

**Klingenberg, Aline (University of Groningen)**

***Freedom of Information: The Impact of Human Rights on Judicial Review in Freedom of Information Cases***

Article 42 of the Charter states that: “Any citizen of the Union, and any natural or legal person residing or having its registered office in a Member State, has a right of access to European Parliament, Council and Commission documents”. In 2009, the European Court of Human Rights (ECtHR) delivered two judgments concerning the right of access to government held information. In these cases, the ECtHR stated that it is advancing towards the recognition of a right of access to information. The ECtHR considered that an information monopoly – as is usually the case with government held information – in itself creates an interference with the exercise of the functions of a social watchdog like the press.

From empirical research regarding Dutch journalists and their experiences trying to obtain information from the Dutch public authorities it emerges that they, in most cases, do not bring a refusal to the court because of the duration of the judicial proceedings. From another research it emerges that in the Netherlands, in 2010, it took an average of one year after filing an appeal in court before it came to a hearing in freedom-of-information cases. Furthermore, it seems that courts are unsuited in adopting an overall supervisory role with respect to enforcing freedom of information legislation. They seemed to be limited to react with a case-by-case approach. This appears to be in contrast with the case law of the ECtHR. The ECtHR, repeatedly found that ‘news is a perishable commodity’. There seems also to be some tension with Article 8 of the Tromsø Treaty, stating that an applicant, whose request for an official document is denied shall have access to an *expeditious* review procedure. Whether procedural rules and practices, such as the ones in the Dutch legal system are indeed in line (or not?) with international law is the topic of this paper. More precisely, this paper deals with the following questions:

1. is enforcement of ‘freedom of information’ laws by courts adequate in the light of Article 42 of the Charter?

2. Are the procedural conditions for judicial review in Dutch law in accordance with the above mentioned ECtHR case law and the Tromsø Treaty? In particular this paper will treat the issue of maximum duration of judicial review in cases concerning requests for information.