



Access to Information in Bulgaria

2016

Report

The report on the state of the access to information in 2016 presents assessment of the regulations in the access to information area; analysis of the results from the assessment of the proactive transparency of 566 institutions for 2017; analyses of the access to information cases referred to AIP for legal help and consultation during 2016; tendencies in the court practices on access to information cases in 2016.

ACCESS TO INFORMATION IN BULGARIA
2016

ACCESS TO INFORMATION PROGRAMME

Sofia, 2017

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ACCESS TO INFORMATION PROGRAMME



AMERICA FOR BULGARIA FOUNDATION

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Access to Information in Bulgaria 2016 Report

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FOREWORD

The improvement continues, but is that enough?

ACCESS TO INFORMATION PROGRAMME presents the Access to Information in Bulgaria 2016 report.

The report consists of several parts.

The first part presents an assessment of the regulations in the area of access to information, prepared by the Head of the AIP legal team Alexander Kashumov. The outline of the problems identified in this context is based on an analysis of the legal aid provided by the AIP team to citizens, journalists, and non-governmental organizations seeking information from public authorities as well as on the litigation and on discussions with officials from the administration carried out in the course of trainings on the Draft Law on APIA amendments held by the AIP in 2016 - 2017.

The next parts of the report aim to form an image of the APIA implementation practices.

The part with the audit on active transparency reflects the results from the AIP evaluation of the Internet sites of 566 public bodies, performed within the period February - March 2017. It shows the developments in the proactive publication of information resulting from the APIA amendments in force as of January 2016. The 2017 data can be compared to the data for the same period in 2016. We have observed progress with regards to certain indicators on the basis of which the assessment was made. The authors of the analysis are Gergana Jouleva, Darina Palova, and Stephan Anguelov.

The analysis of the practices related to the e-requests, of the responses, and of the information collected from the 2017 audit was made by Kiril Terziiski.

The AIP is often addressed for legal aid on access to information cases by journalists, citizens, and non-governmental organizations, as well as by officials from the administration. AIP provides legal advice in cases when a balance between protected rights and interests and an overriding public interest in the disclosure of the information should be struck.

The analysis based on the cases referred to the AIP legal team and the provided legal consultations was made by Darina Palova.

The systematization and analysis of the 2016 access to information litigation was made by Kiril Terziiski.

The report contains 7 appendices which summarize the data from the different activities conducted by the AIP throughout the year. The appendices were prepared by Gergana Jouleva, Darina Palova, and Kiril Terziiski.

The report starts, as usual, with recommendations based on the data and their analysis and a general outline of the tendencies associated with the APIA implementation practices.

The AIP has been taking an active part in the debates concerning the adoption of the APIA and its amendments throughout the years. On the basis of its 20-year-long experience of

monitoring the access to information practices, it should be easy to answer the question - has the access to information become a part of the Bulgarian social culture and has it become an important factor in our democracy? A lot has been achieved, however, it is still not enough.

The Bulgarian Access to Public Information Act is representative of typical legislative approaches in a number of other spheres of government. The APIA provides the regulations necessary for good administrative procedures, but the definitions it puts forward remain unclear from a practical point of view. It does not provide for an independent mechanism for administrative oversight, thus allowing the development of implementation practices that we may qualify as inadequate improvisations.

Are practices consistent and is the access to information regime efficient?

There were periods when Bulgaria ranked among the top countries in terms of number of filed requests for access to information. Was that a reason for being proud or for raising questions about the quality of active transparency in the country? Those periods are gone. Now, the number of requests filed under the APIA are decreasing every year. What are the reasons? Most probably, it is the improved regulations and practices with regards to the proactive publication of information on the Internet. It might also be the despair from waiting for long periods of time to obtain the requested information. As can be seen from the analysis of the legal regulations in the first part of the report and from the analysis of the litigation, the process may sometimes take years and may cost a lot. The practices of responding with silence to an access to information request are continuing as well. Thus, people who have decided to form an informed opinion by investigating an issue of their concern become discouraged.

It is widely accepted the state of access to information is a characteristic feature of democracy.

Is it possible to become informed citizens who exercise their rights, take part in discussions of public policies, and exercise control over the work of the institutions?

The right of access to information opens the door to such aspirations.

