

For our Environment

Task Force on Access to Justice
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Effective access to justice in cases on the right to environmental information in Germany

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Jurisprudence in cases on the right to env. inf.

For the period 01.01.2008 – 19.02.2018:

	Administrative Court decisions quoting § 3 Environmental Information Act (Umweltinformationsgesetz, UIG)	Administrative Court decisions quoting § 1 Freedom of Information Act (Informationsfreiheitsgesetz, IFG)
German law online-database <i>juris</i> (https://www.juris.de/jportal/index.jsp)	80	313
German law online-database <i>beck-online</i> (https://beck-online.beck.de/Home)	73	486

General aspects of A2J in cases on the right to env. information

- **Broad access to Courts:** Anybody (natural and legal persons, civil society organisations) who's information request was refused or not properly answered has standing because § 3 Environmental Information Act (Umweltinformationsgesetz, UIG) confers a subjective right to obtain env. information
- Before access to a judicial review procedure an **administrative appeal** (objection) is obligatory
- **Courts perform a full judicial review:** No decision-making scope on the side of public authorities (in correspondence: judicial review not reduced)
(see Bundesverwaltungsgericht, 28.07.2016, Case no.: 7 C 7/14, par. 25ff.)
- Allocation of the **burden of proof:**
 - Public authority has burden to show and proof grounds for refusal (§ 9 par. 1 sent. 5 UIG).
 - The applicant has to specify the requested information only
(see e. g. Verwaltungsgerichtshof Baden-Württemberg, 29.06.2017, Case no.: 10 S 436/15, par. 28f.)

Specific challenges:

Timely access to information – Interim injunctive relief

- Tense relationship between time limits of the AC for the administrative procedure and the usual duration of judicial control
- Importance of a timely access to information, e. g. for the exercise of participatory rights (see report by the ACCC to the 6th MOP, ECE/MP.PP/2017/32)
 - A2J: Particular role of interim injunctive relief
 - Anticipation of the result of the principle proceeding as a challenge
- In the interim injunctive relief procedure German jurisprudence takes timeliness of access to information into special account:
 - Not only the disclosure of an information but also its refusal can be anticipatory for the result of the principle proceeding
 - More exhaustive judicial control required than usual (in part. in tripolar relationships) (see e.g. Oberverwaltungsgericht Sachsen-Anhalt, 29.07.2016, Case no. 2 M 14/16, par. 31f.)

Specific challenges:

Timely access to information – Multitude of grounds for the refusal of an information request

- § 113 par. 5 sent. 1 Code of Administrative Court Procedure: Principle obligation of the Court to bring about “maturity for adjudication” = to investigate and determine all relevant legal and factual conditions of the claim in order to finally decide the case
- If there are exceptional reasons to not bring about “maturity for adjudication” the Court remits the case to the public authority to decide the matter anew taking the legal view of the court into account
- Bundesverwaltungsgericht, 28.07.2016, Case no.: 7 C 7/14, par. 24ff.:
 - Court is not obliged to determine confidentiality rights of third parties (where the public authority failed to do so) – requires special procedure which involves consultation of third parties that should be conducted by the public authority (separation of powers)
 - Public authority is not obliged to determine all possible grounds for refusal as a measure of precaution
- Verwaltungsgerichtshof Baden-Württemberg, 29.06.2017, Case no. 10 S 436/15, par. 38, 59:
 - The public authority is required “in principle” to raise all objections to an information request already within the administrative procedure – material preclusion of the grounds for refusal??

Thank you for your attention !

For further questions please contact

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