, CH), as well as the mandatory use of representation by a lawyer (IE, PT, CH). This may of course entail substantially higher litigation costs for the losing party. In Switzerland for example, the total cost may be as high as €1,000-€3,500 and according to the German Streitwert system, these cases may cost the unsuccessful litigant €5,000. At the other end of the spectrum, there are examples where costs do not exist in information cases, or at least are very low (SE, MD). It should also be noted that it is quite common for the courts to waive litigation costs in information cases for those who are in social need or for other personal reasons. In some of the studied countries, this may also be done when the applicant for information is an ENGO (SK) or when the cases are of public interest. Sometimes legal aid is available in these cases (RS, CH).

5. What is the average *time needed* for the *court of law* or another independent and impartial body to decide an information case, i.e. from the introduction of the appeal to the notification of the decision? If the national rules of appeal require *administrative reconsideration* before the appeal is submitted to the court of law or another review body, that time should also be also separately specified.

Summary of the responses

In general, there are set time frames in law for administrative reconsideration or review. These are often rather short, ranging from 15 days to two months. However, there are exemptions to this rule, such as Article 10 of Regulation 1367/2006, which states that internal reconsideration within the institutions of the EU shall be made within 18 weeks. For judicial review in court, formal time frames do not seem to frequently apply, apart from general requirements for the expedient handling of information cases. In some of the studied countries, the courts seem to successfully deal with these cases in surprisingly short periods of time. Thus, it is reported from Moldova and Portugal that information cases may be concluded within 30 days. In other countries – with or without requirements for fast-tracking these cases – the time used in the courts range from 3 to 6 months (KZ, IE, RS, SE). In addition to this, however, there are many examples where the court proceedings take more than one year, sometimes several years (EU, GE, SK). In others, there are no statistics available for information cases as such, but only for all kinds of administrative cases. In Germany for example, the average time used in the administrative courts is slightly more than eleven months, in Serbia six months. It should finally be noted though, that there are many reports claiming that the set time frames or general requirements for expediency are often exceeded, especially when the execution phase is included. Some of the respondents claim that the whole process from the information request to the execution of the court order may take several years to conclude (GE, KZ, PT, RS, SK).

6. Are decisions of courts and other review bodies in information cases *in writing, publicly available, binding and final*? If the appeal is successful, how is the independent body's/court's *decision enforced*; by ordering the public authority to disclose the information; by disclosing the information directly; by suing the public authority if they persist in refusing to disclose the information or by any other means?

Summary of the responses

In all of the studied countries, decisions from administrative reconsideration or review procedures, as well as judgements from the courts are given in writing. Some of the information tribunals publish all their decisions online (IE, PT). Decisions from the higher levels of the court systems are also commonly published and thus available for the public at large. From the lower court levels, however, judgments are not always accessible, at least not outside fee-based private websites. An exception from this general picture is provided by Slovakia, where all judgments from all levels are published on the website of the Ministry of Justice.

As for the enforcement, this is consistently performed by way of court orders addressed to the authority to disclose the information requested, or by quashing the administrative decision and remitting it back the case to the authority with instructions. In some of the studied countries, enforcement is reinforced by the power for the information tribunals or the court to combine such an order with a fine for disobedience (DE, MD, PT, RS). In others, it is a criminal offense not to comply with such an order (GE, MD, ME, RS, SK). In a last category of countries, a separate enforcement procedure must be initiated by the information requester in order to have the judgment executed (IE, KZ). However, quite a few of the responses given are merely stating that court orders must be abided to according to law, but without further details about what happens in cases of disobedience. It also seems to be quite common that court orders are met by another decision from the authority not to disclose the information requested, this time applying another exemption ground.

It should also be noted that nearly all of the studied countries have some kind of Parliamentary Ombudsman, but his or her competence is mainly disciplinary and the decisions regarded as recommendations only. Against this backdrop, I think it is safe to say that the effectiveness of some of the legal systems is undermined by the failure to enforce the "binding decisions" of information tribunals and courts. I return to this issue in the discussion in section 3.

7. Can *disciplinary, administrative or criminal sanctions be exercised* against the public officials if disclosure of environmental information is refused unlawfully? Would it be possible for the applicant or other members of the public to be a *party to such proceedings*?

Summary of the responses

In most of the studied countries, there is both disciplinary (administrative) and criminal liability for failure to comply with court orders concerning the disclosure of environmental information. One can assume that such a liability is triggered by what is called "faute grave" or serious maladministration by civil servants. A Swedish case may illustrate this, where a researcher in psychiatry and his assistants were fined for having destroyed documents in breach of a court order. The researcher took the case all the way to the Grand Chamber of the European Court of Human Rights, but without success.[2] The Grand Chamber found that there had been no breach of the researchers' right to private life or his right of negative expression under Articles 8 and 10 of the ECHR. According to this study, the requesters for environmental information commonly cannot intervene as a party to the proceedings concerning administrative and criminal sanctions.

[2] ECtHR 2012-04-03 in Case No 41723/06; Gillberg v. Sweden.

In some countries, refusals concerning disclosure of environmental information can also trigger civil liability (PT, RS). The information provided in the responses is however too meagre to enable any substantive conclusion on this issue. It would be interesting to know more about who may initiate such proceedings and what can be obtained from them.

8. Do you have any experience of situations/cases where individuals or ENGOs asking for environmental information have been *penalized, persecuted or harassed* in any way for their involvement?

Summary of the responses

There are no such experiences according to this study, save for two examples. One of the Irish reporters says that there is anecdotal evidence that harassments occurs and one of the respondents from Kazakhstan claim that defamation actions are common, and even initiated by the administration. As neither of these statements elaborate any further on this question, it is hard to draw any conclusions from them.

9. Do you have any experience of *misuse or abuse* of the right to environmental information and the consequences thereof?

Summary of the responses

The EU respondent says that repetitive requests are handled in a simplified manner and notes that there is a special procedure for wide ranging (in substance or in time) requests for information. To what extent these procedures have been used is however not elaborated upon. The Irish Commissioner of Environmental Information has considered some requests for information which have been regarded as unreasonable, close to misuse. Also in Portugal, there is some experience of repetitive requests, but not concerning environmental information. In one of the Slovak reports, it is reported that there are several cases of abuse in which the authorities have been flooded with requests for environmental information. This has been dealt with by the courts by way of applying "bullying law enforcement". It would be interesting to know more about this concept.

10. In your view, what are the *main barriers* in your legal system concerning access to justice for the members of the public in cases on the right to environmental information?

Summary of the responses

Cost issues are mentioned as a barrier to access to justice in environmental information cases from four countries (GE, DE, IE and CH) and weak enforcement from three (GE, RS, SK). The lack of timeliness is also highlighted in three county reports, two of which relate to proceedings in court (GE, PT), and one to the absence of time frames for administrative reconsiderations (DE). Further barriers mentioned are lack of resources in the administration (RS) or inadequate staffing of the reviewing bodies (IE), absence of specialized and knowledgeable courts (KZ, ME, RS, SK), or even independent courts (KZ). Against this background, I will expand a little on the lack of timeliness in environmental information cases in section 3.

11. Does your legal system provide with any *innovative approaches* concerning administrative and judicial review procedures in cases on the right to environmental information, for example concerning the requirement for the procedure to be expeditious, the use of alternative dispute resolutions (ADRs), costs, remedies, means for execution of review decisions on disclosure or use of e-justice initiatives?

Summary of the responses

To begin with, it may be observed that respondents from the legal arena are not always the best equipped to answer this question, as what is everyday business for them may be very innovative for "outsiders". This is a general experience from all comparative legal research where the phenomenon that "you cannot see the wood for the trees" is well known. An example of this in this study is when the respondent from the Irish Office for the Commissioner for Environmental Information (CEI) claims that nothing within the domestic legislation provides for innovative approaches. In my view, this is quite surprising, as the CEI itself in an international comparison is an advanced information tribunal and thus very innovative.

Be that as it may, the reporter from EU mentions that the European Ombudsman has a fast-track procedure for dealing with environmental information cases, according to which it takes no more than two months from complaint to decision. The German respondent highlights the in-camera procedure which enables for the reviewing court to ask a special senate within the Federal Administrative Court (Bundesverwaltungsgericht) to decide on the disclosure of certain documents without revealing the content to the parties to the proceedings in environmental information cases. In Sweden, the information requested can be disclosed by the court itself if the court finds that there are no grounds for refusal. It should be noted though, that this rarely happens as most documents in the case file commonly go back to the authority. The possibility of undertaking mediation in information tribunals or courts is mentioned in five of the country reports (IE, KZ, MD, RS, CH). In my view, this calls for further clarification as to what, and when, such proceedings can successfully be brought in environmental information cases.

12. Can you please provide us with a short description of particularly *important or innovative information cases*, as well as cases which illustrate the main barriers concerning access to justice in these matters.

Summary of the responses

A substantial number of cases are provided in the country reports, but almost all concern issues relating to environmental information as such; the definition of "public authority" and "environmental information", the application of exemptions from the requirement for disclosure, etc. Only a couple of cases seem to be related to wider issues around access to justice. For example, the respondent from the European Commission highlights that the findings of the Court of Justice on costs in C-71/14 *Fish Legal* are also relevant for environmental information cases. One of the Georgian reports raises the weak enforcement of court decisions ordering the disclosure of environmental information; in one case the time span between order and actual disclosure was six months, in another the request for information was made in April 2015 and the disclosure came three years thereafter, in March 2018. Lastly, one of the Slovak reporters claims that the court practice to remit the case back

to the authority with instructions for disclosure does not function, as the authorities invent new grounds for refusal. This system results in an eternal “ping pong” with such cases.

## *3. Remarks and discussion*

*Introduction*

In this section, I make some remarks on issues I find problematic, challenging or especially interesting from general viewpoint. As for challenges, I will focus on the time issue and enforcement. Thereafter, I comment upon a couple of interesting features in the national legislation concerning access to justice in information cases. Lastly, I highlight some issues related to the text of Article 9.1 of Aarhus, which may be worth discussing.

*Unproblematic issues*

To begin with, it is worth noting that there are a couple of issues that seem to be unproblematic from an access to justice perspective in environmental information cases, at least from what we can read from the responses from the 12 countries in this study. First and foremost, and as already noted, *standing* does not seem to be an issue in these cases as anyone can ask for environmental information without having to state an interest in the matter. Also other concerned persons and entities are commonly accepted as parties to the proceedings, such as those whose interests may be negatively impacted by the disclosure. However, this conclusion must be caveated as there may be decisions in the legal systems that are not appealable at all. For example, decisions by the Swedish Government on the disclosure of environmental information cannot be brought to any court of law. A reservation was made in this respect at the signing of the Convention,[3] but it has not been confirmed in the practice of the Compliance Committee or by any court of law, be that domestic or on EU level. As the questionnaire did not cover the issue of "appealability", we cannot draw any conclusion on the existence of such decisions in the studied countries.