Gergana Jouleva

RECOMMENDATIONS

The recommendations with respect to the existing legislation and its implementation and interpretation are the following:

A. Amendments to the Access to Public Information Act (APIA):

- to designate a public body to coordinate and control the implementation of the obligations under the APIA by the executive power;
- to ensure an efficient mechanism for imposing sanctions on public officials for violating the APIA;
- to establish a mechanism for quick and free processing of complaints by an independent public body (Information Commissioner or Commission);
- to provide for expedited quick court proceedings in cases of complaints against decisions to refuse access to information under the APIA;
- to abolish the imposition of attorneys' fees in court cases initiated upon a claim for violation of the right to access information under the APIA;
- to extend the obligation for disclosing public information to all entities, the capital of which is held directly or indirectly by the State and the municipalities, or which provide public services under the control of, or by virtue of an assignment from the State and the municipalities.

B. Amendments to the Protection of Classified Information Act (PCIA):

- to introduce a ban on classifying information related to violations of human rights, or which conceals corruption and crime, as a state or an official secret;
- to introduce automatic declassification of specific categories of classified information;
- to introduce an obligation for institutions to publish lists of declassified documents.

C. Other recommendations related to the legislation:

- to adopt provisions ensuring the transparency of sessions and meetings of state authorities related to their activities through the establishment of obligations for record keeping (open government).

D. The Government should undertake steps to sign and ratify the Council of Europe Convention on Access to Official Documents (CETS No.205).

The recommendations with regards to the „Access to Information“ sections and their content and with regards to the proactive publication of information on Internet sites are:

- to reach 100% compliance with the obligation to have an „Access to Information“ section on the website;
- to position the section in the main menu of the website of the institution;
- to publish explanatory information for citizens on how to exercise their right to information in a specific institution;
- to review and amend the internal rules in compliance with the new obligations for proactive publication and the changes in the law, to assign teams responsible for these activities, as well as for overseeing the implementation of the obligations, including the obligations related to the proactive publication of information;
- to pay attention to the indications to update the information, published on the websites;
- to comply with the norms determining the costs for provision of information under Order of the Minister of Finance No. 1472 dated 29 November 2011.

LEGISLATION ON ACCESS TO INFORMATION

The significant amendments to the APIA which were adopted in the end of 2015¹ and entered into force in early 2016² raise new questions concerning the interpretation and implementation of the law. For example, there is a debate on the scope of the „public law organizations“ category which includes entities that are obliged to provide access to information. The definition of this category was modified and expanded in 2015,³ yet some issues remained. Based on a literal interpretation of the law, it would seem that the commercial entities, which are only indirectly controlled by the state, are not obliged to provide access to information, even if they play a key role in a given economic sector. However, there is an inconsistent court practice as to whether the National Electric Company (NEC) is a public law organization within the meaning of the APIA. NEC's capital is owned by the Bulgarian Energy Holding (BEH), and not directly by the state. BEH's capital, however, is entirely state-owned. Hence, under the new wording of the law, BEH becomes an obliged body. Another issue arises from the fact that the legal provisions of the APIA related to whether every public procurer is an obliged body are unclear. The court practice is inconsistent with respect to procurers in the Energy sector. However, it is undisputed that every company controlled by such a procurer is an obliged subject under the APIA. A third aspect of the notion „public law organizations“ is touched upon with the question of whether companies with more than 50% municipally-owned capital constitute obliged bodies. Under the APIA, the companies whose managerial or controlling bodies are determined by a public procurer are considered „public law organizations.“ With regards to companies whose capital is owned by the state, there is no debate on that matter. However, the question arises with regards to companies which include municipalities as their shareholders.⁴ As a result, a company in which the state holds 51% of the assets is undoubtedly an obliged body under the APIA, whereas a company entirely owned by a municipality is not.

On another note, the stronger requirements for proactive online publication led to questions regarding the details of such publication. For example, there is a debate on which categories of acts (official documents), issued by institutions, should be published online as falling within the notion „individual administrative acts.“

It is still unclear how the platform for filing access to information requests, which the law provides for, will be structured. It is supposed to start functioning in the summer of 2017.⁵ Along with the obligation to publish information regarding the procedure for access to

¹ Promulgated in the State Gazette (Prom. SG), issue 97 of 11 December 2015.

