



ACCESS TO INFORMATION PROGRAMME

**ACCESS
TO INFORMATION
IN BULGARIA**

2008

SOFIA 2009

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ACCESS TO INFORMATION PROGRAMME



TRUST FOR CIVIL SOCIETY IN CENTRAL AND
EASTERN EUROPE

Access to Information in Bulgaria 2008 Report

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FOREWORD

Access to Information Programme (AIP) presents its annual report *Access to Information in Bulgaria 2008*.

Although there are no substantial improvements in Bulgaria access to information practices in 2008, two developments have helped creating a better framework for an enhanced execution of the right to public information.

The first is the adoption of the Council of Europe Convention on Access to Official Documents; the second one is the promulgation of amendments to Bulgarian Access to Public Information Act (APIA).

On 27 November 2008, the Committee of Ministers adopted the Council of Europe Convention on Access to Official Documents at the *1042bis meeting of the Ministers' Deputies*.

The date for opening the Convention for signature is already known - 18 June 2009. There is no reason for Bulgaria not to accede to the convention. The Bulgarian Ministry of Foreign Affairs is in charge of the process.

Access to Information Programme is the Bulgaria's organization that helped raising the awareness and promoting the principles set forth by the Council of Europe documents.

AIP published and promoted the Recommendation R(81)19 on the access to information held by public authorities. This played a significant role in the debate about the adoption of the Bulgarian Access to Public Information Act during 1998-2000.

After the adoption of the Recommendation (2002)2 on the access to official documents, we participated in a survey on the state of access to information legislation and in presenting the results at the seminar *What is access to official documents?*, organized by the Council of Europe Human Rights and Media Directorate in Strasbourg, November 2002. Then for the first time, the initiative for a binding treaty on access to official documents was launched.

Access to Information Programme translated in Bulgarian and promoted the Recommendation (2002)2 on the access to official documents, the text of which has served as a basis for the work on the future draft treaty. In 2005, *Access to Information Programme* translated, published and disseminated the *Access to Official Documents - a Guide of the Council of Europe Directorate General of Human Rights*.¹ The Guide then was introduced to a variety of public and private sector professionals via a variety of trainings organized and held by AIP during the years.

The 2005 decision to start working on the draft of a text of a Convention at the Council of Europe level was accepted with enthusiasm by the FOIANet members. Since 2006, there has been a permanent interest towards the work of the Group of Experts.

A Bulgarian representative from the Ministry of Foreign Affairs participated in the Group to draft the future convention, from the 47 Council of Europe member-states only 15 had been

¹ <http://www.aip-bg.org/pdf/coe-guide.pdf>

represented. Representatives of international nongovernmental organizations (NGOs) were invited as observers at the sessions of the working group.

We assume that the Bulgaria envoy to this working group had been a sufficiently qualified as he had not even once sought the opinion of AIP- an organization with 12 years' expertise in advocacy for access to information in Bulgaria and abroad.

On November 18, 2008 on behalf of AIP, I submitted a request for access to information on the official position of the Republic of Bulgaria with regard to the draft of the Convention. The Ministry of Foreign Affairs answered only after their silent refusal had been appealed on January 7, 2009. The decision repeated everything that we had already known since the provided information had been already published at the web-sites of the Council of Europe and the Council of Europe Parliamentary Assembly (PACE). We have already had information about what was happening during the sessions of the Group of Experts from our partner organizations, which participated as observers. AIP participated in the international NGO coalition's campaign for a better text of the Convention.²

The decision of the Administrative Secretary of the Ministry of Foreign Affairs stated that the Bulgarian position with regard to the already adopted Convention was protected information in line with Art. 13, Para. 2 of the APIA, i.e. that it „contains opinions and statements related to on-going or prospective negotiations to be led by the body or on its behalf, as well as any data relating thereto, and was prepared by the respective bodies' administrations.“

The Administrative Secretary did not take the burden to explain whose interests will be harmed, he simply referred to Art. 13, Para. 2 of the APIA. He did not take into consideration that the text of the Convention adopted in November set forth the standard - that access to information could be restricted in order not to harm legally protected interests, unless there is an overriding public interest in the disclosure of the information and the state body should explain this to the applicant. The amendments as of December 5, 2008 to the Bulgarian APIA, on which provisions the Ministry of Foreign Affairs had grounded its decision, stipulate the same.

Obviously the understanding was that the position of one or several Bulgarian officials regarding the text of the Convention, even after its adoption, should be treated as a secret.

AIP's publications on issues related to the standards and the implementation of the Bulgarian legislation comprise hundreds of pages and are on demand at home and abroad. In a true democratic state, a ministry would have consulted an expert organization in order to formulate its opinion. However, during the term of this ministry this failed to happen.

On the other hand, there is an overriding public interest in what the government will do with regard to the Convention.

If these documents are kept secret for an organization like Access to Information Programme, one could imagine whether an average citizen would ever receive an answer at all?

Is it worth explaining that my information request was not a matter of mere curiosity?

² http://www.aip-bg.org/documents/coe_convention_aod.htm

We have believed that there should be some position of a country with interesting and rich practice in the field of the draft Convention. Bulgaria representatives to such do not need to disseminate the image of the country as sea, mountains and hotels.

The positive court practice and the problems emerging from the application of the law, regulating a human right also create an image. This image had not become true although it is built by efforts of many and is, perhaps, no less significant than the image „nature beauty“ and a tourist destination. We did not appeal the answer of the Ministry of the Foreign Affairs. Apparently, it is a question of attitude of mind which has little to do with transparent government, openness towards citizens, and public participation in discussions and decision making, but is rather intrinsic to authoritarian style institution itself, irrespectively the legal frameworks and court practice.

I am referring to this case, and it is also presented in the current report, because it is indicative of the state of access to information in Bulgaria: silence, complaints and attempt for justification of a refusal which is usually repealed in court, and occasional islands of hope that there are good practices.

On December 5, 2008, key amendments to the Bulgarian Access to Public Information Act were promulgated. They outlined new frame and mark a new phase in the APIA implementation as they introduce the overriding public interest when exemptions to the right of access to information apply and an extended scope of obliged bodies by including bodies receiving EU funds.

From now on the public interest will be taken into consideration when the exemptions apply. So far, court decisions in favor of requestors which have emphasized the overriding public interest have been related to the progressive thinking of the judges from the court panel which was deciding the case. The public interest is now provided by the law and is a principle set forth by the European convention.

Not only the judges, but also the administration has to take into account the overriding public interest when legally prescribed exemptions apply.

Interesting developments are to be expected.

The administration has to minimize the formalities with regard to handling requests and to assist the applicants. The administration should have accepted anonymous requests and should not restrict the access by requiring electronic signature for the submission of requests, for example.

How will that become possible? Our experience shows that this will happen through pressure and routine exercising the right to the end - including in the court.

I invite interested individuals, professionals and parties to read this AIP report and pay attention to our assessments, presented cases, litigation, survey results regarding active publication and electronic access to information in the light of the above-mentioned significant events from 2008, which would frame the APIA implementation in the future.

Although the recommendations are based on last year developments, they reflect necessary changes if not in legislation, in its interpretation, especially with regard to the overriding public interest.

The Supreme Administrative Court has made a headway in this direction. As one will read from the annotations of the court decisions on access to information cases, at least in five of them the court panels have decided in favor of the public interest.

The first part of the report presents an analysis of the legislative amendments with regard to the access to public information. The amendments to the APIA are compared with and interpreted from the standpoint of the standards set forth in the Council of Europe Convention on Access to Official Documents.

The second part of the report presents the findings of a survey on the preparedness of executive administrative structures to handle electronic requests. Needless to say, the survey was justified by the increased number of electronic requests according as indicated by the official statistics and by related emerging problems. In order to prevent access to information distortions in an environment where technology allows for better and prompter access and international treaties outline principles to improve the access, AIP survey on the electronic access to information alarms the legislative, as well as executive branches of the existing misfortunate practices.

The survey was possible thanks to the indispensable assistance of Galina Nencheva, a student in law at the Sofia University, and William Popov, the 2006 Right to Know Day Winner in the category „Citizen, most actively used the APIA.“ They have submitted requests electronically and gone through all stages of the survey. The survey was also possible thanks to the *Svetlozar Online Ltd*, which employees developed the software necessary to perform the survey.

As you will see from the results, there are institutions, which follow the principles of open and transparent government and do not cause obstacles for citizens. We have considered that their positive practices also deserve to be noticed and set as a good example.

The third part of the report gives an analysis of the cases that AIP received for legal consultation from citizens, partner nongovernmental organizations, journalists and business persons.

The fourth part presents the litigation during the year and gives a short description of the tendencies of court practices during 2008 and litigation case notes.

We publish this report amidst European and general elections campaign. We believe that it is very important to ask candidates what they are personally going to do for the better APIA implementation. It is evidential to all who have exercised their right of information that this law is the „constitution of citizens.“

Only informed citizens can elect, participate in decision making, have the instruments to control the government between elections. Only informed citizen can confront corruption and maladministration.

So, let's exercise our right and submit one „apia-er.“³

Gergana Jouleva, PhD
Executive Director of Access to Information Programme
April, 2009

³ „Apia-er“ - a jargon used by citizens who exercise their right of access to information, meaning a request for access to public information

PROBLEMS AND RECOMMENDATIONS

PROBLEMS:

- ❑ Extremely insufficient information published by the institutions to protect the life, health and property of citizens, as well as other information of public interest - Art. 14 of the APIA;
- ❑ Non-fulfillment of institutions' obligation to publish public information as stipulated by Art. 15 of the APIA;
- ❑ Broad application of the exemption to the right of access to information related to the protection of trade secret and the third party interests without taking into consideration the public interest in the disclosure;
- ❑ Insufficient knowledge of the scope of the lawful exemptions by the administration;
- ❑ As a consequence of the above - inconsistent and unpredictable administrative practices on the APIA;
- ❑ A requirement for a universal electronic signature for the submission of electronic access to information requests which results in the restriction of the right of everybody to information;
- ❑ Lack of transparency, public discussion, and regulatory impact and compliance assessment before the introduction of European legislation and drafts of legal acts in general;
- ❑ Lack of efficient control over APIA implementation.

***Access to Information Programme* notes again that all these problems are related to the lack of political will for transparency and accountability of the government before the citizenry.**

General recommendations to the legislators and the creators of secondary legislation under the APIA:

- ❑ The adoption of new legislation or amendments to the existing one regulating particular spheres of public life such as education, healthcare, finance, and other to comply with the principles of transparency and citizens' access to information. Regulation of these spheres shall include obligations for transparency whose fulfillment will provide for a free choice for the citizens.
- ❑ Introduction of a systematized approach in the process of transposing European legislation through clear responsibilities for drafting legislation, accumulation of expertise, performing regulatory impact and compliance assessment, publication of the drafts in an early stage and extension of the deadline for public discussion with interested parties.
- ❑ The 2010 State Budget Act shall provide for funds in view of the performing of activities and fulfillment of new obligations by the administrative structures in the system of the executive power imposed by the APIA amendments.
- ❑ Updating of Order No. 10 as of 2001 by the Minister of Finance in view of the considerable decrease in the prices of information carriers from the time of its issuing.

Recommendations to the heads of administrative structures in the system of the executive power:

- ❑ To complete the process of creating internal APIA implementation rules, which shall also include the procedure for handling requests submitted electronically;
- ❑ Specifying in the internal rules the categories of information under Art. 14 in terms of the functions of the respective institutions in view of their active disclosure;
- ❑ Active fulfillment of the obligations under Art. 15a of the APIA;
- ❑ Specifying the time periods within which the information in the Internet site shall be updated in the internal rules of the institutions;
- ❑ The procedure for handling electronic request shall not contradict the principles set forth by the APIA, i.e. it shall not be required that the requestors submit requests signed with a universal electronic signature;
- ❑ Giving an answer to an electronic request shall be free of charge;
- ❑ To fulfill the obligation for ensuring proper forms for access to information to people with disabilities (Art. 26, Para. 4 of the APIA);
- ❑ To train officials on the APIA amendments by paying considerable attention at the beginning to the recently obliged bodies;
- ❑ Introduction of permanent trainings on APIA for the officials from the administration;
- ❑ Fulfillment of the obligations under the Law on the Normative Acts:
 - publication of all drafts of legislative acts,
 - announcement of the publication date of the drafts,
 - announcement of the timeframes for the public discussion of the drafts;
- ❑ To begin the imposition of sanctions on officials who do not apply the provisions of the APIA. Information about these sanctions to be published in the annual report of the Minister of State Administration and Administrative Reform.

LEGISLATION

Introduction

In 2008, substantial changes were undertaken in the international, as well as in the national, access to public information framework. On November 27, 2008, the Committee of Ministers of the Member States of the Council of Europe adopted a Convention that granted the access to official documents. Parallel to that development, on December 5, 2008, amendments were made to the Bulgarian Access to Public Information Act. They aimed at the extension of the scope of the publicly accessible information by:

- extension of the scope of the obliged to provide information bodies;
- introduction of an obligation for proactive publication of information online; and
- narrowing the scope of the applicability of the exemptions to the right of access to information.

The amendments to the APIA are in line with the recommendations which AIP has formulated in preceding years based on problems found in the exercise of the right and the implementation of the law. At the same time, the amendments provide important tools for the narrow interpretation and application of the exemptions to the access to information and in this regard particular attention shall be paid to the assessment of existing *overriding public interest* in the disclosure of the information.

Simultaneously, the ratification, promulgation, and enforcement of the Council of Europe Convention in Bulgaria would make it possible for its standards to become part of the effective national legislation and to be applied with a priority over the regulations which contradict it (Art. 4, Para. 4 of the Constitution of the Republic of Bulgaria).

Legislative amendments are expected to help the resolution of some problems which have emerged in the course of litigation against refusals of public institutions to provide information. In a number of cases, after a request for information related to commercial relations of public institutions with companies, access has been refused on the ground of third party interests (trade secret). Often refused to investigative journalists, that information would have helped the establishment of practices of transparency and integrity and would have helped the prevention from corruption.

In 2008, some changes that affect the protection of personal data were made. A secondary legislative act - a regulation issued by the Minister of Interior and the Head of the State Agency for Information Technology and Communications, introduced a regime of public institutions' access to e-communication data without specification of the purpose. In that way the right to personal data protection was seriously impaired by violation of the standard established by Art. 8 of the European Convention on Human Rights (ECHR). The regulation was successfully challenged by AIP before the Supreme Administrative Court, who found the access regime in violation of the Constitution and the European Convention on Human Rights.

International Legislation

After more than two years of discussion, the Council of Europe Committee of Ministers adopted the first binding international treaty to recognize a general right of access to official documents held by public authorities - the European Convention on Access to Official Documents.⁴

The drafting of the Convention on Access to Official Documents started in January 2006 and was accompanied by an extensive campaign run by the three civil organizations with an observer status in the Council of Europe's working group- Access Info Europe, Article 19, and Open Society Justice Initiative. The Convention sets forth minimum standards to guarantee access to information in each member state. In Bulgaria, AIP took part in the international campaign by advocating for the establishment of higher access to information standards and their inclusion in the texts of the Convention.⁵

The Convention is based on the following values:

*Transparency of public authorities is a key feature of good governance and an indicator of whether or not a society is genuinely democratic and pluralist, opposed to all forms of corruption, capable of criticizing those who govern it, and open to enlightened participation of citizens in matters of public interest. The right of access to official documents is also essential to the self-development of people and to the exercise of fundamental human rights. It also strengthens public authorities' legitimacy in the eyes of the public, and its confidence in them.*⁶

The Convention sets forth minimum standards. A Group of Specialists on Access to Official Documents will monitor the implementation of the Convention by the Parties. The Convention will be open for signature on June 18, 2009.

National Access to Public Information Legislation

Amendments to the Access to Public Information Act

Unlike the 2007 proposal for negative amendments to the Access to Public Information Act,⁷ in the beginning of 2008 a process of amending the law in a positive way was initiated. In March 2008, the Combating Corruption Committee at the National Assembly initiated a consultation process on the preparation of amendments to the APIA focused on better formulation of the trade secret exemption. With regard to the necessity for drafting amendments, the Committee

⁴ <http://conventions.coe.int/Treaty/EN/projets/v3Projets.asp>

⁵ AIP addressed the members of the Bulgarian delegation at the Council of Europe Parliamentary Assembly with a letter as of September 24, 2008 urging them to support the statement of the Rapporteur of the Committee on Legal Affairs and Human Rights, Mr. Claas de Vries, during the ordinary session of the Council of Europe Parliamentary Assembly (September 29 - October 3, 2008). AIP created a special subsection on its web site and published translated and updated information about the developments in the drafting of the Convention.

⁶ <http://conventions.coe.int/Treaty/EN/projets/v3Projets.asp>

⁷ A group of MPs in 2007 proposed amending the law by: requiring proof of legal interest by seekers; prolonging the time periods for response to requests; increased costs for the provision of information; possibilities to deny partial access. All these were justified as a required by the transposition of the Directive 2003/98/EC on the re-use of public sector information.

invited and heard the opinion of Access to Information Programme representatives,⁸ as an organization with the highest experience in the freedom of information area.⁹ A separate group of MPs (Martin Dimitrov and others from the opposition) introduced draft amendments to the APIA on May 28, 2008.¹⁰ Based on texts drafted by the working group with the Combating Corruption Committee, joined by an AIP expert, a draft law for amendments to the APIA was introduced by Boiko Velikov and others on July 4, 2008. The texts of the two draft laws were combined and in the end of the year, the APIA was amended. The key points in the APIA amendments are:

1. Extension of the scope of the obliged bodies by including:
 - the regional units of the central authorities;
 - natural or legal persons financed under EU funds, projects, or programs;
 - companies, financed or controlled by the state;
2. Introduction of obligation for proactive publication online by public authorities;
3. Defining *trade secret* as aimed to the protection against unfair competition and putting the burden to prove it on the obliged bodies;
4. Introduction of the overriding public interest test in the disclosure of information which might fall within the exemptions;
5. Changing the discretion whether to provide partial access to an imperative.

