

ANNEX 7

Litigation 2016 - Annotation of Cases

1. Tanya Petrova v the Ministry of Finance

1st court instance - adm. case No 4499/2016 of the Administrative Court - Sofia City, Second Division, Panel 39

2nd court instance - adm. case No 10353/2016 of the Supreme Administrative Court (SAC), Fifth Division

Request:

With a request dated March 2016, Tanya Petrova (from the „Sega“ newspaper) asked the Ministry of Finance (MoF) to grant her access to copies of the financial feasibility reports and the conducted impact assessment on economic activity and employment, related to three decisions of the Council of Ministers (CoM), as well as access to copies of the financial feasibility reports associated with two decrees of the CoM.

With the three decisions in question, the Council of Ministers approved:

- 1) the Law on Amendments to the Corporate Income Taxation Act, including provisions related to amendments to the Income Taxes on Natural Persons Act, the Local Taxes and Fees Act, the Tax-Insurance Procedure Code, and the Value Added Tax Act;
- 2) the Law on Amendments to the Excise Duties and Tax Warehouses Act (the amendments include an increase in the excise duties on cigarettes and certain excise duties on fuels);
- 3) the Law on Amendments to the Tax-Insurance Procedure Code.

The two CoM decrees in question related to the following:

- 1) approving additional expenditures/transfers of up to 30mln levs in 2015, associated with the construction of temporary obstacles along the Bulgarian border with Turkey;
- 2) approving additional payments from the government budget to the Ministry of Transport, Information Technology, and Communications made in 2015 in connection with the finalization of investment projects of the state-owned Road Infrastructure Agency under Operational Program "Transport" 2007-2013.

Response:

With a decision dated 08.04.2016, the Head of the Human Resources and Administrative Services Directorate (HRASD) at the MoF refused to grant access to the requested information, stating that the latter was of preparatory character and did not have any significance in itself (this is the ground for refusal laid down in Art. 13, par. 2, item 1 of the APIA). The refusal further explained that the requested information related to the issuing of a final document by the CoM approving a draft law and a decree concerning additional expenditures/transfers and additional payments from the government budget - which rendered it devoid of significance in itself.

Complaint to the court:

The Head of HRASD's refusal was appealed before the Administrative Court - Sofia City. The plaintiff argued that even if the requested information was of preparatory character, the restriction on the access to information under Art. 13, par. 2 of the APIA was still inapplicable, due to the fact that the requirement that the information should have significance in itself was not fulfilled. It was contended that the information requested in this case had significance in itself, since it did not constitute a recommendation, an opinion, a statement, or a consultation, but was instead related to specific facts. It was further noted that financial feasibility reports should form part of the motives behind any draft normative act, which motives are subject to publication under the Law on Normative Acts. The plaintiff also pointed to the existence of an overriding public interest in the disclosure of the requested information.

Development at the first court instance:

The case was examined in open court on 08.06.2016 and the court proceeded to pronounce a decision.

Decision of the first-instance court:

With Decision No 4562 dated 29.06.2016, the Administrative Court - Sofia City repealed the refusal and obliged the Head of HRASD to provide access to the requested information. The court ruled that the requested information was public and constituted documents, created and stored by the MoF. The court further held that the requested information had the status of administrative public information within the meaning of Art. 11 of the APIA, since it concerned the activities of the MoF and its administration. Furthermore, even though the information was indeed of preparatory character and did not have significance in itself within the meaning of Art. 13, par. 2, item 1 of the APIA, the access to it should not have been restricted, as there was an overriding public interest in its disclosure. The court found that the relevant administrative body failed to make an assessment as to whether an overriding public interest existed or not. The court reasoned that such interest did exist, since the disclosure of the requested information would promote the transparency and accountability of the activity of an obliged subject within the meaning of par. 1, item 6 of the Additional Provisions of the APIA.

Complaint to the Supreme Administrative Court (SAC):

The MoF appealed the decision of the Administrative Court - Sofia City before the Supreme Administrative Court.

Development at the second court instance:

The case will be heard by the Supreme Administrative Court on 28.02.2018.

2. Martin Dimitrov, Petar Slavov, and Metodi Andreev v the Ministry of Finance

1st court instance - adm. case No 740/2016 of the Administrative Court - Sofia City, Second Division, Panel 41

2nd court instance - adm. case No 4602/2016 of the Supreme Administrative Court, Fifth Division

Request:

With a request dated 22.12.2015, the MPs Martin Dimitrov, Petar Slavov, and Metodi Andreev requested the Ministry of Finance (MoF) to grant them access to information related to the capacity of the tax warehouses and the fuels contained within (the total capacity, as well as the capacity used at the time of the request), as well as to the ownership of these tax warehouses in 2014 and 2015 (more specifically, whether ownership was concentrated in one person or in an interconnected group of people).

