

From: [Duarte Geraldes](#)
To: [ECE-Survey-Aarhus](#)
Cc: [Maryna Yanush](#)
Subject: NECE Aarhus Convention: kind request to comment on the progress report of the survey on access to justice in cases on the right to environmental information by 8 April 2019
Date: Thursday, April 18, 2019 20:37:05
Importance: High

Dear
Maryna Yanush,

I hereby present the answers to the questions made by the progress report of the Chair of the Task Force.

So:

1. *CADA's recommendations can be followed or not – what about their status, are they followed or not in general*

CADA's recommendations can be followed on its website through the link
<http://www.cada.pt/modules/CADA/ano.php>.

Although CADA's decisions are lack of binding, they are generally followed by target entities (about 60% <http://www.cada.pt/>).

2. *Does Loser Pays Principle (LPP) apply in court in information cases..?*

Law No. 35/98, provides that NGOs, regardless of whether they have an interest direct on demand, have legitimacy to Propose legal actions necessary for the prevention, correction, suspension and

cessation of acts or omissions by public or private entities that constitute or may constitute a factor of environmental degradation, and to Take legal action to enforce civil liability acts and omissions referred to above. In these actions NGO's are exempt from the payment of expenses and expenses due process intervention.

Given that access to information is thus configured as a popular claim, the popular action, provided for in Articles 20 and 52 (3) of the Constitution, and in Law 83/95 of 31 August, can be summarily defined as a judicial action whose ultimate objective is to protect diffuse interests, consubstantiating a fundamental right of political action, either individually or collectively. The legitimacy (or lack thereof) to defend the diffuse interests in question can be seen as an indirect dimension of violation of the right to environmental information at stake.

The exercise of the right of popular action does not require preparation and the author is exempt from payment of costs as long as the application is partially upheld [Article 20 (2) of Law 83/95 of 31 August].

Thus, Loser Pays Principle (LPP) does apply in court in information cases.

3. *Civil liability in information cases, what does that concept cover (who can take legal action in order to*

obtain what)?

The right of access to administrative documents is limited where, in accordance with specific legislation, are concerned matters under secrecy or information likely to jeopardize or cause damage to the internal and external security of the State. Criminal and civil proceedings (civil liability) can be exercised against public officials, pursuant to the law, in cases of disclosure of environmental information unlawfully refused. Civil proceedings are intended to any kind of actions and omissions adopted in the exercise of prerogatives of public power or regulated by provisions or principles of administrative law, regarding environmental information access. It has a compensatory component. Civil proceedings can be sustained by any holders of legally protected rights and interests. Criminal proceedings have a punitive component and can be hold by public prosecutor or by the offended.

With king regards,
Duarte Geraldes

Duarte Vaz Geraldes
Assessor do Provedor de Justiça
Endereço: Rua do Pau de Bandeira – n° 9 1249-088 Lisboa - Portugal
Site: www.provedor-jus.pt



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