Extending the Scope of the Obligated Bodies

The introduction of the obligation for all regional structures of the executive power institutions to provide information under the law has been ascertained as a necessity for quite a long time. Proposals for amendments to the APIA in that regard (consulted with AIP) were introduced in 2001 during the term of the previous (39th) National Assembly by a group of MPs. Those were adopted at first reading and then went into oblivion although one of the European Commission progress reports on Bulgaria wrongly stated that they had been completely adopted. The purpose of the extension of the scope of the obliged bodies is to avoid the burden on citizens of spending time and resources for traveling to receive the requested access (in a form of an on spot review, for example). In some cases, a problem emerges when institutions approach the issue in a very formalistic way and insist that the requestor signs personally the protocol of the provision of copies of documents.

That amendment is in line with the requirement of the new Convention on Access to Official Documents which sets forth the obligation for provision of information to the regional level of the public authorities as well - Art. 1, Item 2, letter „a“ (i). It shall be emphasized that the Convention sets forth minimum standards, i.e. deviation from that situation is not acceptable.

⁸ Ms. Gergana Jouleva, PhD, AIP executive director, and Mr. Alexander Kashumov, head of AIP legal team.

⁹ The Opinion Statement of AIP as of March 20, 2008 is published at: http://www.aip-bg.org/pdf/stanovishte_trade_secret_200308.pdf (in Bulgarian).

¹⁰ The Opinion Statement of AIP regarding the May 28, 2008 draft law is published: http://www.aip-bg.org/pdf/stanovishte_pdi_180608.pdf (in Bulgarian).

A serious step forward is the introduction of the obligation for all bodies which receive and spend European money to provide information about that. Instead of hiding information behind the curtain of the trade secret or the *third party interests* of a contractor receiving such funds, the data shall be public. Both the contracting state authority and the beneficiary of funds are obliged to provide information at a request while no consent shall be sought from the latter as under the Art. 31, Para. 5 of the APIA. It is hardly necessary to demonstrate what kind of problems had the lack of transparency in the allocation and spending of these funds caused.

It shall be also emphasized that for the first time the obligation for the provision of information under the APIA was clearly imposed on certain categories of companies, controlled by the state. Law implementation practices show intensive search for such kind of information. Currently, citizens have a right of access to it. The extension of the obligation with regard to these bodies is provided by the explicit inclusion of public law organizations in the scope of the obliged under the APIA bodies (Art. 3, Para. 2, Item 1). The definition of public law organization is provided by § 1, Item 4 of the Additional Provisions of the APIA.¹¹

Publication in the Internet

The new Art. 15a to the APIA established the obligation for the online publication of the information stipulated under the Art. 15 of the law. That information has been subject to publication since 2000 with the purpose of greater institutions' transparency (Art. 15) or with the purpose of protecting certain rights and public interests (Art. 14). In reality, however, small volume of that information has been published online despite the increased capacity of the public administration (more than 80 % of the public authorities have Internet sites according to the 2007 annual report of the Minister of State Administration and Administrative Reform). The issue is examined closely in the 2006 and 2007 AIP annual report on access to information.

Indeed, comparison with other national laws which provide for online publication of information shows a pretty concise regulation in Bulgaria. The approach in such cases is either listing of categories of information subject to publication, or establishing the obligation for the institutions to develop their own publication schemes. Nevertheless, the mandatory obligation for the disclosure of information online is a step forwards with regard to existing situation.

Access to Information Exemptions

The amendments to the APIA applied the narrow interpretation of the exemptions taken in Decision No. 7 of the Constitutional Court as of 1996 on a constitutional case No. 1 as of 1996. The court based its approach to the limitations on:

the understanding that it is not a matter of choice between two conflicting principles, but rather, an application of an exception to a principle (the right to seek and obtain information), which exception is subject to a restrictive interpretation.

¹¹ Before the December 2008 amendments, the definition contradicted the one adopted in the European Union legislation. Cf. e.g. the definition of body governed by public law set forth in Art.2, item 2 of the Directive 2003/98/EC.

Similar are the principles formulated in an even more detailed way by Art. 3 of the Convention on Access to Official Documents according to which:

- *Each Party may limit the right of access to official documents. Limitations shall be set down precisely in law, be necessary in a democratic society and be proportionate to the aim of protecting... [protected interests are listed in 11 points].*
- *Access to information contained in an official document may be refused if its disclosure would or would be likely to harm any of the interests mentioned in paragraph 1, unless there is an overriding public interest in disclosure.*
- *The Parties shall consider setting time limits beyond which the limitations mentioned in paragraph 1 would no longer apply.*

Overriding Public Interest

With the amendments to the APIA, the rule of not applying a particular exemption if there is overriding public interest was introduced. For instance, the provision of Art. 37, Para. 1, Item 2 of the APIA establishes that a ground for refusal of access to information is in place where:

the access is of a nature to affect third party's interests and the third party did not give its explicit written consent for the disclosure of the requested public information, unless there is overriding public interest.

The overriding public interest test is applicable towards the exemptions related to the protection of trade secret (Art. 17, Para. 2; Art. 31, Item 5), personal data (Art. 31, Para. 5), opinions and statements related to on-going or prospective negotiations, and to opinions, recommendations, reports and consultations related to the preparation of the administrative acts¹² and having no significance in themselves (Art. 13, Para. 4).

The result of the overriding public interest test application is that even if certain information falls under the legitimate protection of a trade secret, for example, it shall nevertheless be disclosed in the sake of the public right to know. This means that in every particular case, the benefits for the society from the disclosure of the respective information shall be assessed. Thus, the simple fact of having a confidentiality clause in a contract will not be enough as a ground for refusal.

For all the exemptions subject to the overriding public interest test, it shall be applied when *the requested information aims at the revealing of corruption and abuse of power, increase of transparency and accountability of obliged bodies under Art. 3 (§ 1, Item 6 of the Additional Provisions of the APIA)*. This means that access to the opinions and statements expressed in the course of preparation of a given administrative act,¹³ and the former concern rights and interests in a considerable extent and of a lot of people,

¹² The term *administrative act* is described as administrative documents embracing the categories of administrative decisions and secondary legislation (administrative normative acts).

¹³ See previous footnote.

shall not be refused on the ground provided by Art. 13, Para. 2, Item 1 of the APIA. Access to that information would result in the increase of transparency in the institutions.¹⁴

Partial Access

The right of the so called partial access is established by Art. 7, Para. 2 and Art. 2 of the APIA in its text since 2000. If part of the requested information falls within a legitimate exemption, while the other part is outside the scope of that exemption, access to a part of the document may be granted by blanking the protected parts. So far the text of the provisions said that partial access may be granted. During the years, some court panels have interpreted the word „may“ used in the law as administrative discretion that is not subject to judicial review.¹⁵ With the amendments to the APIA an explicit formulation was stipulated by changing the wording „may be provided“ to „shall be provided,“ respectively in Art. 37, Para. 2, (for all exemptions), and in Art. 31, Para 4 of the APIA (more precisely about cases concerning third party interests). This means that from now on it is mandatory to provide access to these parts which do not fall in the scope of legitimate interests.

Application of the „Trade Secret“ Exemption

The APIA amendments introduce substantial changes in the regime of trade secret exemption by narrowing its scope.

The provision of Art. 17, Para. 2 of the APIA brings the possibility for limiting access to information with regard to the protection of third party interests to information:

- whose disclosure or dissemination is of a nature to result in unfair competition,
- among business persons.

These two conditions shall be present cumulatively. Thus the purview of the APIA protects only the trade secret, whose disclosure would result in unfair competition among business entities. In that way, the protection is brought to objective criteria, and not to a volume randomly defined by a third party reluctant to provide information.

¹⁴ In its decision as of March 2009, the Supreme Administrative Court assumed the position that if the challenged refusal have been issued after the APIA amendments, the complainant could use as an argument the existing overriding public interest against the grounds used by the administration that satellite pictures concern the operational preparation of the acts of the body and have no significance of their own as they are used as a base for making respective government decisions regarding joint activities of a forces belonging to a unified rescue system in emergency cases (Decision No. 3001/06.03.2009 on administrative case No. 15759/08 from the docket of the Supreme Administrative Court, Five-member panel).

¹⁵ The position that „the provision of Art. 31, Para. 4 of the APIA gives to the administrative body the discretion to decide whether to refuse access to the requested information, or to provide it in a scope and in a manner so as not to disclose the information concerning the third party“ was assumed in Decision No. 1299/ 06.02.06 on administrative case No. 7222/05 from the docket of the Supreme Administrative Court (SAC), Fifth Division. The contrary approach was taken in Decision No. 4717/25.05.04 on adm. Case No. 8752/03 of the SAC, Fifth Division and other: „If the contract contains data about a trade secret of the company, the information may be provided regardless of the consent/dissent of the third party by applying the provision of Art. 31, Para. 4 of the APIA - the information may be disclosed in scope and in a manner so as not to disclose the information concerning the third party.“ On those grounds the refusal was repealed by the court.

The second important change is the requirement for the obliged bodies to specify how the disclosure would possibly result in unfair competition among business entities. (Art. 17, Para 3). Thus the burden and the subject of proof are more clearly stipulated. The subject of proof is the existence of conditions and demonstrating the possible harm of disclosure, namely - exposing someone to unfair competition. The burden of proof is upon the administrative body or even upon the third party itself - a business person, in the cases when it is an obliged body. The introduction of the new paragraph 3 has solved these contestable issues which have been inconsistently interpreted by the courts.¹⁶

Overriding public interest test as applied to the trade secret exemption

Even if the trade secret exemption applies, information shall be provided if there is overriding public interest in the disclosure (Art. 17, Para. 2). Likewise in the case of other exemptions, trade secret is overridden by the public right to know when the *requested information aims at the revealing of corruption and abuse of power, increase of transparency and accountability of obliged bodies under Art. 3* (§ 1, Item 6 of the Additional Provisions of the APIA). At the same time, APIA provides for a wide scope of cases in which there is overriding public interest, especially with regard to the trade secret (§ 1, Item 5 of the Additional Provisions of the APIA). The provision concerns facts, information, decisions and data related to business activities, and whose keeping as secret is in the interest of the claimants but:

- give opportunity to the citizens to form their own opinion and to take part in ongoing discussions;
- guarantees the lawful and purposeful fulfillment of the legal obligations of bodies under Art. 3;
- are related to the parties, subcontractors, the subject, the price, the rights and obligations, conditions, terms, and sanctions specified in contracts where one of the contracting parties is an obliged body under Art. 3.
- disproves disseminated unauthentic information which concerns significant public interests;

In practice, the presumption of the overriding public interest with regard to the elements of the trade contracts between public institutions and companies appears as an obstacle to the implementation of confidentiality clauses, the latter being abundant in these kinds of documents.

¹⁶ Some court panels found the simple expression of a dissent by the third party for the disclosure of the information as a sufficient ground. Others required a proof for the necessity for obtaining the consent of the third party, i.e. what their legitimate interests were: *„pursuant to the rules for the allocation of the burden of proof during the proceedings, as a positive fact in the benefit of the defendant, the administrative body should have proven the existence of necessity for obtaining the consent of the third party [...] - presence of a trade, production secret or other condition legally protected from public access“* (Decision No. 12582 as of November 11, 2008 on adm. Case No. 9723/07 from the docket of the SAC, Third Division; Decision No. 12621 as of November 24, 2008 on adm. Case No. 2995/08 from the docket of the SAC, Third Division).

Legally Established Requirements for Transparency

In 2008, the Act on Prevention and Exposure of Conflict of Interests was adopted. In Bulgaria, some provisions of the law repeat already existing norms, which have not been applied efficiently. A considerable progress of the law is the establishment of a wide scope of high level officials who have the obligation to avoid conflict of interests and to declare publicly some data. The law gives a definition of *conflict of interests* (Art. 2) and describes specific types of conduct and relations which are unacceptable (Art. 5-11). A mechanism for disclosure and establishing conflict of interests is provided, as well as the possibility of court oversight.

Particular circumstances are subject to declaring such as incompatibility of official position and influence, decision making or participation in public activities for private sake (Chapter III). Four types of declarations shall be submitted by officials and published under the law. In the beginning of January 2009, high number of declarations of obliged public officials were submitted and published online.

The question was raised if some data from the declarations may not be published due to personal data protection. In this regard, the Commission for Personal Data Protection presented its opinion on January 15, 2009. According to that opinion, besides the name of the declaring person, the publication of all other personal data may be done after his/her consent. The publication shall not contain any image of a signature. It does not become clear enough from the opinion which data from the declarations are regarded as *personal* and which as *public*.

We are on the opinion that the conditions subject to declaration are public pursuant to the explicit legal provisions. This issue has been solved on a very similar matter by publishing all data contained in the asset declarations of high ranking officials. The declarations were made accessible online in the National Audit Office web site. The initiation of the discussion again without taking into consideration what has been achieved already is counterproductive with regard to the aim of the law - transparency of public figures and prevention of conflict of interests.

In April 2009, new amendments to the Act on Prevention and Exposure of Conflict of Interests were promulgated. They had been prepared without analyses of the implementation practices. Most of these amendments do not improve the regime. A step backwards with regard to transparency was allowed with the amendment of Art. 2, Para. 25. Narrowing the obligation for avoiding conflict of interest in the administration only to officials who perform activities related to management, decision-making, regulation or control puts a number of officials holding expert positions outside the scope of the law. Consequently the scope of transparent data about these officials decreases. The assumption that the obligation for avoiding conflict of interest is only for a part of the public servants is incomprehensible, incompatible with the achievements of democratic countries and harmful to the public interest in public administration based on transparency and integrity.

Personal Data Protection Legislation

In 2008, no amendments have been made to the general law which regulates the right to personal data protection - Personal Data Protection Act. Amendments to a special law, however, were initiated providing for access to certain categories of data, namely the Draft Family Code.

During the year, the society was involved in a heated debate with regard to the adoption of regulations which implemented the European Union legislation but significantly concerned the right of personal data protection. The debate was about the Regulation No. 40 issued by the Ministry of Interior (MoI) and the State Agency for Information Technology and Communications (SAITC) regarding the retention and access to data of the mobile and Internet operators. The Regulation allegedly transposed Directive 2006/24/EC to the Bulgarian legislation.

The transposition was extremely controversial in view of compliance between the Regulation and the Directive. Compared to the Directive, the national act went a bit further with regard to the intrusion in the privacy. At the same time, the event marks the existence of a problem which our society will have to meet more seriously. The issue raised concerns about preliminary discussions of the draft regulations of the European Union on one hand, and drafts for the transposition of such regulations in the national legislation - on the other hand. The lack of a systematized approach and public administration's capacity to deal with the problem is apparent. For instance, the transposition of the Directive 2003/98/EC with controversial amendments to the APIA in 2007 was initiated by the State Agency for Information Technology and Communications. The same agency, together with the MoI, issued the problematic Regulation No. 40/2008. There is no evidence that these legislative attempts have been consulted in any way with the Ministry of Justice which is responsible for compliance of national draft laws with the European legislation. The process shall be clearly regulated, well coordinated and subject to serious public discussion of draft regulations, especially when fundamental rights are at stake.

Amendments to the Family Code With Regard to Personal Data of Adopted Persons

During the last year, draft amendments to the Family Code were introduced in the National Assembly. Substantial changes were proposed in Chapter VIII *Adoption*. In view of personal data protection and the right of access to them, several amendments were proposed - introduction of a national (instead of the currently existing 26 regional) register of adopters and a unified information system of children subject to complete adoption. A special provision is added which aims to grant access to adopted children to information about their origin. Pursuant to the amendments, they obtain that right after becoming 14 years old. The consideration and the foundation of that provision shall be seriously questioned, however, as far as the right of informed self-definition which grounds the access shall be granted to people of full age.¹⁷

¹⁷The right of informed self-definition is drawn from the practice of the German Constitutional Court and developed by the practices of other constitutional courts - for example, in Hungary as a ground for access to one's own personal data.

Transposition of the Directive 2006/24/EC on Data Retention

In 2008, the question about the transposition of the Directive in the national legislation was set forth. The Directive requires that European Union member-states undertake measures to oblige the companies providing publicly available electronic communication networks and/or services to retain data about the electronic communications without revealing the content for a period between 6 and 24 months. According to Art. 1 of the Directive, the *retention aims to ensure that the data are available for the purpose of the investigation, detection and prosecution of serious crime, as defined by each Member State in its national law*. According to the Directive, access to the data by the competent bodies shall be regulated by the national legislation in line with the provisions of the European Convention of Human Rights as interpreted by the European Court of Human Rights.

The Directive itself is harshly criticized by a number of European organizations working in the personal data protection area and the Internet rights. Litigation for finding the laws which introduce it unlawful was initiated in Germany and Hungary. Ireland brought the case before the European Court of First Instance. Undoubtedly, in that case the purpose of efficient fight with terrorism and organized crime contradicts the protection of personal data with regard to electronic communication.