In addition to standing, there are also other issues concerning access to justice in information cases that seem to be less problematic, such as *formal time frames* for the administrative decision-making and reconsideration procedures. Something similar can probably be said about the review proceedings in the established information tribunals in the studied countries. Having said that, this statement must also be distinguished from the actual situation concerning timeliness, where the picture may be quite the opposite.

Moreover, the requirement to provide written reasoned decisions in cases concerning environmental information seems to less problematic in the studied countries. Further, there would appear to be no costs in the administrative phase of the appeal of decisions on environmental information. Also, regarding the availability of decisions and judgments there seems to be a general fulfillment of the Aarhus demands, at least concerning those from information tribunals and courts of last instance. The power to impose administrative and even criminal sanctions for serious misconduct and maladministration seems to exist commonly, at least in theory. Further, harassments and defamation claims against those who request environmental information seems to occur only sporadically. Misuse and abuse of access to information rights seems to be slightly more common, although the evidence given in the study is mostly anecdotal. Interestingly though, the European Commission has developed a specific procedure to avoid abuse and handle wide ranging requests (sometimes referred to as "fishing trip" requests). The practical application of that procedure would be interesting to study further. On the other hand, there is also a report from the public concerned in one of the studied countries that these kinds of specific procedures sometimes are abused

[3] See https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=XXVII-13&chapter=27&clang=_en#EndDec

by the administration in order to avoid abiding to court orders on disclosure of environmental information.

*Barriers and challenges*

From this study, it is safe to say that the main barriers to access to justice in information cases are the length of the procedure, weak enforcement and – to a certain extent – costs. The first issue can be illustrated by the reports from Portugal, according to which the court procedure at first instance is expedient and effective, commonly lasting for no more than one month. On appeal, however, the procedure is slow, unpredictable and the appeal has no suspensive effect on the issue to which the environmental information relates. Thus – and this is quite specific for cases concerning environmental information – if the request is made in order to obtain information concerning an EIA on a permit application, the permit might already be issued at the time of the court order for disclosure. This is a typical example of a "case won in court, but lost on the ground", a phenomenon that is clearly in breach of the effectiveness criterion in Article 9.4 of the Aarhus Convention. In my view, this is one of the reasons why the requirements for timeliness should be interpreted with extra care in relation to information cases. Therefore, this issue needs to be further discussed as a major obstacle for access to justice in environmental information cases.

It is similarly evident that the failure to enforce orders for disclosure by information tribunals and courts is another important barrier to access to justice in information cases. Weak enforcement is widely reported in the study, occurring mainly in three situations. The first is when the information holding authority does not respond to the disclosure order, or tries to evade it with silence. The second is when the authority finds another ground for refusal and that decision is appealed once again to the court, which makes another order, etc. Such "ping-ponging" seems to be quite a common phenomenon, at least in some countries. The third situation seems to be when the enforcement lies in the hands of a body other than the court, or in another procedure separated from the appeal process. Contrasting to this, effective enforcement seems to be achieved when the court or tribunal deciding on the merits of the case also has the power to invoke fines for disobedience, at least as far as this power is exerted. Further discussion on the failure to enforce such orders would provide us with more organisational and legal instruments to deal with this general problem of environmental law, including in information cases.

Costs are always mentioned as barriers to access to justice in environmental cases, and this picture is – at least to a certain extent – confirmed in our study. As such, these cases are indistinguishable from other kinds of environmental cases, although as already noted, the costs here are at a lower level. For now, I have little to add to this general discussion, except to observe that costs do not seem to be an issue in the information tribunals which some of the studied countries have set up. As these bodies also seem to provide some solution for the other two barriers mentioned here – lack of timeliness and weak enforcement – it may be fruitful to examine how they are designed and function.

*Good examples and interesting features in the studied countries*

I want to draw attention to three features that I find particularly interesting in the reports from the country studied. To begin with, in many of the legal systems, administrative silence is regarded as a negative decision when the deadline given in law is expired. This legal construct for dealing with "administrative silence" or "administrative delay" is in line with a general development of modern administrative law, not least in order to strengthen the application of EU law.  The possibility for certain actors to take bring a case to the CJEU in order to challenge failures to act by the institutions of EU already exists in Article 265 in the Treaty on

the Functioning of the European Union (TFEU). The result of such an action is that the Court declares the omission in breach of the EU Treaties. Also in secondary EU legislation, we have a number of legal constructs in order to deal with administrative omission or silence. According to Article 12 in Directive 2014/65 on markets in financial instruments, the consequence of silence from the competent authority on a notification from someone to undertake an acquisition, is that the authority has no objection to the merger. This is an example of what is a called a "positive silence rule". Examples of the opposite – "negative silence rules" similar to the ones mentioned in the study – can be found in Article 10(6) of the EC Merger Regulation 139/2004. Even more relevant is Article 8(3) of the Regulation 1049/2001 regarding public access to European Parliament, Council and Commission documents, which states that the failure of the institution to reply within the prescribed time limit shall be considered as a negative reply and entitle the applicant to institute court proceedings and/or make a complaint to the Ombudsman. Also in Member State laws, such negative silence rules have established roots and are today quite common.[4] My conclusion is that this legal construct – which in essence means that silence is equaled to an appealable refusal – is a good example on how to effectively deal with administrative passivity as regards access to environmental information.

The next example concerns mediation. As noted under question 11, mediation possibilities are available in information cases in a number of the studied countries, both in information tribunals and in courts. Respondents noted that agreements reached through mediation can be effectively executed due to their status as executable documents. To me, this seems very interesting, but also slightly confusing, as it is not easy to grasp how such negotiations are performed and what their aims would be. To put it bluntly, if someone asks for a certain piece of information, s/he is probably not satisfied by receiving 50%, so what is there to negotiate? However, this low level of understanding can surely be ascribed to my lack of experience in these matters, as mediation is an unknown phenomenon in environmental regulation in the Nordic countries. In contrast, this possibility is widely reported in our study, which is why it would be interesting to learn more about its actual application in environmental information cases.

Finally, civil liability is mentioned by some respondents as a sanction under question 7. The respondents do not, however, expand on this concept. And as the word "civil" is dubious in an administrative and environmental context, there may even be a misunderstanding of what is meant. Such "losses in translation" between different legal systems are common in comparative law and can commonly be revealed by further studies. This is another example of why it would be interesting to learn more about how "civil liability" is used in environmental information cases and what may come out of its use.

*Discussion on Article 9.1 of the Aarhus Convention*

Finally, I want to draw attention to what I consider to be an ambiguity in Article 9.1 of the Convention. Unfortunately, the legal situation does not become much clearer when reading the Implementation Guide from 2014 or examining the subsequent practice of the Compliance Committee. However, please note that the aim here is not to bring clarity to the issue, but to highlight some contradictions that need to be addressed, one way or another.

As noted in the beginning of this report, the first paragraph of Article 9.1 requires Parties to the Convention to provide the person requesting environmental information with recourse to challenge the authority's decision on the matter *in court of law or another independent and*

[4] See opinion by Advocate General Wahl in C-58/13 and C-59/13 *Torresi*, at para 70.

*impartial body established by law*. According to the second paragraph of Article 9.1, if the review is provided by a court of law only, the person shall have access to an expeditious procedure for *reconsidering by a public authority* or *review by an independent and impartial body other than a court of law*. In the third paragraph thereafter it says that final decisions under Article 9.1 shall be *binding on the public authority*.

In my view, the first confusion lies in the use of the expressions *court of law* and *independent and impartial body*. The combination of the two can also be found in Article 9.2 of the Aarhus Convention. Furthermore, the expression is mirrored in the EU's implementation legislation on Article 9.1, namely Article 6 of the Environmental Information Directive (2003/4). It is widely believed that these expressions equate to "any court or tribunal" in Article 267 TFEU, as well as "an independent and impartial tribunal established by law" in Article 6 ECHR, requiring a fair trial. It also goes without saying that these expressions are "autonomous", meaning that the national label on the reviewing body is of no importance when evaluating its independence and impartiality.[5] As a consequence, Article 9.1 calls for a review mechanism performed by such a tribunal, irrespective of how it is named in the national legal system. It is therefore surprising that the requirement for an expeditious alternative procedure under the second paragraph is only applicable when the national system provides a "review by a court of law". All of a sudden, the national labelling of that body becomes decisive, which is peculiar in an international law context. Be that as it may, this is not the main problem with the construction of Article 9.1.

According to the second paragraph in Article 9.1, the alternative and expeditious procedure shall either consist of "reconsideration by a public authority" or a "review by an independent and impartial body other than a court of law". Thus, a normal reading of that paragraph means that there is no requirement on the reconsideration procedure within the administration to be performed by an independent and impartial body or level. Instead, these requirements only apply when the "review" is undertaken by a body other than a court of law. So according to the text, it suffices for the Parties to have a system where the authorities' decision to refuse the disclosure of environmental information is reconsidered within the administration, thereafter the discontented applicant must rely on the possibility to go to court.

Reconsideration within the administration exists in most modern countries and is today recognised as "good governance" in administrative law. It may be undertaken by a higher level within the hierarchy of that authority or even by a special organ created for this purpose, but it always done "within the administration". It is therefore highly doubtful whether this kind of second opinion by the administration would ever meet the requirements of being "independent and impartial". This leads us to question why this requirement applies when the expeditious procedure is performed by way of a review from a body outside the administration.

The answer to this question in the Implementation Guide 2014 seems to be that the independence and impartiality requirement in the second paragraph applies to both administrative reconsideration and review procedures (my italics):[6]

> Many ECE countries have some kind of general administrative reconsideration or appeals process for governmental decisions. This administrative process often functions more rapidly than an appeal to a court and is often free of charge. *Applied to review of requests*

[5] The Aarhus Convention – An Implementation Guide, UNECE 2nd ed. 2014, at pages 188-189.

[6] The Aarhus Convention – An Implementation Guide, UNECE 2nd ed. 2014, at page 192.

> *for information, so long as the body is independent and impartial and established by law, such a process could satisfy the requirements of the Convention.*

I do sympathize with this conclusion, but I fail to see that it is compatible with a straight-forward reading of the text in the Convention. On the other hand, what use is it for the discontented applicant to have access to an administrative reconsideration process if it does not entail an independent evaluation of the authority's decision?

My next confusion concerns the requirement in the third paragraph in Article 9.1 that *final decisions* must be binding on the information holding authority. A legal understanding of this expression is that all kinds of decision can be characterised as "final" as soon as the deadline for appeal has expired, irrespective of whether it is an administrative decision or a court judgment. Furthermore, the binding requirement applies to all final decisions under Article 9.1, even those which result from a reconsideration procedure within the administration or a review by an independent body outside that administration. According to the text, it does not matter which body took the decision, and when, as all final decisions according to the established definition above must be binding on the authority. And this is also how administrative reconsideration processes normally function, as the second decision replaces the first one from the information holding authority. The only distinction that must be made concerns "advisory" decisions or opinions, no matter who authorises them. The 2014 Implementation Guide 2014 clarifies that advisory opinions by information commissioners or ombudsman do not qualify as final and binding. Also in relation to the first paragraph of Article 9.1 first paragraph, it is said that:[7]

> (..) final decisions by the ombudsman must be binding on the public authority holding the information, and, in order to meet article 9, paragraph 4, the ombudsman must be able to provide effective remedies, including injunctive relief, as appropriate.

