



### **Advocacy for Access to Information – Achievements and Challenges** **Summary of speeches and discussions**

Leading organizations in the access to information area from 12 countries (Armenia, Bulgaria, Canada, Cyprus, Georgia, Macedonia, Poland, Russia, Romania, the Czech Republic, Spain, UK) shared achievements and discussed the challenges for the freedom of information advocates during a two days conference held by [Access to Information Programme](#) on 15-16 June 2012 in Sofia, Bulgaria.

The conference [Advocacy for Access to Information – Achievements and Challenges](#) was dedicated to the 15 years experience accumulated by Access to Information Programme in the advocacy for freedom of information in Bulgaria and abroad.

Part of the participating organizations are founders of the [International Freedom of Information Advocates Network](#) – established on September 28, ten years ago during a similar conference held by Access to Information Programme in Bulgaria.

The participants in the conference outlined the **ACHIEVEMENTS** reached as a result of the advocacy work in the field of access to information during the past years.

#### **In the field of access to information legislation**

- During the past 15 years, the right of access to information has been constitutionally granted as a human right in many countries and legal guarantees were established in a number of states;
- During the past 15 years, access to/freedom of information laws were adopted in 90 countries with the active advocacy work of the civil society;
- There has also been a massive growth in the number of civil society organizations working on this key right globally;
- International recognition of the right to information was achieved – in 2006 by the Inter-American Court of Human Rights; in 2009 by the European Court of Human Rights; in 2009 with the Lisbon Treaty – constitutional recognition of the right at an EU level; in 2011 by the UN Human Rights Committee;
- The first international legally binding instrument was adopted by the Council of Europe – the Convention on Access to Official Documents;
- The first Right to Information Rating was launched ranking access to information laws. The RTI Rating opens the opportunity for further advocacy for improving the legislation.

#### **In the area of monitoring of the law implementation and proactive publication of information by state institutions**

##### **Monitoring of the access to information law implementation is a powerful advocacy tool for improving the access to information state**

During the past 15 years, different methodologies were developed and applied for the monitoring of the access to information laws implementation on a national and global level.

Currently, the monitoring of the online disclosure of public information has become especially important. Most of the national access to information laws set forth obligations for proactive



publication of common categories of information and information resources. Along with the development and use of the information technologies, this proactive publication gains momentum.

- The results of the monitoring of the proactive publication:
  - Serve to evaluate the activities of the obliged bodies and to create pressure on poor performers;
  - Allow for the creation of ratings;
  - Create competition between the obliged bodies;
  - Push for respect to the obligations by the responsible officials;
  - Bring to real cooperation between independent experts/advocates and responsible officials in the proactive publication of information which results in enhanced openness;
  - Are easy to cover by the media.
- Civil society also has a role in the proactive publication by launching Internet portals collecting already published information.

### **The right of access to information is an important prerequisite for civil participation and campaigns for better public policies**

- The right of access to information is a successful tool for achieving real participation in the discussion and adoption of important political decisions, as well as for ensuring transparency of decisions taken;
- Access to information can facilitate changes in policies and decisions which are not in public interest;
- The exercise of the right of access to information in campaigns and public participation leads to changes in the practices of the institutions in the direction of opening to the citizens.

### **The benefit of the access to information law for journalistic investigations has been more and more comprehended**

In the countries which have adopted access to information laws during the past 15 years, the use of the procedures of the law by journalists has gone through several phases:

- Using the access to information law, the journalists act in public interest, they strengthen their position as watchdogs, and thus increase the trust in journalist reporting and involve citizens in public debates;
- Tactics for obtaining information and avoiding litigation have been developed – collecting information from different sources, cross-checking with public registers, re-formulation of requests, etc.
- The referral to information/documents obtained under the access to information law or from public registers has become the best protection against libel and defamation suits.

### **The advocacy on the base of legal help and litigation resulted in**

- Broad interpretation of the definition of public information;
- Narrow interpretation of the restrictions to the free access to information;
- The application of the harm test and the overriding public interest test;
- Silent refusals are subject to judicial review.



### **As a result of the raising awareness campaigns on the right to information**

- Active national coalitions of nongovernmental organizations, journalists and citizens were established;
- The percentage of those aware of their right of access to information and active in exercising this right has increased globally;
- The International Freedom of Information Advocates Network has expanded massively to over 200 organizational members;
- The popularity and significance of the International Right to Know Day – 28 September, has increased. It is celebrated by NGOs, Access to Information Commissions and Commissioners, and state institutions all over the world, and has been formally recognized in many countries.