The transposition of the Directive in the national legislation was implemented in the following way. As far as 2007, an Art. 251 was formulated in the Electronic Communications Act (ECA). According to that provision, certain data about the electronic communications shall be retained for a period of 12 months by the companies providing publicly available electronic communication networks and/or services. The purpose of the retention is defined as conditioned by the needs of the national security, as well as the crime investigations. Data revealing the content of the messages shall not be retained under that regime.

Regulation No. 40 as of 2008 of the MoI and SAITC

Based on the delegation of Art. 251, Para. 2 of the ECA, Regulation No. 40 was issued in January 2008 by the MoI and the SAITC on the retention and access to the telecommunication data.

The adoption of the Regulation resulted in a wave of protests and criticism by the civil society and the business community because of the serious intrusion in the private life and electronic communication. According to its own wording, the Regulation No. 40 allegedly puts Bulgarian legislation in conformity with the Directive 2006/24/EC. Article 5 of the Regulation provided for a passive access to the retained data by the „Operational and Technical Information“ Directorate in the Ministry of Interior by means of a computer terminal for the needs of the operational-investigation activities. According to paragraphs 2 and 3 of the same provision, law enforcement bodies and security services obtained access to retained data by a simple written request if it was for the purposes of criminal proceedings or, if necessary, of national security.

With a complaint submitted on March 19, 2009, AIP challenged the lawfulness and constitutionality of the Regulation before the Supreme Administrative Court (SAC). A three-member panel dismissed the complaint with a decision as of July 17, 2008, without ruling on the arguments presented in the complaint about the contradiction of the

Regulation to Art. 32 and Art. 34 of the Constitution, as well as to Art. 8 of the European Convention on Human Rights. The court decision was appealed. With a decision as of December 11, 2008, a five-member panel of the SAC assumed that the provision of Art. 5 of the Regulation was unlawful. In its judgment, the court found contradiction with Art. 32 and Art. 34 of the Constitution as well as with Art. 8 of the European Convention on Human Rights. The court ruled:

*The Supreme Administrative Court has found that the purview of Art. 5 of Regulation No. 40/2008 contradicts the provision of Art. 8 of the European Convention on Human Rights, according to which everybody has the right to respect for his private and family life, his home and his correspondence and the interference of the state in such matters is unacceptable... National legal norms shall comply with that established principle and shall introduce comprehensible and well formulated grounds for both access to the personal data of citizens and the procedures for their retention.*¹⁸

On the base of the court decision, in 2009 the provision of Art. 251 of the ECA was respectively amended by the introduction of a requirement for a court warrant for access to e-communication data with the purpose of investigation of serious or computer crimes (the latter, pursuant to the provisions of Art. IXa of the Penal Code).

The attempts of the law enforcement bodies to ensure automated access without the requirement for a court warrant and under the broadly and vaguely defined purpose „for the needs of the operational investigation activities“ continued in 2009 as well.

¹⁸ More information at: http://www.aip-bg.org/documents/data_retention_campaign_11122008eng.htm

ACTIVE DISCLOSURE AND ELECTRONIC ACCESS TO INFORMATION

General Remarks

On December 5, 2008, in the State Gazette, the Amendments Act to the Access to Public Information Act was promulgated. Along with other important changes, the law provides for new obligations of the institutions with regard to the publication of the categories of information stipulated by Art. 15 in their Internet sites. The provisions of Art. 15 are the following:

Art. 15. (1) In order to achieve transparency of the administration's activities, and for the purpose of maximum facilitation of access to public information, every head of an administrative structure within the system of the executive power shall publish on a regular basis up-to-date information containing:

1. description of his/her powers as well as data on the organizational structure, the functions and the responsibilities of her/his administration;
2. list of the acts issued within her/his authority;
3. description of the information resources used by the respective administration,
4. the name, the address, the telephone number and the working hours of the unit which is authorized to receive and handle access to public information requests.

(2) (Amended, SG No. 24/2006) Every authority under sub-art. 1 shall prepare an annual report on the access to public information requests, which shall contain among others data on the refusals made and the reasons therefor. This annual report shall be part of the annual reports under art. 62, sub-art. 2 of the Administration Act.

The amendments provide that the information under Art. 15 shall be published in the Internet sites and, moreover, an *access to information* section shall be created where not only the name, address, telephone and working time of the unit responsible for the receiving of access to information requests within the respective administration, but also the internal access to information rules for the respective administrative structure within the system of the executive power, shall be published. The procedure for access to public registers, whose description shall be published under the provision of Art. 15, Para. 1, Item 3 of the APIA, shall be presented in the *access to information* section of the Internet sites of the institutions. Since the electronic request is regarded as a written request according to the provision of Art. 24, Para. 2 of the APIA, the procedure for its submission shall be part of the internal access to information rules. The amendments to the law brought clarity with regard to the so far disputable interpretation of Art. 15, Para. 1, Item 2, namely „**list of the acts issued within her/his authority.**“ The Additional Provisions to the law give the following definition for the term:

„A structured aggregation of **all legal, common, and individual administrative acts** issued by the respective administrative body.“

This definition should bring clarity and more precision to the implementation of this existing obligation as the main arguments for the bad implementation of this requirement set forth by the APIA since 2000 have been the vagueness about which acts shall be included in that list.

An additional facilitation for the citizens would be the requirement for a short annotation about the subject of the administrative act to be included in this list/register.

Art. 15a. (New, SG No. 104/2008)

(1) Information under Art. 15 shall be published on the Internet sites of the administrative structures within the system of the executive power.

(2) In the *access to information* subsection of the Internet sites under sub-art. 1, the data under Art. 15, sub-art. 1, item 4 and sub-art 2, as well as the existing internal rules related to the access to information and the procedure for access to the public registers maintained by the administrative structures within the system of the executive power, shall be published.

The fulfillment of these obligations by the heads of the administrative structures in the system of the executive power is due one year after the amendments to the APIA become effective, i.e. December 2008.

In the course of three successive years, *Access to Information Programme* has made an assessment of the availability of the information under Art. 15 based on a survey of the institutional web sites content. The results are published in the annual reports of the organization.¹⁹ We thought that a reasonable approach from the side of the administration suggested the use of the cheapest media for publication - the existing official web sites of the institutions regardless of the fact that no specific obligation was stipulated by the law.

Similar survey will be performed in the end of 2009 considering the fact that the preparation period expires at that time according to the new provisions of the law.

The aim of the survey that we present in the current *Access to Information in Bulgaria* annual report is to evaluate the preparedness of the institutions to answer requests submitted electronically.

The necessity for evaluation of that preparedness was conditioned by several factors:

- Practical problems observed on the base of electronic requests submission which have emerged during the last years and have been referred to AIP for advice;
- Established facts that institutions within the system of the executive power require electronic signature for the submission of electronic requests for access to information;
- The increasing number of requests submitted electronically according to data from the report of the Ministry of State Administration and Administrative Reform (MSAAR).²⁰ For example, according to the report of the MSAAR, the number of requests submitted electronically in 2006 was 4,811 or 18,9% out of the total number of requests. In 2007, the number increased to 7,522 which was 33,9% out of the total number of submitted requests.

¹⁹ http://www.aip-bg.org/l_reports.htm

²⁰ 2007 Report on the State of the Administration, <http://www.mdaar.government.bg/docs/AnnualReport%202007.pdf>, pp. 124 (in Bulgarian).

Methodology

The survey was prepared by the team of AIP and was performed within the period February 10 - March 5, 2009 by two volunteers.²¹ They had the task to submit electronic requests to the administrative structures from the system of the executive power as they are listed in the public Register of Administrative Structures. The Register is accessible through the Internet site of the Ministry of State Administration and Administrative Reform.²²

The requestors had several tasks:

- To find the Internet site of the administrative structure from the register;
- To find on that web site an e-mail address of an official who is responsible for accepting requests, or a contact e-mail of the institution where they may submit requests;
- To check if an *access to information* section exists on the web site since the process of creation of such sections has started several years ago and is stipulated as an obligation by the APIA amendments as of December 5, 2008;
- They had to also check and signify if rules for the submission of electronic requests were published on the web site.

Finally, our requestors had to submit a request to the identified e-mail demanding access to information with the following content:

„Has an official been assigned within the institution of your authority to be directly responsible for the provision of public information as set forth by § 18 of the Transitional Provisions of the Amendments Act to the Access to Public Information Act (Promulgated in SG No. 49 as of June 19, 2007)? In case such an official has been assigned, please name the particular official responsible for the provision of information?“

As it has been mentioned above, the main aim of the survey was to evaluate the situation - possibilities, problems and results from the submission of requests electronically. That is why the information to be requested has been chosen in such a way not to create any difficulties for the institutions. This is information which should have been published in their Internet sites or should have been made available with no difficulties for them. Specifying a department and publication of information about it has been one of the obligations for the heads of administrative structures from the system of the executive power according to Art. 15, Para.1, Item 4 since 2000 when the APIA was adopted. One more particular obligation was provided by § 18 of the Transitional Provisions (Promulgated in SG No. 49 as of June 19, 2007), namely, the assignment of the officials about which we were inquiring with the request.

The perfect answer to such a request would have been to provide the link in the Internet where the name of the official has been specified and the administrative decision for the assignment of that official.

²¹ The reports of the two participants in the survey were used for the presentation of the results - Ms. Galina Nencheva and Mr. William Popov.

²² <http://ar2.government.bg/ras/>

Survey Outcomes

General Results

Requests were submitted to 399 institutions, including ministries, agencies, state commissions, regional governor's administrations, municipalities. The submission of requests to 6 institutions from the Register of Administrative Structures was not possible due to the following reasons:

- No electronic mail addresses were signified on the web site (Municipality of Zemen and Municipality of Kazanlak);
- No Internet site was found (Municipality of Trekliano);
- It was impossible to open the Internet site of the institution (Municipality of Lesichovo);
- Not-existing electronic mail address (Municipality of Kirkovo);
- Wrongly stated electronic mail address.

Out of the total number, 137 institutions (34.3%) gave an answer within the legally prescribed period, i.e. within 14 days.

29 institutions (7%) answered after the deadline.

233 (58.40%) did not answer at all the requests which were, let us remind that, for access to information subject to mandatory publication.

An *Access to Information* section is found in the web sites of 53 (13.28%) institutions; in 61 (15.29%) institutional web sites, the official responsible under the APIA is signified. In 99 institutions (24%), the procedure for the submission of requests electronically is signified, and in 17 (4.26%), an electronic signature is required for the submission of the request.

Regarding the ways by which the electronic requests were answered, they are exceptionally diverse and show high extent of administrative creativity to answer in that case a simple question. The way some administrations have acted raises questions about the effectiveness of the meaningless compliance with the letter of the law which is to the disadvantage of the rationality and the provision of efficient service to the citizens. The creation of registers for requests, the creation of internal rules and procedure for processing requests shall not turn into an end in itself for the administration. The procedure and the forms should be used for the facilitation of the administration and the citizens, not vice versa.

Detailed Results

If we look at the statistics, the results are pessimistic.

Out of all 399 administrative structures, 233 did not answer in any way which is 58.40%.

Eighty-nine (34.44%) out of the total of 258 municipalities to which requests were submitted answered the electronic request in one way or another (electronically, via mail, by phone). Some of them did that with a great delay. 75 (29%) of all the municipalities answered within the legally prescribed period. 65 out of these had signified the official whom the requestor may address.

Only 6 ministries (31%), including the administration of the Council of Ministers, answered the requests.

Three ministries - the Ministry of Agriculture and Food, the Ministry of Defense, the Ministry of Labor and Social Policy - informed the requestor by phone that he/she should submit a request signed with a universal electronic signature (UES). We will not comment on the fact that the Ministry of Environment and Water which is the body overseeing the implementation of the UN Convention on Access to Information, Public Participation in Decision Making and Access to Justice in Environmental Matters (Aarhus Convention) did not answer to the request in any way.

Out of the regional governor's administrations, 10 have answered but in fact only 5 have provided the requested information which, as it has been already noted, is official public information and is subject to publication in the Internet.

Out of the rest administrative structures, such as executive agencies, state agencies, commissions, etc., from the system of the executive power, 43 have answered.

Is it possible that a procedure and rules for access to information are established and the citizens are served well by being answered after the submission of electronic requests?

Apparently, for some administrations this is possible. Below, we have done our best to mention all of them which have answered the requests without any formalities, immediately, or within three-four days.

All these can be nominated as administrations which work in the service of the citizens and follow the spirit of the Access to Public Information Act, including its last amendments:

These are the municipalities of: Anton, Asenovgrad, Beloslav, Blagoevgrad, Bozhurishte, Borovo, Bratsigovo, Breznik, Burgas, Byala Slatina, Veliki Preslav, Veliko Tarnovo, Velingrad, Valchedram, Georgi Damyanovo, Gotse Delchev, Gulyantsi, Garmen, Dobrich, Dobrichka, Dragoman, Dulovo, Zavet, Isperih, Kavarna, Karnobat, Knezha, Kostenetz, Krivodol, Krichim, Kubrat, Kuklen, Loznitsa, Lukovit, Lyubimets, Maritsa, Medkovets, Mezdra, Mineralni bani, N. Kozlevo, Nevestino, Nikolaevo, Nikopol, Nova Zagora, Opan, Petrich, Pirdop, Popovo, Radnevo, Razlog, Satovcha, Sliven, Smyadovo, Stara Zagora, Strazhica, Straldzha, Strelcha, Strumyani, Teteven, Tryavna, Tundzha, Tvarditsa, Targovishte, Tsenovo, Chelopech.

The municipalities of Sofia and Etropole also answered within the legally prescribed time period, although not electronically but via snail mail.

Within the legally prescribed period also answered:

Regional Governor's Administrations: Burgas, Veliko Tarnovo, Haskovo, Lovech, Varna.

Ministries: Council of Ministers, Ministry of Emergency Situations, Ministry of Economy and Energy, Ministry of Foreign Affairs, Ministry of Finance, Ministry of Justice.

Executive Agencies: Nuclear Regulatory Agency, General Labor Inspectorate Executive Agency, State Receivables Agency, Public Financial Inspection Agency, Archives State Agency, State Tourism Agency, Agency for Economic Analysis and Forecasting, Executive Agency on Sorts Testing, Approbation and Seed Control, National Evaluation and

Accreditation Agency, Privatization Agency, State Reserve and War-time Stocks State Agency, Executive Agency Maritime Administration, Disabled People Agency.

State Commissions, Regional Offices, Regional Inspectorates: State Energy and Water Regulatory Commission, State Commission on Gambling, all Basin Directorates for water management, Sofia Regional Inspectorate for Public Health Care and Control, Sofia Regional Inspectorate on Environment and Water, National Part "Central Balkans," General Directorate Civil Aviation Administration, Bulgarian Metrology Institute, State Institute for Culture.

Other institutions provided the requested information with a delay that reached 46 days: The municipalities of: Plovdiv, Pazardzhik, Petrich, Chepelare, Breznik, Haskovo; Executive Agency Automobile Administration, Commission for Consumers Protection, Executive Agency Railway Administration, etc.

A part of the institutions obviously believe that it is not enough that citizens pay their taxes but that they shall be charged a variety of amounts of money for an e-mail ranging from 0.30 BGN - **Ministry of Culture**, through 0,72 BGN - **Municipality of Kotel**, to 1,59 BGN - **Municipality of Peshtera**. **The Municipality of Razgrad** and **the Municipality of Gorna Oryahovitsa** also set a requirement for payment in order to provide public information which is subject to publication. Obviously, the rational purpose is to keep busy the bank where the account of the institution is, since the requestors are from Sofia and in order to receive the information they have to wire the money and then to scan and send the bank transfer order which counts for 5 BGN more at their expense. Something more, if the requestor have submitted the request electronically, and they have the right to submit such a request, even if no internal procedure for answering such requests have been developed, an answer can be given electronically at the address that he had signified in the request. Several institutions have done so without issuing decisions on head letters, without scanning and sending these decisions by ordinary mail.

In one of the municipalities - Dryanovo, they had checked the identification of the requestor in the national data base „Population.“ Obviously, the officials there are not aware that everybody has the right of access to information even non-Bulgarian citizens. Taking into consideration that also foreigners and people without citizenship can request the Bulgarian institutions for information, it would be interesting which data base they would consult to check the address of a Canadian citizen, for example.

The institutions which required that the request was signed with a universal electronic signature and had previously stated that are the following: **the Regional Governor's Administration of Ruse, the Registry Agency, the Regional Governor's Administration of Stara Zagora.**

The administrative meaning of issuing decisions which explain in detail and also attempt at a legal argumentation that the request should be signed with a universal electronic signature and that the requested information was subject to protection under Art. 13, Para. 2 of the APIA is doubtful. The working time spent for the justification of the refusal to the request might be assessed from a financial point of view as well. This is time which citizens also pay by their taxes. Obviously, the first requirement for citizens to exercise their right of access to information is to know whom to address within the administration, including the cases when they submit requests electronically.

Fourteen institutions more have specified in their official Internet sites the necessity for a universal electronic signature for the submission of requests for access to public information: Executive Agency Maritime Administration, Executive Agency Automobile Administration, Registry Agency, Energy Efficiency Agency, Basin Directorate for Water Management in Black Sea Region- Varna, Directorate „National Park - Blagoevgrad, Rila,“ Agency for Economic Analysis and Forecasting, Bulgarian Small and Medium Enterprises Promotion Agency, the Ministry of Agriculture and Food, the Ministry of Defense, the Ministry of Labor and Social Policy, National Revenue Agency, National Veterinary Medicine Service, the Municipality of Gabrovo, the Municipality of Dolna Banya.

