

THE CURRENT SITUATION OF THE ACCESS TO PUBLIC INFORMATION IN BULGARIA 2001



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Report

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INTRODUCTION

The Access to Information Programme Foundation is presenting its second Report on the status of the access to information in Bulgaria.

For those readers who follow the development of legislation in the field of the freedom of information and its restrictions, we have tried to outline the changes in this sphere.

For those who are particularly interested in the practices related to the access to information, we have tried to outline the findings of the systematic monitoring of the implementation of Access to Public Information Act (APIA).

2001 was quite dynamic with regard to the access to information at the European and global level. On 30 May 2001, the European Parliament and the European Council adopted Regulation No. 1049/2001¹ on the Public Access to the Documents of the European Parliament, the Council and the Commission.

At various forums, representatives of the Council of Europe presented the draft of the new recommendation² in the field of the access to information, which was adopted by the Council of Ministers on 21 February 2001.

Romania and Bosnia and Herzegovina adopted laws on the access to information. Article 19 disseminated a Model Law³ on the access to information. A series of regional working meetings on the access to information in Abudja, Nigeria and Bucharest, Romania pointed to the emergence of NGO networks in this sphere.

The winter issue of the Regional Newsletter of the NGOs in CEE and NIS – NGO News of Freedom House was dedicated to the access to information.

The experience in the application of the Access to Public Information Act in Bulgaria is continuously being enriched. The legislative regulation of restrictions is developing

¹ The text is available at: http://europa.eu.int/comm/secretariat_general/sgc/acc_doc/docs/1049EN.pdf

² The translation of the text of the Recommendation can be found at: http://www.aip-bg.org/eurolaw_bg.htm

³ The text can be found at: <http://www.article19.org/docimages/1112.htm>

as well. The Personal Data Protection Act⁴ was adopted by the National Assembly and came into force on 1 January 2002. The Classified Information Protection Act was adopted at first reading⁵.

Draft amendments to the Access to Public Information Act were submitted to Parliament⁶. Without changing the structure of the existing law, the new bill suggests clearer wording of some basic concepts. It introduces the triple test of restrictions and provides for administrative control of decisions on the applications for access to public information. The bill is currently being discussed in the relevant Parliamentary Committees.

The objective of this Report is to outline in a systematic manner the changes in the legal framework of the access to information in Bulgaria in 2001.

The systematic presentation of the experience gained so far leads to some conclusions on the overall condition of the access to information in Bulgaria. The recommendations in the first part of this Report are part and parcel of the practical approach of the Access to Information Programme in its effort to promote the exercise of the right of access to information. Hopefully these recommendations will be taken into consideration in the choice of policies for improvement of the access to information in this country.

Gergana Jouleva, Ph.D

⁴ The text can be found at: <http://www.aip-bg.org/library/laws/zzld.htm>

⁵ The debate on the bill can be followed at: <http://www.parliament.bg/kns/39NS/diskusia.htm>

⁶ Materials on the bill can be found at: http://www.aip-bg.org/projlaw_bg.htm

RECOMMENDATIONS

1. Legislation

1.1. The second reading of **the Classified Information Protection Act** will take place soon.

The new law will regulate yet another restriction of the right to seek, obtain and disseminate information, which is enshrined in Art. 41 of the Constitution of the Republic of Bulgaria.

Pursuant to the Constitution, Judgement No. 7/1996⁷ of the Constitutional Court and the international agreements in the field of human rights, the freedom of each person to seek, obtain and disseminate information underpins the democratic process. This freedom can be restricted only in some specific cases with appropriate checks and balances.

Although practices follow some old rules familiar only to the people working with classified information, we would recommend that the Members of Parliament take into consideration the international standards in this sphere as follows:

- The right to information is the principle, whereas the protection of the information related to the interests of national security and public order is the exception to the rule;
- The law should contain clear, comprehensible and unambiguous provisions on the range of data, the free access to which should be restricted in order to protect the interests of national security and public order;

⁷ The text of the Judgement can be found at: http://www.aip-bg.org/documents/constjud_bg.htm

- Independent judicial control should be provided to ensure compliance of classification with the foregoing objective.

1.2. Amendments to the Access to Public Information Act

On 21 February 2001, the Committee of Ministers of the Member States of the Council of Europe adopted Recommendation R(2000)2 on the access to official documents. As is known, the Recommendation provides for the minimum requirements that Member States should meet in their national legislation and practices.

In December 2001, an amending bill to APIA was submitted to the 39th National Assembly. The proposed provisions comply with some concepts and principles set out in the new Recommendation.

The adoption of the bill will give an opportunity to improve the legal framework of the access to information in Bulgaria.

We recommend that the Members of Parliament take into consideration the new Recommendation of the Council of Europe and adopt the proposed amendments.

1.3. Adoption a new Archives Act

AIP made that recommendation also in its 2000 Report. The provisions of a new Archives Act should comply with Recommendation R(2002)13 of the Council of Europe on the European policy concerning the access to public records.

2. Strengthen the administrative capacity of institutions for application of APIA

2.1. Officials under APIA perform functions that differ from those of the spokespersons of PR departments of the respective institutions. Experience shows that they should not belong to the political office of the head of the institution. We recommend that they have the status of civil servants, which will enhance the stability

of practices and promote the preparedness of the very institution that officials under APIA represent.

2.2. Special training of these officials is necessary. The findings of the survey conducted by AIP in October 2001 reveal that only 16 % of the officials under APIA have been exposed to special training in this sphere. The officials, on their part, are aware of this need.

3. Special efforts to create conditions for easier exercise of the rights under APIA

3.1. Informing the general public of its rights under APIA

Citizens should be aware of their rights in order to exercise them. Measures should be undertaken to inform citizens of their rights in cooperation with non-governmental organisations. The most appropriate place for dissemination of awareness materials is the place where applications are received.

3.2. Maintenance of updated registers of documents

Institutions should maintain records or registers of the documents they store in order to improve the access to public information. These records or registers should be accessible to the citizens. This will facilitate the exercise of the right to access and will enhance the effectiveness of the public administration, as the experience of other countries comes to prove.

3.3. Places for reading and review of documents

The institutions that have obligations under APIA should designate appropriate places for contact with citizens and making documents available to them. Many institutions like Parliament and a number of local governments have already established

information centres that are or can become places for reading and review of information.

Legal Framework

Last year, important steps were undertaken in the legislative regulation of the right of access to information and its restrictions.

With regard to the access to information, some important amendments were introduced in the Access to the Documents of the Former State Security Service Act. APIA provided for the adoption of secondary legislation to facilitate its implementation. As well as the internal orders of individual institutions⁸, specifying the procedure of making documents available, a regulation was adopted on the access to information concerning privatisation deals.

The Personal Data Protection Act was adopted in 2001. It was a necessary step towards the comprehensive regulation of the right of access to information and its restrictions because APIA regulated only the procedure of making information available without any provisions on the restrictions. Last year saw also the adoption of the Public Internal and Financial Control Act (PIFCA), regulating *inter alia* the administrative secret concerning audit statements of findings and reports of PIFC authorities.

⁸ Order of the Prime Minister dated 5 December 2000 on the information made available within the Council of Ministers.
Letter No. 24 - 0000 - 42 of 15 May 2001 concerning the information provided by PIFC authorities.

Outline of the Legal Framework of the Access to Information and Its Restrictions

Legislation Related to the Right of Access to Information

I. Amendments to the Access to the Documents of the Former State Security Service and the Former Intelligence Service of the General Staff Act⁹

The law regulates the access to, disclosure and use of information held in the documents of the former State Security Service and the former Intelligence Service of the General Staff, including their legal predecessors and successors over the period from 9 September 1944 to 25 February 1991.

In March 2001, substantial amendments to the law were passed. They referred to the procedures for ascertaining the affiliation of persons to the former state security services and expanded the scope of persons subject to verification (the previous wording of the law provided for mandatory verification only with regard to top public officials). Two new Commissions were established:

- Commission for the identification of documents and ascertaining of affiliation to the former State Security Service; and
- Commission for disclosure of the affiliation to the former State Security Service.

After the effective date of the amendments to the law, the Constitutional Court was seized with a request of 54 Members of Parliament from the 38th National Assembly to proclaim the whole Amending Act to the Access to the Documents of the Former State Security Service Act¹⁰ unconstitutional. The presenters of the request to proclaim the amendments to the law unconstitutional claimed that there existed

⁹ Amendments to the title, The State Gazette, No. 24 of 2001; Promulgated in The State Gazette, No. 63 of 6 August 1997; Judgement No. 10 of 22 September 1997 of the Constitutional Court of the Republic of Bulgaria, No. 89 of 7 October 1997; Amended, No. 69 of 3 August 1999 effective as from 3 August 1999; Amended, No. 24 of 13 March 2001; Judgement No. 14 of 30 May 2001 of the Constitutional Court of the Republic of Bulgaria – No. 52 of 8 June 2001.

¹⁰ Title amended into the Access to the Documents of the Former State Security Service and the Former

conflict with the provisions of Art. 4, para 1, Art. 87, para 1 and Art. 88, para 1 of the Constitution. The principles of the rule of law, the separation of powers and the right of citizens to protection of their honour, dignity and good name were allegedly violated.

When examining the right of citizens to protection of their honour, dignity and good name, the Constitutional Court noted that this right was not absolute¹¹. Hence when it competed with another constitutional right, a proper balance had to be struck. There was a competing right of citizens in that particular case:

“The public disclosure of persons working at the special security services (State Security Service, Intelligence Service of the General Staff) of the totalitarian state is an expression of the right of individual citizens and the public at large to obtain information.”

At the same time, when examining the balance between competing rights, one should take into consideration also justice as the underpinning principle of law, making it imperative for the general public to know who served repressive authorities and who were the abettors in the persecution and reprisals of thousands of innocent people¹².

II. Regulation on the Terms and Conditions for Disclosure of Information Constituting Administrative Secret in the Transactions under the Re-organisation and Privatisation of State-owned and Municipal Enterprises Act (the Privatisation Act)¹³

The Regulation governs the terms and conditions for disclosure of information related to privatisation deals under the Privatisation Act to officials, on the one hand, and the disclosure of and access to such information granted to citizens, on the other hand. The Regulation gives an exhaustive list of the documents and information, with regard to which the access to information is restricted on the grounds of being an administrative secret. At the same time, in accordance with the international

Intelligence Service of the General Staff Act.

¹¹ Judgement No. 14 of 30 May 2001 on Constitutional Case No. 7/2001 of the Constitutional Court of the Republic of Bulgaria, The State Gazette, No. 52 of 2001.

¹² It was only part of the provisions of Art. 3, para 2, subpara 1, item (f) on the disclosure of the names of collaborators with pending or closed preliminary criminal proceedings that was proclaimed unconstitutional. The rest of the request was not granted.

¹³ Adopted with Decree No. 95 of 11 April 2001 of the Council of Ministers; promulgated in The State

standards, the statutory principles of freedom of information, and the declared policy of transparency of the privatisation, a short time limit is explicitly provided for that information to be protected as an administrative secret, i.e. until the time of completion of the privatisation procedure. Afterwards, all documents and other materials are subject to access under the Access to Public Information Act.

With a view to ensure openness of the privatisation process, the authority under Art. 3 of the Privatisation Act is entitled to disclose documents and information constituting administrative secret within the meaning of the Regulation at its own initiative as well. The documents and information constituting an administrative secret are disclosed at a decision of the authority under Art. 3 of the Privatisation Act with reasons attached thereof¹⁴.

Legislation Related to the Restriction of the Access to Information

I. Personal Data Protection Act¹⁵

The Personal Data Protection Act was adopted at the end of 2001. It was for the first time that the national legislation regulated matters related to the protection of personal data of individuals¹⁶. The adoption of the law was a necessary step on the way to Bulgaria's accession to the European Union¹⁷. Besides, Bulgaria's membership of the Council of Europe called for ratification of the Convention on the Protection of Persons in Connection with the Automatic Processing of Personal Data ("the Convention"), which in its turn required the existence of national legislation on the personal data protection as a condition precedent.

Gazette, No. 39 of 18 April 2001; effective date 18 April 2001.

¹⁴ Where the authority under Art. 3 of the Privatisation Act is the Privatisation Agency, the latter discloses documents and information at a decision of its Executive Board. Where the relevant authority is the Municipal Council, the latter discloses documents and information at its own decision.

¹⁵ Promulgated in The State Gazette, No. 1 of 4 January 2002; effective date 1 January 2002.