² Most of the amendments entered into force on 12 January 2016. The provisions on proactive disclosure entered into force on 12 April 2016 (§ 32, par. 1 of the Transitional and Final Provisions of the APIA, Prom. SG issue 9 of 2015).

³ The definition is laid down in § 1, item 4 of the Additional Provisions of the APIA.

⁴ According to the so far isolated 2012 ruling of the SAC, since the rights of the owner of the capital in such companies are exercised by the municipal councils, and they are not public procurement entities, the companies with municipal participation are not obliged subjects under the APIA.

⁵ According to the law, the respective legal provision enters into force on 1 June 2017.

public registers,⁶ the law, in its new version, provides for giving access to the requested public information through a referral to the internet address of the relevant public register.⁷ This procedure stresses the need of good maintenance of the public registers and data bases online. For example, the public registers published by different municipalities are not arranged in the same manner. The lack of coordination on the part of institutions in implementing these obligations is a serious obstacle to the overall process of implementation.

Some of the existing problems of the APIA, described and analyzed by AIP, remained unaddressed in the 2015 amendments. For example, there is still no mechanism ensuring the uniform implementation of the law in similar situations. This deficit is particularly noteworthy with respect to the legal provisions which usually fall outside the control of the administrative courts. Under the law, the institutions' decisions on filed requests, including the silent refusals, can be appealed. However, the implementation of certain obligations, such as the proactive publishing of information, the provision of a place where documents can be consulted (a reading room), or the adaptation of the received public information for people with disabilities are outside of judicial control as stipulated under the APIA.

Another problem is that the requesters do not have an interest in appealing a series of violations of the procedure on provision of information, which are deemed insignificant by the case law. These are: the violation of the obligation to issue a decision within the legal time period; the unlawful calculation of expenses associated with the provision of information; and the unlawful change in the form of the provided information.

Another problem which remained unaddressed by the 2015 amendments of the APIA flows from the lack of an executive body exercising control. The annual report on the implementation of the APIA by the administration will fall short of undergoing full parliamentary scrutiny if it is not presented before Parliament by a Minister. Moreover, no measures have been taken to establish independent control over the implementation of the APIA by an Information commissioner or Commission.⁸ Another problem is the apparently unenforceable mechanism for implementing sanctions for non-fulfillment of obligations under the law.⁹

Another problem is rooted in the delayed control of refusals and other decisions with respect to requests for access to information. In recent years, the cases before the Supreme Administrative Court have been scheduled for a year or more ahead, which results in slow justice. Unlike many other rights and legal interests, the late administration of justice associated with the right of access to information and the late receipt of the requested information have equal effect to a refusal of justice. It turns out that institutions, which

⁶ According to Article 15a, par. 2 of the APIA.

⁷ The rule of Article 26, par. 1, item 1 of the APIA provides for explicitly granting access when the information is contained in a public register, unlike the previous regime, whereby the filing of the information in such a register was the reason for the application to be left out of consideration due to the inapplicability of the APIA.

⁸ This is the specific reason for the lower assessment given to the APIA by the international mechanism for assessment - the RTI Rating, carried out by the Center for Law & Democracy and Access Info Europe.

⁹ According to the reports on the state of the administration, drafted annually by the administration of the Council of Ministers, so far there is only one case of imposing a sanction for non-fulfillment of the obligations under the APIA.

stubbornly refuse access to information that is of public interest, have an interest in suffering the consequences of a court case, which they surely will not win.

The slow justice problem is being aggravated by another, closely related problem - the losing party's responsibility to cover the costs and expenses arising from the case. This problem stems from the provisions of the Administrative Procedure Code (APC)¹⁰ and the Civil Procedure Code (CPC),¹¹ as well as from the interpretations adopted by the Constitutional Court and the Supreme Administrative Court. According to this legislation, the party to which the judicial decision is unfavorable should bear not only the negative outcome of the case, but also the additional financial burden associated with the responsibility to pay the costs and expenses, including attorney's fees and the fictitiously calculated remuneration of an in-house lawyer.¹² Since there is a minimum tariff for attorney's fees in such cases, the system effectively turns any attempt to defend the right of access to information before a court into a costly endeavor. Thus, the ambition of a citizen or a journalist to act as a defender of the public interest and to demand accountability and transparency of the institutions could cost more than 2000 BGN for a single case.¹³