Apparently, for a part of these institutions the mere requirement for an electronic signature on the request is irrelevant when the requested information is of public interest. That is why part of them have answered the request without even referring to the requirement for a universal electronic signature: Executive Agency Maritime Administration, Basin Directorate for Water Management in Black Sea Region- Varna, Executive Agency Automobile Administration.

Institutions whose legal expert has apparently not read, or has misunderstood the Access to Public Information Act, or think that the APIA does not provide for submission of requests electronically, or require explanation for legal interest, or any kind of clarifications of the request. They are the following: **Regional Governor's Administration of Smolyan, Regional Governor's Administration of Vidin, Regional Governor's Administration of Kardzhali, State Agency for Refugees with the Council of Ministers.**

You can see all primary data for the submitted requests and the answers of the institutions on the web site of *Access to Information Programme*.²³

Part of the institutions which required a universal electronic signature to answer the requests have given grounds for that requirement in their decisions. That is why we think that a clarification is needed in terms of the question: Is a universal electronic signature (UES) necessary for the submission of a request electronically?

²³ www.aip-bg.org/e-register.php

Commentary of AIP lawyers with regard to the question about the UES

The APIA provides for the right of every citizen to receive requested access to information without the need of proving legal interest. That is why it is not necessary that the requestor proves their identification in an unambiguous way, no matter the way of submission of the request - in person at the registrar's office or electronically. An administrative body shall be indifferent to the fact who submits the request. The body is obliged to answer every requestor and to provide equal in volume and content information.

Pursuant to the Electronic Document and Electronic Signature Act, Art. 13, Para. 1, Item 1, letters a, b, and c, *electronic signature is: all information associated with the electronic message in a way synchronized between the author and the recipient and safe enough in view of the communication which: reveals the identification of the author; reveals the author's consent with the electronic message, and protects the content of the electronic message from following changes*; pursuant to Para. 2 of the same article, *the electronic signature has the meaning of a handwritten signature unless the holder or the recipient of the electronic message is a state body or a body of local self-government*.

Pursuant to Art. 25, Para. 1 of the APIA, the request for access to public information shall contain certain requisites - a requirement for placing a handwritten signature on the request is not among them. Consequently, when a request is submitted electronically, an electronic signature which identifies the requestor unambiguously is not necessary.

Introduction for a requirement for placing an electronic signature on a request for access to information submitted electronically **violates two basic access to information principles** - the one according to which everybody has right of access to public information (Art. 4 of the APIA), and the principle provided by Art. 6, Para. 1, Item 2 of the APIA - for the provision of equal conditions for access to information. At the same time, such a requirement sets serious obstacles to the citizens introducing additional costs which are not set forth by the law:

Firstly, the electronic signature costs a serious amount of money and not everybody can afford it, especially people with insufficient means, people from marginalized groups.

Secondly, the usage of the electronic signature requires technical skills which are not in the possession of everyone and needs special knowledge.

Thirdly, installing the electronic signature software requires buying a computer with high technological parameters which is also an issue of costs and not recommended by the companies offering these signatures to use public access spots.

CASES REFERRED TO AIP FOR LEGAL ADVICE AND CONSULTATION

General Characteristics

Provision of legal help continues to be a priority in the work of *Access to Information Programme*. Every year, a part of our annual report presents the cases in which citizens, journalists, and nongovernmental organizations that have faced obstacles in exercising their right of access to information have turned to us for legal consultation. In some of these cases, *Access to Information Programme* provides legal help at the initial phase of the search for information and the legal team gives advice and/or prepares a request for access to information. In another category of the referred cases, we provide legal help after a refusal for provision of information.

In 2008, the legal team has continued to provide free legal help in the following ways:

- **Oral consultations on access to information cases** - usually these are given on the phone or in the office. In 2008, the total number of these legal consultations is **124**.
- **Written consultations in the following two categories:**
 - written comments on the cases sent by the journalists from AIP coordinators' network - in 2008, the number of these comments was **80**;
 - written comments on cases sent by e-mail - **75**.

Statistical reports about the written consultations given during the last year show that more and more citizens, nongovernmental organizations, and journalists use the electronic mail to seek AIP legal help. While several years ago the main part of the consultations were given in the office, today the number of legal consultations given on the phone or by the e-mail is higher. Thus, a legal consultation can be provided within several hours without the necessity of visiting the office of AIP which facilitates a lot the information seekers. Besides, an increased number of cases referred for consultation come from the country, making the description of the particular problem and the provision of consultation by e-mail a preferable option.

- **Preparation/ submission of requests for access to information** when this is necessary in cases referred by citizens, journalists, and NGOs. In some cases, the re-submission of requests for access to information is necessary - when no answer has been issued on an already submitted request, for example. Sometimes, in view of receiving complete information, the so called cross-submission of requests is necessary - the information is requested from several institutions which hold needed information. Such is the case of the Association *WWF-World Wild Fund, Conservation in the Danube-Carpathian*, Bulgaria which was searching for information about illegal construction in the Vitosha mountain related to the ongoing construction of a ski-tourist area „Aleko,“ initiated by the „Vitosha Ski“ JSC. For the purposes of its search, the association submitted a number of requests to the Sofia Municipality, the Ministry of Environment and Water (MOEW), Sofia Regional Inspectorate on Environment and Water, State Forestry Agency, State Forestry Management - Sofia.

- An essential part of the legal assistance provided by the legal team of AIP is the **preparation of complaints to the courts** and the representation in court of requestors who have sought the assistance of AIP.

Number of Cases Referred to AIP for Legal Assistance

The total number of cases in which legal help was provided during the period January - December 2008 is 235.²⁴ Based on the characteristics and the type of the legal help provided, we may define the cases referred to AIP in three categories:

- cases related to different types of difficulties in or questions about exercising one's right of access to information set forth by the Access to Public Information Act (151 instances);
- cases of violation of the general Constitutional right of citizens to seek, receive, and impart information (57 instances);
- cases related to violation of the right of personal data protection set forth by the Personal Data Protection Act (23 cases).

From Which Public Institutions Do Information Seekers Mainly Request Information?

Data about the 151 cases related to the exercise of the right of access to information registered in our database indicate that in 2008 information seekers have most frequently had problems when requesting information from the following public institutions obliged under the APIA:

- bodies of the executive power - in a total of 81 cases, our clients have turned to us for different types of consultations after requesting information from these bodies. These include not only the central bodies of the executive power - ministries, agencies, commissions, but also the regional units of these bodies;
- bodies of local self government (mayors and municipal councils) - 56 registered cases;
- bodies of the judiciary - 18 registered cases;
- natural persons or legal entities financed by the state budget - 9 cases, public-law entities - 3 cases.

What Were the Most Frequently Used Reasons by Public Authorities to Refuse Access to Information?

The total number of refusals by public authorities to provide access to information registered in our database for 2008 is 88. For a third successive year, the number of refusals grounded in the third party exemption is the highest. For example, in 25 of the registered cases, the refusal was explicitly grounded in the provision of Art. 37, Para. 1, Item 2 of the APIA - disclosure of requested information may harm the interests of a third party and their consent for the disclosure has not been obtained. In 12 of the cases, information was refused on the ground of personal data protection. In 2 of the cases, the trade secret exemption was used as grounds for refusal. In a comparatively small number

²⁴ The total number of referred cases is 235, but the number of consultations provided was 283 since in some cases consultations have been provided more than once.

of cases during the year, information was refused on the ground of the administrative (6) and state (4) secret exemption. Only in three of the registered cases, information was refused on the ground of Art. 13, Para. 2 of the APIA.²⁵

The number of the silent refusals still remains high - their number is 24 for the 2008. At the same time, our statistics show a decrease in the number of cases of explicit refusals with no specification of the grounds for the refusal to provide requested information - in 2008, only nine of the refusals were of that type.

Who Requested the Assistance of AIP during 2008?

In 2008, citizens, journalists, and nongovernmental organizations have most frequently turned to AIP for consultations. In 71 of the cases, citizens sought the assistance of the legal team. In 76 cases, the coordinators of AIP in the country, all of them journalists, have sent cases for legal comments. We have registered an increased number of cases from journalists from central and local media - 38. As a comparison, their number in 2007 was 22. The number of cases referred by nongovernmental organizations has also increased considerably - while their number for 2007 was 18, in 2008, they reached 43. Legal help on access to information related issues was also sought by public officials and private companies during the year.

Most Frequently Sought Information by Search Categories

The review of the cases registered for legal consultation by the AIP team shows that there are several important categories of information that has been sought and which has been of great public interest to the information seekers during 2008.

Access to Information about Events of Public Interest

In 2008, we may say that the Access to Public Information Act has been frequently used as a tool for revealing the truth about pressing public events by not only journalists working on the particular topic, but also by citizens who are interested in what is going on and do not trust completely the official information released by the institutions. Here are some examples illustrating that tendency:

During the summer of 2008, there was a case that had caused discussions for a long time - on July 3, explosions shook Sofia. As a result of the explosions, the window-glasses of a lot of buildings in the suburb neighborhoods were broken. Weaker detonations followed that were heard in the whole city. People were wondering what was happening while the telephones of the state institutions were constantly busy. It turned out that ammunitions in a big military warehouse in a military establishment based in the *Chelopechene* neighborhood had exploded. The accident raised a lot of questions about the management of military equipment and ammunitions warehouses, who was responsible for keeping them in a safe condition, what was the condition of the old military equipment. With regard to that case, requests for access to information were submitted with the legal help of AIP by both journalists and citizens.

²⁵ The article provides that access to administrative public information may be restricted if it:

1. relates to the preparatory work of an act by the bodies, and has no significance in itself (opinions and recommendations prepared by or for the body, reports and consultations);
2. contains opinions and statements related to on-going or prospective negotiations to be led by the body or on its behalf, as well as any data relating thereto, and was prepared by the respective bodies' administrations.

A journalist from the *Capital* weekly, Rosen Bosev, requested access to information about the tenders for old ammunitions organized by the state company „Supplies and Trade - Ministry of Defense.“ The journalist Ilia Valkov submitted a request to the Minister of Defense demanding information in 7 points about the utilization of outdated military equipment. Partial access to the requested information was granted, excluding the sale price. The journalist received information about the technical characteristics of the military equipment, ground for decommissions, relevant procedure, basic value of each part of the equipment and grounds for particular sale. Information about the real price was refused on the ground of the trade secret exemption - there were confidentiality clauses in the contracts with the purchasing companies. The citizen William Popov requested information about the military equipment and ammunitions warehouses in the town of Pavlikeni, as well as information about the measures undertaken for safeguarding those warehouses. In that case, the information was refused.

In the summer of 2008, it was officially announced that the funding of 10 projects under the PHARE program with a beneficiary Republican Road Infrastructure Fund was frozen. The grounds for the decision as they said were the results from the KPMG audit report on the work of the road fund. Certainly, that audit report became an object of interest for the media. The journalist Ivan Bedrov (re:tv) turned to AIP for consultation. The report was demanded with a request under the procedure provided by the APIA. The issue about the right of the society to know the content of the report and what was being hidden behind its possible classification as secret was raised publicly. After the official refusal of the Minister of Finance to provide the report, re:tv started court proceedings with the help of AIP.

At the end of September 2008, public debate about the consecutive increase in the price of the natural gas in Bulgaria was triggered. In that regard, *Capital* weekly submitted a request for access to information demanding a copy of the contract between the companies *Bulgargaz* and *Gazprom*. The request was submitted to the Minister of Economy and Energy, to the Chairperson of the State Energy and Water Regulatory Commission, and to the executive director of *Bulgargaz* EAD. The request was published on the front page of the newspaper. The journalist from bTV, Valeria Chankova, requested access to the financial reports of *Bulgargaz* EAD. In all these cases, access to information was refused.

As it is apparent, when access to information related to trade companies is requested, the administration predominantly protects the trade secret rather than respects the citizens' right of information. This is the practice even if behind the interests of the company stand unfairness and corruption. We hope that the last year amendments to the APIA would provide for the solution to that question by introducing the principle of overriding public interest in the provision of access to information. The amendments oblige the institutions to assess in every particular case if there is overriding public interest in the disclosure of the requested information and to provide information unconditionally if there is such.

Access to Environmental Information

Traditionally, a considerable part of the registered for consultation cases are about seeking environmental information. The interest in the topic is strong, especially of specialized nongovernmental organizations which work for the protection of the environment. During the last year, the team of AIP provided legal consultation in a number of cases referred by active environmental organization like the Association of the Parks in Bulgaria,

Environmental Association *For the Earth*, Association *WWF-World Wild Fund, Conservation in the Danube-Carpathian, Bulgaria*, etc.

The interest of the environmentalists towards particular information is often provoked by a decision issued by the competent institutions about construction or reconstruction which would cause unfavorable impact on the components of the environment. For instance, in the spring of 2008, the Association of the Parks in Bulgaria submitted a request for access to information to the Regional Governor of Blagoevgrad about the construction of a ski and golf complex „Kulino“ in the National Park Pirin. With the request, information about the reference number and date of registration in the Regional Governor's Administration of an investment proposal for a Detailed Development Plan (DDP) of the project „Ski and Golf Complex - Kulino“ with a contractor *Balkanstroi JSC*, as well as information about the DDP approval procedure, was demanded.

With his decision, the Regional Governor refused to provide access to the requested information on the ground of the exemption stipulated by Art. 37, Para, 1, item 2 of the APIA because the information would affect the interests of a third party (*Balkanstroi JSC - Razlog*) and its consent for the disclosure had not been obtained. The refusal was appealed before the Administrative Court - Blagoevgrad which delivered a decision in a short term repealing the refusal. According to the court, no legal rights and interests of the company - the third party - may be affected in the cases since the requested information did not contain data that constituted trade secret of the company. The court found that although after the deadline, *Balkanstroi JSC* had deposited an explicit consent for the disclosure of the requested information removing any obstacle from the Regional Governor to reconsider the refusal and respectively to provide access.

In the autumn of 2008, a coalition of over 30 nongovernmental organizations „Let Nature Remain in Bulgaria,“ among which is the Association *WWF-World Wild Fund, Conservation in the Danube-Carpathian, Bulgaria*, initiated a campaign against the illegal extension of the ski zone in the Natural Park Vitosha. With the help of AIP, the association submitted a number of requests for access to information to the institutions which had any responsibility with regard to the Specialized Detailed Development Plan (SDDP) for the construction of a ski-tourist area „Aleko“ drafted by the „Vitosha Ski“ JSC and any specific activities undertaken by the latter company for the extension of the ski and tourist zone. Requests were submitted to the Ministry of Environment and Water, to the Sofia Regional Inspectorate for Environment and Water, to the State Forestry Agency (SFA), to the State Forestry Management - Sofia, to the Natural Park Vitosha Directorate, to the Sofia Municipality (SM), etc. Mainly, the requested information was about the Terms of Reference (TOR) for the preparation of the SDDP submitted by the company and approved by the mayor of Sofia and consulted by the SFA. The respective institutions were also requested to provide information about any violations found and measures undertaken after a field inspection carried out on October 10, 2008, with regard to alleged digging activities, removal of moraines, and entering of heavy-freight equipment in the area between the so called *Blue Ski-slope* and *Vitosha Tulip ski-slope*, etc.

After that submission of those requests, a considerable amount of refusals followed, both silent and explicit. With the help of AIP, a considerable part of those refusals was appealed. In some cases, consistent with the practices so far, filing a complaint was enough for the respective institution to provide access to the initially refused information. For instance, after the submission of complaints against silent refusals, the Sofia Municipality provided information about the TOR for the preparation of the SDDP

submitted by the company, as well as information about the requested and subsequent approval by the municipality under the procedure provided by the Territory Planning Act. In other cases, litigation proceedings were initiated. Currently, with the support of AIP, the association has 6 access to information court cases, and on two of them court decision have already been delivered. (refer to the *Litigation* part of the report)

Access to Judicial Information

In 2008, the work of the bodies of the judiciary was again of particular interest to journalists and nongovernmental organizations. The information which is traditionally sought from the courts is related to the number of cases initiated and completed within a certain period of time, copies of court session protocols, copies of decisions, etc. Due to the creation of Internet sites of a lot of the courts in the country during the past several years, the process of information seeking has been considerably facilitated by the publication of more and more information about the court cases - data about their development, protocols from the sessions held, decisions and rulings of the court. The publication of the schedule for the sessions, activity reports of the respective court, as well as statistics about the completed cases is not a rare practice either. There are still instances, however, of lack of transparency and difficulties in receiving information from some courts provided that others have already published the same type of information in the Internet. For example, although the court decisions are official public information by the meaning of Art. 10 of the APIA and as such shall be accessible to the public, the Regional Court - Shumen refused to provide a copy of a court decision and a protocol from a session at the request of a nongovernmental organization from the town. The ground used for the refusal was lack of legal interest.

The practices of the courts with regard to the permission of journalists to film a particular court session are contradicting. The problem in such cases is the lack of clear rules under which shooting and recording equipment to be allowed in a court hall. As a result, often the journalists are forced to leave court sessions without statement of any grounds for that.