¹⁶ The legal doctrine, legislation and practices of some countries and some international documents use the term "privacy", meaning the right to "inviolability of private life" (Cf. Art. 1 of the Convention on the Protection of Persons in Connection with the Automatic Processing of Personal Data and Art. 1, para 2 of EC Directive 95/46). This right is partially covered by Art. 32 of the Bulgarian Constitution. The personal data protection is considered to be an integral part of this right.

¹⁷ The standards of the *acquis communautaire* in this respect are set out in EC Directive 95/46 ("the Directive").

The right to personal data protection, referred to also as “right to information self-determination”¹⁸, usually contains the following elements:

1. The personal data of any individual may be processed (and also collected) only with his or her consent or where this is prescribed by law and the purpose of such processing is determined in advance;
2. Any individual is entitled to demand correction of errors in his or her personal data subject to processing;
3. Any individual is entitled to know who processes, when and what personal data are processed and for what purposes;
4. Personal data may be disclosed to a third party only when prescribed by law or with the consent of the respective individual.

The Bulgarian law covers all these aspects. The persons obligated to meet these requirements in the processing of personal data are not only central and local government institutions but also any other person holding a database (information array) with personal data structured by more than one single criterion. This category includes a number of companies working with a multitude of customers and generating such databases like banks, insurance companies, pension funds, etc.

The law provides for higher level of protection of some types of personal data as follows: data revealing racial or ethnic origin, political or religious affiliation, health, sexual life, and beliefs. Their processing may take place only with the consent of the individual concerned given in writing, except for the cases explicitly mentioned in the law.

However, the law has some weaknesses. Since personal data constitute information, the free access to which is normally restricted, the law had to contain clear and accurate provisions on the cases of possible conflict with the Access to Public Information Act. Furthermore, the definition of the term “personal data” is rather inaccurate, thus expanding its scope inappropriately. The term “personal data” includes information related to the performance of functions of government bodies, as

¹⁸ See, for example, Judgement No. 15 of 1991 of the Constitutional Court of Hungary.

well as the data related to the participation in management or supervisory bodies of legal entities¹⁹.

The too broad scope of the term “personal data” obviously contravenes the purpose of the law proclaimed in Art. 1, para 2, i.e. to protect privacy. In some cases, there is obvious conflict with other statutory provisions as well, e.g. the information on the participation in management bodies of legal entities is recorded in the commercial registers of regional courts pursuant to the Commercial Code and the Civil Procedure Code. In the context of the right of access to public information enshrined in Art. 41 of the Constitution and APIA and its natural objectives to ensure accountability of the authorities before the citizens and informed choice of the voters, as well as the effective fight against corruption, it is inconceivable for the scope of the Personal Data Protection Act to include data of persons involved in the performance of functions of government authorities.

Pursuant to **Art. 6, para 1** of the Act, a Personal Data Protection Commission is set up to protect persons in the processing of their personal data and the access to such information and to monitor the observance of the law. The members of the Commission and its chairperson are elected by the National Assembly at the proposal of the Council of Ministers for a five-year term of office. They may seek only one re-election.

The Commission will keep a register of personal data administrators. It will inspect them, give opinions and issue permissions in the cases provided by law. The Commission will examine appeals against administrators in connection with any denied access of individuals to their personal data, etc.

II. Public Internal Financial Control Act (PIFCA)²⁰

The law regulates the scope and conduct of public internal financial control and the organisation and powers of the authorities exercising it. The public internal financial control encompasses the financial activities of:

¹⁹ The problem is further aggravated by the concept of the law-makers that any information disclosing the “public” identity of individuals is also part of the personal data. For the sake of comparison, we should note that the term used in the Convention and the Directive is “social” rather than “public”.

²⁰ Promulgated in The State Gazette, No. 92 of 10 November 2000; effective date 1 January 2001.

- Holders of budget credits from the central government budget and holders of resources under EU programmes;
- Holders of extra-budgetary accounts and funds under the State Budget Act of the Republic of Bulgaria for the respective year;
- Holders of budget credits from local government budgets and funds;
- The State Social Security Scheme, the Vocational Training and Unemployment Fund, the National Health Insurance Fund, etc.

The public internal financial control relates also to the activities of persons financed from the central or local government budgets or EU programmes with regard to the spending of such resources.

Since the new law regulates financial audits (similar to those performed under the old State Financial Control Act) of the above mentioned budget spending units, the general public and each citizen take justified and legitimate interest in the information generated by the PIFC authorities. Instead of expanding the right of citizens for access to such information, which was guaranteed in a certain measure by the old State Financial Control Act, the new PIFCA has introduced a ban on the PIFC authorities to disclose information. The provisions of Art. 3, para 4 and Art. 12, para 3 of PIFCA introduce an obligation for non-disclosure of administrative secrets and non-disclosure and non-dissemination of information that has become known in the course of or in connection with the discharge of official duties, unless disclosure is required by law. The lack of a definition of the term “administrative secret” and the purpose of its non-disclosure, as well as the ban on the disclosure of any information “that has become known” is an obstacle even to the disclosure of audit findings after the audit is completed at the discretion of the relevant regional director, which existed in the old law. The existing PIFCA generates substantial doubts as to the constitutionality of the provisions of Art. 3, para 4 and Art. 12, para 3.

Bills

Amending Bill to the Access to Public Information Act

Right from the outset, APIA did not comply with all international standards in this sphere and the interpretation of Arts. 39 to 41 of the Constitution given in Judgement No. 7 of the Constitutional Court on Constitutional Case No. 1 of 1996. No **balance of interests** was provided for in making the decision whether to grant or refuse access to information. No independent body was established to monitor and supervise the implementation of the law.

The information about the implementation of APIA from its effective date to November 2001 makes it clear that substantial steps are needed for preparing the public administration to fulfill its statutory obligations. At the same time, APIA contains some provisions that diverge from its purpose and some ambiguous wording. Certain gaps exist that affect the proper implementation of the law, i.e. no opportunities for administrative appeals before higher-standing administrative bodies, lack of explicit provisions on tacit refusals to grant access to information (the information on the practical problems arising out of these gaps has been collected as a result of the legal assistance and legal defence in litigation provided by the Access to Information Programme).

The amending bill to the Access to Public Information Act submitted by a group of Members of Parliament is aimed at adjusting the legislation to the international standards, re-defining ambiguous terms and filling in the gaps of the existing law.

The amendments provide for:

1. Re-definition of the term “public information” within the meaning of the law;
2. Expansion of the scope of officials under APIA by adding the heads of the regional subdivisions of central government authorities;
3. Removal of the media as persons obligated to provide access to information under APIA;
4. Amendment to Art. 13, para 2, providing for the opportunity to restrict the access to certain types of information related to the

drafting of administrative instruments. The amendment introduces a clear and short time limit for this restriction until the adoption of the final version of the draft;

5. Introduction of a “balance of interests”, which is a major international standard. It provides that the right of citizens to access cannot be restricted on purely formal grounds, i.e. when this is prescribed by law. The law has to ensure the disclosure of certain types of information even in such cases provided that the public interest in disclosing the information prevails over the interest in its non-disclosure;
6. Opportunity for appeal against tacit refusals;
7. Introduction of an opportunity for administrative appeal of refusals to grant access to information.

Environmental Protection Bill²¹

Two environmental protection bills have been submitted to Parliament²². These bills regulate the citizens’ right of access to environmental information²³. These provisions are included in Chapter II “Environmental Information” of both bills.

The new regulation will emerge in the context of the already existing Access to Public Information Act. The special provisions on the right of access to environmental information in the Environmental Protection Act should lead to better arrangements than those provided under APIA. However, the two bills that are not substantially different from one another fail to achieve this objective.

Where a general law and a special law regulate the same matters, the special law prevails (ad argumentum of Art. 11, para 2 of the Legal Instruments Act). Hence the Environmental Protection Act will apply to environmental information but its new wording is less favourable than the provisions of APIA.

²¹ More information on the bill can be found at: http://www.aip-bg.org/projlaw_bg.htm.

²² A government bill and a private bill of Members of Parliament from the UDF.

²³ The guaranteed right of each citizen to access to environmental information is a major EU standard. Besides, such a guarantee has been in existence under the Bulgarian laws since 1991 (Environmental Protection Act).

The environmental protection bills aggravate the existing arrangements by means of:

- Introducing additional restrictions for the right of access to information;
- Lack of any requirement for the restrictions of the right of access to information to be prescribed by law;
- Reducing the number of persons obligated to provide access to information as compared to Art. 12, para 1 of the existing Environmental Protection Act²⁴;
- Insufficient regulation of the proactive obligation of government authorities, individuals and legal entities to provide access to information in comparison to the existing Environmental Protection Act;
- Lack of provisions on the subsidiary application of APIA.

Bills Related to the Restriction of the Right of Access to Information

Classified Information Protection Bill

The earliest draft of the bill was prepared, submitted and approved by the Council of Ministers in May 2001. In the wake of the 2001 parliamentary elections, the new Parliament received two bills on the protection of classified information²⁵. Both were amended after the first reading so that to adjust them to the existing standards. The final version should reflect the following principles:

1. The main objective of such a law should be to give a clear definition of the information, the free access to which has to be restricted because of the protection of national security and public order, while guaranteeing the right of citizens to information;
2. Information has to be classified on the basis of the triple test, i.e. the classification should be prescribed by law, it should be proportionate to the objectives of the law, and its need for the democratic society should be proven;

²⁴ The draft Directive of the European Parliament and the Council for Public Access to Environmental Information COM (2000) 402 provides for a broader scope of persons obligated to provide access to information.

3. The law has to prescribe clear competences as to the classification process;
4. The law has to provide clear classification procedure, including:
 - observance of the procedural rules and the substantive law;
 - assessment of possible material damage from the disclosure of information;
 - issuance of a classification statement.
5. Classification has to pertain only to a specific document, explicitly providing for partial access, if possible;
6. Classified documents have to be registered in public records;
7. The list of the categories of information subject to possible classification as a state secret has to be thoroughly reviewed, reduced and specified in size.

After its promulgation in The State Gazette, No. 55 of 7 July 2000, the Access to Public Information Act introduced certain obligations of government institutions and regulated the exercise of the citizens' right of access to information. The experience of other countries comes to show that the successful implementation of the law calls for continued efforts to create conditions for exercising the rights provided by the law.

²⁵ A private bill of Members of Parliament from the UDF and a government bill.

Conditions for the Application of the Law – Findings of the Sociological Survey²⁶

The objective of the survey *Fulfilment of the Obligations under APIA of the Bodies of Executive Power* was to outline the condition, preparedness and problems in the course of the implementation of APIA.

The survey covered all central bodies of executive power and their regional subdivisions, as set out in the Public Administration Act and enumerated in the register of administrative structures. As well as the bodies of central government, the survey covers the 100 largest Bulgarian municipalities out of a total of 262. The reason for this manner of selection is that access to public information is more actively sought in relatively larger communities. Still, 50 of the 100 selected municipalities have population of less than 32,000 inhabitants, which gives the opportunity for observations in smaller communities, too.

We approached 363 institutions with the request to be interviewed. There were 303 interviews and in the other cases there was either an implied or an explicit refusal to reply.

Table 1					
Visited Institutions	Community			Total Number of Interviews	Refusals
	Sofia	Regional Centre	Small Town		

²⁶ The full text of the Report *Fulfilment of the Obligations under APIA of the Bodies of Executive Power* can be found at: http://www.aip-bg.org/rep_bg.htm.

Ministries, Government Commissions, Government Agencies, Others	35			17	18
Executive Agencies	22			17	5
Regional Administration	2	26		27	1
Municipal Administration	6	27	72	97	8
Regional Subdivisions of the Executive Power	4	169		145	28
Total				303	60

Interviewers had the task of interviewing the officials designated to provide access to information by the heads of institutions responsible for providing access to information under APIA. Respondents at various positions were interviewed. Most typically, they were directors of institutions (28.6 %), PR officers (26.9 %), general secretaries (15.9 %), other experts (10.3 %) and legal counsels (5.3 %).

One of the obligations of the bodies under Art.15 of APIA is to indicate the name, address, telephone number and working hours of the unit in charge of receiving applications for access to public information. The efforts of our interviewers to identify the unit or officials responsible under APIA seemed more like “investigation” rather than receiving information that the bodies of executive power have the obligation to publish.