Response:

With a decision dated 05.01.2016, the Head of the Human Resources and Administrative Services Directorate (HRASD) at the MoF refused to grant access to the requested information. The information related to the capacity of the tax warehouses and the fuels contained within was refused on grounds of the fact that it fell within the definition of tax-insurance secret, which constitutes classified information under the provisions of the Tax-Insurance Procedure Code (TIPC). The decision further stated that the information concerning the ownership of the tax warehouses in 2014 and 2015 was public and was contained in a register in accordance with Art. 54 of the Excise Duties and Tax Warehouses Act, which was available online on the webpage of the Customs Agency.

Complaint:

The explicit refusal was appealed by the MPs before the Administrative Court - Sofia City. The plaintiffs argued that the tax-insurance secret was not among the justifications for restricting the right to access to information under the APIA and that the TIPC was not applicable in the case. It was further noted that there was an overriding public interest in the disclosure of the requested information, due to the high prices of fuels in Bulgaria resulting from the lack of competition in the fuel market and the restrictions on EU importers' access to this market.

Development at the first court instance:

The case was heard in open court on 25.02.2016 and the court proceeded to pronounce a decision.

Decision of the first-instance court:

With Decision No 1614 dated 09.03.2016, the Administrative Court - Sofia City dismissed the case. The court held that the subject matter fell within the scope of the TIPC, for which reason the APIA was inapplicable.

Complaint to the Supreme Administrative Court:

The MPs appealed the Administrative Court - Sofia City decision before the Supreme Administrative Court. They argued that the Administrative Court - Sofia City had wrongfully

narrowed the scope of information subject to disclosure under the APIA and had incorrectly qualified the requested information as 'tax-insurance secret.

Development at the second court instance:

The case was heard in open court on 22.02.2017 and the court proceeded to pronounce a decision.

Decision of the second-instance court:

With Decision No 3390 dated 21.03.2017, the SAC quashed the decision of the first-instance court and obliged the MoF to reconsider the MPs request for access to information, instructing them regarding the proper interpretation and implementation of the relevant legal provisions. The SAC held that the procedure under Art. 74 of the TIPC concerned the disclosure of tax and insurance information and, therefore, should be applicable only with regards to authorities regulating people's revenue and other subjects, defined in the TIPC, but not with regards to all other legal persons. Therefore, the court ruled that the TIPC was not applicable in the case and that the latter should have been decided on the basis of the relevant APIA provisions, pointing to the fact that the Administrative Court - Sofia City's decision was in contravention with the substantive law. The SAC further held that the requested information was of public character and its disclosure depended on the consent of affected third parties, if such existed, in accordance with Art. 31 of the APIA.

The SAC decision was final.

3. Martin Dimitrov and Petar Slavov v the Bulgarian National Bank

1st court instance - adm. case No 9103/2015 of the SAC, Fifth Division

Request:

On 16.07.2015 the MPs Martin Dimitrov and Petar Slavov requested from the Bulgarian National Bank (BNB) information related to the methodology for determining the employee remunerations within the BNB and to the basic remuneration and bonuses, received by the members of the Management Board (MB) and the Bank Governor for the period 2014-2015.

Response:

With a letter dated 30.07.2016, the Governor of BNB informed the requesters that in a meeting dated 30.07.2015 the MB of BNB had adopted a policy for the determination and publication of the Governors', the Deputy Governors', and the MB members' remunerations. He indicated that the latter were available online on the BNB website. The Governor refused to provide access to information concerning his and the MB member's remunerations, received prior to 30.06.2015, on the grounds that the information constituted personal data and that it was classified as administrative secret in that period.

Complaint:

The Governor's refusal was appealed before the SAC. The plaintiffs contended that the requested information did not constitute personal data and did not fall within the scope of the administrative secret protection. It was further noted that following the bankruptcy of the Cooperative Commercial Bank, there was a strong public interest in financial supervision and in the overall activity of the BNB.

Development at the first court instance:

The case was examined in open court on 14.12.2015 and the court proceeded to pronounce a decision.