Against this background, it is quite surprising that in C/2013/93 the Compliance Committee accepted the Parliamentary Ombudsman as a compliant mechanism under Article 9.1 second paragraph (although the procedure was found to breach the timeliness requirement in Article 9.4).[8] The recommendations by the *Sivilombudsmannen* are by no means binding, although normally respected by at least the authorities. In this case, however, the body holding the information within the administration was the Government of the Party concerned and it never fully complied with the Ombudsman's recommendations. The rationale for the Committee's standpoint seems to be that as long as the Party provides the discontented applicant with the possibility of appealing to a court of law, the expeditious procedure according to Article 9.1 second paragraph may well be performed by an independent body issuing recommendations. This viewpoint is not only hard to reconcile with the text in the third paragraph of that Article, it also deprives the protection afforded in the second paragraph much of its value for the information seeking public. On the other hand, the Compliance Committee's findings are well in line with the reasoning above that it suffices for the Parties to provide the information seeking public with access to administrative reconsideration to meet the demand for an expeditious procedure in Article 9.1 second paragraph. Taken together, however, it is doubtful that the public of the Party concerned is satisfied with this solution. In this context, it may be worth noting that judicial review of the Government's decision in that country is performed in the general court in three instances, beginning with the District Court. I don't think it is very

[7] The Aarhus Convention – An Implementation Guide, UNECE 2nd ed. 2014, at page 189.

[8] Compliance Committee decision 2017-09-05 in C/2013/93 *Norway.*

controversial to say that the long road to the Supreme Court can be both long and costly for the losing party.

## *ANNEX*

### *Abbreviated outcomes of the questionnaire*

These are my personal notes from reading the National Implementations reports from the studied countries and the responses of the questionnaire. Please read the text cautiously to see if I have misunderstood your response, or if there is a need of clarification. In this section, you will also find a number of question marks, both in the text and at the end of each country report.

**Abbreviations**

| | |
|---|---|
| AA | Administrative appeal, internal reconsideration within the administration |
| EI | Environmental information |
| ENGO | Environmental non-governmental organisation |
| IA | The authority holding the information |
| IR | Information requester |
| JR | Judicial review to court of law |
| LPP | Loser Pays Principle |
| TP | A third part that is concerned by the decision to grant environmental information |
| SC | Supreme Court |
| SAC | Supreme Administrative Court |

## *European Union*

**NIR 2008-2017**

General: Article 263 TFEU is broader than Article 230, not only decisions directly addressing the complainant, but also directly concerns him or her, can challenge validity by action to MS court.

Internal: Article 3 of Regulation 1367/2006 reconsideration, negative reply, decision within 18 weeks, no requirement for lawyer representation

MS: Definitions in Article 2 of EID, 1(2)(e) EIA, 1(1)(17) IED and 3(18) Seveso III, Article 6 EID on requests for info, similar provision in Seveso III, as for review: 6(1) EID, 11 IED and 23 Seveso III, also Article 19 TEU…

**European Commission/Mr Daniele Franzone**

Legal framework: Regulation 1049/2001, as amended by Reg 1367/2006, also Commission's decision on Rules of Procedure concerning Reg 1367/2006 from 13 December 2007 and 30 April 2008…

1) Time limits for reply, refusal in writing, stating reasons, info about appeal possibilities: "Promptly" (Art 7 in 1049/2001), that is 15 days from request, either to grant or – in a written reply – to refuse, stating reasons and informing about the possibility to ask for reconsideration. In exceptional cases, 15 days more…

2) Time limits to appeal, standing issues, appeal body, suspensive effect for time limits to court, exhaustion of administrative appeal: Art 8 in Regulation 1049/2001; reconsideration by Secretary-General of Commission ("confirmatory procedure"), same deadlines and requirements, fresh review, info about appeal to General Court or complaint to European Ombudsman for maladministration within 2 years. Exhaustion requirement before going to court. Failure to reply within time-limit is regarded as negative decision and entitles to appeal/complaint. Confirmatory procedure free of charge, no standing issues, "any person". Commonest grounds for refusals are privacy, decision-making processes and inspections/audits and commercial interests. From General Court to CJEU on points of law only (4). Yearly report on cases each year (Art 17 in Regulation 1049/2001). Deadline to ask for JR is 2 months (+ 10 days) according to Article 60 in the Rules of Procedure of General Court…

3) Independence and impartiality of appeal body:

Fresh review, does not intervene in the decision-making…

4) Costs relating to appeals:

No costs at the European Ombudsman. At the courts, LPP applies

5) Average time for appeal, including reconsideration:

20 months according to available statistics…

6) Decisions by appeal body in writing, publicly available, final and binding, enforcement of decisions by appeal body:

In writing, publicly available. The European Ombudsman issues recommendations, not binding, may bring the issue to the Parliament's attention…

7) Sanctions against public officials who act unlawfully:

General principle of misconduct ("faute grave")

8) Examples of harassment, penalization or persecutions:

No…

9) Misuse or abuse of environmental information:

Repetitive requests are handled in a simplified manner where only the second assessment can be reviewed, also a specific procedure for wide-scope (in substance or in time) requests…

10) Main barriers to access to justice in environmental information cases:

Free of charge, no standing issues, quick, LPP…

11) Innovative approaches:

ADR does not exist, the European Ombudsman has introduced a new fast-track procedure, takes decision within 2 months from receiving the request (5 days to open, 40 days for decision)…

12) Important cases:

The CJEU gave important guidelines in C-71/14 *East Sussex* at pp 52-60 about the scope of the review (enable the reviewing court to effectively apply "the relevant principles and rules of EU law") and the costs issue (as part of EU law), relevant for MS only…

**Notes**

- Interesting with silence as a negative decision…
- Interesting with special procedure against abuse (repetitive requests)…

**Questions**

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## *Georgia*

**NIR 2008-2017**

a) Higher administrative body, decisions mandatory for execution…

b) Chapter XIII GAC, superior administrative body, claimant can express his or her opinion, defend his or her interest and ask for an oral hearing…

**Institute for Development of Freedom of Information/ Ms Nino Merebashvili-Fisher**

Legal framework

No specific legislation, Article 40 of General Administrative Code, also Administrative Procedure Code…

1) Time limits for reply, refusal in writing, stating reasons, info about appeal possibilities

Immediately, that is following working day, although the IA can use ten days if considerable size etc, must notify the requester.

2) Time limits to appeal, standing issues, appeal body, suspensive effect for time limits to court, exhaustion of administrative appeal

1 month from decision, complaint in writing. If there is a superior administrative level or body, they will first deal with the matter, then to court (exhaustion requirement). Requester has standing. The Ombudsman only recommendations, no specific Information Commissioner…

3) Independence and impartiality of appeal body

No such instance…

4) Costs relating to appeals

Administrative reconsideration (AA) free, court fees; 100 Gel (€33)/150/300 for the three instances (average salary in Georgia is said to be Gel 940 (€310) per month).

5) Average time for appeal, including reconsideration

1 month for AA, can be extended for an additional month if complex, etc. 2 months in the courts (two first instances), if complex another 5 months. In the SC cases should be decided within 6 months…

6) Decisions by appeal body in writing, publicly available, final and binding, enforcement of decisions by appeal body

No obligation to publish decisions/judgements, although a small share in posted at online platforms…

7) Sanctions against public officials who act unlawfully

Disciplinary sanctions, if court decisions are not obeyed with, criminal offense…

8) Examples of harassment, penalization or persecutions

Not aware…

9) Misuse or abuse of environmental information

Not aware…

10) Main barriers to access to justice in environmental information cases

The time frames are unreasonably long, cases often lost that way, courts themselves do not abide to time frames, also enforcement takes many months, court fees can amount Gel550, which is half a month's salary in Georgia (Gel940, that is €310). Further, there is no independent review body (FOI Commissioner), little access to court decisions, low citizen awareness, reluctance from courts to use their inquisitorial powers to properly investigate the cases…

11) Innovative approaches

No such provisions…

12) Important cases

IDFI has brought at least two important cases; one concerned emails from Ministry of Justice on procurement, two lower court levels refused, but SC granted access to the documents, which was precedential on what constitutes "open public info". The court order was served in September 2017, but it was carried out not until March 2018.

The second case concerned Georgian Tax Revenue Service which refused to give access to documents on inspections of Free Industrial Zones. The Tbilisi District Court found in favour of IDFI in January 2018, the case was brought to the enforcing authority – LEPL National Enforcement Bureau – since the administration refuses to carry out the decision, then the documents were turned over in June 2018, after over three years delay (originally requested in April 2015)…

**Supreme Court /Ms Ana Shalamberidze**

Legal framework

General Adm Code (GAC), Administrative Procedure Code (APC)etc…

1) Time limits for reply, refusal in writing, stating reasons, info about appeal possibilities

Article 40 GAC; immediately, no more than 10 days, must give reasons for refusal within 3 days thereafter and give instructions for appeal and with which administrative bodies consultation has been performed…

2) Time limits to appeal, standing issues, appeal body, suspensive effect for time limits to court, exhaustion of administrative appeal

Art 180 GAC; 1 month, art 2 APC must AA be exhausted…

3) Independence and impartiality of appeal body

Independence of judiciary is guaranteed by constitution and Law on legal Entities under Public Law.

4) Costs relating to appeals

- " -

5) Average time for appeal, including reconsideration

AA within 1 month, courts should hear the cases within 1 month, may be extended to max 5 months…

6) Decisions by appeal body in writing, publicly available, final and binding, enforcement of decisions by appeal body

The courts make a decision with a declaration, those are compulsory according to the Constitution, art 12 GAC about enforcement…

7) Sanctions against public officials who act unlawfully

Disciplinary measures against the public officer….