In 2008, the information seekers were interested not only in the work of the courts, but also in the work of the bodies of the prosecution. In one such case, a citizen submitted a written request to the Sofia Regional Prosecutor's Office (SRPO) demanding information about the stamps which the prosecutor's office is possessing and which are being used by the officials at the time of the request submission. In a written decision, the SRPO refused to provide the requested information on the ground that it constituted state secret under the provisions of the Protection of Classified Information Act. The refusal was appealed before the court. The latter repealed the refusal as unlawful and turned the request back to the prosecutor's office for reconsideration.

Access to the Archives of the Former State Security Services

In 2008, documents from the archives of the former State Security Services remained in the focus of already traditional interest of the investigative journalists. The difference during the last year is that the requests targeted the documents subject to provision by the Commission for Disclosure of Documents and for Revealing Affiliation of Bulgarian Citizens with the State Security Services and Intelligence Services of the Bulgarian Army.²⁶ These are the cases of Hristo Hristov (*Dnevnik* daily) who published the book *The Double Life of Agent Piccadilly* in 2008 after he has been granted access to the archives; of Bogdana Lazarova (*Darik Radio*) who sought and received access to documents related to the secret services records on the Bulgarian alleged involvement in the assassination attempt against Pope John Paul II; of Alexenia Dimitrova (*24 Hours* daily) regarding access to documents concerning former intelligence services agent who had escaped in London; and of Rosen Bosev (*Capital* weekly) who sought for the dossier of the Bulgarian President George Parvanov (Agent Gotse).

Access to Personal Data

In 2008, the team of AIP provided legal consultation in 23 cases related to violations of the right of personal data protection.

The general overview of the personal data protection practices proves that the old habits can hardly be overcome - as a rule, the data administrators disproportionately process personal data as regards to the aims of the activity they perform. They collect big volumes of data which once collected are held almost forever. In many cases, official IDs are requested and held without specific reasons. For example, in order to be able to shop in the Metro Cash and Carry („Metro“) Stores, citizens are supposed to obtain a customer card. Such a card is issued after the submission of a big volume of personal data, as well as a digital photo. Another extreme example of an administrator who exceeds its authority in the processing of personal data is the company „Cez Distribution - Bulgaria“ JSC. In order to provide its services (distribution of electricity), the company requires that except for a filled blank request form, its customers also submit a copy of the title for possession of the respective real estate. If the property is given for rent, the company requires that the rent contract is presented.

Personal data related cases referred to AIP for legal help have raised some new and interesting questions.

1. Access to personal data of deceased persons

Peculiar is the case of the team of the TV series *Otechestven Front* who turned to AIP for legal help. The journalists were shooting a documentary about the execution of death penalty in Bulgaria before 1989. In this regard, they wanted to receive a copy of the prisoner's file of the last sentenced to death whose sentence was executed in Bulgaria.²⁷ The story tells that the relatives of the deceased received neither the certificate of death,

²⁶ Research and writing activities of investigative journalists in the particular area shall be done under the procedures stipulated by the Access to Public Information Act pursuant to the provision of Art. 31, Para. 1, Item 3 of the Act for Access and Disclosure of Documents and for Revealing Affiliation of Bulgarian Citizens with the State Security and Intelligence Services of the Bulgarian Army.

²⁷ The moratorium on the execution of the death penalty was promulgated on July 20, 1990 by the Great National Assembly. This moratorium was effective up to September 2, 1998 when the 38th National Assembly with amendments to the Penal Code repealed the death penalty.

nor the belongings of the prisoner, nor any evidence about when and how the death sentence had been executed. With the help of AIP, and on behalf of the mother of the prisoner, a request was submitted to the Minister of Justice for access to the data. Although the request was submitted by the mother, access was refused and the refusal was appealed before the court.

2. Access to data about biological origin

In 2008, the team of AIP was addressed by citizens who were seeking data about their biological origin. These are adopted persons who do not have information about their biological families. The question regarding the right of information about the biological origin has found different solutions in the European legislation. There is also a court practice by the European Court on Human Rights on the issue. In Bulgaria, there is no legally provided explicit and clear procedure under which adopted children to be able to access data about their biological origin after coming of age. Pursuant to the 2003 amendments to the Family Code (Art. 67b), the adopters or the adopted child of legal age can ask the regional court which have delivered the decision permitting the adoption to provide information about the origin of the adopted person when important circumstances demand it. At this stage, the legal advice which the team of AIP provides in such cases is to apply the provisions of the Personal Data Protection Act which grants the right of everybody of access to their personal data. A possible refusal can be appealed before the Commission for Personal Data Protection.

Positive Practices for Information Provision

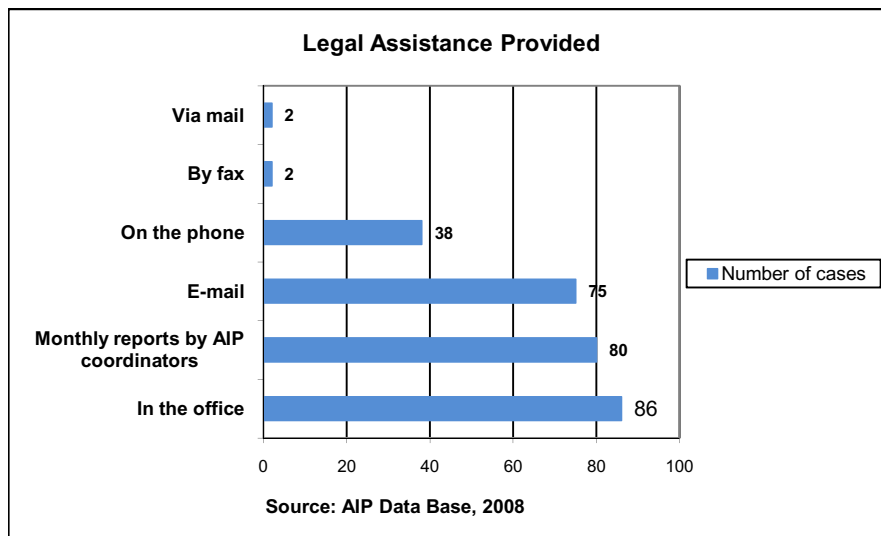
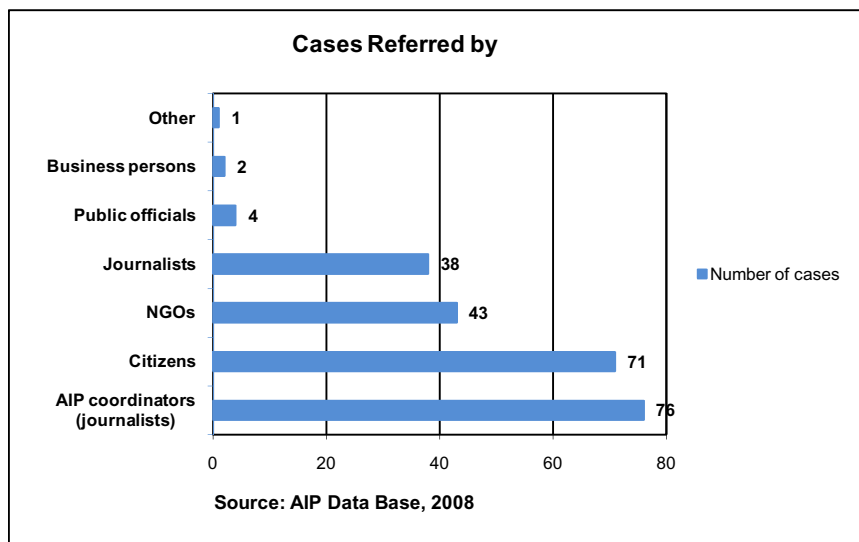
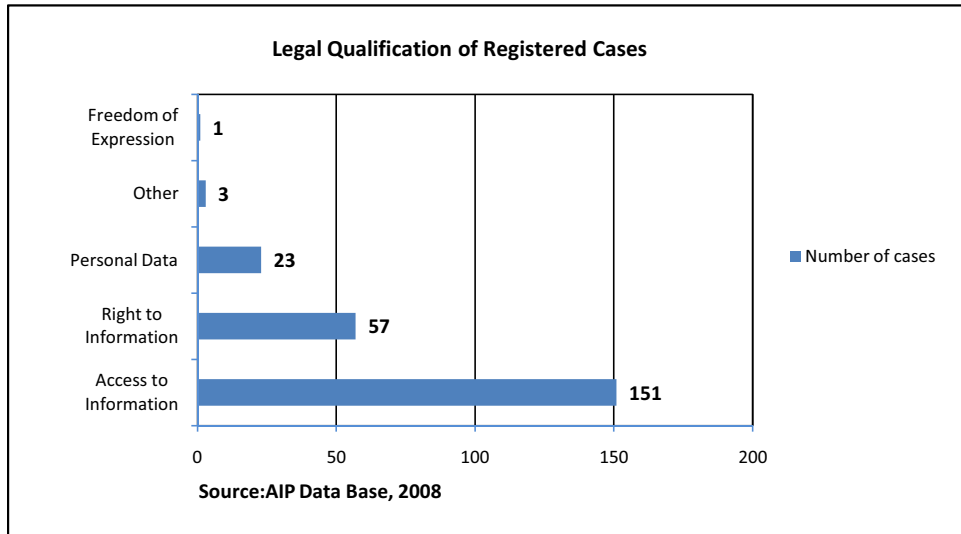
Even before the introduction of the principle of overriding public interest with the amendments promulgated at the end of the year, several administrative structures have already applied that principle in practice.

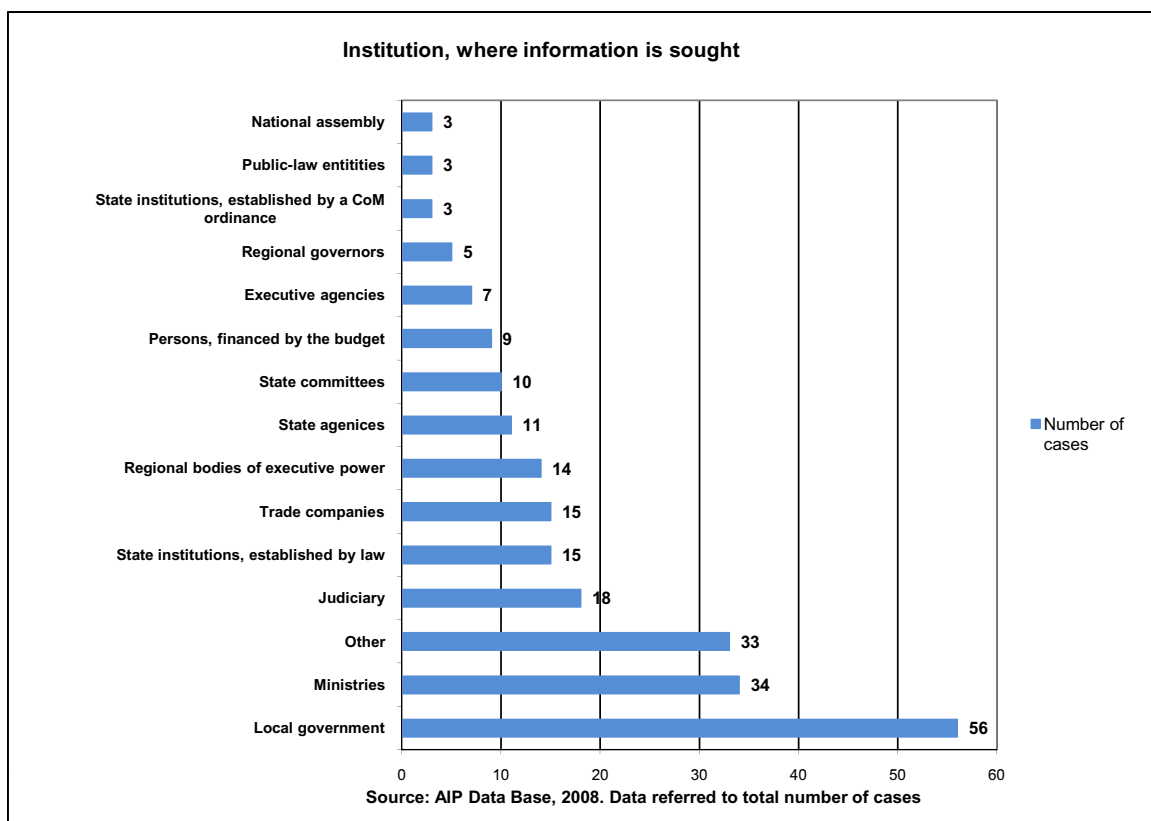
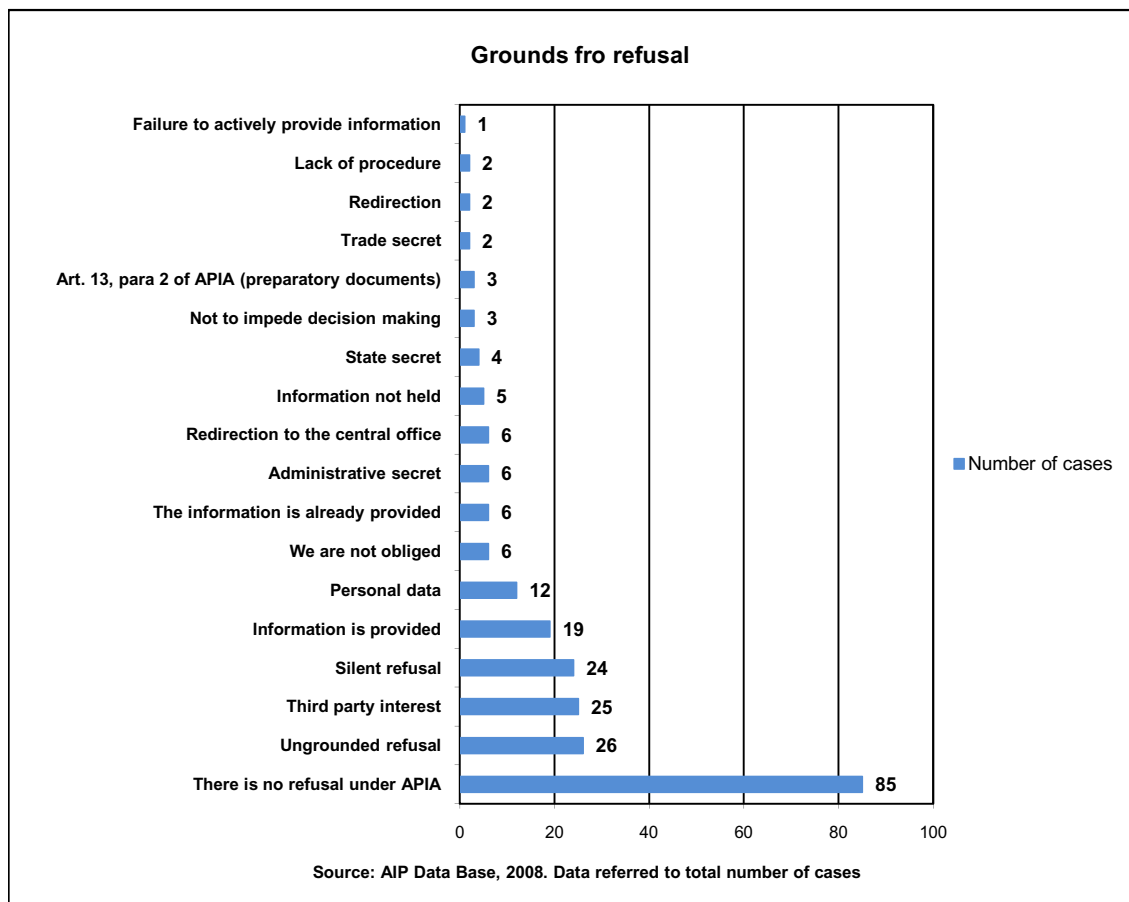
For instance, the administration of the Ministry of State Administration and Administrative Reform published on their Internet site the declarations submitted by its servants under the requirement of Art. 12 of the Act on Prevention and Exposure of Conflict of Interests. The „Architecture and Urban Development“ Directorate at the Sofia Municipality published online a register of all construction permits issued by the directorate.

Although there is no explicit obligation for the publication of such information, the above mentioned institutions considered that the public interest requires that citizens obtain freely this information online.

APPENDIX

Statistics from the electronic database Access to Information Programme





LITIGATION

In 2008, an essential part of the legal help that the AIP team has provided was preparation of complaints to the court and representation of requestors who had sought the help of AIP. During the year, AIP legal team prepared a total of **forty-five complaints**, assisting citizens and organizations. Out of this number, the complaints to the first instance court are thirty (Supreme Administrative Court - five, Sofia City Court - one, Administrative Court-Sofia City - fourteen, Administrative Courts in the country - ten). The court appeals are eleven and the appeals against court rulings are four.

Out of the total thirty complaints submitted to the first instance court, nineteen are against explicit refusals of provision of access to information, while those against silent refusals are less - eight.

In two of the cases, a refusal of access to premises was appealed. In one of the cases, an appeal was submitted against a secondary legislative act, namely *Regulation #40 as of January 2008 on the categories of data and the procedure under which they would be retained and disclosed by companies providing publicly available electronic communication networks and/or services for the needs of national security and crime investigation*, issued by the State Agency on Information Technologies and Communication (SAITC) and the Ministry of Interior (MoI).

In 2008, the AIP legal team provided **legal representation in fifty-six** cases to challenge refusals of access to information provision. During the year, the legal team of AIP prepared **ten written defenses** in cases in which AIP provided legal help.

During the year, the courts delivered a number of decisions and rulings on AIP assisted litigation. A considerable part of them was again related to interpretation of different exemptions to the right of access to information, and more precisely, to their scope and applicability in specific cases, as well as to other questions raised over the application and interpretation of the law.

