

**Freedom of Information  
Case Handling Workshop  
Budapest, 26-27 November 2018**

*Summary Report*

For the first time in ATI-FOI history, practitioners working at independent supervising national bodies gathered together at an international case handling workshop to discuss and share best practices as well as current difficulties in handling cases and complaints. The other purpose of the meeting was networking, since—especially compared to the field of data protection and privacy—international cooperation and correspondence is not common practice in this area, therefore such initiatives are much appreciated.

Countries participating at the workshop were:

- Hungary (host)
- Republic of Albania
- Republic of Croatia
- Federal Republic of Germany
- Gibraltar
- Republic of Kosovo
- Kingdom of Morocco
- Republic of Serbia
- Republic of Slovenia
- Republic of South Africa
- United Kingdom of Great Britain and Northern Ireland

The agenda—containing 16 presentations—was the result of prior consultation among the participants focusing on important, both procedural and material topics in the legal environments of enforcing transparency and disseminating public information around the world.

**1. Legal tools available for bodies supervising FOI in different countries.**

The spectrum differs widely from soft ombudsman-like tools (particularly the power of publicity) to strict powers used in formalised procedures by authorities (particularly imposing fines or other sanctions). In between, we find—either mandatory or optional—mediation roles to help disputing parties reach agreements.

Sharing and analyzing the pros and cons of international examples provide a broader context for more sound case analysis. The strongest tool available for a supervisory body is imposing fines. Special provisions by some national legislations (Croatia, Serbia, etc.) even allow the imposition of monetary fines against an information officer or head of non-compliant public body as a private person.

Using the tool and pressure of publicity by revealing the facts of a case and the findings of supervision brings also interesting factors to light (e.g. Kosovo). Whether a published report may contain the case number or not has caused some privacy concerns lately in Slovenia.

Compliance assessments are of huge importance for measuring the standards of FOI and ATI—Croatia, Albania, and Germany served good examples of international cooperation in developing and using concrete tools. All participants showed great interest in the Croatian scoring system developed for particular sectors (e.g. schools, professional chambers, etc.).

## **2. The standards of cooperation of FOI supervisory bodies with the courts and their possible involvement with the judicial system**

These also differ from country to country. The Serbian presentation, e.g., introduced a complicated system with several stakeholders, however, only a small number of the complaints are brought before the courts.

Discussing the advantages and disadvantages of the different models provided insights to orient practice. The Croatian colleagues also reported an online search engine they had developed for matching and finding the relevant decisions and the related court judgments.

## **3. The supervision of data controllers' compliance with their obligation to disclose data of public interest online and charging fees for fulfilling data requests**

The regulation of these two essential but rather problematic legal tools used by supervisory bodies, namely: Participants discussed their experience with the publication of draft legislation and the similarities of their e-publication schemes.

With regard to the fees charged by public bodies for public information, participants found that there are only few countries where reimbursement is allowed by law (e.g. Hungary, Ireland, Estonia, UK, Germany). In the UK, a public authority can charge a limited fee (£450 for PA, £600 for central government and it cannot involve extra staff time except for the time spent on communicating the information.). In Germany, the amount is between 60–500 EUR.

## **4. The conflict of FOI with other constitutional rights and freedoms, privacy or freedom of thought in particular**

The issue was analyzed in concrete cases (e.g. complaints about Facebook posts, online and printed press articles). In Germany, requests for data can be submitted either under the freedom of the press or the FOI Act—the comparison survey shows great differences between the two legal ways.

All presentations discussed interesting national examples—see the slides for details.

**Prof. Tana Pistorius and Ms. Lebogang Stroom invited all participants to the next ICIC** to be hosted by the Information Regulator of South Africa in Johannesburg between 10–13 March 2019.

Dr. Julia Sziklay, member of the **ICIC Governance Working Group**, reported about the work and mission of the WG.

As a conclusion, all participants agreed that the CHW offered a excellent opportunity to discuss matters of overall interest and share good experience as well as possible concerns in a very interactive way. This was especially useful for all but for those countries in particular which have recently

adopted their new laws on FOI and ATI, or have not yet, or only recently, started operation (Marocco, Republic of South Africa, Gibraltar).

Suggestions for the organisation of future workshops:

- introduction of more case law but maintaining general overview,
- concentrating on current problems, e.g. the interpretation of GDPR,
- sharing already functioning compliance assessments methodologies,
- analyzing certain aspects of FOI law in detail,
- keeping the number of participants relatively low in order to be able to discuss topics inter-actively

Possible host of the next CHW: Gibraltar or Croatia.

Budapest, 30 November 2018