8) Examples of harassment, penalization or persecutions

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9) Misuse or abuse of environmental information

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10) Main barriers to access to justice in environmental information cases

No artificial barriars…

11) Innovative approaches

No special procedure for EI…

12) Important cases

SC decided on a case where the Ministry of Economy refused info about an agreement made in 2012, which involved info about outlets into the river Mtkvare, info that the SC said was covered by Art 2(3) of the Aarhus Convention…

**Notes**

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**Questions**

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## *Germany*

**NIR 2008-2017**

Art 19 (4) GG Court protection, Verwaltungsgerichtsordning (VwGO), Umweltinformationsgesetz (UIG) and similar provisions adopted by the Länder. AA is handled by a specific "Objection authority" (Wiederspruchsbehörde)…

**Independent Institute for Environmental Issues (UfU)/Mr Karl Stracke, and Leuphana University of Lüneburg/Mr Thomas Schomerus, professor of environmental and energy law**

Legal framework

16 Bundesländer, in 9 specific legislation on A2JI, in the others incorporated in the general freedom of info acts. On federal level, the EIA UIRL), general rules of Administrative Procedure Act (VwO). Process starts at the IA or private body, AA not compulsory at the latter. A request for review must be made within 1 months, both for AA and JR in administrative courts (three level). There are also specific administrative actions in order to prevent the disclosure of sensitive info…

1) Time limits for reply, refusal in writing, stating reasons, info about appeal possibilities

Allowed time to process the request is 1 month, possibility to extend to 2 months due to volume or complexity. Stating of reasons mandatory, including possibility to and deadline for appeal.

2) Time limits to appeal, standing issues, appeal body, suspensive effect for time limits to court, exhaustion of administrative appeal

After the administrative decision, 1 month to appeal (AA and JR), same for private bodies, in the latter case there is no specified time limit for action in court ("without unreasonable delay"). Out of 48 cases we have studied, 46 was initiated for not granting – in whole or in part – the requested info, 1 case total passivity and another against a private body. No issues on standing, legal entities with legal capacity can request info. AA in writing to the same authority (IA)…

3) Independence and impartiality of appeal body

AA mandatory, time period starts after decision, exhaustion requirement. Not so concerning private bodies where an internal appeal does not suspend time limit for going to court, parallel actions and internal action only optional. At federal level, no independent AA exist (but at lower level?). The "objection authority" can be regarded as independent and impartial, unheard of cases where the IA does not abide to those decisions…

4) Costs relating to appeals

For AA no costs if the info is without fees, if JR the "Streitwert system" applies with proportionate costs, including court fees and lawyers' fees. Discretion of the judge, but the value of environmental info is generally calculated to €5000, which leads to a fee of €438, on

appeal €584. The lawyers' fee for the first instance is €925 and for the second €1,033 for each party, LPP leads to a total cost of €4,938 for the losing party to pay. Sometimes the judge divides the cost proportionate…

5) Average time for appeal, including reconsideration

No available statistics, nationwide average for JR is 11,2 months for first instance, for AA no time limit for decision, cannot be further specified…

6) Decisions by appeal body in writing, publicly available, final and binding, enforcement of decisions by appeal body

Selection of cases published by the courts, private entities offer fee-based services, which however do not cover all cases. Judgements from Bundesverwaltungsgericht are published from 2002 and onwards. The enforcement is either through order or to remit the case back with instructions ("Bescheidungsurteil").

7) Sanctions against public officials who act unlawfully

The concerned party can always make disciplinary complaint to the IA if refusal is clearly unlawful, it will be handled by the superior author, the complainant must be informed. Courts can decide penalty payment against refusing authority up to €10,000, can be decided several times, also a theoretical possibility to arrest the reluctant civil servant…

8) Examples of harassment, penalization or persecutions

No…

9) Misuse or abuse of environmental information

Don't know…

10) Main barriers to access to justice in environmental information cases

Standing is clear, but; undefined time period for mandatory AA, remaining issues concerning grounds for refusal, eg on "emissions", public security, international relations and suchlike criteria which leave a wide margin of administrative discretion, questions on copy right and business secrets…

Under Q12: The designated authority for helping out the public to find information is not responsible for environmental information, charges may constitute barrier, no sanction for omission to actively disseminate environmental info…

11) Innovative approaches

The concept of "in-camera proceedings" is established under German law. This is a special interim-procedure within the administrative court trial which can be applied if the authority refuses to disclose the controversial information to the court. The reasons for the non-

disclosure can then be examined by a special Senate within the Federal Administration Court, without disclosing the information to the general public or the parties involved.

12) Important cases

Examples on how German courts have interpreted provisions relating to A2J in information cases. As a general pattern, they have given a wide understanding to the rights and a narrow to the exception clauses:

- Public authorities, under the control of
- Environmental info (including transport of animals, indoor air, property)
- Applicants for environmental info may include public sector entities, such as municipalities, churches, political parties…
- General clause about administrative passivity after three months applies
- Application for info must not be specified in detail…
- Specific in-camera provisions apply to guarantee secrets during the court proceedings, but they must be interpreted narrowly…
- Narrow reading of public interest exceptions, such as under the Major Accidents Ordinance, "course of justice", misuse of environmental info for eg terrorist purposes must be proven by the authorities. Whether the relation between Germany and EU is regarded as "internal relations" under the legislation on environmental info is still an open question…
- Several court decisions on the encounter between the right to environmental info and GDPR (Reg 2016/679), the authorities must substantiate their reasoning in this aspect, they are not opposing principles but complimentary…

**Notes**

- NB, in Germany there is case-law on the encounter between environmental info rights and GDPR…

## *Ireland*

**NIR 2008-2017**

Directive 2003/4/EC → Access to Information on the Environmental Regulations 2007 to 2018 (AIE Regulations). Decision must be made within one month/two months. Two tier system for appeals, internal review within 4 weeks, free of charge by the public authority within one month, then appeal to the Commissioner for Environmental Information (CEI), an independent authority (no time limit for decision though). CEI may require the authority to make available the info, IR and a TP affected by the decision (but not the authority) may appeal to High Court. Sec 5 of the Environment (Miscellaneous Provisions) Act 2011 provides with cost rules based on that each party bears his or her own costs at the discretion of the court, it may decide otherwise in frivolous, vexatious or in contempt of court, etc. The fee normally is €50 (or €15 for medical card holders), but can be waivered. An applicant can ask the court to determine the costs of the proceedings. Rarely the applicant will be ordered to pay the opponent's costs, sometimes even awarded reimbursement for own costs if the case is of exceptional public importance. The authorities must comply with the court order within 3 weeks, the CEI can also apply to the High Court for enforcement measures. There is also a general avenue to JR in High Court, the system provides for adequate and effective remedies.

**Office for the Commissioner for Environmental Information/ Ms Lisa Underwood**

Legal framework

1) Time limits for reply, refusal in writing, stating reasons, info about appeal possibilities

Must make a decision one month, extended to two months, specify reasons for refusal, info about internal review and appeal.

2) Time limits to appeal, standing issues, appeal body, suspensive effect for time limits to court, exhaustion of administrative appeal

One month for internal review, one month for appeal by the applicant or concerned TP to the Commissioner for Environmental Information (CEI), the CEI may extend that period when reasonable. 43% of the cases deal with definition of "environmental information" and "public authority", 34 % whether a certain info is held by public authority, 23% about exceptions. Appeal may be done to High Court within two months, two land mark judgements in 2017; *Minch v CEI & Anor (2017) IECA 223* and *Redmond & anor v CEI & anor (2017) IEHC 827* concerning "environmental information". A person may also bring JR directly to High Court….

3) Independence and impartiality of appeal body

The Office of CEI was created in order to be "independent in the performance of his or her functions". The Office focuses on independence, costumer focus, fairness, empathy and innovation, see Strategy Statement 2016-2018 and 2018 Corporate Governance Framework review.

4) Costs relating to appeals

€50 or reduced fee at €15 for medical card holders and TP. If the decision from the authority is untimely, the fee can be reduced by the CEI.

5) Average time for appeal, including reconsideration

The average in 2017 was 262 days.

6) Decisions by appeal body in writing, publicly available, final and binding, enforcement of decisions by appeal body

Decisions by the CEI is final and binding unless appealed, published on the Office's website. The CEI requires the IA to make available the info requested, the IA shall comply within three weeks, the CEI can also apply to the High Court for an order…

7) Sanctions against public officials who act unlawfully

No such regulation within AIE Regulations

8) Examples of harassment, penalization or persecutions

No such experience…

9) Misuse or abuse of environmental information

Not in general, but there are some experiences of manifestly unreasonable requests close to abuse…

10) Main barriers to access to justice in environmental information cases

Not appropriate for the OCEI to answer this question…

11) Innovative approaches

Nothing within AIE Regulations…

12) Important cases

*Minch* concerned a plan for next generation broadband and its economic and environmental consequences, where the High Court overruled a decision by the CEI to withheld information in the National Broadband Plan to the Government.

*National Asset Management Agency* v the CEI (2015) IESC on 23 June 2015 concerned information held by that authority (NAMA), where the SC applied the principles of *Fish Legal* (C-279/12) and provisions of EU law directly…

**Courts Service of Ireland/Ms Agne Abbassene**

Only four questions are relevant for the Court Services to answer:

4) Costs relating to appeals

JR, typically between €210 and €300, plus lawyers' costs…

5) Average time for appeal, including reconsideration

Approximately seven months to conclude such a case, highly dependent on the parties though…

6) Decisions by appeal body in writing, publicly available, final and binding, enforcement of decisions by appeal body

The court directs the IA to make information available, judgements published on website

11) Innovative approaches

No…

**National University of Ireland Galaway/Mr Rónán Kennedy, lecturer in environmental law**

Legal framework

1) Time limits for reply, refusal in writing, stating reasons, info about appeal possibilities

One/two months, does not have to be in writing, but the IA must give reasons for refusal and inform about appeal…

2) Time limits to appeal, standing issues, appeal body, suspensive effect for time limits to court, exhaustion of administrative appeal

One month to CEI, but can be extended if reasonable to do so, a significant portion of the appeals concerned "environmental info", "public authority", "holder". Standing to IR and TP who would be incriminated by the disclosure of info, no statistics on standing. In theory, one can also ask for JR, but the courts are unwilling to grant leave to appeal as the AEI Regulations provide for an appeals procedure at High Court, in practise therefore a requirement for administrative exhaustion.

3) Independence and impartiality of appeal body

The CEI is also the Ombudsman and Information Commissioner and benefits from the impartiality of those offices…

4) Costs relating to appeals

€50 or €15…

5) Average time for appeal, including reconsideration

Decreased from 316 days in 2016 to 262 days in 2017…

6) Decisions by appeal body in writing, publicly available, final and binding, enforcement of decisions by appeal body

Available on OCEI's website, the IA is ordered by the CEI to disclose the information, the CEI can also ask the High Court for an enforcement order…

7) Sanctions against public officials who act unlawfully

Normal civil and public service disciplinary sanctions apply, the public not a party, no criminal enforcement...

8) Examples of harassment, penalization or persecutions

Only anecdotal evidence…

9) Misuse or abuse of environmental information

Lack of staff and resources at the IA, requests being ignored, misdirected or responded after deadline…

10) Main barriers to access to justice in environmental information cases

The CEI is not adequately staffed, although improvements recent years there still is significant delays… Costs can be prohibitive, especially for small ENGOs and individuals, even though the cost rules of Aarhus Convention and Directive apply, specialist legal advice can be very expensive and each party bears its own costs…

11) Innovative approaches

The CEI can facilitate mediation…

12) Important cases

- In *An Taoiseach v CEI and Fitzgerald (2010) IEHC 241* the SC found that cabinet's meetings still are confidential…

- CEI has found in four cases that certain bodies are "public authorities"; Raidió Teilifis Éirann, Anglo-Irish Bank (nationalized), NAMA and Bord na Móna. However, the Court Services is not because it works as a body in a "judicial capacity", and Irish Fish Producers' Organisation is not a "public authority"….