Silent Refusals

The number of silent refusals by the administration is still considerable. As it has been noted, out of all 30 complaints prepared by AIP to the first instance court, eight were against silent refusals. A positive sign, however, as indicated by the practical experience is that the submission of a complaint against a silent refusal is in some cases sufficient to force the respective institution to provide the information that was initially refused. Such a development was observed after the submission of four of the complaints against the registered silent refusals. That was the case of a citizen who demanded information from the Ministry of Regional Development and Public Works (MRDPW) about the approved and disapproved project proposals for co-funding under the PHARE program. After the submission of a complaint against the silent refusal of the MRDPW to provide the information, it was provided. The same development was observed in two of the cases of the Association *WWF-World Wild Fund, Conservation in the Danube-Carpathian, Bulgaria* when after the submission of complaints against two silent refusals, the Sofia Municipality provided to the association the requested information about the Specialized Detailed Development Plan (SDDP) for a ski-tourist area „Aleko“ developed by the „Vitosha Ski“ Ltd. Similar was the development that followed the submission of a complaint by AIP against the silent refusal of the Ministry of Foreign Affairs (MFA) to the request

about the position of the Republic of Bulgaria with regard to the draft of a Convention on Access to Official Documents. After the submission of the complaint, the MFA answered our request. Indeed, the institution provided partial access to the information which was not the one requested, but information that had already been published in the Internet sites of the Council of Europe and the Parliamentary Assembly of the Council of Europe. However, the submission of the complaint resulted in a reaction.

Preparatory Documents

With a decision²⁸ as of September 2008, a panel of the Administrative Court-Sofia City (ACSC) repealed the refusal of the Chief Secretary of the Ministry of Environment and Water (MOEW), Mr. Tamer Beysimov, to provide to the National Movement Ekoglasnost access to the Protocol from the session of the National Council on Biodiversity held on November 25, 2007, when the buffer zone of Rila mountain was not included in the network for protected environmental areas NATURA 2000 because of two votes short. The refusal was grounded in the provision of Art. 13, Para. 2, item 1 of the APIA since the Protocol constituted a preparatory document with no significance of its own. In their judgment, justices assumed that the requested protocol was "information related to the environment" and did not fall under the restrictions to the right of access to environmental information as stipulated by the Environmental Protection Act. Consequently, environmental information shall not be denied on the ground of the provision of Art. 13, Para. 2, of the APIA, since the grounds for refusal stipulated by the APIA may not be applied in cases when requests for access to environmental information were to be decided. According to the court, such a conclusion was drawn also from the sense of the law, as the environmental issues were subject to public discussion which excludes the restricted access to preparatory documents.

Protection of Third Party Interests

A big part of the court decisions delivered in 2008 was against refusals of obliged bodies to provide information on the ground of the protection of third party interests. Most often, behind that ground stood *trade secret or personal data*. Not seldom, however, the refusals were justified with the mere statement of the fact that the requested information would harm the interests of a third party and that no consent was given for the disclosure (Art. 31 of the APIA).

In one of those decisions,²⁹ the court ruled that a contract signed between the State Tourism Agency (STA) and a private company for the provision and exploitation of an exhibition stand at the global exhibition of travel agencies *World Travel Market 2007* held in London, is public. The refusal of the Chairman of the STA was grounded in the mere statement that the information was related to the interests of a third party (the private company) and its consent for the disclosure had not been obtained. It was also only stated that the requested information constituted trade secret since a clause of confidentiality was included in the signed contract. The judgment stressed out that the information about the presentation of Bulgaria as an attractive destination and the advertisement of tourism in the country was of particular importance for the majority of citizens. It was also stated that the contract had been terminated and at that time was

²⁸ Decision No. 930 as of Sept. 11, 2008 of the Administrative Court-Sofia City (ACSC), 1st Division, Sixth Panel, on adm. case No. 3681/2008.

²⁹ Decision No. as of June 11, 2008 of the ACSC, 2nd Division, 37th Panel, on adm. case No. 79/2008.

not effective between the parties which unbound them from its clauses. In this regard, the court panel found that the Chairman of the STA was not bound with the clauses of confidentiality and should have provided the requested information.

In another decision,³⁰ as of October 2008, a panel of the Supreme Administrative Court (SAC) found that the information about the money allocated by the municipality to the local media for the publication of decisions, orders, announcements, invitations, protocols and other official acts of the municipality was public information under the stipulations of the APIA and should be provided at a request. Access to the information should not be refused on the ground of the protection of third party interests and the lack of their consent since in those cases, media, regardless of acting as companies performing free economic activities, performed activities of promulgation and dissemination of decisions of the municipality financed by the municipal budget. That was why media were not third parties as meant by the provision of Art. 31, Para. 2 of the APIA, but obliged bodies as stipulated by the provision of Art. 3, Para. 2, Item 2 of the APIA. This was the judgment behind the court decision on the case of the *Non-Governmental Organizations Center Razgrad* against a refusal of the mayor of the Municipality of Razgrad to provide information about the allocation of money for publications in local media. With that decision, the justices of the SAC repealed the decision of the Administrative Court - Razgrad, as well as the mayor's refusal, and turned the request back to him for compliance with the court instructions with regard to the implementation of the law.

Classified Information

With the legal help of AIP, the explicit refusal of the Sofia Regional Prosecutor's Office (SRPO) to provide information to the citizen Ivan Petrov regarding the number and types of official stamps used by the SRPO was appealed. The refusal was grounded on the state secret exemption. With a decision as of October 2008,³¹ a panel of the Administrative Court - Sofia City repealed the refusal assuming that the mere statement that the requested information constituted state secret did not classify it as such.

Scope of the Definition „Public Information“

In 2008, the explicit refusal of the Chief Secretary of the National Assembly to provide access to the building of the National Assembly to the movie director Malina Petrova shooting a movie for the National Film Center was appealed. The movie was related to one of the important events in the public life of Bulgaria for the last 18 years - setting the former Communist Party building on fire in 1990. Currently, the committees of the National Assembly hold their sessions in that building. With a decision as of December 2008,³² a panel of the ACSC repealed the refusal and obliged the Chief Secretary to provide the requested access on days and time which according to his discretion would be most convenient with regard to the proper functioning of the National Assembly. The court assumed that position because the building was of a historical meaning and its representation (shooting) outside and inside, as well as representation of events which had taken place there in the past, constituted visual information related to the public

³⁰ Decision No.10962 as of October 22, 2008 of the SAC, Third Division, on adm. case No. 1660/2008.

³¹ Decision No. 815 as of October 13, 2008 of the ACSC, 2nd Division, Sixth Panel, on adm. case No. 3317/2008.

³² Decision No. 1083 as of December 23, 2008 of the ACSC, 2nd Division, 31st Panel, on adm. case No. 3721/2008.

life, although the past one, particularly to a part of the most recent history of the Republic of Bulgaria. In its judgment, the court panel concluded that in the particular case - specific and uncommon - the requested access to the building of the National Assembly and respectively the provision of such access for the shooting of a movie was in itself an access to public information case.

Access to Information - Access to Documents

In one of the most important decisions delivered during the year, a five-member panel of the SAC assumed a broad interpretation of the term „description of public information“ and thus has altered the court practice according to which if an initial request for access to information is formulated as a request for access to a document, it is not a request for access to public information. With a decision as of July 2008,³³ a five-member panel of the SAC repealed the decision of the lower instance court, as well as the refusal of the Minister of Culture to provide access to public information regarding a copy of a minister's Order for the appointment of a working group to draft a Regulation under the Protection and Development of Culture Act. In their judgment, the justices stated that the lower instance court had wrongly assumed that the formulation of the initial request - for access to a copy of an order - was not a request for access to public information since it had not contained a description of the information as required by the APIA. A conclusion of that kind was in contradiction to the provision of Art. 26, Para. 1, Item 3 of the APIA according to which, one of the forms of provision of access to public information was a paper copy. Thus the requirement was literally fulfilled - the request for access to a copy of an order was a lawful request for access to public information under the APIA. Furthermore, the title of the order itself - for the appointment of a working group to draft a Regulation as required by Art. 5, Para. 4 of the Protection and Development of Culture Act - contained the description of the requested information which should be contained in the specified form - a copy of the order.

Overriding Public Interest

As it has been already mentioned in the current report, the last amendments to the APIA have introduced the principle according to which exemptions to the right of access to information shall not be applied if there is an overriding public interest in the disclosure of the information. Although the balance of interests was not provided by the APIA before³⁴ and from a formal point of view the court had not balanced public interest against other protected interests, the court had delivered decisions by taking into account the public interest in a considerable number of cases brought by AIP. For example, in the cases against refusals to provide environmental information, the court almost always concluded that the disclosure of such information is of public interest.³⁵

Court decisions in favor of public interest have been delivered in other cases as well. For instance, the refusal of the Administrative Court of Varna to provide access to the file of a court case which had been allegedly decided by the former Chairman of the court after she had taken a bribe was appealed. In that case, the court decided that there was high

³³ Decision No. 8696 as of July 2, 2008 of the SAC, Five member panel - 1st Panel on adm. Case No.6569/2008.

³⁴ The overriding public interest test was introduced in APIA in December 2008. See p.9-11 above.

³⁵ See, Case Note No. 6 - National Movement Ekoglasnost vs. the MOEW and Case Note No. 10 - WWF vs. the RIOEW - Sofia.

public interest in the disclosure as the Bulgarian society had reached a level of its development at which it showed strong intolerance against the corruption.

In a case against the refusal of the State Tourism Agency to provide access to a contract for the presentation of Bulgaria as an attractive destination at an international exhibition, the court found that the information was of particular importance to a majority of citizens. It was noted in the judgment that the public interest was determined not only by the existence of sea and mountain resorts whose inhabitants relied on tourism for their means of living, but also by the fact that a number of less developed and rural regions had started the development of rural and alternative forms of tourism and the good presentation of the country would help the development of those regions.

In a case against the refusal of the Chief Secretary of the National Assembly to provide access to the building to a movie director, the court assumed that this building used to be the former Communist Party building which is a well known fact. There, historical figures used to work and take decisions with a historical significance, events took place which were and still are of importance for the history of the country. The court assumed that position as the building was of a historical meaning and its representation (shooting) outside and inside, as well as representation of events which had taken place there in the past, constituted visual information related to the public life, particularly to a part of the most recent history of the Republic of Bulgaria. With the provision of the requested access to the building, the aim of the movie would have been achieved - the spectators would form opinion about the events that took place in the past and are part of the history.

Execution of Court Decisions

An improvement with regard to the execution of court decisions by the administration was observed during the last year. After the submission of a request, prepared by AIP, the Supreme Administrative Court imposed a fine to the Minister of Interior at the amount of 200 BGN (100 Euro) for not fulfilling an obligation under the APIA which was established by an effective SAC decision within the course of one year. The Minister disrespected his obligation to decide on a request submitted by Yordan Todorov, a journalist from the *168 Hours* weekly, after a court decision as of July 2007 had repealed the Minister's initial refusal to provide access and turned the request back to him for reconsideration. In their judgment, the justices dismissed the argument of the minister that the delay was caused by the procedure of seeking the third party's consent since no evidence for the minister's issuing of decision on the request existed at that moment (July 2008). That court decision³⁶ as of July 9, 2008 is the first court decision in AIP litigation experience which imposes a fine on an executive body for not fulfilling an obligation under the APIA.

Data Retention

Among the very important litigation cases during the year was that against the Regulation # 40 on the retention and access to data of the mobile operators and Internet companies issued by the State Agency on Information Technologies and Communication (SAITC) and the Ministry of Interior (MoI) and adopted in January 2008. The adoption of the Regulation triggered a massive wave of criticism and rage among the civil society and business community in the country, as it implies serious intrusion in private life and correspondence. The Regulation allegedly puts Bulgarian legislation in conformity with

³⁶ Decision No. 8487 as of July 9, 2008 of the SAC, First Division, on adm. case No. 7157/2008.

the Directive 2006/24/EC. According to the Directive, companies providing publicly available electronic communication networks and/or services shall be obliged to retain data for all mobile calls: date and hour, place and participants in the communication; as well as for all electronic messages (via Internet). On March 19, 2008, AIP submitted an appeal to the Supreme Administrative Court (SAC), setting forth the question about the lawfulness and the constitutionality of the adopted Regulation. A three-member panel of the SAC dismissed the appeal with their decision³⁷ as of July 2008 without ruling on the arguments presented in the appeal that the Regulation was in violation of Art. 32 and Art. 34 of the Bulgarian Constitution, as well as of Art. 8 of the European Convention on Human Rights (ECHR).

The court decision was appealed again and in a decision³⁸ as of December 2008, a five-member panel of the SAC ruled that the provision of Art. 5 of the Regulation did not set any limits with regard to the data access by a computer terminal. Also, the requirement „for the needs of the operational-investigation activities“ was too broad and did not provide for any guarantees for the protection of the right to privacy stipulated by Art. 32, Para. 1 of the Bulgarian Constitution. Furthermore, no limits were set forth against misuse of the possibility for violation of constitutionally granted rights of the citizens in contradiction to Art. 8 of the ECHR. Reference to specialized laws - such as Penal Procedure Code, Special Surveillance Means Act, Personal Data Protection Act - which specify conditions under which access to specific data related to the private life and personal data of the individual shall be granted, was not provided either. Based on that judgment, the five-member panel of the court repealed the decision of the lower instance court and the disputable Art. 5 of the Regulation.

Overview and Analyses of Litigation Practices

In 2008, *Access to Information Programme* published the fourth volume of the book *Access to Information Litigation in Bulgaria*. The book contains analytical part which reviews the main issues that have emerged in the court practice with regard to the Access to Public Information Act during the last years. Summaries and twenty-seven decisions on 14 court cases in which AIP legal team has provided legal help, including court representation, were included as appendices to the book.³⁹

³⁷ Decision No. 8786 as of July 16, 2008 of the SAC, Fifth Division, on adm. case No. 5393/2008.

³⁸ Decision No.13627 as of December 11, 2008 of the SAC, Five-member panel- 2nd Panel, on adm. case No. 11799/2008.

³⁹ The English version of the book *Access to Information Litigation in Bulgaria (2005-2008). Selected Cases*. Vol. 4 is accessible at: <http://www.aip-bg.org/books.htm>.

APPENDIX

LITIGATION CASE NOTES

1. Desislava Krasteva (bTV) vs. the Administrative Court - Varna

First Instance Court - administrative case No.572/2008, Administrative Court - Dobrich

Request:

With a request as of July 22, 2008, Desislava Krasteva, a reporter from the bTV, requested the Interim Chairperson of the Administrative Court at the town of Varna to provide access to the documents contained in the file of a 2008 administrative case from the case log of the same court. The request of the reporter had been urged by allegations in the press that the former chairperson of the court had taken a bribe to decide on that particular case.

Refusal:

The Interim Chairperson of the Administrative Court - Varna reviewed the request on the same day of its submission and issued a Decision No. 2 under the APIA as of July 22, 2008. He refused the provision of access to information. The refusal was grounded mainly in the fact that the request was not for public information under the provision of Art. 2 of the APIA. The arguments were the following:

- the request had not been formulated as a request for access to public information rather as a request for information contained in a particular case file concerning particular persons;
- the type of requested information was not specified with its description, rather an access to specific documents was requested;
- the provision of Art. 2, Para. 4 of the APIA excluded the application of the law in terms of information that contained personal data, whereas every court case about a particular person contained their personal data as under the stipulation of the Personal Data Protection Act.

Complaint:

The refusal was challenged before the Administrative Court - Varna. The complaint stated that the case file to which access had been denied was of public interest as it was related to the proceedings against the former Chairperson of the Administrative Court - Varna who had allegedly taken a bribe for deciding on that particular case. It was also stated that the disclosure of information regarding the court case would help the citizens form their own opinion on the lawfulness and the transparency of the activities of the judicial bodies.

Developments in the Court of First Instance:

All judges from the Administrative Court at the town of Varna begged to be struck off the list. The case regarding the lawfulness of the refusal of access to information was sent under the Administrative Court at the town of Dobrich with a Ruling No. 11440 as of October 30, 2008 of the Third Division of the Supreme Administrative Court.

The Administrative Court - Dobrich heard the case in one court session and scheduled it for judgment. Written notes, prepared by Alexander Kashumov, a lawyer from *Access to Information Programme*, were presented on behalf of the complainant. The notes stated in detail the arguments about the unlawfulness of the refusal.

Court Decision:

With a Decision as of January 5, 2009, the Administrative Court - Dobrich repealed the refusal of the Interim Chairperson of the Administrative Court -Varna and obligated the latter to provide access to the information contained in the administrative case file. In its judgment, the court ruled that due to the fact that there were publicly expressed allegations in terms of the proceedings regarding the detention of the former Chairperson of the Administrative Court - Varna after an indict for bribery, the information contained in the case file was related to the public life in Bulgaria and assumed the characteristic of public information. According to the court, the high public interest that had emerged was a result of the condition that the Bulgarian society had reached a state of its development at which it expressed intolerance towards the possibility of existence of corruption in the state authorities. In its judgment, the court pointed out that the case to which access had been requested was started as a result of a conflict between a company and the State Receivables Collection Agency with regard to the lawfulness of a decision taken by the latter. The court, however, found the explicit dissent for the provision of access to the case expressed by the company irrelevant as the protection of personal data may not be applied in cases of legal persons. The court pointed out that in the current case there was no legally protected trade secret either and that the litigation regarding the State Receivables Collection Agency was open and public.

