

On the state of affairs concerning the Aarhus Convention in the Kingdom of Denmark

Lyngby May 22nd 2012

Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention)
Protocol on Pollutant Release and Transfer Registers (PRTR Protocol)
United Nations
Economic Commission for Europe
Environment Division
Palais des Nations
8-14 avenue de la Paix
1211 Geneva 10
Switzerland

Concerning the hearing 6-8th June 2012

When we have applied for environmental information referring to the legislation applied in Denmark, which implements the convention, we get the same answer:

”The information is not covered by the convention.”

After having appealed the case, the Danish Ombudsman agrees, that the information is covered by the convention. This process takes months and only leads to new allegations like for example this, which was put forward in the Vetstat case:

If the information becomes publicly known, it can be misunderstood and lead to unpredictable results.

Or, in the same case:

The information will damage the economy for some veterinarians.

Both allegations were eventually rejected by the ombudsman. It is remarkable that skilled lawyers in the administration can put such nonsense on paper. If information can be denied because of a hypothetical risk, that it may be misunderstood, then all information can be denied. And how can the economy for some suffer, if everyone get access to the same information?

All decisions by Danish authorities can be appealed, and instructions on how to proceed in this matter must follow all written decisions. But in Denmark the time limit of the convention on 1, max. 2 months is only considered valid for the first instance. In the Vetstat case the information about the way to appeal the decision was wrong in one case, and it took the wrong institution (Miljøklagenævnet) one year to find out. Several reminders sent by the ombudsman were necessary just to get that far. Every time the case moved to a new administrative body, special hearings were performed anew, they had to be commented by the parties and this has also been time consuming. The Ombudsman only deals with a case, when all other possible appeals have been exhausted, and he is a very thorough man. In other words, highly competent, but slow. We do not have a possibility of sending the case to a special court, and suing the state is risky, expensive and also slow, and therefore out of reach for people in general. The Ombudsman only makes a statement, which is NOT legally binding. In most cases the authorities will follow his view, but they are not obliged to do so.

Our experience shows, that the Danish administration deliberately obstructs the Aarhus Convention by keeping the cases floating in the system for an unnecessarily long time.

Another problem in Denmark is, that another law “Law on public access to the administration”, which gives right to *cases*, as long as you can define the case, was used against us. The authorities claimed, that we had not defined the “case”, which was correct because there was no “case”, since the Aarhus Convention gives access to data, and so, the demand to define a “case” becomes absurd. Never the less the limitations on access to cases according to the “Law on public access to the administration” are written into the legislation implementing the Aarhus Convention. This establishes the impression, that local Danish legislation may overrule the Aarhus Convention. Another clause limits the limitations of the Law on public access to the administration to situations, where they do not inflict with the Aarhus Convention and the EU directive based on this. Maybe this is legally correct, but it complicates the matter, because a very complicated legal conflict has to be dealt with. In the Vetstat case the ombudsman wrote one and a half page on this issue, concluding that the EU directive and the Aarhus Convention overrule local Danish legislation. Still the Vetstat information is only accessible if you apply for a password and a login. The database is not directly accessible on the internet.

We experience similar behavior from the administration in present efforts to get access to information about the resistant, dangerous MRSA bacteria, which the authorities have gathered by taking tests on some locations.

Simplified flow chart of the over seven years long Vetstat case, where information eventually was given out.

Ministry of Family affairs

Ministry of Justice

Ministry of Food and Agriculture

Technical University of Denmark

Tribunal for complaints in Environmental matters

Ministry of Science

Office for Universities and Buildings

Technical University of Denmark

The Ombudsman

Kind regards from
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