- *Minch* concerned next generations broadband, the report was not considered to be a “plan or policy or programme” according to 2007 Regulations, but the economic analysis therein was likely to affect the environment.

- In *Cusack and Eirgrid CEI/14/0016 (2016)* the IA refused to make information about a new high voltage line accessible due to business secrecy, which was overturned by the CEI as it thought that the info was too general for competitors to draw any conclusions from…

- In *Right to know CLG v An Taoiseach (2018) IESC 3710*, the High Court quashed a refusal by the Department of An Taoiseach to provide info about Irish greenhouse emissions due to the overweighing public interest over cabinets confidentiality…

**Notes**

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**Questions**

- IR and a TP affected by the decision may appeal to High Court, but what about the deciding (first) authority..?
- Lisa Underwood; contradiction between the two first bullet points under Q1 about time limit..?
- The answers given by the Court Services, do they concern appeals of CEI’s decisions or JR in information cases..?

## *Kazakhstan*

**NIR 2008-2017**

Apeal to higher level of administration or court, not exhaustion. Public authorities are not allowed to circulate complaints to the detriment of persons who makes appeal, JR within three months, the procedure is cassatory, LPP applies but court fees are low, also possibility to ask courts for execution. There is also the Nature Protection Prosecutor's Office, protected by the Constitution of Kazakhstan.

**Supreme Court/Mr Beibut Shermukhametov**

Legal framework

Kazak Constitution, Law on Access to Information (2015), Law on the Procedure for Consideration of Requests of Individuals and Legal Entities, Environmental Code, Law on Administrative Procedure, Law on the Judicial System and the Status of Judges, Administrative Procedure and Procedure Code (APPK)…

1) Time limits for reply, refusal in writing, stating reasons, info about appeal possibilities

Within 15 calendar days, if info is required from other subjects may be extended to 30 days if notified with IR three days before deadline. State bodies and officials etc must provide the public with open access, including requests for info, appeals are made to higher level within administration or court.

2) Time limits to appeal, standing issues, appeal body, suspensive effect for time limits to court, exhaustion of administrative appeal

The length of the civil process dealing with environmental disputes depends upon the complexity of the case, but takes commonly no more than 2 months. Appeal must be made within 3 months, missing that deadline is not an automatic ground for dismissal, but will be taken into account when deciding the case.

3) Independence and impartiality of appeal body

According to the Kazak Constitution and the Law on the Judicial System and the Status of Judges, the courts are staffed with permanent judges, justice is administered by the courts only. No other state body or administration can appropriate the powers of the courts, cannot be controlled or considered by other bodies, officials or other persons.

4) Costs relating to appeals

Tax Code, individuals and legal entities are exempted when defending their rights.

5) Average time for appeal, including reconsideration

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6) Decisions by appeal body in writing, publicly available, final and binding, enforcement of decisions by appeal body

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7) Sanctions against public officials who act unlawfully

According to the Law on Access to Information everybody shall freely receive and may distribute information not exempted by law. Certain kinds of information cannot be restricted, such as on issues relating to emergency, public health care, state of the environment, funds from state or local budgets. Judgements are posted on the court's website, they have compulsory force as failure will trigger criminal or administrative liability.

8) Examples of harassment, penalization or persecutions

No…

9) Misuse or abuse of environmental information

No…

10) Main barriers to access to justice in environmental information cases

Legal illiteracy…

11) Innovative approaches

Today, mediation is not possible in these disputes, but will be introduced in the Code of Administrative Proceedings Procedure through pre-trial settlements (answer under Q12)

12) Important cases

**Ecological Society Green Salvation**

Legal framework

Act on the procedure for consideration of appeals from individuals and legal entities, Law on access to information, Civil Procedure Code (CPC), Law on Enforcement Proceedings and status of Bailiffs, Code on Administrative Violations …

1) Time limits for reply, refusal in writing, stating reasons, info about appeal possibilities

15 days from the request, may be extended by 5 days if information held by other authorities, IR must be notified, another deadline is 5 days after the receipt (??), appeal can be made to higher level of administration or court.

2) Time limits to appeal, standing issues, appeal body, suspensive effect for time limits to court, exhaustion of administrative appeal

Appeals to higher level of administration within three months of awareness, although later requests are not dismissed, but the delay may be considered when deciding the case. Main reasons for denying are incomplete, unreliable info or misinfo and unreasonable refusals to provide info. According to Article 8 of CPC, any individual or legal entity can appeal administrative decisions, no requirement to exhaust administrative remedies.

3) Independence and impartiality of appeal body

Reviewed in court, which according to the Constitution are independent…

4) Costs relating to appeals

Pre-trial costs are insignificant…

5) Average time for appeal, including reconsideration

Timeframes are specified in CPC, depends on the complexity, the case shall be considered within one month after the case is completed (preparations shall not take more than 20 days, can be extended to one month), varies in fact between 1-2 months and several years. Execution can take years.

6) Decisions by appeal body in writing, publicly available, final and binding, enforcement of decisions by appeal body

Judgements issued electronically and in written form, available to the public, if not appealed, it's binding and final, can be enforced according to the Law on Enforcement Proceedings and Status of Bailiffs.

7) Sanctions against public officials who act unlawfully

Administrative and criminal responsibility according to Code on Administrative Violations, covers illegal refusals, incomplete or knowingly false info, placing false info in mass media, etc…

8) Examples of harassment, penalization or persecutions

No such info, but spreading false info and defamation claims are common, even by the administration…

9) Misuse or abuse of environmental information

In 2018, there were 74 requests, out of which 44 was responded to and 16 contain incomplete or inaccurate info…

10) Main barriers to access to justice in environmental information cases

According to the 2016 HR report, the Kazak law does not provide for independent judiciary, has not changes much, also absence of specialized courts and judges is a problem…

11) Innovative approaches

No…

12) Important cases

Kazak courts do not take into account international agreements on A2I and biodiversity and world heritage, state bodies and the courts ignore Aarhus, between 2015 and 2018, the SC rejected more than 10 motions from Green salvation. Courts allow "loose interpretations" and application of law (lax?), apply laws not in force, mislead the bodies of international conventions, poorly examines the materials of the cases, do not recognize A2J rights, court orders are extremely poorly executed – an example of 5 years. In sum, all this legitimize contradiction of law and MEAs, pave the way for serious violations of human rights to the environment, contributes to corruption, degradation of environmental security, hinders the development environmental democracy…

**Notes**

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**Questions**

- Under Q1, there are two deadlines under Article 11 of the Law on Access to Information, 15 and 5 days respectively – I cannot see the difference…

## *Montenegro*

**NIR 2008-2017**

Law on Free Access to Information, appeal to independent supervisory body; the Agency for Protection of Personal Data and Access to Information, the Agency shall decide the complaints within 15 days. Also court protection and the cases shall be dealt with with urgency, this law protects the public interest, rights of citizens and truth. Law on General Administrative Procedure; AA to second instance authority, according to the Law on Administrative Disputes, any person or legal entity can appeal. The AA procedure is free of charges or inexpensive and is performed by an independent and impartial body of law. According to the Law on Free Access to Information, the IA shall deliver its decision immediately and no later than 8 days, in exceptional cases concerning personal life and security even within 48 hours. If the info is great in volume, confidential, requires searching, the time frame may be expanded with 8 days after notification. The IA shall implement decisions within 3 days or 5 days after the IR has submitted proof of having paid the costs (I guess this concerns when a court orders the IA to make info available??). According to Decree on Compensation Expenses in the Process of Access to Information, only the IAs actual costs for copying etc will be charged. If the IR is in social need etc, the IA will bear the costs. According to the Law on General Administrative Procedure, the procedure shall conducted without delay and at the lowest cost possible, if the administration initiates the case, the costs will be borne by the authorities. The decisions shall be issued by the authorities as soon as possible and no later than 20 days (sometimes 1 month) after the request (I guess this concerns AA, see Article 212 of the Law on General Administrative Procedure??). If the IR is not satisfied or there is no answer to the request, s/he has the possibility to lodge an appeal (AA), and if AA is not available, go directly to court. Refusals shall be made in writing, giving the reasons, according to the Law on Access to Information, the Agency shall deliver its decisions within 15 days.

**Environmental Protection Agency/Ms Nikola Medinica**

Legal framework

Law on Free Access to Information, Decree on the Compensation, Law on Administrative Disputes…

1) Time limits for reply, refusal in writing, stating reasons, info about appeal possibilities

According to the Law on Free Access to Information, each authority must publish guidelines on their websites on environmental information. The procedure is also regulated in this legislation.

2) Time limits to appeal, standing issues, appeal body, suspensive effect for time limits to court, exhaustion of administrative appeal

The IR may lodge a complaint to the Agency for the Personal Data Protection and Free Access to Information. If the request is denied, for example due to secrecy, no appeal can be made, but the IR may initiate an administrative lawsuit. An appeal may be lodged to the Agency no later than 15 days after the decision. Where such a procedure is prescribed, the IR has access to an expeditious and free of charge procedure in court or other independent and

impartial body of law (??). Exhaustion is required. An appeal can be based og violation or misinterpretation of the law.

3) Independence and impartiality of appeal body

The Agency carries out his or her duties according to the law, autonomous and independent, an own legal entity.

4) Costs relating to appeals

Costs are regulated according to the Decree on the Compensation…

5) Average time for appeal, including reconsideration

The Agency shall issue a decision within 15 days from receiving a complaint, it is the Council of the Agency which decides.

6) Decisions by appeal body in writing, publicly available, final and binding, enforcement of decisions by appeal body

The IA must execute a decision of the Agency within 3 working days, or 5 days from proof has been submitted on the payment of the costs. The first instance body is obliged to carry out all actions on appeal within 5 days from the filing of the appeal (??). An appeal against the decision to make information available is not suspensive, although judicial protection can be obtained by application of the Law on Administrative Disputes.

7) Sanctions against public officials who act unlawfully

The Law on Free Access to Info provides penal provisions for violations of the authorities and the Agency.

8) Examples of harassment, penalization or persecutions

No such experience…

9) Misuse or abuse of environmental information

Some info about air quality misinterpreted by ignorant persons, misleading the public. Although not intentional, such situations can lead to various abuses…

10) Main barriers to access to justice in environmental information cases

Insufficient knowledge by the judicial authorities…

11) Innovative approaches

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12) Important cases

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**Notes**

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**Questions**

- The different deadlines in Article 31 and 32 in the Law on Access to information..?