Decision of the first-instance court:

With Decision No 652 dated 20.01.2016, the SAC repealed the refusal and obliged the BNB to provide the requested information. The court held that the remunerations of public officials, whose functions and activities are associated with the well-being and best interests of the public, should be public. It further reasoned that the size of the received remuneration did not affect the inviolability of the individual and the individual's private life, but rather represented objective factual information, determined on the basis of the relevant internal rules and norms. The court ruled that there was an overriding public interest in the full disclosure of the information concerning the remunerations received by the BNB senior management officials. It further stated that the remunerations of MB members and senior management officials could not be classified as administrative secret, since they did not fall in any of the categories of information listed in Art. 23 of the Bulgarian National Bank Act, which defines 'administrative secret' for the purposes of the BNB.

The SAC decision was final and the information was provided.

4. Non-Governmental Organizations Center Razgrad v the Supreme Judicial Council

1st court instance - adm. case No 10332/2014 of the Administrative Court - Sofia City, Second Division, Panel 38

2nd court instance - adm. case No 6930/2015 of the SAC, Fifth Division

Request:

With a written request dated 19.08.2014, the Non-Governmental Organizations Center Razgrad asked the Supreme Judicial Council (SJC) to provide access to the SJC Crisis PR Plan, adopted in November 2013 by the Public Communications Committee of the SJC.

Response:

With a decision dated 15.09.2014, the General Secretary of the SJC refused to provide the requested information on the grounds that the Plan was not an official document, that it was only intended to be used as guidance for hypothetical situations, and that it did not have significance in itself. The legal basis for the refusal was Art. 13, par. 2, item 1 of the APIA.

Complaint:

The refusal was appealed before the Administrative Court - Sofia City. The plaintiff argued that Art. 13, par. 2, item 1 was inapplicable in the case, because the requested Plan was a final document and was not of preparatory nature.

Development at the first court instance:

The case was examined in open court on 11.03.2015 and the court proceeded to pronounce a decision.

Decision of the first-instance court:

With Decision No 2321 dated 06.04.2015, the Administrative Court - Sofia City repealed the refusal to grant access and returned the request to the General Secretary of the SJC for reconsideration. The court held that Art. 13, par. 2, item 1 of the APIA was inapplicable, as that provision requires two conditions to be met for it to apply: 1) the information must relate to the preparatory work of an act of the relevant administrative body; 2) the information must not have significance in itself (opinions and recommendations prepared by or for the body, reports and consultations). These conditions were not met in the case, since the adopted Plan in question did not concern the issuing of a subsequent final act by the SJC. As the General Secretary of the SJC himself stated, the 'recommendations' contained within that Plan did not relate to the adoption of another final act of the collective body - the SJC - but were instead connected with the measures that the SJC members should undertake in specific situations. Therefore, the Plan was to be properly qualified as an internal document, detailing certain rules for the SJC members to follow, and thus had significance in itself. Furthermore, the court did not accept the General Secretary's arguments that the disclosure of the SJC Crisis PR Plan compromised the independence of the judiciary, noting that the latter depended on the observance of the 'separation of powers' principle and the mechanisms put in place to guarantee that principle, encoded in the Bulgarian Constitution and developed in the Judiciary System Act (JSA). The court

reasoned that the disclosure of the SJC internal rules concerning the measures that should be undertaken by its members on occasion of a potential or real communication crisis could not and should not be able to put the judiciary in a position of dependency to the benefit of the legislative or the executive powers.

Complaint to the Supreme Administrative Court:

The decision of the Administrative Court - Sofia City was appealed by the General Secretary of the SJC before the Supreme Administrative Court (SAC).

Development at the second court instance:

The case was examined in open court on 06.06.2016 and the court proceeded to pronounce a decision.

Decision of the second-instance court:

With Decision No 7525 dated 22.06.2016, the SAC upheld the decision of the first-instance court. The SAC held that given the character and purpose of the SJC Crisis PR Plan, the first-instance court had correctly reasoned that the conditions for restricting access to public information, laid down in Art. 13, par, 2, item 1 of the APIA, were not satisfied, since the PR Plan did not relate to the preparatory work of another final act and did have significance in itself. The fact that the Plan was of advisory character did not qualify it as a recommendation within the meaning of the law, because it was not connected with the issuing of another final act. The plan was to be qualified as an internal document concerning certain rules of operation and thus had significance in itself.

The SAC decision was final and the information was provided.