In 46.1 % of the institutions, interviewers identified the person responsible under APIA without any special consultations with other administrative officers. The least “investigative” efforts to identify the officials responsible under APIA were needed in the case of regional administrations, and the greatest effort had to be made in the case of central government institutions and executive agencies. As a result of those “investigations”, it took more than one day to identify the respondent in 25.9 % of the cases. It took two visits on the average in order to do the interview. The longest time

was needed in the case of central government institutions (2.33 visits) and the shortest time was needed in the case of municipal administrations (1.63 visits). A total of 34.2 % of all institutions requested clarifications on the questionnaire. That happened most frequently in the case of the regional subdivisions of the executive power (RSEP).

In most cases (60.1 %), respondents did not fill in the questionnaire in the presence of the interviewer. More closed in that respect turned out to be central government bodies and executive agencies (82.4 %), while the most open institutions were municipal administrations (52.7 %). Still, the interviewers gave a positive subjective assessment of the attitude of officials to the interview: 50.9 % said that they had been received very well, 44.0 % reported that they had been received well and only 5.2 % of interviewers stated that the officials had treated them badly.

The Access to Public Information Act provides for the obligation of all heads of administrative structures of the executive power to publish up-to-date information on a regular basis, including a description of the powers and information about the organisation and functions of the administration; a list of the acts issued by the respective body; a description of information arrays and resources; and the name, address, telephone number and working hours of the unit responsible for receiving applications for granting access to information.

Information under Art. 15

The creation of conditions for fulfilment of the obligations of executive power bodies under APIA should be viewed in the overall context of the administrative reform in Bulgaria. One of the legal instruments creating conditions for the implementation of APIA and the other reform-related laws is the Regulation on the Terms and Conditions for Keeping the Register of Administrative Structures and Acts of Executive Power Bodies²⁷. The Regulation determines the content of the register of administrative structures and acts of executive power bodies, the terms and conditions for maintaining the register, and the access to the information therein. It provides information about all bodies of executive power and administrative structures, as well

²⁷ Adopted with Decree No. 89 of the Council of Ministers dated 26 May 2000; promulgated in The State Gazette, No. 44 of 30 May 2000.

as the statutory, general and individual administrative acts within the meaning of Art. 2 of the Administrative Procedures Act²⁸.

Table 2							
Publishing of Information under Art. 15							
	Institution					RSEP	Total
	Central Government Institutions	Executive Agencies	Regional Administration	Municipal Administration			
Description of the structure and functions of the administration	88,2%	85,7%	73,1%	83,0%	73,4%	78,4%	
List of the acts issued by the institution	62,5%	76,9%	41,7%	61,5%	35,4%	48,8%	
Description of information arrays	50,0%	15,4%	30,4%	41,2%	39,5%	38,3%	
Name, address, telephone number and working place of the official responsible for receiving applications	53,3%	30,8%	58,3%	62,2%	57,9%	57,2%	

As is seen in Table 2, institutions have published mostly *descriptions of the structure and functions of the administration* (78.4 %) and least frequently *descriptions of information arrays* (38.3 %). Generally speaking, central government institutions and municipal administrations tend to publish information under Art.15 more often than other institutions. Particularly rare are cases of executive agencies publishing information arrays (15.4 %) and details of contact persons under APIA, whereas regional administrations lag behind in publishing the lists of their acts (41.2 %).

The practices of publishing information under Art. 15 of APIA are directly related to the overall condition and competence of institutions. Institutions which have

²⁸ The register is public and it is available on the Internet – www1.government.bg/ras.

undergone some training in the field of APIA and have designated an official responsible for applications under APIA and maintain registers of applications tend to publish information under Art. 15 more often than the others.

Officials Designated under APIA

A total of 61.4 % of the institutions have designated an official to deal with the applications for granting access to information. Such officials are most frequently designated at regional administrations (70.4 %) and least frequently at ministries (41.2 %). Still, it follows that the designation of such an official is in response to citizens' search for information. Therefore one can observe that officials are designated more often at institutions receiving a greater number of applications for granting access to information (84.4 %).

Officials responsible for the implementation of APIA are typically designated by a written order (53.44 %). It is not uncommon, however, to have them designated at an oral order (26.4 %) or in another manner (20.2 %). "Oral" appointments are most typical for regional administrations (33.3 %) and least typical respectively for central government institutions (16.7 %). Besides, oral appointments generally imply a lower level of organisation of activities under APIA. For example, institutions that keep computer registers of applications have officials designated under APIA with a written order much more frequently (68.8 %). The correlation between the search for information and the administrative preparedness of institutions is confirmed by the findings of the survey. The availability of applications depends on the designation of officials and the manner of their appointment: where no applications are served, respondents believe that the official has been designated to be responsible for applications under APIA with an oral order (27.0 %).

In the context of the limited resources available to institutions, it is understandable for most officials designated under APIA to perform other functions as well. Only 11.4 % of the institutions have appointed officials specially for processing applications under APIA. Naturally, such officials are few at places where no applications have been served (3.0 %). Officials appointed specifically for work with applications under APIA are most typical for ministries (16.7 %) and least typical for municipal administrations (6.1 %). This might be associated with the greater financial

capabilities of central government institutions, although they do not process more applications than local administrations²⁹.

It seems that officials designated under APIA have a lot of other duties and they are not overburdened with applications. This, however, does not imply that these officials make the decision to grant access to information or not when an application is served. The decision is made most frequently by the head of the institution (83.6 %). This is indicative of partial authorisation only. The extent to which designated officials are in a position to make decisions on their own can be interpreted also as a sign of the internal democracy within the institutions. The highest level of discretion exists again at municipal administrations, where designated officials make decisions to grant access to information or not independently in 13.8 % of the cases. This happens most rarely at executive agencies (6.7 %) and RSEP (6.2 %), where the respective head of the institution makes decisions. It is interesting to note that institutions that have not received any applications for granting access to information so far tend to answer more frequently that decisions are (will be) made by the head of the institution (88.0 %). Of course, this could be explained also with the fact that institutions, which have not received any applications so far, have designated officials under APIA less frequently than the other institutions.

The existence of an official designated under APIA is of particular importance for the competent provision of services to citizens. Filling in the questionnaire in the survey was a kind of an exercise for serving an application under APIA. It turned out that respondents occupied very different positions – heads of departments, experts, legal counsels, general secretaries, PR officers, deputy directors, etc. Answers are very different, depending on the position of the respondent. For example, 56.0 % of interviewed directors believe that a question about the reasons for the dismissal of an official will fall within the scope of APIA as compared to only 32.5 % of interviewed legal counsels/experts. Such substantial discrepancies exist with regard to almost all questions, including the questions about the number and nature of applications or the revenues from applications to the institutions. The reason for these discrepancies could be found in the fact that respondents occupy different hierarchical positions in their institutions. Generally, people occupying different positions interpret the law

²⁹ See the number of applications by institutions below.

differently. Therefore a stricter regulation of the obligations under APIA would substantially enhance the level of competence.

Registers of Applications under APIA

Although APIA does not explicitly require maintenance of a register of applications for granting access to information, applications are always registered in a manner prescribed by law (Art. 25, para 3 of APIA).

As mentioned earlier, institutions keeping registers of applications under APIA give more positive interpretations of the law and find themselves in a better organisational condition. A total of 61.8 % of interviewed institutions state that they keep such registers. Most of them are ministries and government commissions (71.4 %) and least are regional administrations (51.9 %). As a whole, registers are more frequently maintained in Sofia (62.2 %) and regional centres (65.1 %) than in smaller towns (52.3 %).

Respondents qualify the maintenance of registers as professional, insofar as registers are kept at all. For instance, 93.2 % of institutions keeping registers enter details about the type of information requested, 89.8 % keep track of decisions to grant access and refusals, 86.6 % record the form of the application, and over 95 % make such entries as date, details of the applicant, etc.¹²

But on the other hand, as is seen in Table 3, 27.6 % of the institutions stating that they keep registers cannot specify the number of applications received. The share of such “wishful” answers is reduced to only 24.2 % for institutions keeping electronic registers.

Table 3		
	Do you keep a register of applications?	Total

¹² See the distribution in section B27 of the Annex.

	Yes	No	
Institutions stating the number of applications, including zero	72.4%	60.0%	67.6%
Institutions failing to state the number of applications, including zero	27.6%	40.0%	32.4%

Only 28.1 % of registers are electronic. Electronic registers are available at 50 % of ministries, government commissions and regional administrations, 22.3 % of RSEP, and 27.3 % of executive agencies. Similar is the level of municipal administrations, where electronic registers of applications under APIA are kept in 27.4 % of the cases.

The availability of electronic equipment is not a sufficient condition in itself for the existence of electronic registers. This is confirmed by the finding of the survey that institutions, which have undergone training in the field of APIA, have twice more computer registers (46.2 %) as compared to those which have not been exposed to training (23.9 %).

Number of Applications under APIA

Officials find it most difficult to answer the seemingly simple question about the number of applications under APIA received over the period from the effective date of the law in July 2000 to September 2001. Even when respondents asked for some more time to re-read the law in order to fill in the questionnaire, they said they were not sure whether the number of applications had to include practices related to the provision of administrative services, complaints, requests, proposals, etc.

The number of institutions, which received applications under APIA from July 2000 to September 2001, is not very clear either. As is seen in Table 4, 38.1 % have not received any applications under APIA, while those that are sure they have received such applications are only 25.4 %. It is a matter of guess-work as to the other 36.5 % to know whether they have received any applications under APIA or not.

Table 4

How many applications for granting access to information under APIA have you received?

	Institution							Total
	Central Government Institutions	Government Agencies	Government Commissions	Executive Agencies	Regional Administration	Municipal Administration	RSEP	
No applications have been received		33.3%	33.3%	41.2%	37.0%	46.9%	34.8%	38.1%
Applications have been received	28.6%	16.7%	33.3%	5.9%	37.0%	26.0%	25.5%	25.4%
No answer	71.4%	50.0%	33.3%	52.9%	25.9%	27.1%	39.7%	36.5%

Unfortunately, there is no way to know the exact total number of applications under APIA. For example, in the case of municipal administrations, reported figures range from two or three (in most cases) to 21,000. Similarly, most central government institutions report that they have received either no applications or one or two applications, while a government commission reports 4,664 applications. Equally substantial discrepancies exist in the countryside. The information from Regional Health Insurance Funds, for example, varies from zero to 1,200 applications. In the case of employment offices, most of them report no applications under APIA, while the few offices that have received applications report numbers within the very wide range from 70 to 11,507 applications.

Somewhat greater consistency can be observed in the numbers reported by regional administrations and Regional Directorates of Interior, although some variations exist there as well. Regional administrations specify four to 48 applications, while RDI report three to 130 applications.

As a whole, the number of applications is not monitored systematically. This is mainly due to the simple reason that such applications are not served at all. The rare cases of such applications do not call for any special efforts to work systematically with them. On the other hand, there is a serious lack of preparedness with regard to APIA. Respondents say that they need special training. The confusion becomes particularly big because in most cases no registers are kept for applications under APIA separate from complaints and other requests for administrative services. There is lack of clarity with regard to the distinction between inquiries under APIA from requests under other laws and with regard to the implementation of APIA itself.

Table 5						
Applications under APIA: Percentage Distribution by Institutions						
Percentage of Applications	Institution					Total
	Central Government Institutions	Executive Agencies	Regional Administration	Municipal Administration	RSEP	
Oral	16.7%	5.9%	11.1%	5.2%	7.1%	7.6%
Written	38.9%	5.9%	33.3%	24.0%	23.4%	24.4%
E-mail	11.1%		3.7%	1.0%	3.5%	3.0%
Applications regardless of the format ³⁰	38.9%	5.9%	40.7%	27.1%	29.1%	29.0%

Still, the available data can provide grounds for some general observations concerning the distribution of applications by type. As is seen in Table 5, registered applications are most frequently given in writing (24.4 % of the institutions have registered such applications) and served to regional administrations (33.3 %) and central government bodies (38.9 %).

In accordance with Table 5, a total of 29 % of the institutions have registered applications served in any of the three forms (written, oral or electronic). At the same time, when answering another question, a smaller number of institutions (24.4 %) say

³⁰ The total number of registered applications is calculated on the basis of the “or” method, i.e

that they have received applications for granting access to information. These discrepancies come to indicate once again the uncertainty of institutions in categorising applications under APIA.

Decisions on the applications and grounds for refusals

In reply to registered applications for granting access to information, the administration has the obligation to send a decision in writing to grant access or a refusal to grant access to the applicant within 14 days.