2. Zornitsa Markova (*Dnevnik* newspaper) vs. the State Tourism Agency

First Instance Court - administrative case No. 79/2008, Administrative Court-Sofia City, 2nd Division, 37th Panel

Second Instance Court - administrative case No. 9503/2008, Supreme Administrative Court, Third Division

Request:

With a written request under the APIA as of November 2007, Zornitsa Markova, a reporter from *Dnevnik* newspaper, requested the Chairperson of the State Tourism Agency (STA) to provide a copy of the contract signed between the Agency and the „R.O.K.“ Ltd. for the exploitation of an exhibition stand where Bulgaria was presented as an attractive destination at the global exhibition *World Travel Market 2007* held in London.

Refusal:

With a decision as of December 2007, the Chairperson of the STA refused to provide a copy of the contract on the ground that the contract contained clauses which constituted trade secret and that the company's consent for disclosure - as a party of the contract - had not been obtained. The refusal also stated that it was not clear for what purpose the reporter would further use the copy of the contract.

Complaint:

With the assistance of AIP, the refusal was appealed before the Administrative Court - Sofia City (ACSC). The complaint stated that the requested information was not only public but was of high public interest as it was about a contract which had not been implemented appropriately, including sanctions imposed in that regard according to statements made by the STA itself. Cancellation, termination, and suspension of the contract were announced. Simultaneously, a new public procurement tender procedure was announced for the exhibition which would take place in 2008 in Berlin, Moscow and Kiev.

Developments in the Court of First Instance:

The case was heard in an open session and scheduled for judgment.

Court Decision:

With a Decision as of June 11, 2008, the ACSC repealed the refusal of the Chairperson of the STA and turned the request back to him with the instruction to provide the requested information, or, if a refusal was to be issued, it should contain arguments on why the requested information was regarded as trade secret whose disclosure might bring to unfair competition between companies. The court assumed that the information about the contract signed between the State Tourism Agency and the company „R.O.K.“ Ltd for the provision and exploitation of an exhibition stand at the global exhibition of travel agencies *World Travel Market 2007* held in London was public. The judgment stressed out that the information about the presentation of Bulgaria as an attractive destination and the advertisement of tourism in the country was of particular importance for the majority of citizens. It was noted in the judgment that the public interest was determined not only by the existence of sea and mountain resorts whose inhabitants relied on tourism for their means of living, but also by the fact that a number of less developed and rural regions had started the development of rural and alternative forms of tourism and the good presentation of the country would help the development of those regions.

It was also noted that excerpts from the contract containing confidentiality clauses were presented as evidence during the proceedings. Nevertheless, at the time of the request, the contract had been terminated and not effective between the parties which unbound them from its clauses. In that regard, the court panel found that the Chairman of the STA had not been bound with the clauses of confidentiality and should have provided the requested information. Besides, the administrative body should have determined and justified the conditions of the contract which constituted trade secret in relation to the publicity provided by the Public Procurement Act under which a number of elements of the contract should be public.

Court Appeal:

The decision of the ACSC was appealed by the STA before the Supreme Administrative Court. The appeal stated that the clauses of the contract related to commercial law relations and were of private character as a result of which access to the contract was not due.

Developments in the Court of Second Instance:

A hearing of the case at an open court session was scheduled for May 11, 2009.

3. Ivan Petrov vs. the Sofia Regional Prosecutor's Office

First Instance Court - administrative case No.3317/2008, Administrative Court - Sofia City, 2nd Division, 26th Panel

Request:

In the beginning of 2008, the citizen Ivan Petrov who regularly submits signals to the Prosecutor's Office was impressed by the number and variety of stamps used by the Sofia Regional Prosecutor's Office (SRPO). That was why on April 14, 2008, the citizen

submitted a request for access to information to the SRPO demanding the following information:

- What was the number of round type of stamps used by the SRPO and how many of them were currently in use?
- How many of the stamps described above were in different type of font?
- When was the last time when the SRPO ordered a round type of stamp?
- What were the reasons for ordering stamps in different fonts?

Refusal:

With a Decision as of April 18, 2008, the Prosecutor Al. Nalbantov, refused to provide access to the requested information on the ground that the information had been classified pursuant to Appendix No. 1, II, Item 12 to Art. 25 of the Protection of Classified Information Act (PCIA) and constituted state secret.

Complaint:

With the assistance of AIP, the refusal was appealed before the Administrative Court - Sofia City. The complaint stated that indeed pursuant to the Appendix No. 1, II, Item 12 to Art. 25 of the PCIA which contained a List of the categories of information subject to classification as a state secret - *the information related to the making and holding of stamps with the state coat of arms, as well as the stamps of the state authorities, shall be classified as a state secret.* It was apparent from the request itself, however, that in the current case the information requested did not fall in the quoted category of Attachment No. 1 as the requested information regarded statistical data about already made stamps of a body of state authority. The provision of such kind of information would in no way have harmed the interests protected under Art. 25 of the PCIA. Besides, it was not clear what kind of harm may the provision of answers to the questions set forth in the request impose.

Developments in the Court of First Instance:

The case was heard in an open court session in October 2008 and scheduled for judgment.

Court Decision:

With a Decision No. 815 as of October 2008, the ACSC repealed the refusal of the regional prosecutor and turned the request back to the latter for reconsideration. In the judgment, the court ruled that the administrative body had not cleared out if the provision of access to information would have harmed the interests of the Republic of Bulgaria related to the national security, defense, foreign policy and the protection of the constitutionally established order, and if yes, in what way the access would have harmed the interests of the state. The court decision also stated that the refusal of the Prosecutor's Office only stated the belonging to a category of information from the List of the categories of information subject to classification as a state secret (Appendix No. 1 to Art. 25 of the Protection of Classified Information Act). The lack of justification on what criteria and on what grounds it had been assumed that the requested information constituted state secret impeded the court to exercise efficient control on the lawfulness of the refusal for its provision.

The decision was not appealed and came into effect.

4. Ivan Petrov vs. the Sofia Municipal Council

First Instance Court - administrative case No. 4953/2007, Administrative Court - Sofia City, 2nd Division, 27th Panel

Second Instance Court - administrative case No. 5863/2008, Supreme Administrative Court, Third Division

Request:

With a written request under the Access to Public Information Act as of September 2007 addressed to the Chairperson of the Sofia Municipal Council (SMC), the citizen Ivan Petrov demanded access to the following information:

- all official leaves made by the Chairperson of the SMC during the current term of the SMC (from 2003 till August 2007) - by date and duration;
- all official trips in the country and abroad made by the Chairperson of the SMC during the current term of the SMC (from 2003 till August 2007) - by date, places of visit, purpose of visit, duration and amount of expenses made.

Refusal:

No response to the submitted request was received within the legally prescribed 14-days period.

Complaint:

The silent refusal of the Chairperson of the SMC was appealed before the Administrative Court - Sofia City. Besides the arguments about the unlawfulness of the silent refusal, the complaint contained arguments on the merit of the case. It was argued that the requested information may not be defined as *personal data* under the meaning of the provision of Art. 2 of the Personal Data Protection Act, as it did not relate to a natural person but to the exercise of official functions by the chairperson of the municipal council. The content of the request which aimed completely at the activity of a body of local self-government within the municipality classified the information as administrative public information as under the provision of Art. 11 of the APIA. Precisely with such kind of judgments, panels of the SAC had repealed decisions of the Regional Court of Razgrad on identical cases for access to information about the per diem expenses of a mayor and a deputy mayor of the municipality (Decision No. 3110/23.03.2006, SAC, Fifth Division, adm. case No.8452/2005 and Decision No. 9097/21.09.2006, SAC, Fifth Division, adm. case No. 5319/2006). The conclusions reached by another panel of the SAC followed the same direction with regard to a case for access to information about the per diem expenses of the prime minister and the ministers. In that latter case, the court panel assumed it was undoubtful that the information about the per diem expenses of the prime minister and the ministers constituted administrative public information as under the provision of Art. 11 of the APIA and should be provided to the requestor (Decision No. 6027/28.06.2005, SAC, Fifth Division, adm. case No. 10635/2004).

Developments in the Court of First Instance:

The case was heard in an open court session and scheduled for judgment.

Court Decision:

With a Decision as of February 18, 2008, the ACSC repealed the silent refusal of the Chairperson of the SMC and returned the request back to the latter for reconsideration. In its judgment, the court pointed out that the Chairperson of the SMC was obliged to

issue a decision on the request for access to information. The silent refusal was unacceptable under the APIA. Thus, on the base of that ground only, the refusal was subject to repeal.

Court Appeal:

The Decision of the ACSC was appealed before the SAC by the Chairperson of the SMC. The appeal stated that in the current case the requestor had demanded access to documents in a written form. Based on that ground solely the silent refusal had been lawful since the administrative body was not obliged by law to provide the information as it was formulated in the request.

Developments in the Court of Second Instance:

The case was heard in an open court session in February 2009 and was scheduled for judgment.

Court Decision:

With a Decision No. 3532 as of March 17, 2009, a panel of the SAC, Third Division, upheld the decision of the ACSC. Besides confirming the judgment of the previous court instance, the justices assumed that the requested information should be defined as administrative public information under the meaning of the provision of Art. 11 of the APIA. Consequently, access to that information was free, except in the cases when there was a ground for refusal stipulated by the APIA. However, the requested information did not fall in the legally prescribed exceptions.

The court decision is final.

5. Malina Petrova vs. the Chief Secretary of the National Assembly

First Instance Court - administrative case No. 3721/2008, Administrative Court - Sofia City, 2nd Division, 31st Panel

Second Instance Court - administrative case No. 4930/2009, Supreme Administrative Court, Thurd Division

Request:

In December 2007, Malina Petrova, a movie director, submitted a request to the Chairperson of the National Assembly, Mr. Georgy Pirinski, for access to the premises of the building at 1 Kniaz Alexander I Batenberg Square.⁴⁰ The purpose of Ms. Petrova was to shoot a movie titled *Giuro Mihailov and the Incendiaries*. The movie was assigned to her after she had won a competition of the National Film Center to the Ministry of Culture in November 2006. The movie was related to one of the important events from the public life in Bulgaria during the past 18 years - setting the former Communist Party building on fire in 1990.

Months in a row, she did not receive any answer. That was why on May 15, 2008, Malina Petrova submitted a request for access to public information under the APIA demanding information about the official answer of the Chairperson of the National Assembly on her initial request regardless of the form.

⁴⁰ The former Communist Party Building where currently the sessions of the parliamentary committees are held.

Refusal:

With a letter as of May 29, 2008, signed by the Chief Secretary of the National Assembly, Ms Petrova was informed that access to the building of the National Assembly may not be provided to her. It was pointed out that the building was under a special restrictive regime of access, as well as that in case the requested access to the building had been provided, parts of the building would have been isolated which would have impeded the access of MPs and officials to their working places, and consequently the functioning of the National Assembly (NA).

Complaint:

With the assistance of AIP, the refusal was appealed before the Administrative Court - Sofia City. The complaint argued that by its content, the letter constituted a refusal of letting the movie maker in the building of the NA and exercise her right to seek, receive and impart information. In the current case, not only her personal right was at stake, but also the right of the movie team and the right of the citizens to receive the information which she would have imparted through her movie. It was also stated that with her first request, Ms. Petrova explicitly stated that she would like her access to the building of the NA to be complied with the most convenient time for that, including non-working days for the MPs, etc.

Developments in the Court of First Instance:

The case was heard in three open court sessions. At the first two, the proceedings were stayed for collection of evidence. At the third court session in November 2008, the case was heard on the merit and scheduled for judgment. The court representative of the Chief Secretary alleged that the submitted request may not be defined in any way as a request for access to public information under the provision of Art. 2 of the APIA since the requested access would not help the complainant to form her own opinion on the activities of the NA. The representative argued that there existed specific legal regulation, precisely Art. 8 of the Rules for the Organization of the Work of the NA, according to which the Chairperson of the NA had the obligation and the authority to organize the internal order in the premises of the NA and to provide working conditions for the MPs. Those should be taken into consideration. The representative also alleged that in the current case a balance of interests had been sought since access to the premises of the NA had been granted in all cases when the requestors had interest in the work of the NA. The case of the complainant, however, not being such.

Court Decision:

With a Decision No. 1083 as of December 23, 2008, a panel of the ACSC repealed the refusal of the Chief Secretary of the NA and sent him back the request with the instruction to provide the requested access on days and time considered by him as best in view of the functioning of the NA. In its judgment, the court panel concluded that in the particular case - specific and uncommon - the requested access to the building of the National Assembly and respectively the provision of such access for the shooting of a movie was in itself an access to public information case. The court assumed that position because the building was of a historical meaning and its representation (shooting) outside and inside, as well as representation of events which had taken place there in the past, constituted visual information related to the public life, although the past one, particularly to a part of the most recent history of the Republic of Bulgaria. The decision also stated that at

the current moment, the premises at Alexander I Batenberg Sq.⁴¹ as a building charged with particular historical information were managed by the NA and the respective bodies of the NA are the only obliged bodies which the complainant may address to seek and receive that information.

The court panel also stated the argument that Art. 2 of the APIA should be interpreted broadly - as one applicable to not only present time, but also to the past. The provision shall be applied to the seeking, representation and dissemination of public information - facts and events - with a historical value.

The decision ended with arguments about how and when access should be provided to the building of the NA. Since the access may not be uncontrolled, the court panel ruled that it was within the authority of the Chief Secretary to determine the days and the time when access to the building of the NA would be provided, including the parliamentary recess, in such a way that the work of the MPs and the institution would not be impeded at all.

Court Appeal:

The Decision of the ACSC was appealed by the Chief Secretary of the NA before the Supreme Administrative Court.

Developments in the Court of Second Instance:

Proceedings were started in the SAC on April 7, 2009, after the submission of the appeal. Hearing of the case in an open court session is pending.

6. National Movement *Ekoglasnost* vs. the Ministry of Environment and Water

First Instance Court- administrative case No. 3681/2008, Administrative Court-Sofia City, First Division, 6th Panel

Second Instance Court - administrative case No. 15062/2008, Supreme Administrative Court, Third Division

Request:

With a written request for access to information as of November 2007, submitted to the Ministry of Environment (MOEW) and Water, Petar Penchev, a deputy chairperson of the National Movement *Ekoglasnost*, demanded access to the Protocol from the session of the National Council on Biodiversity (NCBD) to the MOEW held on November 25, 2007, when the buffer zone of Rila mountain was not included in the network for protected environmental areas NATURA 2000 because of two votes short.

Refusal:

With a decision No. 218 as of November 15, 2007, the Chief Secretary of the Ministry of Environment and Water, Mr. Tamer Beysimov, refused to provide access to the requested information on the ground of Art. 13, Para. 2, Item 1 of the APIA (information relates to the preparatory work of an act and has no significance in itself). The grounds for the refusal also stated that the requested Protocol from the session of the consultation body to the Minister was related to the operational preparation of the decisions, did not have a significance of its own, and contained opinions, recommendations, and expert positions about the second review of the 26 protected areas for the wild birds and the 16 protected areas for the protection of the habitats of the wild flora and fauna.

⁴¹ The former Communist Party building.

Complaint:

The refusal was challenged before the Supreme Administrative Court (SAC). Court case No. 12966/2007 was initiated in the Third Division of the SAC. With a ruling the case was sent to the jurisdiction of the Administrative Court - Sofia City since the refusal had been signed by the Chief Secretary of the ministry, and not by the minister himself. At the same time, AIP started to legally assist the case.

Developments in the Court of First Instance:

The case was heard in an open court session on September 1, 2008 and scheduled for judgment. AIP prepared written notes for the complainant. They stated that the requested information related to the Protocol from the session of the NCBD undoubtedly resembled environmental information under the meaning of Art. 19 of the Environmental Protection Act (EPA). The information about the session of the NCBD regarded territories and areas which should be included in the NATURA 2000 network. That was why the information was related to the components and factors and consequently constituted *environmental information* as stipulated by Art. 19 of the EPA. Consequently, the hypotheses for the restrictions of access to information stipulated by Art. 13, Para. 2 of the APIA were generally inapplicable since there was neither reference to them, nor were they provided as relevant texts by Art. 20 of the EPA. The provision of Art. 20 of the EPA listed the acceptable restrictions to the access to environmental information. Undoubtedly, the regulation of access to information by the EPA set a special regime with regard to the provisions of the APIA.

Court Decision:

With a Decision as of September 11, 2008, a panel of the Administrative Court-Sofia City (ACSC) repealed the refusal of the Chief Secretary of the MOEW. In their judgment, justices assumed that the requested protocol was undoubtedly „information related to the environment“ and did not fall within the exemptions from the right of access to environmental information as stipulated by the Environmental Protection Act. Consequently, environmental information may not be denied on the ground of the provision of Art. 13, Para. 2 of the APIA since the grounds for refusal stipulated by the APIA may not be applied in cases when requests for access to environmental information were to be decided. According to the court, such a conclusion was drawn also from the sense of the law, as the environmental issues were subject to public discussion which excludes the restriction of access to preparatory documents. Even more, the court obligated the MOEW to provide the requested document within 14-days period after the decision came into effect.

Court Appeal:

The decision of the ACSC was appealed by the MOEW before the Supreme Administrative Court with the main argument that there had been no valid request for access to environmental information but only a request for the provision of a copy of a document which had no significance of its won.