Some of the problems with the legislation on access to information are rooted in questions that have to be discussed at the EU level, or touch upon the process of incorporating EU legislation in the domestic law of Bulgaria. The balance between the right of access to public information and the protection of personal data continues to be a topic of primary importance. In this respect, the interpretation and implementation of the law adopted by the Supreme Administrative Court in a series of cases is in line with the European Convention of Human Rights standards. However, no significant progress has been made with respect to the publishing of conflict of interest declarations filed by civil servants and officials.¹⁴ An important event in 2016 was the decision of the Grand Chamber of the European Court of Human Rights that confirmed the application of Article 10 of the Convention to cases of access to public information.¹⁵ The same decision stressed that data relating to a person's profession should be disclosed, since they do not fall within the scope of protection of the personal sphere.¹⁶

¹⁰ Article 143 of the APC.

¹¹ Article 178 of the CPC.

¹² It is essential that in-house lawyers do not receive such remuneration.

¹³ According to Ordinance No. 1 on the Minimum Amount of Attorney's fees, the remuneration for court representation in this type of case for one instance is 500 BGN. The party that has lost the case is ordered to cover the expenses of the opposing party on top of its own expenses. This is also the case when the public institution is represented by an in-house lawyer. There are two court levels (instances) in such a case.

¹⁴ According to Article 17, par. 2 of the Conflict of Interest Prevention and Ascertainment Act, the declarations should be published in compliance with the requirements of the Personal Data Protection Act. See further in this report the results of the Active transparency audit carried out by AIP in 2017.

¹⁵ Decision of 8 November 2016 on complaint № 18030/11 of the European Court of Human Rights, Grand Chamber. AIP filed an amicus curiae brief on the case.

¹⁶ The case concerns the refusal of several police departments in Hungary to provide data on the names of the lawyers appointed as public defenders, along with the number of cases taken by each of them in pre-trial proceedings.

In 2016, the government once again did not take any steps towards joining the Convention on Access to Official Documents in breach of its commitment in the Second National Action Plan of the Open Government Partnership initiative. Furthermore, this commitment is not included in the Third Action Plan.¹⁷

Achieving maximum government transparency requires the adoption of provisions related to the so-called „sunshine government“. Such provisions are usually seen as a part of the freedom of information rules. The latter would impose certain requirements on high public bodies in terms of carrying out meetings and sessions. The publicly known cases that have accumulated over the years and the need to enhance the integrity of senior officials raise the issue of creating such legislation. The refusal to provide information regarding the views expressed by participants in official meetings (sessions) of collective bodies or in regulated public discussions continues to be challenged in court cases under the APIA.

Questions also arise with respect to other types of meetings of senior officials discussing official matters. For example, a topic that has been in the public debate for about 15 years now is the transparency of information related to meetings of the President, Prime Minister, Ministers, MPs, judges, and the Prosecutor General with other officials. In some of these cases, the courts instructed the institutions to provide access to the requested information, while other cases did not reach the litigation stage. At the same time, there are no specific obligations pertaining to such meetings, such as an obligation to register them and to take some form of recording, even in summarized form, of the discussions. The existence of such meetings and their topics relating to official matters require the establishment of certain registration obligations, and respectively a mode of public access to the generated information in this regard. In view of the need, identified at the political level, to improve the anti-corruption legislation and to ensure the integrity of senior officials, such regulation is clearly a priority.

¹⁷The national action plans are available on the government's Public Consultations Portal at: <http://www.strategy.bg/Articles/List.aspx?lang = bg-BG>

RESULTS FROM THE CIVIL AUDIT ON ACTIVE TRANSPARENCY 2017

Context

The December 2015 amendments to the Access to Public Information Act (APIA) introduced new obligations for the authorities to publish information on the Internet. The transition period for complying with the new regulation was short - three months starting from January 12, 2016. Part of the obligations, namely the publication of seventeen categories of information, related to the implementation of obligations under other laws, such as the Public Finances Act, the Public Procurements Act, the Law on Normative Acts, the Law on Ascertainment and Prevention of Conflict of Interests, etc. According to the law, the publication of documents requires the creation of special website sections, containing information about the dates when the relevant document was created and uploaded. Such sections are „Buyer's Profile“, „Budget and Finances“, and „Draft Normative Acts“ for instance.