Table 6						
Number of Decisions on Applications						
	Institution					
	Central Government Institutions	Executive Agencies	Regional Administration	Municipal Administration	RSEP	Total
Decisions made forthwith: number	672	12	90	443	331	1550
Decisions made within 14 days: number	4133	8	85	287	13239	17762
Decisions made after 14 days: number	0	2	6	3	11	22
Total number of decisions	4805	22	181	733	13581	19334
Registered applications	4690	22	189	21740	16746	43399
Applications with no answer	155	0	7	21007	3165	24065

“whatever” applications.

Table 7						
Percentage of Decisions out of the Total Number of Applications						
	Institution					
	Central Government Institutions	Executive Agencies	Regional Administration	Municipal Administration	RSEP	Total
	% of registered applications	% of registered applications	% of registered applications	% of registered applications	% of registered applications	% of registered applications
Decisions made forthwith: number	14.33	54.55	47.62	2.04	2.65	3.57
Decisions made within 14 days: number	88.12	36.36	44.97	1.32	1.71	40.93
Decisions made after 14 days: number	0	9.09	3.17	.01	.02	.05

41 % of the decisions are sent within 14 days. Executive agencies and regional administrations claim most frequently that they make decisions forthwith. Municipal administrations seem slower. It should be noted, however, that the great number of applications (remaining without any reply) is due to one single municipality, which has reported over 21,000 applications.

More substantial is the general discrepancy between the number of applications and the number of decisions related to them. Respondents say that 43,399 applications

have been received and the number of decisions is 19,334, which accounts for 44 % of all applications.

A total of 2.4 % of the institutions have imposed penalties for delayed granting of access to information. Regional administrations are not only faster but also more rigid in imposing penalties for delay, i.e. 9.5 % of regional administrations have imposed penalties as compared to no central government institution and 1.4 % of municipal administrations.

6.6 % of the institutions³¹ have refused to grant access to information on at least one of the specified grounds. Central government institutions refuse to grant access most frequently (22.2 %), making reference primarily to Art. 13, para 2 of APIA. The small number of central government institutions makes the share of these grounds insignificant – 1.3 % in the total distribution by types of refusal.

Table 8						
Institutions Which Have Issued Refusals: Percentage Distribution						
Percentage of Institutions ³²	Institution					Total
	Central Government Institutions	Executive Agencies	Regional Administration	Municipal Administration	RSEP	
Refusals on grounds of state secret	0	0	0	0	0	0
Refusals on grounds of administrative secret	5.6%			3.1%	2.1%	2.3%
Refusals on grounds of personal data protection				2.1%	2.1%	1.7%
Refusals on grounds of affecting interests of third parties			3.7%	4.2%	2.1%	2.6%
Refusals on grounds of Art. 13, para 2 of APIA	22.2%					1.3%

³¹ Number of refusals on *any* grounds.

³² Number of institutions which have issued refusals on any grounds.

Refusals on other grounds	5.6%					.3%
Refusals: total	22.2%		7.4%	8.3%	4.3%	6.6%

Generally speaking, refusals refer to “affecting the interests of third parties” (2.6 %). This type of refusal is most typical for municipal administrations (4.2 %) and regional administrations (3.7 %). Grounds of “administrative secret” are invoked most frequently by central government institutions (5.6 %) and municipal administrations (3.1 %).

Special attention should be paid to the results related to institutions without any refusals to grant access to information on grounds of “state secret”. The cases of refusal collected and systematised at AIP (502 cases after the entry of APIA into force) do not include any refusal to grant access on grounds of “state secret”. This fact calls for some explanation.

In the first place, the List of the Categories of Information Constituting State Secret is adopted with an Act of Parliament³³. It includes some abstract categories of information. Citizens, however, are not aware of the number and type of specific secret documents at the institutions and the time-frame of classification³⁴. Therefore individual citizens are not in a position to request access to information, the content of which is totally unknown to them. This is one of the possible reasons for the lack of any refusals “invoking state secret”. In countries with developed practices for granting access to public information, the list of classified documents includes information about the title of such documents, as well as the grounds and time-frame for their classification.

Another explanation of the lack of refusals on grounds of “state secret” may be sought in the fact that the existing List of Facts, Information and Objects Constituting State

³³ List of the Facts, Information and Objects Constituting State Secret of the People’s Republic of Bulgaria issued by the Speaker of the National Assembly, promulgated in The State Gazette, No. 31 of 17 April 1990; amended, No. 90 of 6 November 1992; amended, No. 99 of 8 December 1991; amended No. 108 of 10 December 1999; amended, No. 55 of 7 July 2000.

³⁴ Currently, the Bulgarian legislation does not provide any specific time-frame for classification of documents. There exist some orders, part of them being unknown to the general public, issued by specific bodies of the executive power to declassify documents pertaining to a specific period of time.

Secret classifies information in the following spheres: defence, public order, public sector in the economy, foreign policy and aeronautic safety. These spheres are governed by a small number of institutions, whose activities are almost entirely classified, i.e. Ministry of Defence, Ministry of Interior, Ministry of Foreign Affairs. The other bodies of executive power generate and keep much less information constituting state secret (e.g. Ministry of Transport).

The general lack of knowledge of these few “secret” institutions is an additional obstacle to formulating requests for granting access to information. It should be remembered that these institutions work with citizens very rarely. Therefore citizens have much less contacts with them and cannot formulate their interest in the activities of these institutions³⁵.

Since only part of the information can be protected on grounds of “state secret”, there exists “the right of partial access to information”. The Bulgarian APIA, too, recognises the right of partial access. Current practices observed by AIP show that the partial access is still unknown to the public administration. In some cases, however, citizens request access to public information contained in a document or a set of documents with both unrestricted information and restricted information constituting administrative secret.

Forms under APIA

Pursuant to the provisions of APIA (Art. 35, para 2), a record is to be drawn upon provision of access to public information, which is to be signed by the applicant and the relevant official. There exists no statutory form of such records. However, the record must contain a description of the documents made available.

The existence of record forms to certify the provision of access to information is quite uncommon. Such forms are used in only 15.4 % of the institutions. They are most common in executive agencies (21.4 %) and least common in ministries and government commissions and agencies (91. %).

³⁵ It is interesting to check cases where such interest is formulated, i.e. the issue of granting access to information about the circumstances relating to the death or injuries of conscripts in the army.

These practices correlate with the other activities that presuppose more competent and better organised services under APIA. Forms exist more frequently among institutions that have undergone training (21.3 %), institutions that have designated an official responsible for applications under APIA (20.0 %) and mostly institutions that maintain computer registers of applications (29.3 %).

Places for Review/Reading of Information under APIA

63 % of the institutions have designated a special place/desk for receiving applications under APIA. This is most typically the case at regional administrations (77.8 %) and RSEP (65.7 %). Such places are most uncommon at central government institutions (50.0 %). In almost all cases (97.8 %), however, the same place is used for receiving other applications as well. The place designated for serving applications under APIA only are most typical at regional administrations.

Much fewer institutions have designated a special place for review/reading information. A total of 64.6 % of the institutions have designated such places, most of them RSEP (73.0 %) and municipal administrations (63.0 %). Again practices under APIA are of crucial importance. Where applications under APIA have been received places for review/reading information are most common (76.6 %).

The places for review/reading of information are located most typically at special premises (56.6 %). Less frequently information is read at information departments (33.1 %), archives (5.7 %) or libraries (4.6 %) (libraries hardly exist in most institutions). It is interesting to note that different institutions have found different solutions for the places where information is made available for review/reading. For instance, ministries and government commissions (83.3 %) and regional administrations (53.8 %) offer access to information mainly at their information departments, while municipal administrations and RSEP have provided special premises (perhaps these are municipal information and service centres).

Revenues under APIA

The access to public information is free of charge under APIA. Applicants need to cover only the material costs for the provision of access to information. These costs are refunded in accordance with the rates specified in Order No. 10 of the Minister of

Finance dated 10 January 2001, promulgated in The State Gazette, No. 7 of 23 January 2001.

In most cases (43.0 %), institutions provide access to information entirely free of charge. This is particularly true of executive agencies (43.8 %) and RSEP (54.0 %). Costs for the provision of access to information are most frequently refunded at ministries (70.6 %) and regional administrations (72.0 %).

Costs are refunded mainly in accordance with an order issued by the Ministry of Finance and much more rarely an internal administrative order (3.0 %).

The question about the revenues of the institution from the provision of access to information after the entry of APIA into force seems to be very difficult for respondents. Only six out of 187 institutions stating that they have generated revenues under APIA have specified the amounts received from July 2000 to September 2001. Four municipal administrations have generated revenues ranging from BGN 10 to BGN 45. The revenues of the Council of Ministers are “about BGN 100”, while the Government Securities Commission has specified revenues of BGN 7,762. The other 181 institutions stating that they have generated revenues under APIA have failed to specify any amounts.

Training and Advice

The findings of the survey reveal that only 16.7 % of the respondents have undergone some training in the field of APIA. The largest percentage is observed in regional administrations (25.9 %) and municipal administrations (24.5 %), which is indirect evidence of the competence and openness of municipal administrations. Officials from central government institutions and executive agencies have been least exposed to training (5.9 %).

The training of officials correlates to a better overall condition of institutions as far as APIA is concerned. For instance, institutions with trained officials more often designate a person responsible for the implementation of APIA and they keep a register of applications (including registers in a computer format). In the final analysis, institutions with trained officials have received more applications for

granting access to information (which even at this point suggests that the number of applications is an “interpreted” rather than a mathematical quantity).

At the same time, only 25.3 % of the interviewed institutions use any written instructions or manuals to distinguish between applications under APIA and other requests or complaints. This happens most frequently in municipal administrations (38.3 %) and regional administrations (29.6 %) and least frequently in central government institutions (17.6 %). These findings confirm the higher quality of implementation of APIA at the local level. In smaller communities as a whole (30.8 %), officials tend to use written instructions on the implementation of the law more frequently than officials in Sofia (20.9 %) or regional centres (23.9 %).

What do officials do when they encounter difficulties in the application of APIA? A total of 47.6 % seek advice in connection with applications under APIA. Most typical is this search for advice in central government institutions and least common in municipal administrations. This seems natural as municipal administrations tend to use written instructions more often than central government institutions do.

Advice is most frequently sought with a legal counsel (53.5 %) and less frequently with the head of the institution (20.8 %). These findings could be interpreted as seeking expert assistance rather than an administrative (political) decision on the respective application. In this sense, the proper implementation of the law perhaps calls for greater qualifications and competence rather than good will on the part of the leadership of institutions.

Refusals Referred to AIP

AIP has been registering cases of citizens and journalists who have been refused access to information. The legal team of AIP makes comments on each case, sending the legal comments and recommending action to the persons seeking legal assistance. All cases are stored in the electronic database.

From January 01, 2001 to December, 31 2001 502 cases of refusals to grant access to information by various officials under APIA were registered.

I. PROVISION OF ACCESS TO INFORMATION AT THE INITIATIVE OF THE OFFICIALS UNDER APIA (Art. 14 of APIA)

Pursuant to the provisions of APIA, officials have to provide certain types of information at their own initiative. This obligation can be divided into two parts: on one hand, there is an obligation to publish current public information (Art. 14, para 1) and, on the other hand, there is an obligation to publish or announce in another way information that can prevent a threat to the life, health and safety of citizens and their property or refute incorrect information disseminated to the detriment of material public interest or information that is or could be of public interest (Art. 14, para 3).

Fulfillment of the Obligation under Art. 14, para 2

In accordance with the cases reported to AIP, the public administration is not very well aware of its obligations in this respect. The AIP database includes some cases, where in the event of accidents or natural calamities, e.g. fire, flood or pollution, local journalists had to seek information on their own about the size of the accident or natural calamity, the damage caused and the remedial action. Usually civil defense authorities, mayors, and environmental protection bodies are preoccupied with the containment of the accident and the prevention of further damage and tend to underestimate information. A typical example: a correspondent of a central daily newspaper in the city of V. phoned the officer on duty in the civil defense service to ask about the damage caused by a hurricane that lasted two days. The officer refused to give her any information about the damage, referring to the ban of the senior officials to disclose information to the media.

In such cases, no persons are designated to provide up-to-date information on a continuous basis, as a result of which incorrect and misleading information is spread.³⁶

Concerning the Obligation under Art. 14, para 1

The public administration disseminates official newsletters prepared by the press centres in discharge of the obligation to publish current information. The preparation

³⁶ Such cases were registered in the following cities: Vratsa in May, Blagoevgrad in April, Montana in May, Yambol, Kyustendil, Blagoevgrad and Plovdiv in August, Varna in October, and Smolyan in December.

of such newsletters was a well-established practice of most central and local government authorities even prior to the adoption of APIA. Nevertheless, the AIP database includes some cases of temporary suspension of such newsletters or insufficient information content but these are exceptions rather than the general rule.