### **Open Government Partnership Initiative**

- Open Government Partnership is built upon three main pillars – transparency, civil participation, accountability, with the use of the new technologies for their achievement as a cross-cutting theme;
- The initiative aims to impose and develop these principles globally, and to expand the space for these positive social outcomes;
- Currently 55 countries have joined;
- 90 countries have effective laws on access to/freedom of information, which give a solid foundation for the development of the Initiative;
- Accumulated knowledge and expertise by civil society organizations with experience in advocacy for access to information, transparency, and accountability;

**Despite the positive results and the number of achievements, there are still CHALLENGES before the access to information advocates.**

### **In the area of the access to information legislation**

- An extensive campaign is necessary for the ratification of the Convention on Access to Official Documents in order for it to come into force;
- The attempts to decrease the access to information standards both on national and international level still continue;
- Too many laws have broad regimes of exceptions;
- Not all access to information laws have in their scope the legislative and the judicial bodies;
- The lack of transparency in the legislative process and decision making inside government is still a persisting problem.

### **In the proactive publication of information by state institutions**

- Advocates will have to work for the further development of the legal framework for online proactive publication of information;
- Regarding the monitoring of proactive publication, there is a field for cooperation and sharing of methodologies;
- Within the evaluation of the online publication, special focus should be given to:
  - Is the published information easy to find;



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- Accessibility of the published information – i.e. complex issues, such as budget data, to be presented in understandable forms;
- Is the information up-to-date;
- Is it machine-readable, does it allow for reuse or other use;
- Is the published information adapted to the needs of people with disabilities.

### **The right of access to information is an important prerequisite for civil participation and campaigns for better public policies**

- Public participation in the discussion of draft legal acts and public policies sets new requirements for the timely and complete publication of the documents subject to discussion;
- The monitoring on public policies by interested groups and NGOs requires access to information about the way in which decisions have been taken;
- The mentality of the administration/authorities to “protect” the information and to hide behind formalities are still obstacles to the free access to information and hampers civil participation in the discussion of policies;
- A number of state and municipal companies are still out of the scope of the bodies obliged to provide information which results in difficult obtaining of information from them.

### **Access to information for journalistic investigations**

- To develop/raise the understanding about the benefits of using the access to information law by journalists;
- To use open data for revealing maladministration and for doing investigations;
- Professional journalism should use the right of access to information and oppose the PR approach and the copy-paste journalism;
- Avoiding litigation by using successful tactics for obtaining information.

### **Problems arising from access to information legal help and litigation**

- Duration and costs of the litigation;
- The necessity for expert capacity in order to litigate;
- Inconsistent practices in balancing the right to information and the protection of personal data, classified information and preparatory documents;
- Lack of sanctions for non-compliance with the access to information law;
- Some countries lack administrative oversight body, which could substantially reduce litigation.

### **Raising awareness campaigns**

- There is a permanent need for raising awareness since the civil activity is not a constant;
- Freedom of Information Advocates should be flexible and respond to the changing milieu, the needs and the interests of the citizens, and use the new technologies to increase the scope of their campaigns;
- Raising awareness campaigns in regions going through reconciliation– access to information should get into the agenda of the government, the politicians, and the society;
- Increasing the scope and the effect of the Right to Know Day.



### **Open Government Partnership Initiative**

- The focus of the national action plans is currently on the electronic government and open data, rather than on the access to information and civil participation;
- Some national action plans do not contain commitments to the improvement of the access to information practices and/or the legislation;
- It is necessary that national nongovernmental organizations with accumulated experience and other actors take part in the monitoring and evaluation of the implementation of the national action plans;
- It is necessary that Access to Information Advocates and Open Data Advocates cooperate;
- There is a constant need for resources for the monitoring and evaluation of the implementation of the national action plans;
- A lot of governments use the Initiative only as an image lifter before the society. The promises they give in the national plans are often older commitments, too broadly formulated or almost insignificant, which undermines their participation and the Initiative as a whole.
- It is still unclear how the Independent Expert Panel and the Independent Reporting Mechanism will be settled and how they will function.

### **Participating organizations:**

[Access to Information Programme, Bulgaria](#)

[Access Info Europe](#)

[Association of Leaders of Local Civic Groups \(SLLGO\), Poland](#)

[Centre for Law and Democracy](#)

Codru Vrabie, Member of the Steering Committee of the [Freedom of Information Advocates Network](#)

[Cyprus EU Association](#)

[Foundation Open Society Macedonia](#)

[Freedom of Information Foundation, Russia](#)

[Freedom of Information Center of Armenia](#)

[Institute for Development of Freedom of Information, Georgia](#)

[Open society p.b.a., the Czech Republic](#)

[Statewatch](#)