5. Krassen Nikolov v the Prosecutor's Office of the Republic of Bulgaria

1st court instance - adm. case No 9569/2015 of the Administrative Court - Sofia City, Second Division, Panel 36

Request:

With a written request dated 18.08.2015, Krassen Nikolov (from Mediapool) asked the Prosecutor's Office to grant him access to information concerning the establishment and composition of the „Anti-corruption“ specialized unit. More specifically, the requester sought to obtain a copy of the agreement for the establishment of this specialized unit at the Prosecutor's Office, concluded between the Prosecutor's Office, the State Agency for National Security (SANS), and the Ministry of Interior (MoI). Mr Nikolov also requested information related to: the person in charge of the unit in question; the number of employees from the Prosecutor's Office, the SANS, and the MoI working within the unit; a list of the prosecutors working within the unit at the time of the request; the criteria for selection of prosecutors, SANS and MoI employees working within the unit; the number of cases that were being handled by the unit at the time of the request; and the number of convictions and submitted indictments at the time of the request.

Response:

The Prosecutor's Office did not provide a response within the 14-day period prescribed by law.

Complaint:

The silent refusal was appealed before the Administrative Court - Sofia City.

Development at the first court instance:

The case was examined in open court on 28.01.2016 and the court proceeded to pronounce a decision.

Decision of the first-instance court:

With Decision No 851 dated 15.02.2016, the Administrative Court - Sofia City repealed the silent refusal and obliged the Prosecutor General to provide an explicit response, instructing him regarding the proper interpretation and implementation of the relevant legal provisions. The court held that the only appropriate manner to address a request for access to information under the law was by means of an explicit decision. The APIA did not provide for a response by silent refusal, which in itself was sufficient ground to repeal the refusal of the Prosecutor's Office.

The decision of the Administrative Court - Sofia City was not appealed and entered into force. The Prosecutor's Office then provided the requested information pertaining to the establishment and composition of the specialized anti-corruption unit.¹

¹ <http://www.mediapool.bg/antikoruptionsionoto-zveno-na-tsatsarov-za-edna-godina---edna-prisada-na-parva-instantsiya-news246766.html>

6. Marietta Sivkova v the Yambol Municipality

1st court instance - adm. case No 256/2014 of the Yambol Administrative Court, Panel 1

2nd court instance - adm. case No 3046/2015 of the Supreme Administrative Court, Fifth Division

Request:

With a written request dated February 2014, Marietta Sivkova (a municipal councilor from the city of Yambol) asked the Mayor of the Yambol Municipality to provide her with a copy of an out-of-court settlement, concluded between the municipality and a construction firm.

Response (1):

With a letter dated 25.02.2014, the Secretary of the Yambol Municipality rejected the request on the basis of its form, stating that the phrasing 'the text of an out-of-court settlement' did not constitute a valid request for access to information, since the APIA only stipulates a requirement for the provision of information, but not of specific documents.

With Ruling No 182 dated 23.05.2014, the Yambol Administrative Court (YAC) repealed the Secretary's refusal to address the request and obliged the Secretary to assess the latter on its merits. The court held that the request contained all elements prescribed by Art. 25, par. 2 of the APIA, for which reason it could not remain unaddressed. The YAC ruling was appealed by the Yambol Municipality before the SAC, but the appeal was deemed inadmissible at two court instances, so the ruling entered into force.

Response (2):

With a decision dated 18.11.2014, the Secretary of the Yambol Municipality assessed the request on its merits and refused to grant access to the requested information, citing the same motives that led them to reject it in the first place. The decision stated that there was no valid request for access to information in the case, because the request did not describe the desired information, but sought access to a specific document.

Complaint:

The explicit refusal was appealed before the YAC. The plaintiff contended that the issue pertaining to the proper form of the access to information request (the so-called *access to information - access to documents* issue) was currently addressed by four decisions of five-member panels of the SAC, which stated that the question of whether the request related to the concrete information carrier (a document) or contained a description of the information itself had no bearing on the requirement to provide the information.

Development at the first court instance:

The case was examined in open court on 06.01.2015 and the court proceeded to pronounce a decision.

Decision of the first-instance court:

With Decision No 9 dated 22.01.2015, the YAC repealed the refusal and returned the request to the Secretary for reconsideration, instructing them regarding the proper interpretation and implementation of the relevant legal provisions. The court held that the fact that the request concerned a specific document, rather than provide a description of the data contained within that document, was not a valid justification to refuse access to the requested

information. The court pointed to Art. 37, par. 1 of the APIA, which contains an exhaustive list of the justifications for refusing access to public information, and indicated that the justification invoked by the administrative body in the case did not figure there. This decision is in line with the court practice adopted in recent years with respect to the issue of whether requesters can seek access to information or to specific documents. The court reasoned that the law does not distinguish between the information contained within a document and that same document as a carrier of the information. Therefore, the request for a copy of a document amounts to a request for access to the information contained within.