Besides the general categories of information subject to publication on the Internet under Art. 15, Para 1 of the APIA, the effective implementation of the new obligations for proactive publication would require a review and update of the Access to Information Sections in line with their extended content, as well as the preparation of explanatory texts.

It should be noted that the law has not envisaged the provision of specific resources for the implementation of the new obligations. Moreover, it has not provided for the appointment of responsible access to information officials. The 2007 APIA amendments required that access to information officials be assigned to every institution. The increase in the volume of work of these officials that results from entrusting them with a number of duties, including the proactive publication of information, creates problems with the implementation of the new obligations that need new obligations that can be solved by a more balanced internal distribution of duties.

A positive factor in the process of opening data bases and public registers (subsequently, the process of proactive publication) was the launching of the Open Data Portal - also introduced with the 2015 APIA amendments. The active involvement of the Council of Ministers in the process of uploading data on the portal and the trainings held during the year have drawn the attention of the administration to the new obligations and expedited the process as a whole.

The term *active transparency* relates to the initiative of the public bodies to proactively publish certain categories of information without being requested to do so.

It is hard for information seekers to decide whether specific information can be easily found on the website in every particular case. That is why in a number of countries with effective access to information laws the assessment of the level of active transparency is carried out by means of special surveys.

The systematic monitoring on the proactive publication process is performed by a centralized, specialized, independent institution, such as the Office of the Information Commissioner/Commission, or by non-governmental organizations.

The surveys performed by the AIP are within that tradition.

The AIP has been publishing the results from the systematic monitoring on the implementation of the APIA since the very inception of this practice. Following the introduction of specific legal obligations (2008) for proactive publication on the Internet after 2010, the AIP has developed a monitoring tool for assessing the publications on websites and the monitoring results can be accessed at: <http://www.aip-bg.org/en/surveys/>.

The latest amendments in the legislation have required that the assessment/ survey methodology be updated. The increase in the number of categories for publication resulted in an increase in the assessment indicators, including those for the updating of the published information.

The surveys are performed within the period March - April in order to achieve comparable results, although the online-based assessment tool allows for the assessment of the publications in every single moment.

In 2017, the survey was performed during the period 7 February - 31 March. The websites of 566 institutions were assessed, encompassing 18 ministries, 151 regional offices of executive bodies, 90 state and executive agencies, 11 independent bodies of power, 2 public-law bodies, and 265 municipalities.

566 electronic requests were filed for the List of the categories of information, subject to mandatory publication online concerning the sphere of activity of the respective administration - an obligation introduced with the December 2015 amendments to the APIA.

What is noteworthy concerning the 2017 assessment of active transparency is that the results were sent to all of the audited institutions before official release. Between 14 and 31 March the responsible access to information officials could have reviewed the assessments of their respective institutions and sent feedback to the AIP for possible omissions. We have received responses from 78 institutions and we are grateful for their cooperation.

Results

The following conditions should be taken into consideration when reading the results:

- Different number of obligations for the central authorities and their regional offices.
- Different number of obligations for the first degree and second degree budget spending units.
- Smaller second degree budget spending units are not among the frequent contractors in public procurement procedures.
- The regional offices of the central executive bodies, the regional governors, and the executive agencies do not draft and do not adopt normative acts.

The general conclusion drawn on the base of the results is that there is an improvement in the publication of all categories of information. Regarding some of the mandatory categories of information related to budget accountability, as well as the information published in the section „Buyer's Profile“, the improvement is considerable.

*Institutional Information*¹⁸

We could systematize the categories of information subject to publication under Art. 15, Para. 1 of the APIA according to their content. For instance, the information about the functions and powers of the authority, about its operational rules, the services and the rules for their provision, about the data sets and the registers it maintains and their description, about civil servants competitions and the contact information, could be defined as **institutional information**. The process of publishing that type of information has been increasing during the years, and in 2017 the level of implementation is over 70%, reaching up to 90% for some categories.¹⁹

The best implementation with regards to publishing descriptions of powers and functions is by the ministries, the regional governors, and the state and executive agencies. We have 100% implementation of the obligation by the independent authorities.

The publication of the internal operational rules of the authorities, despite being a new legal obligation introduced with the amendments to the law, is well-implemented, reaching 100% implementation by the ministries and the independent authorities. Such a high result is understandable since the operational rules are a specific document, which was subject to publication online even before the amendments to the APIA.