## *Republic of Moldova*

**NIR 2014**

If necessary, the courts apply the Aarhus Convention directly (explanatory report of the SC), this is relevant for the understanding of the Law on Access to Information (2000). According to this law, everyone can request information unless it is exempted in law. Refusal in writing, giving the reasons and information about appeal. Refusals can be challenged in court thru administrative litigation action. Everyone can appeal, both extrajudicial and to court, also notify the Ombudsman. Both actions and inactions can be appealed. Court may decide sanctions for failure to provide info, as well as not immediately meeting the IR requests. Settlements in court are possible…

**The Ombudsman Institution of Moldova**

Legal framework

Constitution and Law on access to information, applicable on all areas, including the environment, Civil Procedure Code, Law on Administrative Contentious (Actions, Procedure??), Contraventional Code, Law on Mediation…

1) Time limits for reply, refusal in writing, stating reasons, info about appeal possibilities

No later than working 15 days, may be extended with working 5 days if large volume, additional consultation needed, applicant informed 5 days before time deadline… "Anyone" can ask for information, exceptions only according to international law, such as national security, private and business interests, etc. Refusal in writing with info about appeal. Appeals both extra-judicially and to the administrative courts…

2) Time limits to appeal, standing issues, appeal body, suspensive effect for time limits to court, exhaustion of administrative appeal

Appeal within 30 days from knowledge, may also lodge a complaint to the People's Advocate (Q5; but not in EI cases??). If AA is available it suspends the time limits for court actions, here the deadline is 1 month counted from the decision of the AA. Thus, there is an exhaustion requirement. If there are no AA possibilities, the IR may go directly to court.

3) Independence and impartiality of appeal body

This is guaranteed by the law. For example, it's stated that the People's Advocate is autonomous and independent and cannot be subject to any imperative mandates, requests for explanation or any other interferences. Ignorance in abiding recommendations from the People's Advocate is criminalized.

4) Costs relating to appeals

There are no fees in AA proceedings or cases in the administrative courts…

5) Average time for appeal, including reconsideration

No disaggregated data on this, but on average approx. 30 days.

6) Decisions by appeal body in writing, publicly available, final and binding, enforcement of decisions by appeal body

Appeal are dealt with according to the Law on Administrative Contentious (Procedure?); appeals within 30 days, decisions in written form, if not satisfied or silence, the IR has the right to go to administrative court, judgements are binding and their non-execution is criminal…

7) Sanctions against public officials who act unlawfully

Intentional non-executing/avoidance or prevention of court orders by a public authority is penalized under the Contraventional Code, judicial proceedings are public…

8) Examples of harassment, penalization or persecutions

The Ombudsman has received no such complaints…

9) Misuse or abuse of environmental information

The Ombudsman has received no such complaints…

10) Main barriers to access to justice in environmental information cases

There are no such barriers…

11) Innovative approaches

The mediation process in contentious litigation according to the Law on Mediation…

12) Important cases

The Ombudsman has not examined any such cases…

**Notes**

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**Questions**

- Under Q2, you inform us about the possibility to lodge a complaint to the People's Advocate, but under Q5 you state that this body does not deal with information cases??
- The difference between the Ombudsman and the People's Advocate..?

## *Portugal*

**NIR 2008-2017**

Vast and updated legislation that ensures access to freedom of info, also every citizen has a right to act on behalf of the environment. According to Constitution, the right to info belongs to those who are directly interested in that info, extended to include any person with a legitimate interest, complying with the provisions in LADA (??) and Personal Data Protection Act (LPD). The request shall be satisfied within 10 days, although volume and complexity may extend the deadline to max 2 months, notified to the IR 10 days before deadline, stating the reasons. Request not satisfied or answered, appeal either to independent administrative authority or file an action to court. The first mentioned authority is the Commission for Access to Administrative Documents (CADA), a legal entity under the Parliament. The Commission is responsible for compliance with the LAIA law (??), IR has free access to CADA. Submission must be assessed within 40 days and results in a report. From receiving the report, the IA must comply within 10 days, or else no decision will be considered to be taken. The opinion of CADA is not binding, although an unsatisfied applicant can challenge administrative disobedience in court. It is also possible to file a complaint to the Ombudsman, independent body, although only recommendations. In the judicial procedure, litigants can ask the court to order the IA to provide the info or to consult the requested documents, certain actions and class actions (??). In court, the info cases shall be dealt in a summary procedure according to CPTA, with speed and effectiveness, tend to be less than 1 month. The judge may order the IA to provide the info and combine that with a daily fine, can ask the administration to respond within 10 days, civil, disciplinary and criminal sanctions may apply. Most commonly, intra-administrative solutions are tried before going to court. Although the summary procedure entails particularly low costs, legal counsel is mandatory and there are court fees, while using the CADA is free and no lawyer obligation. None of these procedures takes precedence over the other though…

**Provedor de Justiça (Ombudsman)/Mr Duarte Geraldes**

Legal framework

Law 26/2016 on access to environmental information, Procedure of Administrative Courts Code…

1) Time limits for reply, refusal in writing, stating reasons, info about appeal possibilities

10 days, in written if refusal, info about AA and JR, AA is done to CADA. The IA can also ask CADA for an opinion.

2) Time limits to appeal, standing issues, appeal body, suspensive effect for time limits to court, exhaustion of administrative appeal

20 days from decision to CADA if IR is not satisfied, lodging an AA suspends the time frames for JR. CADA shall decide within 40 days, communicates a report with the interested parties, thereafter the IA has 10 days to decide. Absence to respond within the time frame is regarded as refusal, which also is appealable. Interested parties can appeal both decisions to administrative court according to Procedure of Administrative Courts Code, summary

procedure there. Also lodge a complaint to the Ombudsman, who however only has persuasive powers and issues recommendations.

3) Independence and impartiality of appeal body

Independence and impartiality of CADA follows from the Law 26/2016, the Agency functions under the General Assembly.

4) Costs relating to appeals

Free from costs in CADA, summary procedure entails particularly low costs according to Decree 34/2008 on Regulation of Procedural Costs.

5) Average time for appeal, including reconsideration

40 (CADA) and 10 (IA) days respectively. In administrative court, no such deadline.

6) Decisions by appeal body in writing, publicly available, final and binding, enforcement of decisions by appeal body

CADA's decisions are not binding, but court decisions are as they order the IA to abide.

7) Sanctions against public officials who act unlawfully

Disciplinary sanctions according to the General Labour Law in Public Functions, criminal and civil liability, IR can be part in both procedures.

8) Examples of harassment, penalization or persecutions

No such…

9) Misuse or abuse of environmental information

Violation to make info available can be seen as an abuse…

10) Main barriers to access to justice in environmental information cases

In general, excessive delays and costs in administrative courts.

11) Innovative approaches

CADA's decisions should be binding and it should have possibilities to issue fines. The court procedure is characterized by speed and effectiveness, commonly less than 1 month (!!), the judge can impose periodic penalties.

12) Important cases

The right to environmental info entails the info in itself, not only the documents (2015), definition of public authority includes private entities such as investees and concessionaires if they deliver services related to the environment.

**Universidade de Lisboa /Ms Carla Amado Gomes, assistant professor in administrative and environmental law**

1) Time limits for reply, refusal in writing, stating reasons, info about appeal possibilities

10 days according to Law 26/2016. Refusal in writing, info about appeal possibilities (AA and JR in administrative courts).

2) Time limits to appeal, standing issues, appeal body, suspensive effect for time limits to court, exhaustion of administrative appeal

20 days according to Article 16 of Law 26/2016. Most common are pure silence, not yet concluded within administration, confidentiality. No issues on standing, as everybody without having to state an interest. There is no administrative recourse, instead CADA or JR, appeal within 20 days. An urgent procedure in administrative court, including possibilities to issue injunctions. Appeal to CADA suspends the deadline for JR until the IA decides on the matter. No requirement for exhaustion.

3) Independence and impartiality of appeal body

CADA is independent according to Law 26/2016, chaired by a SAC judge and consists of members that are nominated from different sectors of society (Government, Assembly, academia, regions, municipalities, Bar A, National Data Protection Agency), who cannot be questioned or removed or decisions altered by other authorities.

4) Costs relating to appeals

CADA free of charge, low costs in court if action popularis, if not calculated, approx. €51.

5) Average time for appeal, including reconsideration

In CADA up to 2 months, in 1st instance court max 1 month, in 2nd and SAC unpredictable, appeal in general has not suspensive effect.

6) Decisions by appeal body in writing, publicly available, final and binding, enforcement of decisions by appeal body

CADA’s decisions are public and availbale on website, 1st instance court decisions are not, 2nd and SAC available online; binding and final. CADA’s recommendations can be followed or not. The court decides and the IA must respond within 10 days, the court may issue daily fines.

7) Sanctions against public officials who act unlawfully

Disciplinary, criminal and civil liability. The public cannot intervene in disciplinary or criminal sanction procedures, but can take action in court on civil liability.

8) Examples of harassment, penalization or persecutions

No…

9) Misuse or abuse of environmental information

Repetitive requests, but not for environmental info…

10) Main barriers to access to justice in environmental information cases

The summary procedure is easy and quick, includes remedies and the cost is low. However, on appeal, the procedure is slow, unpredictable and has no suspensive effect.

11) Innovative approaches

See Q10.

12) Important cases

SAC decided in 2009 on the definition of "public authority", including corporations and private legal entities where the State is shareholder and concessionaires of public service, as they enjoy assets belonging to the public domain.

**Notes**

- The court procedure is characterized by speed and effectiveness, commonly less than 1 month (!!)

**Questions**

- CADA's recommendations can be followed or not – what about their status, are they followed or not in general..?
- Does Loser Pays Principle (LPP) apply in court in information cases..?
- Civil liability in information cases, what does that concept cover (who can take legal action in order to obtain what)..?

## *Serbia*

**NIR 2008-2017**

Law on Free Access to Information of Public Importance (LFAIPI); everyone, that is any legal or natural person as long as they are holders of rights or interests (Law on General Administrative Procedure). The IR can lodge a complaint to the Commission within 15 days after the decision if IA refuses to grant access or does not reply within 48 hours. The Commission's decisions are binding, final and enforceable by way of fines, also punishable if disobeyed. If the IA does not abide, the Government is obliged to act. A complaint can be made according to the Law on State Administration concerning improper conduct by employees. A complaint can also be lodged to the Protector of Citizens (LPC), who can instigate legal proceedings, recommendations on which the IA must react within 60 days, giving the reasons for its decision. Mediation can be performed. According to the LFAIPI, the Commissioner shall decide on the matter as soon as possible and no later than 30 days from the complaint, please refer to (?) the Law on Administrative Procedure according to which cases shall be dealt with at the lowest possible cost and without delay, a party may be exempted from costs if social reasons, also within the Civil Procedure Code. A decision on a request for information must be issued within 15 days from the receiving it, in writing and informing about the appeal possibilities. The Commissioner shall decide within 30 days, his or her decision is binding, final and enforceable. The Constitution grants legal aid to those who are in need thereof.

