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Free Access to environmental information

Report – Slovenia

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The questions are the following:

1) *Constitutional frame, constitutionally guaranteed right of access to (environmental) information? Access to information as a fundamental (democratic) right?*

A right of access to public information is defined in second paragraph of Art 39 of the *Constitution of the RS* (hereinafter: *Constitution*). Slovenian *Constitution* was adopted in 1991 and for the first time a right to access to public information has been legally defined. Before that, in the *Constitution* in former Yugoslavia such a right was not assured as a fundamental democratic right. Basically, at that time in 1991, most of Slovenians were not aware of what does it mean. Same article also defines freedom of expression and to certain extend it was more important than access to the public information. On my own opinion, it lasted for a decade or so that most of Slovenians accepted access to information as democratic right and start to use it. The right to access to public information is most widely used by journalist, but also NGOs and individuals are requesting public information more and more frequently. This is true also with respect to environmental information. This will be, from the substantive point of view, more detailed answered under question Nr 4.

2) *Other (national) legal acts providing access to information held by public authorities. Relationship with laws transposing Dir 2003/98 on re-use of public sector information*

The most general act is *Access to Public Information Act*[1], *Physical Assets of the State and Local Government Act*[2], *Environmental Protection Act*[3], *Inspection Act*[4] and *General Administrative Procedure Act*[5].

3) *National legal situation before Dir 90/313/EC: has the EC/EU legislation had a major impact on the national law on access to information?*

As already mentioned under question Nr. 1, Slovenia became independent in 1991, one year after adoption of the Directive 90/313. At that time, we were not member of EU neither negotiation had been started. In 1997, when we concluded the Association Agreement with the EU Slovenia started with the adoption of the *acqui communiaitre*. In this period, we also adopted, for the first time, the law on public access on information. One of the most important issues at that time was a question, what is public information (how it is defined; namely, especially in case of journalists, sometimes information requested was not written in any document and access to that kind of information was usually not granted. Before becoming a member of the EU, Slovenia already adopted the Environmental Protection Act, which also regulated the access to public information and in 2006 this act was substantially changed. The right to environmental public information was even more detailed elaborated. However, before 1993, we hardly knew that access to public information is possible. Until that time we, basically, had not known the content state environmental plans, what is going on behind the factories walls, how to get to environmental permissions, etc. Generally speaking one can say

[1] OJ of the RS. No. 24/2003) with changes and amendments (latest change: Official Gazette of RS, No. 19/15, Decision of Constitutional Court of Slovenia); available: https://www.ip-rs.si/index.php?id=324.
[2] OJ of the RS, Nr. 86/10, 75/12, 47/13 – ZDU-1G, 50/14, 90/14 – ZDU-1I, 14/15 – ZUUJFO).
[3] OJ of the RS, Nr. 39/06, 49/06 – ZMetD, 66/06 – odl. US, 33/07 – ZPNačrt, 57/08 – ZFO-1A, 70/08, 108/09, 108/09 – ZPNačrt-A, 48/12, 57/12 in 92/13).
[4] OJ of the RS, 43/07, 40/14.
[5] OJ of the RS, Nr. 24/06, 105/06 – ZUS-1, 126/07, 65/08, 8/10 in 82/13.

that right to access public information started in 1991 and access to environmental public information in 1993.

4) Statistical information about the use of the access-right including types of users if known (eg NGOs, competitive industry, general public, environmental consultants, etc). Difficulties of the administration handling the number and/or the scope of applications.

Statistical information on the use of the access–right can be given, but only with the respect to the procedures commenced at the Information Commissionaire office.[6] Namely, there is no statistic for overall number of requests addressed to public entities that are obliged to allow the access or to provide information. However, procedures (appeals) that are registered by *Information Commissionaire* can be of help. Namely, if there is a procedure commenced at *Information Commissionaire*, it means that there was an appeal, because certain public body did not want to allow access or did not give public information as requested.