The internal rules for the provision of administrative services are an exception to the positive tendency to publish institutional information, with a level of implementation of 58%, although the list of services provided by public bodies has been published in 88% of the cases.

The level of publication of the lists of registers maintained by public bodies, and the registers themselves, has been growing during the years, while the level of publication of another category - **description of the data bases and the registers (APIA, Art. 15, Para. 1, Item 3)** - is very low, falling at only 16%. The description of the registers and the data sets maintained by institutions, which should contain the legal basis for maintaining the registers, its formats, and the procedure for accessing them, might require some additional work, which should have been done long ago, since this category of information has been subject to publication since the adoption of the APIA in 2000. The 2017 results showing that 56% of the ministries have published that category of information make us believe that the tendency in this regard is towards improvement as well.

¹⁸ See [Annex 1](#) to the report, which contains comparative data from the AIP surveys encompassing three successive years of implementation of old obligations and two years of implementation of new obligations introduced with the APIA amendments as of December 2015.

¹⁹ See [Annex 1](#) to the report, which contains comparative data from the AIP surveys encompassing three successive years of implementation of old obligations and two years of implementation of new obligations introduced with the APIA amendments as of December 2015.

*Operational Information*²⁰

Another group of documents subject to publication can be defined as **operational information**. This category comprises normative acts and their texts; general administrative acts and their texts; the register of the individual administrative acts; draft normative acts with corresponding motives, impact assessment reports, reports from public consultations; development strategies, programs, plans, and the mandatory indication of the time of these publications.

Despite the fact that the regional governors, the regional offices of the central government authorities, the executive agencies, and the commissions do not adopt normative acts (respectively, do not publish drafts of normative acts), it is still necessary to insert references to the public body which creates normative acts within their sphere of activities, so that website users can be better oriented. The regional governors can refer to the Council of Ministers Portal for Public Consultations - <http://www.strategy.bg/> . Such referrals are a good solution and help interested parties to get acquainted with drafts of normative acts, as well as with the possibilities to submit opinion statements on the Portal.

A considerable increase in the publications with regards to the operational information is also noticeable,²¹ including an improvement in the publications of the motives behind the draft normative acts. Although increased, the publications of the reports and results from the public consultations on the draft normative acts are still negligible - 14%. Still, it is a good tendency that the publication of the administrative acts (normative, general, and individual) contains an indication regarding the time when the act was adopted and uploaded.

The results also show an increase in the publications of development strategies and programs. However, the most considerable increase is in the publication of development plans, which is especially good, as such plans require not only a general overview of the development, but also an assesment of the capacity and financial securing of the programs. There is also an increase in the publication of the activities reports - from 25% in 2015 to 62% in 2017.

²⁰ See [Annex 2](#) to the report, which contains comparative data from the AIP surveys encompassing three successive years of implementation of old obligations and two years of implementation of new obligations introduced with the APIA amendments as of December 2015.

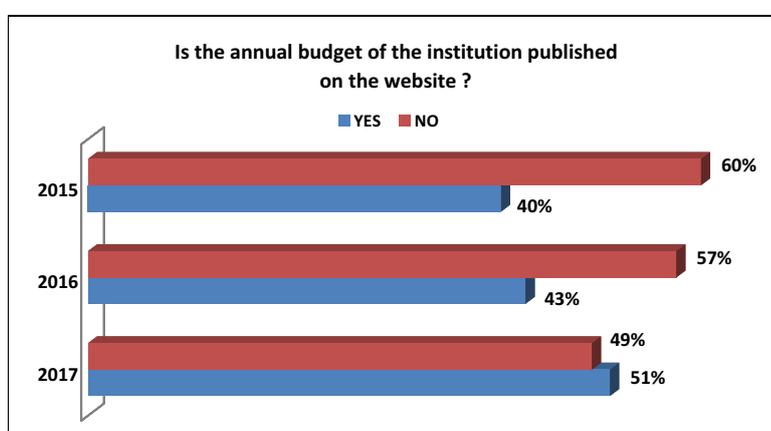
²¹ See [Annex 2](#) to the report, which contains comparative data from the AIP surveys encompassing three successive years of implementation of old obligations and two years of implementation of new obligations introduced with the APIA amendments as of December 2015.