II. GRANTING OF INFORMATION UPON REQUEST

The cases registered in the AIP database reveal a tendency toward the increase of requesting access to information through applications in writing as compared to 2000. Usually citizens submit applications in writing, while journalists prefer the oral form. Last year, the AIP database registered a total of 46 applications in writing for access to public information. 33 out of them were granted and the other 13 were rejected and appealed in court.

III. THE MOST FREQUENTLY SOUGHT INFORMATION BY CITIZENS AND JOURNALISTS

1. Seeking of Financial Information

There are quite frequent cases of seeking information about the spending of resources by government authorities, enterprises with state or municipal participation, as well as information related to financial abuse. The public internal financial control authorities and the National Audit Office control the spending of the government budget. They exercise their rights with regard to government institutions and enterprises with state or municipal participation. This information has always been of great interest to the general public.

Seeking of Information from the PIFC Authorities

Typically the persons seeking information refer their applications to the regional subdivisions of the Public Internal Financial Control Agency (PIFCA) in the respective city and this is only natural because they are in charge of the local inspections. It should be noted that AIP did not register a single case of information provided by the PIFC authorities throughout 2001. The most frequent answer to

applications for granting access to copies of audit statements or reports goes as follows: “We are not entitled to provide copies of audit statements or reports. Please call the head office in Sofia.” Notwithstanding the APIA provisions on the explicit obligation of the public administration to refer the application to the competent authority, the directors of the regional PIFCA subdivisions fail to do so.

In connection with the access to information to be provided by the PIFC authorities, in May 2001 the Director of PIFCA sent out a circular letter to all regional directions, specifying the rules for granting access to information about financial audits and inspections to the media. According to the letter, the Director of PIFCA perceives the granting of access to information as making available a summary of the audit findings rather than as access to original documents. The letter specifies also a PR expert at the Agency in Sofia as the official in charge of providing access to information.

At the same time, the mandatory granting of access to information by the press centre in Sofia is an impediment that slows down the work of local journalists.

Seeking of Information from the National Audit Office

Since the National Audit Office is the authority to perform the external audit of the budget and other public resources, Art. 2, para 2 of the National Audit Office Act reads explicitly that its operations are based on the principles of openness and transparency.

There are two types of information generated or stored by the National Audit Office, which are of particular interest: information related to audits and information from the public register of the property of senior government officials.

Last year, the AIP database registered four applications for access to information related to financial audits. The National Audit Office did not answer any of them.

There is also keen interest in the information from the register of the property of senior government officials. The National Audit Office collects information for this register pursuant to the Public Register of the Property of Senior Government Officials Act. Although the law refers to this register as “public”, access to the information therein is granted only to the media through their editors-in-chief. In the

beginning of 2001, the AIP team served an application for access to information included in the public register but no answer followed. At the end of the year, a similar application of the editor-in-chief of a newspaper from Varna was not answered either. The case was appealed in court.

Seeking of Information from the Tax Administration

The most frequently sought information from the tax administration relates to the consolidated statements on the amount of collected or non-collected taxes, information related to tax offences, and information about big tax debtors. The cases registered in the AIP database make it clear that the local tax administration usually does not provide access to such information, although the provisions of paragraph 1, subpara 1 of the Tax Procedure Code (TPC) on the definition of the administrative secret to be kept by the tax administration do not cover the consolidated statements on the collected taxes.³⁷

An important step of the tax administration towards granting of access to information at its own initiative was the list of tax debtors owing more than BGN 3,000 published on the Internet in May 2001. Although TPC makes it clear that the amount of the taxes due by the tax liable persons is a tax secret, the tax administration struck a balance between the public interest in learning a specific piece of information and the interest of individual debtors in protecting their tax secret. In that particular case, government institutions decided in favour of the public interest. The General Tax Director (GTD) put the list on the Internet but some local tax offices continued to refuse access to that information to local journalists. Such cases were registered in Burgas, Vratsa, Stara Zagora, Montana and Lovech.

2. Seeking of Information Related to the Privatisation Process

Traditionally privatisation deals generate keen interest. Journalists and citizens seek information in connection with the signing of privatisation agreements, their content and the fulfillment of the contractual obligations. After the adoption of the Regulation on the Terms and Conditions for Granting Access to Information under the Privatisation Act, the relevant central and local government institutions started

providing copies of documents on completed privatisation agreements. Last year, the AIP database registered several cases of providing copies of privatisation agreements and there was no case of refusal to grant access to documents related to a privatisation deal under APIA.

3. Seeking of Information Related to Committed Offences

The information related to the commitment and detection of offences is of particular interest. Journalists are the major group of persons seeking such information. The cases registered with AIP reveal that problems occur mainly in the granting of access to information through the regional newsletters of the Ministry of Interior (MoI) subdivisions. The following problems exist in this connection:

- Local newsletters often miss facts and events that appear in the central newsletter prepared by the central press office in Sofia on the following day;
- Information is two or three days late;
- There are no details on offences or accidents.

The preparation of newsletters for the media is a form of granting access to information at the initiative of the MoI authorities. Therefore they are not bound by a statutory obligation to disclose more information than they deem appropriate. There exists no legal instrument to set out mandatory rules for the preparation of newsletters.

4. Seeking of Information from Courts

The Constitution of the Republic of Bulgaria and procedural laws safeguard the transparency of the judiciary and guarantee the public nature of court proceedings. Furthermore, court registers by alphabetic order or time limits are also public. It should be noted that registered refusals by courts of law were quite few in 2001 as compared to 2000. The problems related to the freedom of information, which were registered in the AIP database, referred mainly to refusals of granting access to individual cases.

³⁷ Such cases were registered in Gabrovo, Veliko Turnovo, Plovdiv, Burgas and Vratsa last year.

Litigation

In comparison to the previous year, a greater number of citizens and NGOs sought legal assistance from AIP to serve court appeals.³⁸ By the end of February 2002, 26 appeals were served to courts of law and court sessions were held on 16 cases, for which the legal defence was provided by the Access to Information Programme. The cases were selected on the basis of several criteria: the public interest in the requested information, the need for court interpretation of some ambiguous statutory provisions of material significance for the application of the law, and the inability of the person seeking information to afford the legal defence.

At the same time, there were citizens and NGOs who served appeals on their own.³⁹

By the end of February 2002, five judgements and seven rulings were issued in those court proceedings. Although the earliest appeal dated back to August 2000, only one case has ended with an enforceable judgement so far. Besides, courts examined some important issues like the admissibility of appeals against tacit refusals.

The hearing of cases brought as a result of appeals against refusals to grant access to information follows the general trends of the administrative justice and the administration of justice in Bulgaria in general. Although such cases are typically heard in one court session because no additional evidence is produced, it takes quite a long time from the time of bringing the case to the relevant court to the issuance of the final judgement. This is especially impractical if the applicant needs the information urgently. The time span from the end of court pleas to the issuance of the judgement is longer than in other types of cases maybe due to the novelty of the legal framework and the lack of sufficient practice.

Applicants, defendants or courts themselves raised some controversial issues in the proceedings, which generated public debate as early as the time of the discussion of the bill on the access to public information prior to its adoption by Parliament. Besides, some new issues emerged as well.

³⁸ Information on the cases assisted by AIP can be found at: http://www.aip-bg.org/dela_bg.htm.

³⁹ For example, a case was brought against the refusal of the Chairman of the Plovdiv Regional Court to provide information on the number of permissions to use special intelligence means over a certain period of time.

TACIT REFUSALS

One of the first issues put on the agenda was the admissibility of appeals against the so-called “tacit refusals”. The term is used in the Administrative Procedures Act with a view to ensuring administrative and judicial control of both the action and inaction of government authorities. Since the term is not used in APIA, the judges hearing two of the cases came to the conclusion that the judicial review of failure to decide on an application for access to public information was inadmissible⁴⁰. However, the five-member panel of the Supreme Administrative Court ruled that the Administrative Procedures Act provided the general arrangements for judicial protection of citizens’ rights against unlawful acts or refusals to issue acts⁴¹. That interpretation of the law was of paramount importance because otherwise the meaning and effectiveness of the Access to Public Information Act would have been put to question by allowing arbitrary and uncontrollable silence of officials⁴².

PERSONS OBLIGATED UNDER APIA

The question as to who exactly has obligations under APIA emerged in the relationship between persons seeking information and persons obligated to provide it. It was typically raised by defendants. The reason lies in the lack of clarity in some cases as to who exactly within a central or local government institution is authorised to decide on applications for access to information. In some cases, the refusals to grant access were signed by persons other than the relevant government authority, i.e. most frequently heads of administrative units like directorates, for example. In the case of *Karaivanov versus the Minister of Economy (2001)* brought because of failure to provide access to a statement of the Liquidation and Insolvency Commission at the Ministry of Economy, the decision to refuse access was made by the Director of the Liquidation and Insolvency Department. The three-member panel of the Supreme Administrative Court assumed that it was a case of re-assignment and its opinion was

⁴⁰ Centre for Independent Life Association versus the refusal of the Minister of Labour and Social Policy (2001); Polina Kireva versus the refusal of the Minister of Environment and Waters (2001).

⁴¹ Ruling No. 8645 of 16 November 2001 of the Supreme Administrative Court of the following panel: Chairperson: Andrey Ikonov; Members: Alexander Elenkov, Janeta Petrova, Zacharinka Todorova, Tanya Radkova.

⁴² The Supreme Administrative Court with the following judges sitting on the panel: Chairperson: Vesselin Kulnova; Members: Zacharinka Todorova and Tanya Radkova issued Judgement No. 1795 of 26 February 2002 to repeal as unlawful the tacit refusal of the Minister of Education and Science to make a decision on the application for access served by the Access to Information Programme.

confirmed by the five-member panel. However, the Supreme Administrative Court proved more consistent in its practice concerning the judgement of the first-instance court on the case of *Alexey Lazarov versus the refusal of the Director of the Press Centre and PR Directorate of the Council of Ministers (2001)*. The court ruled that in order to have a decision made by a person other than the relevant government authority, that person needed explicit authorization within the meaning of Art. 28, para 2 of APIA.

Some practical issues emerge with regard to the persons obligated under APIA in the case of public law entities and their structures like the National Health Insurance Fund and the Regional Health Insurance Funds. The matter was raised in connection with the appeal against refusals of the NHIF and the RHIF served by the GP Association in Veliko Turnovo.

Although the provisions of Art. 3, para 1 of APIA seem clear and they did not generate any debate in the public discussion prior to the adoption of APIA, there arose the question as to whether the judiciary had any obligations under APIA. It was discussed at various forums but it also emerged in practice when a ruling of the Regional Military Prosecutor in Sliven refused access to information to the Bulgarian Helsinki Watch Committee in December 2001. The ruling built on the argument that prosecutors were not civil servants and therefore they had no obligations under APIA.

WHICH INFORMATION IS “PUBLIC”?

The law-maker has given a rather vague definition of the term “public information”, as noted also by the Supreme Administrative Court in its practices. The provisions of Art. 2, para 1 of APIA are unclear and contravene the provisions of Arts. 7, 10, 11 and others of APIA. The provisions of Arts. 10 and 11, which enumerate the two types of information, i.e. official (including the legal instruments or acts adopted by government authorities) and administrative (information generated, obtained and stored in connection with the former), give a better idea of which information is public⁴³. The argument that a specific piece of information is not public has been invoked quite rarely in the positions of the relevant person obligated under APIA.

⁴³ There is reference to these provisions in the definition of the public nature of the information requested in the judgement of the Supreme Administrative Court on the case of *Jordan Lazov versus the refusal of the Minister of Environment and Waters*.

Twice such an opinion was expressed: in the refusal to provide a copy of a letter of the General Tax Director and the refusal of the Mayor of Berkovitsa to provide a copy of a title deed for municipal property. So far courts of law have not identified certain information as non-public, without any detailed interpretation of the statutory provisions related to the definition of the term “public information”.