5) Significant national law and jurisprudence on the definition of "environmental information" (Art. 1 para 1 Dir 2003/4/EC

The *Environmental Protection Act* (2006) enables access to environmental information not only as a general rule but also as specific cases like to information of emission and monitoring, environmental plans, environmental projects, the environmental impact assessment, in cases of industrial pollutions or industrial accidents, etc. A part from the sole environmental information one can stress also that environmental information is also part of public participation procedures, meaning that opening different procedures to public participation, enables also access to environmental information.

Altogether 28 procedures are registered at *Information Commissionaire* since 2005. Procedures refer to the environmental information and are mostly commenced by natural persons, than attorneys of law, than civil initiative, non-governmental associations (NGOs), and also by companies, usually competitors. On the other hand, addressee that should allow access to information are: the Government and individual ministries, Health inspection, municipalities, Environmental inspection, Agency for radioactive waste, National institute for health protection and also Agency for protection of competition.
A list of requests is a long one; however we can select the following information being requested:

- weather radio stations for telecommunications cause any health implication,
- what is the quality of drinking water,
- whether environmental permission for waste disposal was awarded or not,
- what are emissions from bio electricity plant,
- what will be implications to the environment and to the health of the people in case of new thermoelectricity plant,
- request for the elaborate for the waste treatment plant,
- municipality plans on future construction works and regarding their impact to the environment,
- what are the emissions caused by plant Lafarge, which also burn waste,
- environmental permit to treat motor oil,
- health impacts of active lightning conductor - Prevectron,
- information on how the radioactive waste are treated,
- request for geology report,
- an assessment of the performance of small waste water plant,
- what are the emissions of noise in certain areas,
- information on the procedure how certain public service on the field of the environmental protection has be awarded, …etc.

To my knowledge, access to public information and issuing an information regarding the environment is quite benevolently issued by many public entities. Relatively low number of appeals that are handled by *Public Commissioner*, basically, confirms this viewpoint.

[6] See more about this body under the question 14.a of the questionnaire.

It is interesting, that I was not able to find any judgment on application of the Directive 2003/4/EC by courts. As answered above under question Nr 2, there are quite some national statutes that embodied that principle, however, cases, so far, have not reach the courts. I can only express my own opinion, but I think this is because public entities are benevolent offering access to information on the one hand, and on the other hand, and this is more important, *Public Commissionaire*, as state body, handles, rather efficiently, appeals.

6) Significant national law and jurisprudence on determining the access right holder ("without having to state an interest", Art. 3 para 1 Dir 2003/4/EC)

Article 5 of *Public Information Access Act* does not request any specific condition regarding an interest of the party to be fulfilled. Limitations are regulated under Article 5.a, which reads:

> *"Exceptions to Limiting the Rights of Parties, Participants or Victims in Proceedings and Protection of Confidential Source.*
>
> *(1) The body denies the applicant access to requested information if the request refers to information, access to which is forbidden or restricted under law even to parties, participants or victims in legal or administrative proceedings, or inspection procedure as governed by the law.*
>
> *(2) The body denies access the applicant to requested information if the request refers to information on which the law stipulates protection of confidential source.«*

Basically, there are no other conditions, like to prove personal (individual) interest, also not in case of the *Environmental Protection Act* for an environmental information. This basic rule, that public information is available to everybody, is quite widely respected.

7) Significant national law and jurisprudence on the realm and obligations of private persons as defined by Art. 2 No. 2 b and c 4/EC. (see ECJ 279/12 (Fish Legal)

Cases on a question who is a body obliged to offer an access to public information were part of application od PIAA However, not so much in cases where certain private company would have been awarded with the exclusive or special right of a public nature (like concessionaires). This is not disputable. In case where a private person performs an activity of a public competence it is rather straight forward that it is to be understood as a public body in a sense of a PIAA. However, in cases where public entities establish a companies, not pursuing state based competences, this might not be so clear. Therefore, the PIAA has been changed to broaden the obligation to allow access to public information also to persons being under surveillance of public bodies.