Complaint to the SAC:

The Secretary of the Yambol Municipality appealed the YAC decision before the SAC.

Development at the second court instance:

The case was examined in open court on 24.02.2016 and the court proceeded to pronounce a decision.

Decision of the second-instance court:

With Decision No 3541 dated 29.03.2016, the SAC upheld the decision of the first-instance court. The SAC held that the request for a copy of a document (an out-of-court settlement between the Yambol Municipality and a construction firm) was valid under the APIA, because the document would provide the requester with information concerning the subject of the agreement, its terms, the agreed price, and the sanctions that a potential breaching party would incur. The SAC further ruled that the requested information was public, since its provision would help the requester to form an opinion regarding the activity of the obliged subject, given that the information in the case related to budget expenditure.

The decision was final and the information was provided.

7. Viktor Ivanov v the Government Information Service

1st court instance - adm. case No 10101/2014 of the Administrative Court - Sofia City, Second Division, Panel 35

2nd court instance - adm. case No 8434/2015 of the SAC, Fifth Division

Request:

With a written request dated 10.09.2014, Viktor Ivanov (from the newspaper „24 Chasa“) asked the Government Information Service (GIS) to grant him access to three reports of the General Inspectorate of the Council of Ministers (CoM), compiled in reference to three performed inspections:

1. A report of the General Inspectorate of the CoM regarding a special inspection carried out on a site located in the „Boyana“ complex in accordance with Order No P-763/11.04.2014 of the Prime Minister of the Republic of Bulgaria;
2. A report of the General Inspectorate of the CoM regarding a special inspection related to the observance of working hours by CoM officials, carried out in accordance with Order No B-54/09.05.2014 of the Prime Minister of the Republic of Bulgaria;
3. A report of the General Inspectorate of the CoM regarding an inspection carried out on the basis of information, received from the SANS, in accordance with a written resolution by the Prime Minister of the Republic of Bulgaria.

Response:

With a decision dated 24.09.2014, an expert at the GIS refused to grant access to the requested information on grounds of the fact that it contained the names and offices of employees of the CoM administration and of the „Boyana“ complex, which constituted personal data within the meaning of the Personal Data Protection Act (PDPA).

Complaint:

The explicit refusal was appealed by Viktor Ivanov before the Administrative Court - Sofia City. The plaintiff argued that the names and offices of public officials did not constitute personal data.

Development at the first court instance:

The case was examined in open court on 29.01.2015 and the court proceeded to pronounce a decision.

Decision of the first-instance court:

With Decision No 3007 dated 29.04.2015, the Administrative Court - Sofia City repealed the refusal and returned the request to the GIS for reconsideration, instructing them regarding the proper interpretation and implementation of the relevant legal provisions. The court held that the protection of personal data argument was unfounded, since the requested information was not the three names and the offices of the public officials, but the inspections carried out by the General Inspectorate of the CoM. The fact that these inspections could contain personal data, which cannot be disclosed without the consent of the affected parties, did not mean that all the information within the inspections could not be disclosed.

Complaint to the Supreme Administrative Court:

The decision of the Administrative Court - Sofia City was appealed by the GIS before the SAC.

Development at the second court instance:

The case was examined in open court on 18.01.2016 and the court proceeded to pronounce a decision.

Decision of the second-instance court:

With Decision No 1167 dated 04.02.2016, the SAC upheld the decision of the Administrative Court - Sofia City. The SAC held that the first-instance court had correctly ruled that the protection of personal data argument could not be invoked in cases where the requested information did not relate to the personal data of public officials, but concerned information contained within public administrative reports. The SAC further noted that Art. 37, par.1, item 2 of the APIA stipulates a requirement to disclose the requested information in cases of overriding public interest. According to par. 1, item 6 of the Additional Provisions (AP) of the APIA, an 'overriding public interest' can be established when the requested information could lead to the exposure of corruption practices or abuse of power, or could promote the transparency and accountability of the obliged subjects. In the present case, it is clear from the subject of the request for access to information that the requester sought to form an opinion on the accountability of the relevant obliged subjects.

The SAC decision was final and the information was provided.