**Commissioner for information of public importance and personal data protection**

Legal framework

Law on Environmental Protection, Law on Free Access to Information of Public Importance, Law on General Administrative Procedure…

1) Time limits for reply, refusal in writing, stating reasons, info about appeal possibilities

A request for environmental info shall be answered within 48 hours and decided upon within 15 days, refusal in writing and info about appeal.

2) Time limits to appeal, standing issues, appeal body, suspensive effect for time limits to court, exhaustion of administrative appeal

If the IA does not reply or the IR is not satisfied, a complaint can be lodged to the Commissioner for Information of Public Importance and Data Protection (CIPIDP) within 15 days upon receipt of reply or document. Against certain bodies, this is not possible, but instead an administrative dispute, on which the court notifies the Commission ex officio. If the IR is not satisfied with the Commission's decision, an administrative dispute can be initiated (in court??), if there is a public interest violated, also the Public Prosecutor can take such steps. Most complaints to the Commissioner concerns local budget allocation decisions, environmental protection very few (2017; 1,68%).

3) Independence and impartiality of appeal body

The Commissioner is autonomous and independent according to law, no instructions, no liability, no recommendations directed to him or her, prosecution only after the consent by National Parliament.

4) Costs relating to appeals

Complaint to Commissioner is free of charge, when going to the Administrative Court of the Republic of Serbia a fee at €3,50 must be paid.

5) Average time for appeal, including reconsideration

The Commissioner must decide promptly and no later than 30 days after receiving the complaint, however this time frame is almost always exceeded. There are between 3,500 and 4,000 cases each year and environmental protection has absolute priority.

6) Decisions by appeal body in writing, publicly available, final and binding, enforcement of decisions by appeal body

The Commissioner's decisions are binding, final and enforceable by way of administrative actions or fines, the Government shall upon request assist the Commission in the enforcement of the decisions.

7) Sanctions against public officials who act unlawfully

Law on Free Access to Information of Public Importance imposes between €45 and €450 upon responsible person, the Public Prosecutor, the Administrative Inspectorate and the IR can initiate such proceedings.

8) Examples of harassment, penalization or persecutions

No such data…

9) Misuse or abuse of environmental information

No such data…

10) Main barriers to access to justice in environmental information cases

The authorities' reluctance to act according with the law, the enforcement of the decisions of the Commissioner is blocked by conflicts of interest, as some national authorities refuse to enforce the decisions (National Bank of Serbia, general courts, misdemeanour courts, Public enforcement officers and Tax administration).

11) Innovative approaches

Ask the Ministry of Environmental Protection…

12) Important cases

In February-March 2018, there was a case about laboratory analysis of illegal buried waste that caught public attention, the Commissioner issued a decision against the Ministry of Environmental Protection, which was enforced.

**Protector of Citizens of the Republic of Serbia/Ms Tanja Dlesk**

1) Time limits for reply, refusal in writing, stating reasons, info about appeal possibilities

2) Time limits to appeal, standing issues, appeal body, suspensive effect for time limits to court, exhaustion of administrative appeal

The Protector of the citizens is an independent body, to which the public can file a complaint after having exhausted legal means, exceptionally s/he can initiate cases ex officio. Complaints shall be filed no later than 1 year after the decision became final, it is not a substitute to appeal to the Commissioner or a court.

3) Independence and impartiality of appeal body

The Protector is organisationally and functionally separated from other bodies of the State.

4) Costs relating to appeals

To the Protector, it is free of charge.

5) Average time for appeal, including reconsideration

A time frame is not stipulated in law and it depends upon the complexity of the case.

6) Decisions by appeal body in writing, publicly available, final and binding, enforcement of decisions by appeal body

Recommendations of the Protector are public on the website. Not binding decisions, but if the IA fails to meet the recommendations, it shall notify the Protector within 60 days. Then the Protector may inform the public, National Assembly and the Government and may recommend proceedings to determine accountability.

7) Sanctions against public officials who act unlawfully

8) Examples of harassment, penalization or persecutions

9) Misuse or abuse of environmental information

10) Main barriers to access to justice in environmental information cases

The problems with the implementation of the Commission’s decisions, as well as insufficient administrative and financial capabilities of the administration, which need to improve the system of environmental information.

11) Innovative approaches

12) Important cases

After an outbreak of fire in a landfill in 2017, the Protector pointed to the fact that that was no information system, which constitutes breaches of the Stockholm Convention on Persistant Organic Pollutants and the Aarhus Convention, as the concentrations of dioxins and furans in the air was not measured. The Protector recommended a system for measuring air quality in an opinion addressed to the Ministry of the Environment and the EPA.

**Judicial Academy/Ms Marija Milakovic**

1) Time limits for reply, refusal in writing, stating reasons, info about appeal possibilities

On information of importance for the protection of life, freedom of persons and protection of the public health and the environment, the deadline is 48 hours from the request. If the IA refuses, a reply shall be given in writing no later than 15 days. Silence may be appealed after the deadline has expired, appeal to the Commissioner.

2) Time limits to appeal, standing issues, appeal body, suspensive effect for time limits to court, exhaustion of administrative appeal

The general time frame for appeals is 15 days, or 1 year after silence, has delaying effect (??). Upon the recommendation of the Ombudsman (Commissioner, Protector??), the IA may issue a new decision. The IA may initiate misdemeanour proceedings to that court or make a complaint to the Commissioner. An appeal to the Administrative Court shall be dome within 30 days, in exceptional cases 60 days. The Commission’s decision can be appealed to the Administrative Court.

3) Independence and impartiality of appeal body

The Commissioner is autonomous and independent according to law, same salary as justices in SC, cannot be held liable unless consent by the Parliament.

4) Costs relating to appeals

Necessary costs for the copying, if those amounts to more than €4,500, a deposit of 50% may be required. According to the Law on Civil Procedure, legal aid shall be free in Serbia, this will be implemented by the end of 2018.

5) Average time for appeal, including reconsideration

The Commissioner shall issue a decision promptly and no later than 30 days after the complaint, an administrative dispute may be lodged against the Commission’s decision within 30 days. The average time for the administrative courts to decide cases is 6 months.

6) Decisions by appeal body in writing, publicly available, final and binding, enforcement of decisions by appeal body

Decisions by the Commissioner are obligatory, enforcement shall be procured by the Government. In 2017, a dispute on jurisdictions has led to that decisions by the Commissioner stayed unmanaged. The Commissioner can impose very high fines on obstructing authorities, the administrative courts may impose fines in between €250 and €850 to the head of the IA that fails to act on their verdicts.

7) Sanctions against public officials who act unlawfully

Denial and giving false info shall be punished with fines or imprisonment up to one year. Also liability and discipline responsibility.

8) Examples of harassment, penalization or persecutions

Very low ecological awareness among the public, low ENGO activity.

9) Misuse or abuse of environmental information

Do not know…

10) Main barriers to access to justice in environmental information cases

The administrative courts have not yet recognized the role of the ENGOs in society.

11) Innovative approaches

New Law on Mediation which is applicable on environmental cases, an agreement can serve a executable document if signed by a public notary

12) Important cases

Very poor practise.

**Notes**

- Conflict of jurisdiction, poor enforcement of the Commissioner's decision…

**Questions**

- What about the court control, can the Commission's decision by appealed on points of law to the administrative courts..?

## *Slovakia*

**NIR 2008-2017**

Act (211/2000) on Free Access to Information, new Administrative Procedure Code. Appeals are made to superior level of administration, then to regional court. The court may order the IA to give reasons for refusal, and in the final judgement oblige the IA to provide the info requested, special procedure for the implementation of the court's decision in order to increase efficiency. According to the Act on Court Fees, ecological organisations are exempt from paying court fees, the same applies in cases of administrative silence for others, but generally they have to pay a court fee on €70, which will be reimbursed if they win the case. The procedure is cassatory and the IA can make another decision, still refusing the information on another ground, even though the court's finding is final and binding. Thus, even if the duration of the trial is one year, the process can continue for several years, especially of the verdict is appealed to next level of court. According to law, information about access to administrative and judicial review is posted online.

**Ministry of Justice/Ms Nikola Budošová**

Legal framework

1) Time limits for reply, refusal in writing, stating reasons, info about appeal possibilities

Without delay, but no later than 8 working days, may be extended for serious reasons for another 8 days at the most. All decisions have to be reasoned, refusals in writing and info about appeal.

2) Time limits to appeal, standing issues, appeal body, suspensive effect for time limits to court, exhaustion of administrative appeal

Appeals may be made within 15 days from the decision or from the expiration of the deadline in cases of silence. Standing is stipulated in law (?). Appeals are made to superior body within administration; there is no Ombudsman or Information Commissioner. The appellate body shall decide within 15 days, if not this is deemed to be refusal from the day after the expiration of that deadline. Appeal is made to the court, where the IA is defendant.

3) Independence and impartiality of appeal body

The independence of the courts is guaranteed in the Constitution, the independence of the independent body mentioned above (??) is guaranteed in Act (205/2004) on the collection and storage and dissemination of environmental information and Freedom of Information Act and Act (162/2015) on administrative judicial procedure.

4) Costs relating to appeals

On AA, there is no fee, on JR the court fee is €70.

5) Average time for appeal, including reconsideration

Superior administrative body shall decide within 15 days, no stipulated time frame for JR. The Ministry does not have any information about the average length of the court proceedings in information cases, but according to the law and Aarhus, they must be timely.

6) Decisions by appeal body in writing, publicly available, final and binding, enforcement of decisions by appeal body

Yes, the decisions are available, final and binding. Further, there is a possibility for the court to order the IA to disclose the info, can also quash the decision and remit the case back to the IA. The courts cannot disclose the info directly.

7) Sanctions against public officials who act unlawfully

Administrative sanctions apply, it is an offence to unlawfully refuse to disclose information, court hearings are open to the public.

8) Examples of harassment, penalization or persecutions

No such info…

9) Misuse or abuse of environmental information

No such info…

10) Main barriers to access to justice in environmental information cases

No such info…

11) Innovative approaches

All judgements of the Slovak courts are published on the website of the Ministry of Justice (!!)

12) Important cases

No such info…

**Via Iuris /Mr Imrich Vozár**

Legal framework

1) Time limits for reply, refusal in writing, stating reasons, info about appeal possibilities

According to Act 211/2000, info shall be disclosed without undue delay, but no later than 8 working days, may be extended 8 days in difficult cases. If refusal, the decision shall be in writing, stating the reasons and inform about the appeal possibilities.

2) Time limits to appeal, standing issues, appeal body, suspensive effect for time limits to court, exhaustion of administrative appeal

Appeal shall be lodged to the next level of administrative of the IA within 15 days, main reasons for refusal are unlawful application of law. There is an exhaustion requirement.

3) Independence and impartiality of appeal body

N/a…

4) Costs relating to appeals

Court fees are €70, foundations, charities ENGOs etc are exempted.

