Study on Access to Justice in Information Cases

Report to 12th Meeting of the Task Force on Access to Justice
Geneva 28 February-1 March 2019

Jan Darpö, Uppsala Universitet
A2J in Information Cases
Art 4(1), 4(2), 4(5-8) and 9(1)

- Selection of 12 Parties to the Convention; European Union, Germany, Georgia, Ireland, Kazakhstan, Montenegro, Portugal, the Republic of Moldova, Slovakia, Sweden, Serbia and Switzerland

- (Very) simple questionnaire...

- Invitation to National Focal Points to approach administration, courts and tribunals, ENGOs, other stakeholders...
Logistics of the study

- Thematic focus on 11\textsuperscript{th} Task Force meeting in 27-28 February 2018
- Spring: Concluding the Questionnaire…
- Summer: Letters to National Focal Points…
- Fall: Completion of the Questionnaire…
- Responses from each country vary in complexity and number of respondents: 1 (EU, DE, MD, ME and CH), 2 (GE, KZ and PT), 3 (IE, RS and SK), 4 (SE)…
Unproblematic issues

- “Standing” (not covering appealability)...
- Formal time frames for decision-making...
- Decisions in writing with reasons...
- No costs in the administrative phase of the appeal...
- Formal administrative and criminal sanctions for serious maladministration...
- Only anecdotal evidence of harassments and defamation claims...
Main barriers

- Length of the procedure; especially in judicial review proceedings in court, no suspensive effect...

- Weak enforcement; “administrative silence”, “ping-pong” between courts and administration, separate enforcement processes...

- (To a certain extent) costs; court fees, experts and lawyers, Loser Pays Principle (LPP)…
Good and interesting examples

- Environmental “tribunals”; expedience, costs, enforcement…
- Courts and tribunals are empowered with sanctions for disobedience…
- “Negative silence rules”…
- Mediation…
- “Civil liability” (?)…
Article 9(1) 2nd sentence

(…) 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 (…).
The Continuation…

- 12th Task Force meeting in Geneva on 28 February-1 March 2019…
- Remit to National Focal Points and ENGOs for wider distribution (8 April)…
- Reprocessing by the chair and the secretariat during the spring of 2019…
- …with the aim to present the report to the 23rd meeting of Working Group of the Parties on 26-28 June 2019…
….and finally...

THANK YOU FOR LISTENING..!

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jan.darpo@jur.uu.se

www.jandarpo.se/ In English