Developments in the Court of Second Instance:

A hearing of the case in an open court session in the SAC was scheduled for June 2009.

7. Association *Non-Governmental Organizations Center Razgrad* vs. the Mayor of the Municipality of Razgrad (media)

First Instance Court - administrative case No. 189/2007 Administrative Court - Razgrad

Second Instance Court - administrative case No. 1660/2008 of the Supreme Administrative Court, Third Divisions

Request:

With a request as of August 27, 2007, Georgi Milkov, a Chairperson of the Association *Non-Governmental Organizations Center Razgrad*, submitted a written request for access to public information to the Mayor of the Municipality of Razgrad under the procedure stipulated by the Access to Public Information Act. With the request, he demanded access to information about the allocation of money by the municipality to local media in Razgrad for the publication of decisions, orders, announcements, invitations, protocols, etc. for the period January-July 2007, as well as information about the money allocated to the local TV KIS 13.

Refusal:

With a Decision as of September 21, 2007, the Mayor of the municipality refused to provide the requested information since it was related to the interests of third parties (the local media) which had explicitly dissent the disclosure - a ground for refusal under Art. 37, Para. 1, Item 2 in relation to Art.31, Para. 4 of the APIA.

Complaint:

The refusal of the Mayor was challenged before the Administrative Court - Razgrad.

Developments in the Court of First Instance:

Local media which had received money for the publication of materials from the municipality were constituted as parties in the case. The last court session was held in November 2007 and the case was scheduled for judgment.

Court Decision:

With a Decision No. 84 as of December 13, 2007, the Administrative Court - Razgrad dismissed the complaint of the association. In its judgment, the court assumed that the requested information was related to the commercial activities of third parties (publishers of printed media, respectively owners of TV programs) and indeed affected their lawful interests. The court did not share the position of the complainant that the those third parties were recipients of money from the municipal budget and as such they were themselves obliged to provide information under the provision of Art. 3, Para. 2, Item 2 of the APIA. According to the court, payments in business transactions in which the two contracting parties are equal did not mean *funding from the state budget*.

Court Appeal:

The decision of the Administrative Court - Razgrad was appealed before the Supreme Administrative Court (SAC). Before the scheduling of the proceedings in the SAC, AIP undertook the legal help in the case.

Developments in the Court of Second Instance:

The case was heard in an open court session in September 2008. Written notes were prepared and presented on behalf of the association-complainant. It was stated that the case concerned budget expenses made for the publication of documents of the municipality. This was public information which did not relate to the interests of the companies which had performed the publication. No information was requested about the way the respective media utilized the allocated money. It was wrongly assumed in the appealed court decision that the companies had not received funding from the municipal budget. They had received precisely such funding and for an activity stipulated by the law - publication of decisions

and other documents of the public authorities. It was also noted that the municipal budget was public pursuant to Art. 5 of the Municipal Budgets Act. If the whole is public, then its parts were public as well, i.e. all particular expenses made from the budget.

Court Decision:

With a Decision No. 10962 as of October 22, 2008, a panel of the SAC, Third Division, repealed the decision of the Administrative Court - Razgrad, and ruled instead the repeal of the refusal of the Mayor and turned the request back to the latter for execution of court instructions with regard to the implementation of the law. In their judgment, the justices found that the information about the allocation of money by the municipality to the local media for the publication of decisions, orders, announcements, invitations, protocols and other official acts of the municipality was public information under the stipulations of the APIA and should be provided at a request. Access to the information should not be refused on the ground of the protection of third party interests and the lack of their consent since in those cases, media, regardless of acting as companies performing free economic activities, performed activities of promulgation and dissemination of decisions of the municipality financed by the municipal budget. That was why media were not third parties as meant by the provision of Art. 31, Para. 2 of the APIA, but obliged bodies as stipulated by the provision of Art. 3, Para. 2, Item 2 of the APIA.

The court decision is final.

8. Association *Non-Governmental Organizations Center Razgrad* vs. the Mayor of the Municipality of Razgrad (construction companies)

First Instance Court - administrative case No. 211/2007, Administrative Court - Razgrad
Second Instance Court - administrative court No. 2995/2008, Supreme Administrative Court, Third Division

Request:

On October 15, 2007, Georgi Milokov, a Chairperson of the Association *Non-Governmental Organizations Center Razgrad* submitted a written request to the Mayor of the Municipality of Razgrad under the procedure stipulated by the APIA. He demanded access to information about the name of the company/ies which had performed construction and repair works under the approved projects under the 2007 Public-Private Partnership Program in the Municipality of Razgrad till the moment of the submission of the request. Information about the application forms with the attachments relevant to each project, as well as the decisions of the selection commission with regard to each approved project was also requested.

Refusal:

With a decision as of November 5, 2007, the Mayor of the Municipality refused to provide the requested information on the ground that third parties were involved and their consent for the disclosure was lacking. The refusal stated that such consent had been sought from the three construction companies which had performed the activities under question and they had deposited their dissents for the provision of the information.

Complaint:

The refusal of the Mayor was challenged before the Administrative Court - Razgrad.

Developments in the Court of First Instance:

The three construction companies were constituted as interested parties in the case. The case was heard in an open court session and scheduled for judgment.

Court Decision:

With a Decision No. 94 as of January 4, 2008, the Administrative Court - Razgrad repealed the refusal of the Mayor in its part where the provision of access to information about the name of the company/ies which had performed construction and repair works under the approved projects had been refused. The court dismissed the complaint in the part regarding the information about the „application forms with the relevant attachments to each project“ and the „decisions of the selection commission regarding all approved projects.“ In the current case, the court assumed that the application forms, as well as the relevant attachments, may contain information about the applicant (a legal person in this case) which was not public, i.e. information related to particular elements from the capital status of the company (for example, monthly turnover, subcontracting parties under similar contracts, etc.). Such kind of information constituted trade secret and in that case, the Mayor had rightly decided that it might have harmed rights or legal interests of third parties and had applied the hypothesis provided by Art. 37, Para. 1, Item 2 of the APIA, refusing access after the explicit written dissent of the third parties. The same type of information might be contained in the decisions of the selection commission as far as those decisions should be grounded and the grounds might contain information that constituted trade secret for the applicants.

Court Appeal:

The decision of the Administrative Court - Razgrad was appealed before the Supreme Administrative Court in its part where it dismissed the complaint.

Developments in the Court of Second Instance:

The case was heard in an open court session and scheduled for judgment. Written notes, prepared by Alexander Kashumov, a lawyer at AIP, were presented on behalf of the association-complainant. It was argued that even the challenged refusal did not contain evidential facts for the presence of monthly turnovers, the subcontracting parties under similar contracts, etc. in the requested application forms and the attachments to them. Furthermore, the presence of such facts had not been proven before the first instance court. As it was clear from its judgment, the lower instance court had grounded its decision in propositions about what was possible to be contained in the requested information under the APIA instead of what was actually contained. Thus, the case was decided without sufficient clarification about the legally relevant circumstances.

Court Decision:

With a Decision No. 12621 as of November 24, 2008, a panel of the SAC repealed the decision of the Administrative Court - Razgrad, as well as the refusal of the Mayor, obligating the latter to provide access to the requested information within a 14-days period to the Association *Non-Governmental Organizations Center Razgrad*. In their judgment, the justices found that no evidence had been presented that would have conditioned the conclusion that the provision of the requested public information related to third parties would have harmed their interests in a way that would have justified the necessity for their explicit consent - like the existence of a trade secret, production secret or other circumstance legally protected from public access. The judges held that taking into consideration the above, the conclusions of the lower instance court that the Mayor

had lawfully applied the provisions of Art. 37, Para. 1, Item 2 of the APIA did not find any ground in the facts established during the proceedings.

The court decision is final.

9. Yuri Valkovski vs. the Ministry of Culture

First Instance Court-administrative case No. 5161/2007, SAC, Third Division
Second Instance Court - administrative case No. 6569/2008, SAC, Five-member Panel

Request:

On April 16, 2007, Yuri Valkovski, a member of the informal organization *Expert Group for Transparent and Efficient Cultural Policy*, submitted a request to the Ministry of Culture (MC) asking for access to the following information:

- A copy of the Order appointing a working group to draft a Regulation, stipulated by Art. 5, Para. 4 of the Protection and Development of Culture Act (PDCA), under which Regulation the minister should define the selection procedure for directors of state cultural institutions (in the form of a paper copy);
- Information about the deadlines within which the working group should present results from its work on the draft of the respective Regulation (in paper form).

Refusal:

On April 23, 2007, the requestor received a letter with the decision of the minister who had refused to provide a copy of the order for the assignment of a working group to draft the Regulation. The refusal was grounded in the provision of Art. 13, Para. 2, Item 1 of the APIA since the information had been related to the operational preparation of the acts of the MC and had no significance of its own. With the same letter, the minister informed the requestor that pursuant to § 20, Para. 2 of the Final Provisions of the PDCA (promulgated in State Gazette, issue 106, as of December 27, 2007), the time frame prescribed for the adoption of the Regulation was six months after the enactment of the law.

Complaint:

The refusal was challenged before the Supreme Administrative Court (SAC). The complaint stated that quoting Art. 13, Para. 2, Item 1 of the APIA was completely groundless since the order of the minister constituted an act of a state body issued within the fulfillment of its duties, i.e. the order constituted official public information pursuant to Art. 10 of the APIA. The exemption provided by Art. 13, Para. 2 of the APIA was applicable if and only the information had been administrative public information, which pursuant to Art. 11 of the APIA was all other information which was not official. With regard to the information about the time frames, the complaint stated that the minister had not provided the requested information since the requestor had not asked for prescribed period within which the respective regulation should be adopted - there was no need doing it since the time frame was set forth by the law itself. Information about the deadlines assigned to the working group to present results from the drafting of the respective Regulation. As a matter of fact the response with regard to that part of the request constituted a silent refusal and should be repealed as unlawful.

Developments in the Court of First Instance:

The case was heard in an open court session in December 2007 and scheduled for judgment.

Court Decision:

With a decision No. 439 as of January 14, 2008, a panel of the SAC, Third Division repealed the refusal of the minister in its part stating that the time frame for the adoption of the Regulation was six months as prescribed by the law, and obligated the minister to provide information about the deadlines set for the work group to present the draft of the Regulation. In their judgment, justices stated that with the challenged part of the decision, the administrative body had informed the complainant about the legally prescribed period of six months within which the Regulation should be adopted. The request, however, which triggered the administrative procedure, was for access to public information regarding the period within which the working groups should present finalized draft of the Regulation. The court panel rejected the rest of the complaint as groundless. With regard to the requested copy of the order appointing the working group, the justices assumed that the way the request had been formulated did not stand for a request for access to public information. Every request for access to information under the APIA should contain description of the public information sought, as stipulated by Art. 25, Para. 1, Item 2 of the APIA. The APIA provided for the procedure to request access to information but not access to documents as a material carrier of the information, as it was in the given case regarding the first point in the request. Documents were a material carrier of information, but if information was requested just as a provision of a document and not as a description of a piece of information or information about someone or something, such information was not subject to provision.

Court Appeal:

In the part which the complaint was denied, the court decision was appealed by AIP before a Five-member panel of the SAC. In the appeal, it was specified that the interpretation assumed in the appealed decision with regard to the issue „access to information-access to documents“ restricted the scope of citizens' right to access to information in an inadmissible way.

Developments in the Second Instance Court:

The case was heard in an open court session and was scheduled for judgment. The representative of the appellant, Alexander Kashumov, a lawyer from AIP, emphasized the point at issue - did the law prohibit the requestor to describe the requested information by specifying the concrete document? The provisions of the APIA are clear with regard to that question. Under § 1, point 1 of the APIA, everyone has the right to examine the original document. He/she can request a paper copy of the same document (Art. 26, (1), 3). The provision of Art. 10 of the APIA defines as official public information the information, which is contained in the acts of the state or local self-government bodies. The acts in principle are documents. The accumulated practice of the SAC concerning the issue was cited.

Court Decision:

With a Decision No. 8969 as of July 24, 2008, a five-member panel of the SAC repealed the decision of the lower instance court, as well as the refusal of the Minister of Culture to provide access to public information to Yurii Valkovski with regard to a copy of an order for the assignment of a working group to draft a Regulation as required by Art. 5, Para. 4 of the Protection and Development of Culture Act. The court assumed a broad interpretation of the expression „description of requested information“ and thus stopped the wrong court practice according to which if an initial request for access to information

was formulated as a request for access to a document, it would not be considered as a request for access to public information under the meaning of Art. 25, Para. 1, Item 2 of the APIA. In their judgment, the justices pointed out that the lower instance court had wrongly assumed that the formulation of the initial request - for access to a copy of an order - did not constitute a request for access to public information in compliance with the Art. 25, Para. 1, Item 2 of the APIA. Such a conclusion contradicted the provision of Art. 26, Para. 1, Item 3 of the APIA, according to which one of the forms of provision of access to public information was a paper copy. Literally, the latter gave sufficient grounds to assume that a request for the provision of a copy of an order was a valid request under the provision of Art. 24 of the APIA for access to public information - namely, a copy of the specified order. Furthermore, the title of the order - for appointing a working group to draft a Regulation, stipulated by Art. 5, Para. 4 of the Protection and Development of Culture Act - contained the description of the requested information which should be contained in the specified form - a copy of the order.

10. WWF - World Wide Fund, Bulgaria vs. Regional Inspectorate for Environment and Water - Sofia

First Instance Court - administrative case No. 6846/08, Administrative Court - Sofia City, First Division, 9th Panel

Request:

On October 7, 2008, the Association *WWF-World Wild Fund, Conservation in the Danube-Carpathian, Bulgaria* submitted a request for access to information to the Director of the Regional Inspectorate for Environment and Water (RIEW) - Sofia. The association demanded access to a copy of the Terms of Reference (TOR) for the preparation of a Detailed Development Plan (DDP) for the construction of a ski-tourist area „Aleko,“ developed by the „Vitosha Ski“ JSC under the procedures of the Territory Planning Act.

Refusal:

With a Decision as of October 20, 2008, the Director of the RIEW refused to provide access to the requested information since it did not fall within the scope of the provision of Art. 19, Item 1-6 of the Environmental Protection Act. Besides, it was stated that the requested information did not constitute public information as meant under the provision of Art. 2, Para. 1 of the Access to Public Information Act. Also, the TOR for the preparation of the DDP was part of an administrative procedure but not a final act of the administrative body in charge of that procedure.

Complaint:

With the legal help of AIP, the refusal was appealed before the Administrative Court - Sofia City. The complaint stated that access to information related to the environment as meant under the provision of Art. 19 of the EPA was requested in the particular case since the TOR for the preparation of the DDP for the construction of a ski-tourist area was a plan that would impact or would be likely to impact the components of the environment as stipulated by Art. 19, Item 2 of the EPA. Thus, the substantive provisions of Chapter II of the EPA *Environmental Information* should be applied. Furthermore, the procedure provided by Chapter III of the APIA *Procedure for the provision of access to public information* should be applied for the provision of access to environmental information as stipulated by Art. 26, Para. 1 of the EPA. That was why in cases when access to environmental information was requested, the grounds for refusal stipulated by Art. 20, Para. 1 of the EPA should be applied, rather than those stipulated by Art. 37

of the APIA. It was also noted that the statement made by the Director of the RIEW referred to the exemption from the right of access to information stipulated under Art. 13, Para. 2 of the APIA which was related to the so called preparatory documents. A refusal grounded as such was unlawful since in the cases of environmental information requests, the grounds for refusal stipulated by Art. 20, Para. 1 of the EPA should be applied. No ground for refusal similar to that provided by Art. 13, Para. 2, Item 1 of the APIA was found among the listed by Art. 20, Para. 1 of the EPA which made the former inapplicable when the requested information was related to the environment.

Developments in the Court of First Instance:

The case was heard in an open court session and scheduled for judgment.

Court Decision:

With a Decision as of March 2009, a panel of the ACSC repealed the refusal of the Director of the RIEW and turned the request back for reconsideration in line with the court instructions for the interpretation and application of the law. The court found that the right to favorable and healthy environment (Art. 55 of the Constitution) was directly connected with the right of the citizens to be informed. The judgment stated that the information about the TOR was undoubtedly environmental information and the decision for its provision should have been made on the base of the EPA which was a special law with regard to the APIA. The refusal was not only unlawful but also contradicted the purpose of the law and mostly the main informational functions of the RIEW to provide environmental information to the public, to organize the process of citizens' access to environmental information and sustainable usage of natural resources.

The decision has not yet come into force.

**ACCESS TO INFORMATION
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Report

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ACCESS TO INFORMATION PROGRAMME



Access to Information Programme was founded on October 23, 1996 in Sofia by journalists, lawyers, sociologists and economists determined to contribute to the establishment of informed public opinion.

Access to Information Programme Foundation is a member of the International Freedom of Information Advocates Network (FOIA Net).

In 2005, the Atlas Economic Research Foundation recognized Access to Information Programme with two of the most prestigious awards for establishing and promoting the principles of democracy and market economy: *The Templeton Freedom Prize for Ethics and Values* and *The Templeton Freedom Award for Institute Excellence*.

Goals:

AIP facilitates the exercise of the right of access to information.

AIP encourages individual and public demand for government held information through civic education in the freedom of information area.

AIP works for the increase of transparency in the work of public institutions at central and local level.

Activities:

Monitoring of legislation and practices related to access to information.

Provision of legal help in cases of information seeking.

Trainings in the access to information area.

Public awareness campaign on access to information.

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