8) National law and jurisprudence on the public authorities to be addressed ("information held by or for them") (Art. 3 para 1 Dir 2003/4/EC)

Who are entities that are obliged to allow access to public information is defined under Articles 1, 1.a, 3.b, 4.a of the *Public Information Access Act* (*PIAA*) with the field of application also in environmental matters. The statute defines the notion of public authorities and therefore the notion of entities being obliged to procure information quite widely. Even more, since these entities often establish other entities, which might also be engaged in private law sphere, the law was changed in 2014, to broaden its application also to, so called, *liable business entities subject to dominant influence of entities of public law*. In short, that means that if certain entity is supervised or being under auspices of public entity, that first entity is also obliged to allow access to information.

9) Significant national law and jurisprudence on practices on access conditions (terms, "practical arrangements" (see Art.3 paras 3 – 5 Dir 2003/4/EC)

Access conditions were not often challenged by parties. Usually, it is not a problem to obtain information which is saved somewhere in physical manner, like being in a form of a paper, document, etc. There was one case, where party ask for the on-line access to certain information and the access was denied. On the other side, if the request is too broadly formulated, this might be a reason for simple refusal. This does not occur

often. According to Art. 18 of the PIAA the public entity has to offer help in defining or redefining the request for public information.[7]

10) Law and practices/jurisprudence on charges for access (copying, administrative time?)

In cases where preparing public information demands certain work to be done by public entities, the later are entitled to condition the access by the costs of such work and this is than notified to the party. Consultation on the spot of the requested information shall be, therefore, normally, free of charge. The body may charge the applicant the material costs for the transmission of a transcript, copy or electronic record of the requested information.[8] If the party is unwilling to pay, there is no obligation for public entity to procure such information. This later approach is usually used in case of journalist, that are asking for the access to information that need to be processed first.

11) Do any public authorities claim copyright in the material supplied, and impose conditions relating to use of information under copyright law (such as due acknowledgement and user fees in case of re-publication)?

Indeed, copyright is an objection where public interest test is applied. Also, in case of fees and in case of republication there are usually certain costs which public authority or public entity is faced with because personal data needs to be deleted first. For instance, all judgments of courts are requested by certain private company who process them and offers certain services with added value, like to connect certain decision with certain article and statutes. That makes any legal research much easier. The private company can get court judgments for reviews (as a public information) for the purposes of re-use, however, court has to delete all personal data before handling over the judgments. This processing demands certain costs, to which courts are entitled.[9]

12) National law and jurisprudence on the role of affected third parties in access procedures esp. concerning trade secrets and personal data (designation of trade secrets, consultation prior to release of information, etc)

Personal data, trade secrets, rights to industrial property, etc. all this affects third parties rights. These are usually an obstacle for unlimited access to public information. Third parties have a right to be included in the proceedings and they can request certain data, especially personal date, to be deleted. Also, it is possible to held procedure *in camera*. This is usually used by *Information Commissionaire* when it would first like assess, whether certain document is indeed of public interest (to perform *public interest test*) and whether includes trade secrets, business secrets, or is a part of industrial property rights.

13) Significant national law and jurisprudence on exceptions (Art. 4 Dir 2003/4/EC)

More specifically:

a. Confidentiality of commercial or industrial information

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[7] Article 18 (Supplementing the request)
(1) If the request is incomplete and, hence, the body cannot deal with it, the body must invite the applicant to supplement it within the time limit laid down by the body. The time limit may not be less than 3 working days.
(2) Official referred to in Article 9 of this Act is obliged to provide the applicant with the appropriate assistance in supplementing the request.
(3) If the applicant does not supplement the request within the time limit laid down in the first paragraph, or if the request does not fulfill the conditions set out in Article 17 of this Act even following its supplementation and, hence, the body cannot deal with it, the body shall act in accordance with the Article 19 of this Act.

[8] Art. 34 of the PIAA.

[9] This is not so in cases where deleting personal data is already done for the purposes of court's openly accessible database.