FORM OF REFUSALS

However, in connection with refusals there exist certain administrative practices that diverge from the law and create problems in court proceedings. More often than not government authorities or their administration will rule on the applications of citizens for access to information through a communication, a letter or a notice that has no heading as a rule. Afterwards, in the court session, the legal defence of the defendant will sometimes claim that the notice is not actually a decision to refuse access and therefore it is allegedly beyond judicial control. Courts of law have accepted so far that it is sufficient for the appealed act, regardless of its title, to have affected the rights of the applicant for access to information.

RESTRICTIONS. RIGHT TO PARTIAL ACCESS

The most frequent cases of restricted right of access are refusals invoking the existence of administrative secret, infringement upon the rights and interests of a third party or restriction under Art. 13, para 2, subpara 1 of APIA⁴⁴. The right to partial access is used quite rarely and in such cases government authorities provide only some of the requested documents. There has been no case of making available a copy of a document with deleted paragraphs or specific sentences. This is the reason for the lack of the necessary balance of competing rights and legal interests, as required under Judgement No. 7 of the Constitutional Court on Constitutional Case No. 1 of 1996. In this sense, particularly important is the judgement of the Supreme Administrative Court on the case of *Lazov versus the refusal of the Minister of Environment and Waters*, stating that: ...”Furthermore, even in the existence of an explicit refusal of the third parties to grant access to information concerning their personality, in the case under Art. 31, para 4 of APIA the Minister could grant access to the requested information in the amount and manner that will not disclose the

⁴⁴ It should be noted that so far we are not aware of any refusal on grounds of *state secret*.

personal information about third parties. This is perfectly possible in this case and there is no evidence that grounds exist for refusal under Art. 37, para 1, subpara 2 of APIA.”

ADMINISTRATIVE SECRET

So far the persons obligated under APIA have invoked the administrative secret regulated in the Internal Financial Control Act⁴⁵ and the Tax Procedure Code⁴⁶. Typically no arguments or evidence other than the secret protected by law are referred to. For example, there is no reference to what constitutional interest will be protected by the restriction of the right to access provided by law or whether partial access will be possible. No evidence is produced to support the alleged existence of a statutory restriction, while most acts that are appealed do not even describe specific circumstances, i.e. there is no specific statement of facts.

These practices of the executive power authorities are “nourished” by vague and too general statutory provisions, e.g. those related to the term “administrative secret” in Art. 3, para 4 and Art. 12, para 3 of PIFCA. The inaccurate wording of these provisions, in our opinion, was the major reason for the competent court of law to reject the first-instance appeal in the case of *D. Karaivanov versus the refusal of the Minister of Finance*. Besides, the objective of the statutory provisions on the administrative secret and the opportunity for granting partial access were not examined in the judgement.

In the case of *Totev versus the refusal of the General tax Directorate*, the Sofia City Court assumed that there was an administrative secret to be protected pursuant to Art. 12 and Art. 242, para 1, subpara 3 of the Tax Procedure Code. The court ruled that there existed no opportunities for granting partial access.

In some cases, the government authorities requested to grant access to public information fail to specify any secret provided by a special law. The issue of the legality of such refusal has already been raised⁴⁷.

⁴⁵ *D. Karaivanov versus the refusal of the Minister of Finance and Public Barometer Association versus the refusal of the Director of the Public Internal Financial Control Agency.*

⁴⁶ *D. Totev versus the refusal of the General Tax Director, the Institute for Market Economy Foundation versus the refusal of the Director of the National Health Insurance Fund.*

⁴⁷ Case of *the Bulgarian Helsinki Watch Committee versus the refusal of the Supreme Prosecutor's*

THIRD PARTY CONCERNED

This reason for restricting the right of access to information is quite common in practice. In court practices, there are cases when the requested information relates to both individuals and legal entities⁴⁸. When interpreting the provisions of Art. 31 of APIA, the court ruled that with a view to their appropriate application it was necessary to advise the party concerned of the application in order to obtain its possible consent with the granting of access. In the event of disagreement of the party concerned with the granting of access, the official designated under APIA still has to assess the opportunities for granting partial access in an appropriate manner and appropriate size so that to prevent disclosure of the protected data of the third party⁴⁹.

There is still no ruling on the scope of the data, for which the lack of consent of the third party concerned will be binding on the official under APIA. Some cases raise the issue that with a view to the provisions of Art. 41, para 1, second sentence of the Constitution, the third party, be it an individual or legal entity, will express valid disagreement with the disclosure of its data only when this is a way to exercise subjective rights⁵⁰. At the same time, the reasons attached to the judgement on the case of *Lazov versus the Minister of Environment and Waters* lead to the conclusion that not all data can be subject to the restricted right to access⁵¹.

INFORMATION UNDER ART. 13, PARA 2, SUBPARA 1

A common reason for refusal is associated with the “information with no significance on its own”, i.e. opinions, views or recommendations prepared in the course of the drafting process. Since the law provides for operational independence of government

Office of Cassation.

⁴⁸ In the case of *Lazov versus the refusal of the Minister of Environment and Waters*, there was pointed out a link of the refusal with personal data, while in the cases of *Infoecoclub Association, Montana versus the refusal of the Secretary of the Municipality of Montana*, *Naidenov versus the refusal of the Secretary of the Municipality of Montana*, *Totev versus the refusal of the General tax Director* and *For Wild Nature – Balkans Association versus the refusal of the Director of the Roads Executive Agency* there were invoked interests of legal entities.

⁴⁹ *Lazov versus the refusal of the Minister of Environment and Waters*. In the case of *Totev versus the refusal of the General Tax Director*, the first-instance court decided that it was impossible for partial access to be granted without affecting the rights of the third party. It was that conclusion that was reviewed by the cassation instance.

⁵⁰ For example, the definition of personal data of individuals under the Personal Data Protection Act specifies the scope of the personal data, for which the parties have the subjective right to demand non-disclosure from the government authorities and other persons.

⁵¹ The case raised the issue whether the names of the drafters would be within the scope of the

authorities and other persons obligated under APIA in this case, the judicial review will extend only to the establishment of the powers under Art. 13 and the consideration of the purpose of the law in making the decision on the refusal.

In this connection, various issues have emerged relative to the refusals on these grounds. One of them is the broad or narrow interpretation of the words “operational preparation of acts”. In the case of *Lazarov versus the refusal of the Director of the Press Centre and PR Department at the Council of Ministers*, the issue at stake was whether the time of discussion of a draft was part of the phase of operational preparation of acts⁵². The issue of the access to the minutes and verbatim reports of the discussions held by various collegiate bodies emerged in other cases, too⁵³. At the same time, the access to reports on noise measurements by the sanitary authorities, which was refused on the same grounds, was put forward⁵⁴. It seems that the court practices in connection with these provisions of APIA will be decisive for the implementation of the law and, hence, the extent of openness of the executive power before the general public⁵⁵.

protected personal data.

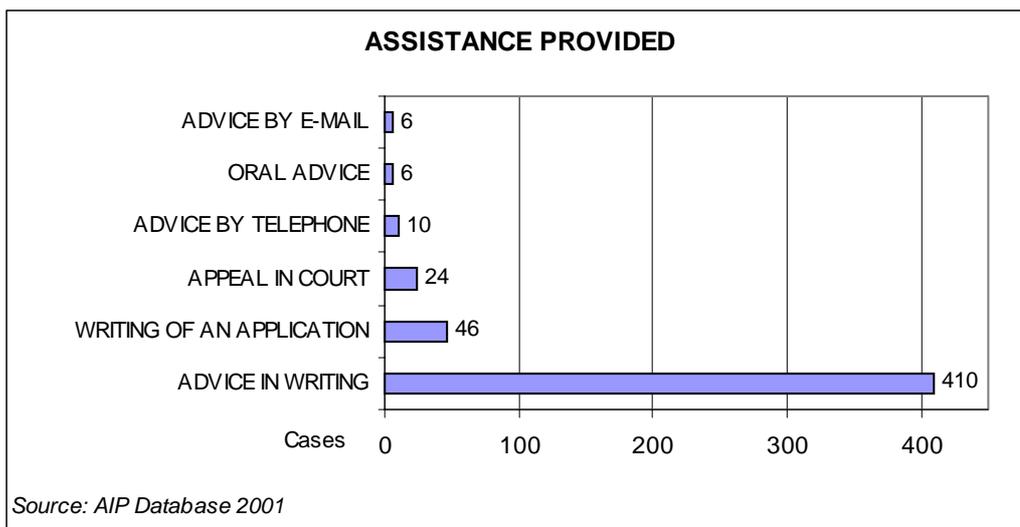
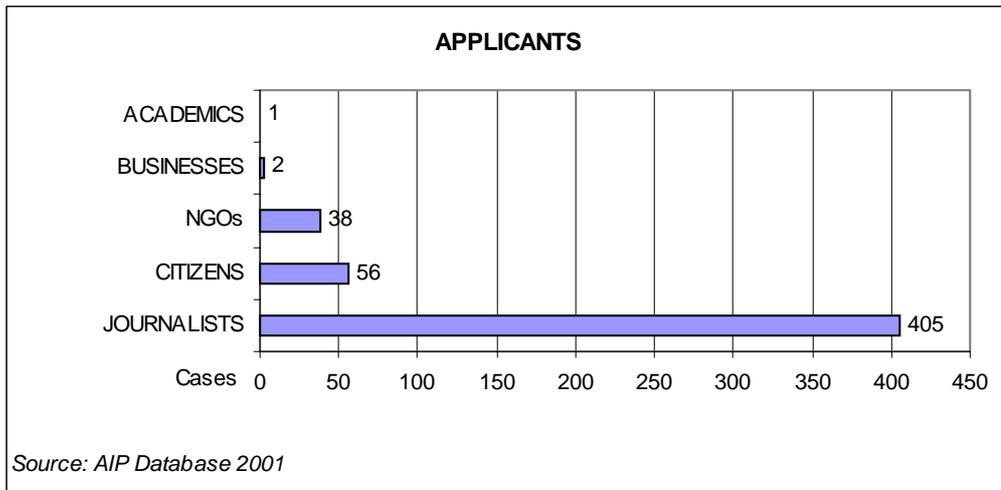
⁵² The first-instance court rejected the appeal. The judgement was attacked before the cassation instance.

⁵³ *Polina Kireva versus the refusal of the Minister of Environment and aters, Karaivanov versus the Minister of Economy* (first case).

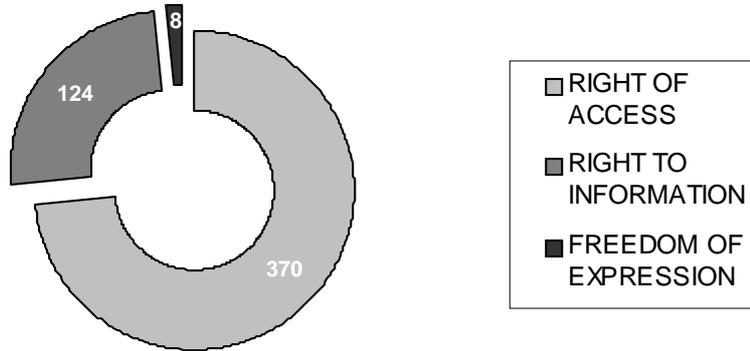
⁵⁴ *Ecoglasnost National Association versus the refusal of the Director of the Preventive Medicine and Public Sanitary Control Department at the Ministry of Health*.

⁵⁵ With a view to guaranteeing the right of every citizen of access to such information, the United States has a special Sunshine Government Act that has introduced the principle of openness of the meetings of all executive branch authorities and the access to their records respectively. The right of access may be restricted only on the grounds provided by law rather than at the discretion of the relevant authority.