8. Alexander Dunchev v the Ministry of Agriculture, Food, and Forestry

1st court instance - adm. case No 10032/2014 of the Administrative Court - Sofia City, Second Division, Panel 32

2nd court instance - adm. case No 1386/2015 of the SAC, Fifth Division

Request:

With a request dated August 2014, Alexander Dunchev asked the Ministry of Agriculture, Food, and Forestry (MAFF) to provide him access to 6 (six) expert reports (called market value assessments) concerning the market value of public sector real estate properties (forests) that were the subject of different transactions.

Response:

With a decision dated 12.09.2014, a commission within the MAFF refused to grant access to the requested information, claiming that the latter was not of public nature. The argument was that the disclosure of the market value assessments would violated copyright law, since these documents were scientific and literary publications. The decision further stated that the market value assessment represented a statement by an independent evaluator which could not constitute public information, as it did not provide any insights into the work activities of the relevant public body. Finally, the refusal noted that there was no overriding public interest in the disclosure of the requested information in the case.

Complaint:

The refusal of the MAFF was appealed before the Administrative Court - Sofia City. The plaintiff argued that the requested information was public and did not touch upon copyright law, as the market value assessments were not a product of creative writing, but were reports drafted by expert professionals, listed in a public register.

Development at the first court instance:

The case was examined in open court on 11.11.2014 and the court proceeded to pronounce a decision.

Decision of the first-instance court:

With Decision No 7309 dated 01.12.2014, the Administrative Court - Sofia City repealed the refusal and returned the request to the MAFF for reconsideration. The court held that the market value assessment of public sector real estate was public information and that there was an overriding public interest in the disclosure of such information. The court reasoned that the disclosure of the assessment would allow the requester to form an opinion regarding the work activity of the relevant public body in the context of real estate sales. The market value assessments would show whether the MAFF actually complied with them, as well as whether they themselves were prepared in accordance with the requirements of the State Property Act. The court further held that copyright law could not prevent the provision of the assessments under the APIA, since copyright had to be balanced against the existing public interest in the disclosure of the information in question. In this case, there was an overriding public interest in the disclosure, because the information would render the management decisions of the obliged subject transparent.

Complaint to the Supreme Administrative Court:

The decision of the Administrative Court - Sofia City was appealed by the MAFF before the SAC.

Development at the second court instance:

The case was examined in open court on 17.02.2016 and the court proceeded to pronounce a decision.

Decision of the second-instance court:

With Decision No 2573 dated 09.03.2016, the SAC upheld the decision of the Administrative Court - Sofia City. The SAC held that there was an overriding public interest in the disclosure of the requested information in the case, because the APIA stipulates a presumption for the existence of such an interest when the data in question relate to economics and concern the conditions, rights, obligations, sanctions, and time limits, encoded in a contract involving a party which is an obliged subject within the meaning of the APIA.

The SAC decision was final and the information was provided.

9. Ralitsa Petrova v the Sofia District Prosecutor's Office

1st court instance - adm. case No 6552/2014 of the Administrative Court - Sofia City, Second Division, Panel 24

2nd court instance - adm. case No 3215/2015 of the SAC, Fifth Division

Request:

With a request dated 21.05.2014, Ralitsa Petrova (from the magazine „Praven Svyat“) asked the Sofia District Prosecutor's Office (SDPO) to provide her with information concerning the identity of the prosecutor who had ordered the SANS to investigate President Rossen Plevneliev upon a signal from Nikolay Barekov in relation to the President's meeting in Vienna with representatives of EVN.

Response:

With a decision dated 28.05.2014, the Sofia District Lead Prosecutor refused to provide Mrs Petrova with the requested information, stating that the latter was not public within the meaning of the law, but instead constituted personal data.

Complaint:

The refusal was appealed before the Administrative Court - Sofia City. The plaintiff contended that public bodies could not exercise power anonymously and that public officials were accountable to the society.

Development at the first court instance:

The case was examined in open court on 15.12.2014 and the court proceeded to pronounce a decision.

Decision of the first-instance court:

With Decision No 154 dated 12.01.2015, the Administrative Court - Sofia City dismissed the complaint. The court held that the requested information did not relate to the public life in the country, nor to the activity of the obliged subject under the APIA, but instead constituted personal data of a specific individual in its entirety.

Complaint to the Supreme Administrative Court:

Ralitsa Petrova appealed the decision of the Administrative Court - Sofia City before the SAC. The appellant argued that the requested information was public and that the names of public officials could not be held in secret.

Development at the second court instance:

The case was examined in open court on 16.03.2016 and the court proceeded to pronounce a decision.