Disputes in cases that concern a confidentiality of commercial or industrial information needed to be answered by *Information Commissioner*. Exception to free access to public information are defined under Article 6 of the *PIAA*. Commercial or industrial information is such an exemption of confidentiality. Confidentiality can be defined by the commercial subject itself (subjective criteria). Such rule has to be included in an internal act of general application and transparently published. There is also another criterion, so called objective criteria, embodied under Article 6.2.: *Access to information is not allowed if public interest would not be so important and, on the other hand, if information revealed can cause substation damage.* In both cases the access to public information can be denied. However, the public interest test needs to be performed in order to establish whether the public interests outweigh the right to confidentiality.

b. Confidentiality of the proceedings of public authorities / internal communications /

Usually, also proceedings in camera are respected in cases where permission commissionaire would like, first, to establish whether certain information should be given to public or not. Also, when decision to access to public information is issued, personal data needs to be respected and any public information, that is given to applicant shall not be given with personal data included. There is no provision, to my knowledge, that there should also be a confidentiality assured in internal proceedings.

c. Approach to the disclosure of:

- *"raw data' (Aarhus Compliance Committee case ACC/53/ Uk – see AC Implementation Guide 2014 p 85)*

Not to my knowledge.

- *"material in the course of completion" vs "unfinished documents" see AC Implementation Guide 2014 p 85*

Not to my knowledge.

d. "Information on emissions into the environment" (Art. 4 para 2 subpara 2 Dir 2003/4/EC, see T-545/11

Information on emissions into the environment is quite often requested by individuals, also by NGO's. Since different kind of monitoring are also in place, this information are usually accessible and to certain extend, this information has to be publish in media, especially emissions of CO_2, PM_{10}. To my knowledge, it is not difficult to get to this information. It is more questionable how reliable are. Especially in cases where there are ongoing proceedings (for instance cement factory Lafarge plant, where, according to media info, inhabitants were unable to rely on measurement of the emissions).
Case like T-545/11 is not noticeable in Slovenian practice. It is however, of interest of the scholars and the final decision of the EU court is awaited.

e. International relations, public security, national defence (see T-301/10 Sophie t' Veldt)

With respect to international relations, public security national defence, one can only mention information that Slovenian citizens, especially NGO's would like to obtain from foreign public entities (for instance regarding gas terminals in gulf of Trieste, also gas terminals in case of plans that Croatia has,…). In certain cases, also Slovenian government request this kind of information abroad. To my knowledge, no other cases are reported.

f. Weighing of interests in every particular case(Art. 4 para 2 subpara 2 Dir 2003/4/EC

Indeed, public interest is often present and, to my opinion, *Public Commissionaire* is using it in due diligence, appropriate, with due care and with due interpretation, on case by case basis, trying to, as much as possible, explain, why in certain cases public interest is more important than other rights (like industrial property rights, copyright, etc.).

14) Judicial control of access-decisions

a. Have specialised administrative appeal bodies (information officer etc) been set up? How do they work? Are their opinions respected?

A specialised administrative appeal body was set up to monitor access to public information. It is titled *Public Commissionaire*.[10] It is a kind of state based agency, which, again to my opinion, works rather well (from its very beginning). Decisions adopted by *Public Commissionaire* are well augmented, using also the consistent interpretation, using and citing European Court of Justice decisions, EU acts and sources of law, etc. This body did a huge work and has an important impact on understanding a right to access to public information as well as a right to reuse public information. Due to the work they have done and due to the well reasoned decisions, there are basically no court procedures. Namely, it is possible to bring an action against decision of *Public Commissionaire*.

b. Court review: "in-camera"-control? Standing of parties affected by decisions denying or granting access?

According to the rules, court review of decision of *Information Commissionaire* is possible. However, I was unable to find any case that would refer to Directive 2003/4/EC.

15) How do states fulfill the duty to make information actively available?

Information can also be actively available; this is especially true in cases of environmental information. According to EPA the state has to do the first step:

- informing public how to participate in assessing strategic environmental assessment (SEA), and also in EIA;
- every forth year the Ministry for the environment prepares a comprehensive and report on the state of play in the environment in Slovenia;
- certain monitoring are also requested and their results are quite often published in daily newspapers, daily media (internet). This is true for CO_2 emissions and greenhouse gases. Also, during the summer season, information are available also for bathing waters and they are publicly published.

[10] This is its home page: https://www.ip-rs.si/?id=195