SCHEDULE No. 1 AIP Database – Statistic

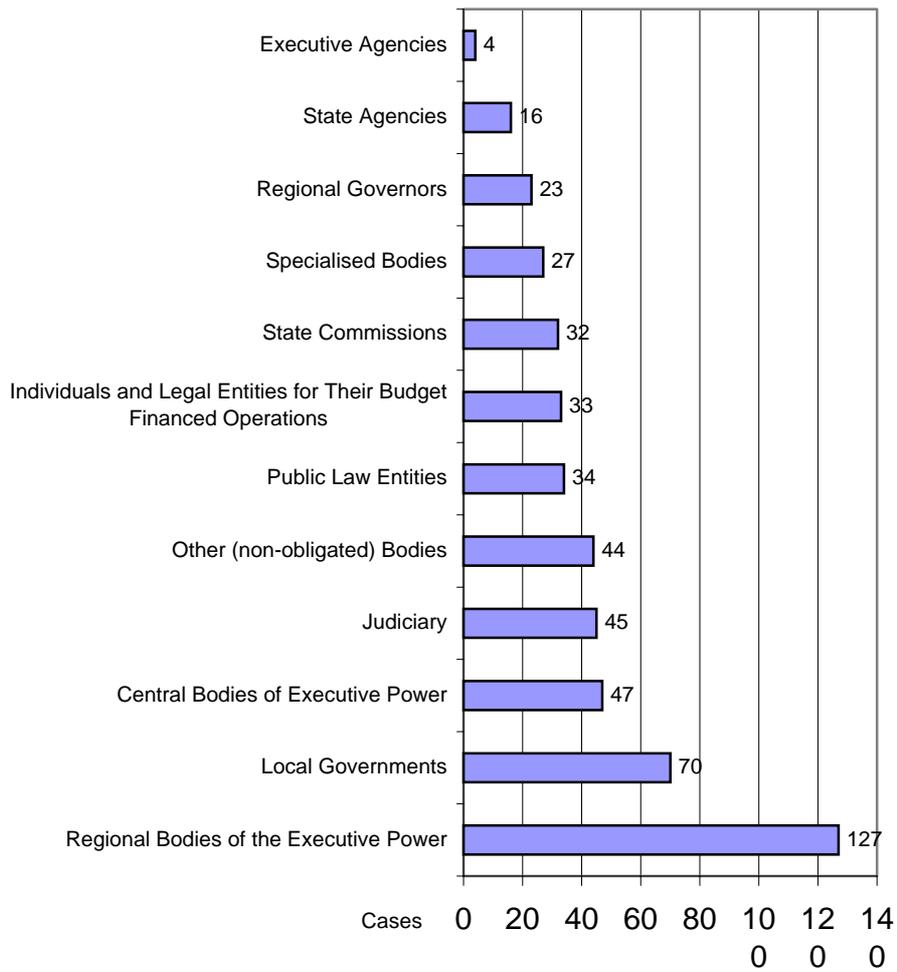


Legal Qualification



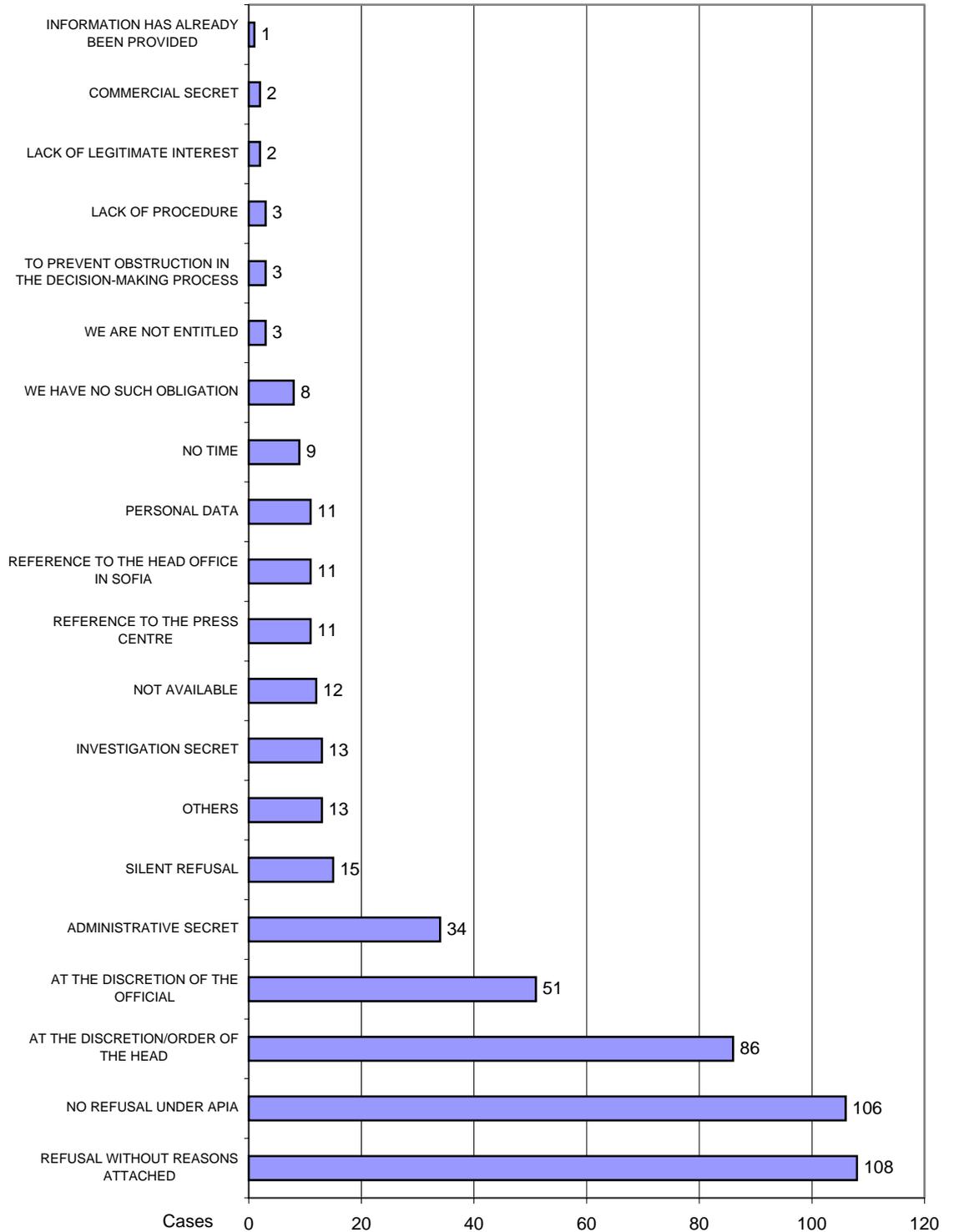
Source: AIP Database 2001

INSTITUTIONS FROM WHICH INFORMATION HAS BEEN SOUGHT



Source: AIP Database 2001

GROUNDS FOR REFUSALS



Source: AIP Database 2001

SCHEDULE No. 2

LITIGATION OF AIP FOR DEFENCE OF THE RIGHT OF ACCESS TO PUBLIC INFORMATION

Case No. 2167 of 2000 of 3E Division, Sofia City Court Totev versus the Ministry of Finance

Facts:

Totev served an application in writing to the General Tax Director (GTD), requesting a copy of a letter of the GTD that contained interpretation of provisions of the Tax Procedure Code (TPC). The letter was the reply of the GTD to a question of a third party in the Q&A system of the tax administration.

Within the prescribed 14-day time limit, the GTD sent a refusal in writing to grant access to the document on grounds of Art. 2, para 1 of APIA.

An appeal was served in due course against the GTD refusal to grant access to information.

Arguments of the Parties:

The arguments of the appeal are that the information in question is public because it concerns all and gives an idea on the application of the law by the tax administration.

The information is not secret because the applicant has requested that the name of the recipient of the GTD letter be deleted prior to the provision of a copy of the letter.

The defendants claim that the requested information is not public within the meaning of Art. 2, para 1 of APIA and that it is an administrative secret within the meaning of § 1, subpara 1 of the Additional Provisions of TPC.

Development of the Case:

The first-instance court heard the case in two sessions. At the second session, the defendant raised the objection that in the case of invoking a secret APIA was inapplicable and, furthermore, the GTD letter contained instructions for the plaintiff to obtain the requested information through the Q&A system of the tax administration.

The appeal was rejected in the first-instance court.

A cassation appeal was served against the judgement of the first-instance court.

Outcome:

The first-instance court rejected the appeal because it considered the appeal to be ill-grounded due to the fact that the requested information, although public within the meaning of APIA, was an *administrative secret* within the meaning of TPC. Besides, the requested information affected the interests of a third party and the consent of the latter had not been sought, which the court considered to be an obligation of the applicant.

The final judgement is still pending.

Case of Bulgarian Helsinki Watch Committee versus the General Prosecutor's Office

Facts:

The Bulgarian Helsinki Watch Committee served an application in writing to the General Prosecutor's Office with the request to obtain the number of reports and complaints of ethnic discrimination over the recent years from the General Prosecutor's Office.

The General Prosecutor's Office referred the application to the Sofia Appellate Prosecutor's Office, whereby the latter gave no reply.

An appeal was served to the Supreme Administrative Court (SAC) under APIA within the prescribed time limit.

Arguments of the Parties:

The arguments of the appeal are that decisions on refusal should be given in writing and have reasons attached and that there exist no grounds for refusal in this particular case.

Development of the Case:

After the serving of the appeal, the General Prosecutor's Office sent a letter to explain that it did not collect such information.

Outcome:

Talks were held between the NGO and representatives of the General Prosecutor's Office and an out-of-court settlement was reached, while the appeal was withdrawn.

**Case No. 280 of 2001 of the 4th Division, Supreme Administrative Court
Kireva versus the Ministry of Environment and Waters**

Facts:

Kireva served an application for access to public information to the Minister of Environment, requesting a copy of the minutes from a session of the Higher Environmental Expert Board at the Ministry.

Within the prescribed time limit, a refusal to grant access to the information was received on grounds of Art. 37, para 1, subpara 1 of APIA, i.e. the information represented state secret or another secret protected by law or it had no significance on its own.

Kireva served another application for access to the same information with arguments in support of her right to access, stating that there existed no statutory restrictions of the access to that information.

No reply to the second application was received.

An appeal was served against the tacit refusal of the Ministry to grant access to the requested information.

Arguments of the Parties:

In the opinion of the plaintiff, the minutes contain a decision that represents public information because it affects the rights of many citizens. Besides, the minutes make it clear what the Ministry has done with respect to the issues discussed. There exist no grounds for refusal also because of the fact that the session was open to the general public.

Development of the Case:

The case was heard in one session. The Prosecutor expressed the opinion that the information was within the purview of Art. 13 of APIA.

Outcome:

The litigation was pending but afterwards the court issued Ruling No. 6858 of 2001 on dropping the case because the judges sitting on that panel decided that the tacit refusal was not subject to appeal.

**Case No. 1736 of 2000 of the 5th Division, Supreme Administrative Court
Karaivanov versus the Ministry of Economy**

Facts:

Karaivanov requested a copy of the minutes taken at a meeting of the Liquidation and Insolvency Commission at the Ministry of Economy and two other documents of the Ministry. Within the prescribed time limits, the Ministry replied and provided copies of the two documents but refused to disclose the minutes. The reasons invoked the provisions of Article 13, para 2.

The refusal was appealed before SAC.

Arguments of the Parties:

The applicant indicated that the minutes contained a decision and that decisions were instruments constituting official public information within the meaning of APIA. Hence it could not be maintained that it had “no significance on its own”.

The defendant objected that the refusal was issued by the Director of the Liquidation and Insolvency Commission. The Minister of Economy had not sent any reply and the tacit refusal provided no grounds for appeal.

Development of the Case:

The 5th Division of SAC issued Ruling No. 3595 of 23 May 2001, stating that the case involved a refusal by the Director rather than a tacit refusal by the Minister of Economy. The court cancelled the proceedings and referred the case to the competent Sofia City Court. The ruling was attacked with a private appeal within the seven-day time limit.

Outcome:

The litigation is still pending.

**Case No. 1763 of 2001 of the 5th Division, Supreme Administrative Court
Centre for Independent Life (CIL) Association versus the Minister of Labour
and Social Policy**

Facts:

CIL served an application for access to information to the Minister of Labour and Social Policy to make available a copy of the Personal Social Worker Programme.

The Ministry did not send a reply within the prescribed time limit.

An appeal was served against the tacit refusal by the Minister. The arguments were that decisions on refusals had to be given in writing and with reasons attached. After the appeal had been filed, the Minister sent a letter with a brief outline of the Programme. The appeal was not withdrawn and the litigation is pending.

Arguments of the Parties:

The plaintiff maintained that the right of access to information was not exercised in the desired form and insisted on its protection.

The defendant objected that the information came within the purview of Art. 13 of APIA, the Programme was not finalized in a documented form and the tacit refusal was not subject to appeal.

Development of the Case:

The case was heard in one session where the parties expressed their positions. Afterwards the court issued a ruling to cancel the proceedings because the judges sitting on that panel assumed that the tacit refusal was not subject to appeal.

A private appeal was served against the ruling within the prescribed time limit.

A five-member panel of the Supreme Administrative Court ruled that tacit refusals to grant access to information were subject to appeal in court. Otherwise they would be tantamount to denial of justice. The same court ruling referred the case back for hearing on merit.

Outcome:

The litigation is still pending.