Decision of the second-instance court:

With Decision No 4555 dated 18.04.2016, the SAC quashed the decision of the Administrative Court - Sofia City and repealed the refusal of the SDPO to provide the requested information. Contrary to the reasoning of the first-instance court, the SAC held that public officials, among which were prosecutors, could not benefit from the same level of protection of personal data as ordinary citizens. Therefore, there was no legal ground based on the PPDA to deny the disclosure of information related to the name of the relevant Sofia

District prosecutor under the APIA. This reasoning is also in line with the purpose of the law to help the public form an opinion regarding the work activities of the obliged subjects.

The SAC decision was final.

10. Arch. Vessela Toncheva v the Sofia Municipality

1st court instance - adm. case No 9073/2013 of the Administrative Court - Sofia City, Second Division, Panel 34

2nd court instance - adm. case No 3220/2015 of the SAC, Fifth Division

Request:

With a request dated 05.08.2013, Arch. Vessela Toncheva requested the Mayor of Sofia Municipality (SM) to grant her access to an order of the Mayor and a report of the Chief Architect of the Sofia Region related to an inspection on the lawfulness of the existing movable objects in the "Borisova gradina" park in the capital.

Response:

With a decision dated 16.08.2013, the Secretary of the Sofia Municipality refused to provide the information, stating that the latter was of professional (internal) nature and did not have significance in itself, since it did not represent a final administrative act.

Complaint:

The Secretary's refusal was appealed before the Administrative Court - Sofia City.

Development at the first court instance:

The case was examined in open court on 18.02.2014 and the court proceeded to pronounce a decision.

Decision of the first-instance court:

With a Decision No 6363 dated 27.10.2014, the Administrative Court - Sofia City repealed the refusal and obliged the Secretary of the Sofia Municipality to provide access to the requested information. The court held that the refusal to provide access could not be grounded, pursuant to Art. 13, par.2 of the APIA, in the preparatory nature of the information and its lack of significance in itself, because the requested information was public, concerned the results from a performed administrative inspection, and contained orders of the Mayor and the Chief Architect, issued in the fulfillment of their professional duties. The court further ruled that even if Art. 13, par. 2 of the APIA was applicable, the refusal would still be unlawful, because the purpose of this legal provision is to restrict only the access to information, which is of preparatory nature and does not have significance in itself. The access to such information should be restricted because the public can find out the relevant facts from the published final act of the relevant administrative body. However, if a final act was never to be published, the public would remain completely uninformed, which should be prevented.

Complaint to the Supreme Administrative Court:

The Secretary of the Sofia Municipality appealed the decision of the Administrative Court - Sofia City before the SAC.

Development at the second court instance:

The case was examined in open court on 28.03.2016 and the court proceeded to pronounce a decision.

Decision of the second-instance court:

With Decision No 4897 dated 25.04.2016, the SAC upheld the decision of the first-instance court. The SAC held that the Administrative Court - Sofia City had correctly reasoned that the requested information represented official public information within the meaning of Art. 10 of the APIA. The information was contained within orders of the Mayor and the Chief Architect of the Sofia Municipality, issued in the fulfillment of their professional duties, and concerned the results from a performed administrative inspection, as well as the reason for ordering this inspection and the development of a plan scheme. Furthermore, the orders in question had significance in themselves, as they were not associated with the exercise of power for the operational preparation of a single administrative case (eg., the removal of illegally-placed movable objects from a given area in result of a performed inspection would be a different case from the one associated with the development of the plan scheme of that area).

The SAC decision was final.

11. Ivan Petrov v the Sofia Municipality

1st court instance - adm. case No 10941/2014 of the Administrative Court - Sofia City, Second Division, Panel 24

2nd court instance - adm. case No 5305/2015 of the SAC, Fifth Division

Request:

With a request dated 13.10.2014, Ivan Petrov asked the Sofia Municipality to provide him with information related to whether there were tenants of municipal property who had requested the municipality to pay them insurance indemnities, and if positive, whether the municipality performed such payments and what types of property were engaged in these procedures (for living purposes, for working purposes, etc.)

Response:

With a decision dated 16.10.2014, the Secretary of the Sofia Municipality refused to grant access to the requested information, stating that such information did not exist and that there was no requirement to assemble it on the basis of the request. The Secretary claimed that the requester's questions could only be answered by making an appropriate reference, rather than merely providing access to existing information. Therefore, the requested information was not public.

Complaint:

The refusal was appealed by Mr Petrov before the Administrative Court - Sofia City. The plaintiff argued that the information was public and available to the municipal officials, since it was contained in the documents associated with the payments of insurance indemnities to tenants of municipal property. Moreover, there was a continuous administrative practice of providing public information in the form of a reference in writing.