5) Average time for appeal, including reconsideration

May vary, the legislation does not specify and there are no statistics.

6) Decisions by appeal body in writing, publicly available, final and binding, enforcement of decisions by appeal body

Court decisions are in writing, published and legally binding. Single instance procedure, thus are the judgements enforceable, but there can be appeals made to the SC. In most cases, the court only quashes the refusal with reasons as to why the decision is illegal, thus enabling for the IA to make another decision. As this is ineffective, a new order has been introduced, enabling the courts to order the IA to disclose the info if it is convinced that there are no legal obstacles for doing so.

7) Sanctions against public officials who act unlawfully

Administrative offense to knowingly issue or publish false info or to violate someone's rights, the IA is party to those proceedings.

8) Examples of harassment, penalization or persecutions

N/a…

9) Misuse or abuse of environmental information

Several cases with "flooding" has resulted in that the courts apply "bullying law" (??)

10) Main barriers to access to justice in environmental information cases

The repetition of the process as the IA goes from one reason to another for not disclosing info, the new rules for enforcement by court orders is not applied by the courts, even though it is 6 years since its introduction. The widely applied concept of “bullying law enforcement” is abused by the administration and the courts.

11) Innovative approaches

The possibility for the courts to order the IA to disclose the requested info.

12) Important cases

Negative; the practise against fictitious decisions does not work, is abused by the authorities, eternal going back and forward.

Positive; The SC judgement on the definition of trade secrecy in the Mochovce case, where the operator claimed trade secrecy after an accident, something that the Ministry just repeated. The SC however stated that the IA must make their own evaluation as to whether the info in an objective sense qualified as trade secrecy.

**Notes**

- The enforcement seems to be weak…

**Questions**

- Several cases with “flooding” has resulted in that the courts apply “bullying law” (??)

## *Sweden*

**NIR 2008-2017**

The right to appeal to court is stipulated in the Freedom of Press Act, governmental decisions are reconsidered within by the Government, decision has to be in writing, informing about the reasons and appeal possibilities. The IR can appeal, to the administrative court of appeals and then to SAC. An appeal on information issues has to be examined "promptly". There are also considerable possibilities for re-examination within the IA according to the Administrative Procedure Act. When the court has decided, the IA must ensure disclosure of the information requested. There are no fees in AA or JR, no mandatory representation, LPP is not applied (each party bears his or her own costs). Judgements are available according to the transparency principle within Swedish administration, at the office but also to some extent posted on websites.

**Swedish Environmental Protection Agency/Ms Ulrika Domellöf Mattsson**

Legal framework

Freedom of Press Act (Constitution, TF), Public Access to Information and Secrecy Act (OSL), Administrative Procedure Act (FL)…

1) Time limits for reply, refusal in writing, stating reasons, info about appeal possibilities

"Forthwith, or as soon as possible" according to TF, must be dealt with "promptly". Decision notified, written if requested, which is a requirement for appeal, info about appeal. There is not an obligation to make info available in electronic form, but a recommendation.

2) Time limits to appeal, standing issues, appeal body, suspensive effect for time limits to court, exhaustion of administrative appeal

Reviewed by court (Administrative Court of Appeal)

3) Independence and impartiality of appeal body

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4) Costs relating to appeals

Each bears their own cost, no court fees.

5) Average time for appeal, including reconsideration

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6) Decisions by appeal body in writing, publicly available, final and binding, enforcement of decisions by appeal body

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7) Sanctions against public officials who act unlawfully

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8) Examples of harassment, penalization or persecutions

No...

9) Misuse or abuse of environmental information

No…

10) Main barriers to access to justice in environmental information cases

Not aware of any such barriers, but some ENGOs complain (*but the reference does not concern A2J in info cases, my remark*).

11) Innovative approaches

Not aware of.

12) Important cases

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**Swedish Chemical Agency/Mr Adam Diamant**

1) Time limits for reply, refusal in writing, stating reasons, info about appeal possibilities

Forthwith, asap. Free at the place, refusal in writing and appeal-info. According to the Parliamentary Ombudsman, the disclosure should be done within a couple of days, although it can be expanded due to complexity, etc.

2) Time limits to appeal, standing issues, appeal body, suspensive effect for time limits to court, exhaustion of administrative appeal

3 weeks, but there is no restriction to make a new request. Transparency principle according to the Constitution (TF), and only exemptions given in law (OSL). Most common grounds for appeal is that there is no confidentiality ground for refusal. IP and IA are parties to the proceedings.

3) Independence and impartiality of appeal body

N/A..

4) Costs relating to appeals

No costs.

5) Average time for appeal, including reconsideration

According to TF, the cases shall be dealt with promptly, but the time varies.

6) Decisions by appeal body in writing, publicly available, final and binding, enforcement of decisions by appeal body

Rulings in writing, binding when the judgement has entered into force. Commonly, the court orders the IA to disclose the info.

7) Sanctions against public officials who act unlawfully

Normally, no sanctions are imposed by the court, the Ombudsman can issue criticism. According to the Penal Code, anyone who discloses confidential info can be punished for breach of professional confidentiality.

8) Examples of harassment, penalization or persecutions

No…

9) Misuse or abuse of environmental information

No…

10) Main barriers to access to justice in environmental information cases

The Swedish system is open and the grounds for refusal are limited.

11) Innovative approaches

See above.

12) Important cases

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**Environmental Licensing Board at the County Administrative Board in Västra Götaland/ Mr Anders Hjalmarsson**

1) Time limits for reply, refusal in writing, stating reasons, info about appeal possibilities

All Swedish citizens and foreigners can request info, disclosure asap.

2) Time limits to appeal, standing issues, appeal body, suspensive effect for time limits to court, exhaustion of administrative appeal

Administrative reconsideration is optional but not mandatory unless the decision is clearly wrong. The ELA has no experience in requests for environmental information.

3) Independence and impartiality of appeal body

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4) Costs relating to appeals

No costs.

5) Average time for appeal, including reconsideration

Asap…

6) Decisions by appeal body in writing, publicly available, final and binding, enforcement of decisions by appeal body

The IR can always make a new request, the court orders the IA to disclose the info.

7) Sanctions against public officials who act unlawfully

Disciplinary and criminal.

8) Examples of harassment, penalization or persecutions

No.

9) Misuse or abuse of environmental information

No.

10) Main barriers to access to justice in environmental information cases

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11) Innovative approaches

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12) Important cases

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**BirdLife Sweden /Mr Daniel Bengtsson**

1) Time limits for reply, refusal in writing, stating reasons, info about appeal possibilities

In my experience immediately, always in writing presenting the reasons and appeal-info.

2) Time limits to appeal, standing issues, appeal body, suspensive effect for time limits to court, exhaustion of administrative appeal

3) Independence and impartiality of appeal body

4) Costs relating to appeals

5) Average time for appeal, including reconsideration

My guess is 3-6 months.

6) Decisions by appeal body in writing, publicly available, final and binding, enforcement of decisions by appeal body

7) Sanctions against public officials who act unlawfully

8) Examples of harassment, penalization or persecutions

No.

9) Misuse or abuse of environmental information

No.

10) Main barriers to access to justice in environmental information cases

Examples of appeal barriers (*but not related to info cases, my remark*).

11) Innovative approaches

Not in my knowledge.

12) Important cases

**Notes**

- There is not an obligation to make info available in electronic form, but a recommendation.
- We have cases where civil servants have been fined for not disclosing info after a court order, see judgement in ECtHR/GC 2012-04-03 in Case No 41723/06.

- Decisions by the Government in Sweden to refuse the disclosing environmental info is not appealable to a court, see reservation at the ratification of Aarhus…
- If the court finds that there are no grounds for refusal, they can disclose the requested info directly (as the same grounds for confidentiality apply in court)…

**Questions**

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## *Switzerland*

**NIR 2008-2017**

On federal level, any person can ask for info according to the Federal Act on Freedom of Information in the Administration (FoIA) and, if refused, can ask for mediation. Also TP have a right to ask for mediation. The request must be filed in writing with the Federal Data Protection and Information Commissioner (FDPIC) within 20 days after the IAs decision or deadline expired (silence). Either the parties agree, or shall the FDPIC decide with a recommendation within 30 days, thereafter the IR and TP must request a decision from the IA within 10 days. The IA must decide within 20 days from the issuance of the recommendation or the request from a party. So far, this procedure is free of charge. Also decisions by cantonal authorities can be appealed, but they will be reviewed by a superior level within the cantonal administration, thereafter cantonal court and then further to the Federal Administrative Court (FAC). Decisions on environmental information are binding. Everybody's rights and freedoms are protected by the courts according to the Swiss Constitution. The FAC hears cases from federal authorities and appeals can be made if there has been a violation of someone's rights. An appeal has suspensive effect, guaranteeing implementation of Article 9.4 Aarhus. The rulings of the FAC can be appealed to the SC, which is the highest level of judiciary in Switzerland. In court, there is a fee and a requirement for representation, although availability of legal aid if necessary from economic viewpoint and the case is merited. This decision is made at the beginning of the proceedings. Court judgements are published anonymously.

**Pro Natura (Friends of the Earth Switzerland)/Ms Franziska Scheuber**

Legal framework

1) Time limits for reply, refusal in writing, stating reasons, info about appeal possibilities

20 days with a possibility to prolong in exceptional cases with another 20 days. The decisions must be made in writing.

2) Time limits to appeal, standing issues, appeal body, suspensive effect for time limits to court, exhaustion of administrative appeal

20 days, no issues concerning standing. Appeal is made to the Commissioner for mediation, etc. The deadline is extended while at the Commission, exhaustion requirement.

3) Independence and impartiality of appeal body

In the law, that is FoIA.

4) Costs relating to appeals

No costs in the AA procedure, including mediation at the Commissioner, in the courts LPP applies, the costs amount to 1,000-4,000 CHF (€880-€3,520), but may be higher.

5) Average time for appeal, including reconsideration

We do not know.

6) Decisions by appeal body in writing, publicly available, final and binding, enforcement of decisions by appeal body

Binding and final, not always published, enforcement is made by having the court order the IA to disclose info.

7) Sanctions against public officials who act unlawfully

We do not know.

8) Examples of harassment, penalization or persecutions

No.

9) Misuse or abuse of environmental information

No.

10) Main barriers to access to justice in environmental information cases

Too often exceptions, although they should be interpreted restrictively. No barriers in A2J in info cases, but costs for obtaining general info, for example concerning building applications.

11) Innovative approaches

Mediation by the FDPC.

12) Important cases

In 2015, Pro Natura requested info from the Federal Office for Agriculture about authorization of certain pesticides, which was refused. A successful appeal was made to the FAC and that judgement was confirmed by the SC, which stated that ENGOs must generally be given admittance to such proceedings and therefor have access to all necessary info.

**Notes**

- Well developed and experienced order for mediation with exhaustive effect…

**Questions**

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