

European Court of Human Rights Says Laws Can Never Be Secret

Madrid, 19 January 2009 — Access Info welcomes the [European Court of Justice ruling on 10 March 2009](#) that it is illegal to enforce against individuals a law which has not been made public. The case referred to rules governing what cannot be carried onto aircraft, which for years after they were first adopted in 2002 were kept secret, violating the fundamental principle that a law is not a law until it has been published.

The result of these secret “laws” has been widespread confusion and misinterpretation. Not only did an Austrian gentleman have his tennis racquet confiscated (which was the origin of the case to the European court) but many people have had nail clippers and scissors and tweezers and other small personal items confiscated when in fact the rules (which were eventually made public by the [European Commission on 8 August 2008](#)) state that only scissors and knives with blades longer than 6cm are prohibited.

“A fundamental principle of democracy is that a law is not valid until it has been published. Citizens cannot be expected to comply with laws they cannot even know about. If we abandon these principles, even in the name of the fight against terrorism, then terrorists and others who do not believe in democracy really are gaining the upper hand,” said Helen Darbishire, Executive Director of Access Info.

Access Info reports that it is not only the European Union which has kept this list secret. A freedom of information request to the UK government to know what UK law says about what cannot be carried onto aircraft was refused on 29 September 2008 with the argument that to disclose the actual regulations, even partially, would make it *“easier for the information to fall into the hands of a person with hostile intent.”* [Click here for the full text of the letter from the UK Department of Transport.](#)

The problem with this line of argument is that it confuses the compulsory publication of laws, with no exceptions, with other information which may be subject to exceptions from disclosure. In this case it might be possible to withhold some aspects of information about airport security such as the technical specifications of X-ray machines in airports. But any rules with which the public must comply as a matter of law can never be subject to exception.

Access Info calls on all governments in Europe to make public the national laws, regulations and rules relating to what passengers may not carry onto aircraft. As Franz Kafka said in his short story *Before the Law*, *“the law should always be accessible to everyone”*.

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