Case No. 20558 of 2001 of the Sofia City Court

Institute for Market Economy (IME) Foundation versus the National Health Insurance Fund (NHIF)

Facts:

IME filed an application for access to public information, requesting several types of documents. It requested information about the 2000 budgets and reports of the Regional Health Insurance Funds (copies), the bank chosen by the NHIF to operate with its resources, the procedure applied to the selection of the bank and the amount of the resources deposited by the NHIF.

The refusal to disclose information was given in writing and the following reasons were cited:

- an official secret within the meaning of para 1 of the Code of Tax Procedure (secret of tax liable persons) was involved;
- the NHIF report could be received after its promulgation in the State Gazette;
- the information about the decision on the selection of banks to operate with the NHIF resources had to be sought from the Managing Board of the NHIF.

After long delays, the file was referred to SAC and a case was brought. Subsequently, a resolution was adopted to refer the case to the competent Sofia City Court.

Arguments of the Parties:

The arguments of the applicant are that facts have to be invoked as grounds for the refusal. It remains unclear why a secret exists within the meaning of the TPC. Paragraph 1 of the TPC makes reference to different cases and a specific case has to be invoked in the refusal. The body envisioned in APIA is the NHIF in its capacity of a public law entity and since it was represented by the Director, it is wrong to refer the request to the Managing Board.

The defendant claims that it has already provided the requested information on the NHIF annual report and therefore it is not necessary to provide the separate annual budgets and reports of RHIFs. As to the other information requested, i.e. the decision on the selection of the banks to operate with the NHIF resources, the defendant states that it is not competent to provide access to it.

Development of the Case:

At the first court session, the defendant stated that it had provided part of the requested information, i.e. the 2001 annual report of the NHIF.

The proceedings were postponed and a new session is expected to be scheduled.

Outcome:

The litigation is still pending.

**Case No. 7176 of 2001 of the 5th Division, Supreme Administrative Court
Access to Information Programme (AIP) Foundation versus the Ministry of
Education and Science****Facts:**

AIP served an application in writing for access to information to the Ministry of Education and Science, requesting copies of the acts relative to the teaching of Islam and Christianity as optional subjects at school.

The Ministry of Education and Science failed to send a reply with the time limit prescribed by law.

An appeal was served against the tacit refusal of the Ministry before the Supreme Administrative Court.

Arguments of the Parties:

The arguments of the appeal were that the decision on the refusal had to be given in writing and with reasons attached thereof. The requested information was public within the meaning of Art. 2, para 1 of APIA because it related to social life in the Republic of Bulgaria and, if made available, it would make it possible for an opinion to take shape on the work of the Minister of Education in the exercise of his statutory powers. Undoubtedly, the information on how the government performed its duty to provide education to young people, including the subject of religion, was related to social life in the country.

Development of the Case:

The case was heard in one court session, where the parties expressed their positions.

The judgement was issued after the court session.

Outcome:

SAC issued Judgement No. 1795 of 26 February 2002 to cancel the refusal of the Minister of Education and Science to provide information on the curricula and other documents related to Islam and Christianity as optional subjects, which had been prepared and kept at the Ministry.

**Case No. 5736 of 2001 of the 5th Division, Supreme Administrative Court
Lazov versus the Ministry of Environment and Waters****Facts:**

Lazov filed an application in writing to get access to copies of statements of findings and penalty orders issued to sanction a municipal company in Dupnitsa within the framework of the relevant administrative procedure. Other documents were also requested.

The decision given in writing and with reasons attached thereof refused access to information, stating that the requested documents contained personal data of the persons who had signed the documents as drafters and witnesses.

An appeal was served against the refusal before the Supreme Administrative Court.

Arguments of the Parties:

The applicant indicated that the requested information did not contain any personal data within the meaning of the law and, on the other hand, even if there had been any personal data, the Ministry had to grant partial access to that information. The requested information was public within the meaning of Art. 2, para 1 of APIA. It was included in acts of government authorities and hence it was public by definition as per Art. 10 of APIA. Besides, the administrative penalty process was public and invariably related to disclosure with a view to the general preventive objective of administrative penalties (Art. 12 of the Administrative Violations and Penalties Act).

Development of the Case:

The case was heard in one court session.

Outcome:

The court cancelled the refusal by the Minister of Environment and Waters. It obligated the Minister to grant access to the information requested by the applicant. The court assumed that the requested information was official and public as per Art. 12, para 3 of APIA. The access to such information was free and compliant with that law, the grounds for refusal being specified in Art. 37, para 1 of APIA.

The court ruled that the Minister had invoked wrong grounds for the refusal under § 1, subpara 2 of APIA. The said provision referred to the term “personal data” but the applicant had not requested access to that type of information. It was true, however, that most of the requested documents features also personal data like names, addresses, positions and other details of the drafters and the witnesses. Still, if the Minister of Environment and Waters in her capacity of an official obligated under APIA believed that the disclosure of personal data would infringe upon the interests of third parties, the procedure under Art. 31, para 2 of APIA could be applied. There was no evidence on any effort to apply it. Besides, even in the case of explicit refusal

of the third parties to grant access to their personal data, pursuant to Art. 31, para 4 of APIA the Minister could grant access to the requested information in a manner and amount that would not disclose the personal data of third parties. That was perfectly possible and no evidence was available to support a refusal under Art. 37, para 1, subpara 2 of APIA. Therefore the refusal was unlawful.

**Case No. 21048 of 2001 of the Sofia City Court
Ivanov versus the Public Internal Financial Control Agency**

Facts:

Ivanov served an application in writing to the Director of the Regional PIFCA in Sliven, requesting copies of two audit reports relative to the audit conducted in the College and the Teachers Department at the Technical University, Sofia in 1999. He was refused access to that information.

Arguments of the Parties:

The plaintiff insists that the refusal of the Director of PIFCA to grant access to information was given in material breach of procedural and substantive laws and in divergence of the purpose of the law.

The PIFC Act does not state that audit reports are administrative secret. Pursuant to Art. 3, subpara 4 of the PIFC Act, PIFC authorities are required to refrain from disclosing the administrative secret that has become known to them in connection with the discharge of their duties. Hence, the information has to constitute administrative secret first and only then comes the requirement to have become known in connection with the discharge of duties. The cases when certain information is administrative secret have to be specified in a law pursuant to the imperative provisions of Art. 7, para 1 of APIA.

There is no evidence to prove that the requested audit report contains such types of information that are secret. Conversely, it is certain that it contains a lot of information that is not secret at all, e.g. the fact that the undertaking was audited on specific grounds and by specific authorities, the time of the audit, the findings of the auditing body (shortages, evidence of offence, etc.). These types of information are of the greatest public interest and this is precisely the purpose of APIA to give an opportunity to the citizens to form an informed opinion on issues related to public life and the operations of persons obligated under the law (Art. 2, para 1 of APIA).

The defendant maintains that he has been refused access to information for the following reasons: in the first place, the application did not contain any specific questions. Secondly, the PIFC Act does not include any specific provisions to regulate a mechanism for granting access of citizens to audit reports. Thirdly, there exists a statutory ban on the disclosure of such information under the PIFC Act.

Development of the Case:

The case was heard in one session.

Outcome:

The litigation is still pending.

**Case No. 6234 of 2001 of the 5th Division, Supreme Administrative Court
Karaivanov versus the Public Internal Financial Control Agency**

Facts:

Karaivanov served an application in writing to the Minister of Finance, requesting a copy of an audit report of PIFCA.

The Ministry of Finance referred the application to PIFCA.

A refusal to grant access to information was signed by the Director of PIFCA and sent to the applicant.

An appeal against the refusal was served within the prescribed time limit.

Arguments of the Parties:

The applicant pointed out the following arguments: in the first place, the refusal was based on misinterpretation of Art. 13, para 2, subpara 1 of APIA since the meaning of the word “may” is to give the person the power to decide (on the basis of its operational independence), while taking into consideration the specific facts and relevant legal provisions, i.e. to carefully strike a balance between the right of each citizen of access to public information and the existence of another protected right or interest on the basis of the specifics of the case.

The defendant invoked Art. 3, subpara 4 of the PIFC Act and Art. 13, para 2, subpara 1 of APIA in support of the refusal.

Development of the Case:

The case was heard in two court sessions.

The first-instance court rejected the appeal of Karaivanov against the tacit refusal of the Minister of Finance to grant access to public information.

The judgement was attacked with a cassation appeal before a five-member panel of the court.

Outcome:

The first-instance court assumed that pursuant to Art. 7, para 1 of APIA, the access to administrative information was restricted where such information was protected by law as secret. The copy on paper of the audit report constituted administrative secret within the meaning of Art. 37, para 1 of APIA for the following reasons: pursuant to Art. 3 of the PIFC Act, audit authorities were required to apply the principles of protection of the administrative secret in the course of exercising public internal financial control, i.e. not to disclose information that had become known to them in the discharge of their duties, unless disclosure was required by law.

Given those considerations, the court concluded that the principle of free access to administrative public information was inapplicable to that particular case. The requested information was administrative secret and that provides grounds for the refusal to grant access. It was a case of other secret protected by law (PIFC Act) within the meaning of Art. 7, para 1 of APIA.

For the above mentioned reasons, the court ruled that the refusal by the Minister of Finance was lawful and compliant with the substantive legal provisions under APIA and that the appeal was ill-grounded and subject to denial.

The judgement of the cassation instance is pending.

Case of Boyadjiev versus the Chief Architect of Sofia

Facts:

Boyadjiev served an application in writing for access to information, requesting a copy of the general and specific schemes for the installation of movable equipment within the territory of Sofia.

No reply was received within the time limit prescribed by law.

An appeal was served against the tacit refusal by the Chief Architect of Sofia.

After the serving of the appeal, the Chief Architect issued a decision to grant access and, later on, provided copies of the requested documents.

Development of the Case:

The case was not heard in court because the information was provided after the appeal had been served.

Outcome:

The information was provided after the appeal had been served.

Case No. 9080 of 2001 of the 5th Division, Supreme Administrative Court Lazarov versus the Council of Ministers

Facts:

Lazarov served an application in writing for access to information, requesting a copy of the verbatim report of the first session of the incumbent Council of Ministers.

He was refused access to information on grounds that the verbatim report was a document of no significance on its own within the meaning of Art. 13, para 2, subpara 1 of APIA.

The refusal was attacked before the Supreme Administrative Court.

Arguments of the Parties:

The applicant maintains that the verbatim report of the session of the Council of Ministers was excluded from the groups of documents of no significance on its own within the meaning of Art. 13, para 2, subpara 1 of APIA because it was not mentioned expressly on the list of such types of documents. The provision of Art. 13, para 2, subpara 1 is not imperative and it authorised the relevant official to decide whether to grant access or not on the basis of the existing facts. Secondly, the sessions of the Council of Ministers are held in public (Art. 125 of the Statutes of the Council of Ministers) and hence the requested information has to be provided, unless grounds exist for restricting the access under Art. 7, para 1 of APIA.

The defendant claims that the requested information is just a preparatory document of no significance on its own and hence access should not be granted.

Development of the Case:

The case was heard in one court session.

The first-instance court rejected the appeal.

A cassation appeal was served.

Outcome:

The first-instance court decided that the requested information was public. But since the law provides for broad discretionary powers of administrative authorities to decide whether to grant access to public information or not, some problems arise in the implementation of the law. The verbatim report referred to the very first session of the newly elected Council of Ministers and the parties did not argue over the matter that it was a case of requesting access to administrative public information. Such access is generally free pursuant to Art. 13, para 1 of APIA but it could be restricted in the cases set out in para 2.

In this particular case, the verbatim report was correctly treated as information with restricted access and the refusal to grant access was appropriate.

The cassation judgement is pending.

Case of the Regional Nature Protection Centre (RNPC) versus the Municipality of Sofia

Facts:

RNPC served four applications for access to information, requesting copies of the programme for reduction of the number of stray dogs; copies of documents related to the privatisation of the stray dogs centre in the village of Mirovyane; a copy of the contract between the Municipality of Sofia and a private company for the reduction of the number of dogs raised at that centre; and a copy of the decision of the Municipal Council of Sofia to pay subsidies for the castration of stray dogs/

None of the applications was answered within the time limit prescribed by law.

An appeal was served in court against the tacit refusal by the Municipality of Sofia.

Development of the Case:

After the appeal had been served to the court of law through the Municipality of Sofia, the applicants received the decision to grant access to information.

Outcome:

There was granted access to the requested information.