Development at the first court instance:

The case was examined in open court on 09.03.2015 and the court proceeded to pronounce a decision.

Decision of the first-instance court:

With Decision No 1836 dated 20.03.2015, the Administrative Court - Sofia City dismissed the complaint and sentenced the plaintiff to pay for the court expenses of the Sofia Municipality. The court held that the requested information was not public, as the requester had asked for answers to specific questions, which did not constitute public information within the meaning of the APIA. The court reasoned that the right to access public information was restricted to existing documentation and that the obliged subjects were under no obligation to create documentation on the basis of requests, for which reason the APIA could not stipulate a requirement to provide a reference in writing in any case.

Complaint to the Supreme Administrative Court:

Ivan Petrov appealed the decision of the Administrative Court - Sofia City before the SAC. The plaintiff contended that the requested information was public, as it concerned the management of municipal property and its provision would allow the requester to form an opinion regarding the Sofia Municipality's work activities in this regard, and, more specifically, regarding the payments of insurance indemnities to tenants of municipal property.

Development at the second court instance:

The case was examined in open court on 30.03.2016 and the court proceeded to pronounce a decision.

Decision of the second-instance court:

With Decision No 5898 dated 17.05.2016, the SAC quashed the decision of the Administrative Court - Sofia City and obliged the Sofia Municipality to provide the requested information. The SAC ruled that the requester was seeking public information, the provision of which would allow him to form an opinion regarding the Sofia Municipality's work activities in the context of municipal property management, and, more specifically, regarding the payments of insurance indemnities to tenants of municipal property.

The SAC decision was final.

12. WWF - World Wide Fund for Nature v the Pirin National Park Directorate

1st court instance - adm. case No 8/2016 of the Blagoevgrad Administrative Court

Request:

With a written request dated 12.11.2015, the WWF asked the Director of the Pirin National Park (PNP) to provide them with information related to the Management Plan for the PNP. The request was divided into four main points:

1. Has the Directorate of PNP identified gaps in the three-month interim reports on the execution of the contract for „Development of the PNP Management Plan for the period 2014-2023?“ (The requester sought after copies of the handover certificates recording the acceptance of all interim reports, as well as the settlement records in cases of disputes):
2. Has the Directorate of PNP ceased the execution of the contract for „Development of the PNP Management Plan for the period 2014-2023?“ or has it extended its term? If positive, for what reasons and what are the new terms?;
3. Has the Directorate of PNP invoked forfeiture clauses in cases of delays and/or unsatisfactory execution of the contract for „Development of the PNP Management Plan for the period 2014-2023?“? If positive, which were the clauses and what was the amount of damages?;
4. Has the Directorate of PNP paid the final instalment on the contract for „Development of the PNP Management Plan for the period 2014-2023“ by 17.11.2015? If positive, what was the date of the transaction?

Response:

With a decision dated 08.12.2015, the Director of PNP refused to provide the requested information. The refusal claimed that the third party - the private company „Proles engineering“- had not provided its consent to the disclosure. The refusal also indicated that the APIA was inapplicable, since the Public Procurement Act (PPA) provides a special procedure for access to such information. Finally, the refusal stated that the information, necessary for the development and update of the relevant Management Plan, was published on the official website of the project in accordance with the Environmental Protection Act (EPA).

Complaint:

The refusal to provide the information was appealed before the Blagoevgrad Administrative Court. The plaintiff contended that the requested information concerned the environment and its provision did not necessitate the consent of a third party, since there was an overriding interest in its disclosure. Moreover, the fact that the PPA stipulates a requirement for active publication of information related to public procurement contracts did not affect the applicability of the APIA to such contracts. Finally, the requested information was not published on the official website of the project.

Development at the first court instance:

The case was examined in open court on 06.04.2016 and the court proceeded to pronounce a decision.

Decision of the first-instance court:

With Decision No 639 dated 03.05.2016, the Blagoevgrad Administrative Court repealed the refusal and returned the request to the PNP Directorate for reconsideration, instructing them as to the proper interpretation and implementation of the relevant legal provisions. The court held that: the affected third party's interest was not specified; the administrative body had not discussed whether an overriding public interest existed in the case; the publication of information in accordance with the PPA did not preclude the applicability of the APIA; and that the requested information was not published on the official website of the project.

The decision of the first-instance court was not appealed and entered into force. The information was provided.