Budget, Financial Transparency and Integrity²²

For another successive year, the AIP has assessed in its survey Civil Audit on Active Transparency whether executive bodies publish their main financial documents and the conflict of interest declarations of their officials. The larger part of the assessment criteria for budget and financial transparency reflect the obligations for publication under the Public Finances Act (PFA), enforced since January 1, 2014. The level of publication of the conflict of interest declarations has been assessed since 2012 in line with the obligations encoded in the current Law on Prevention and Ascertainment of Conflict of Interests (LPACI).

The good news is that an increase in the publication process has been observed with respect to almost all of the set criteria. Apparently, the audit performed by AIP has served its purpose and has stimulated the institutions to be more open to the citizens, at least online.

Бюджетна и финансова прозрачност

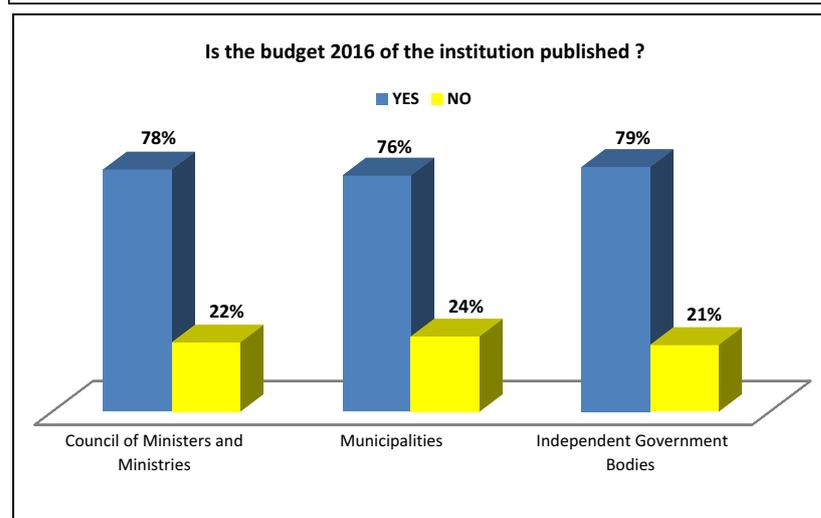
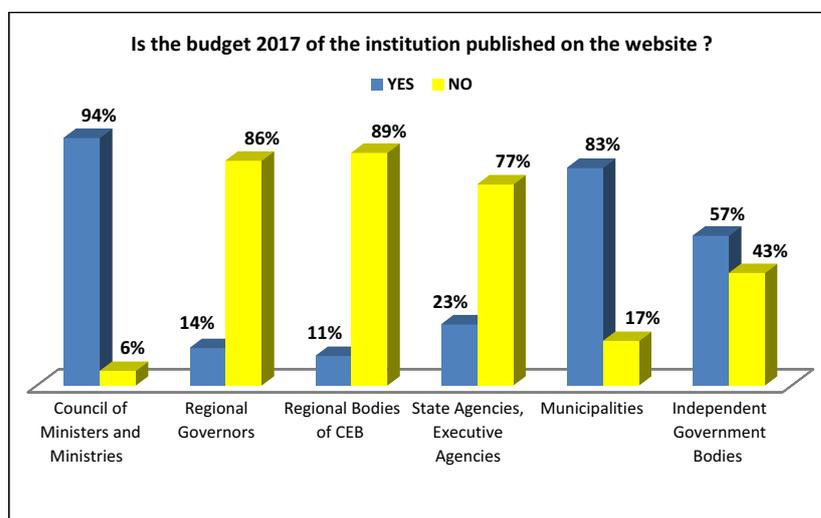


For the first time, over the half of the audited institutions have published their budget online. This amounts to 288 bodies out of all 566 assessed. The first degree budget spending units are still champions as far as the implementation of the obligation is concerned. The number of second degree budget spending units that have published their budgets for the current year has also increased compared to 2016.

Among these is an important institution which has changed its practices and has published its main financial documents for the first time - the Customs Agency. Among the institutions that persist in not publishing their budgets and financial reports are key institutions, such as the National Revenue Agency, most of the executive agencies, different bodies under the „head“ of ministries, regional departments of agriculture and regional forests directorates, regional health inspectorates, regional departments on education, etc.

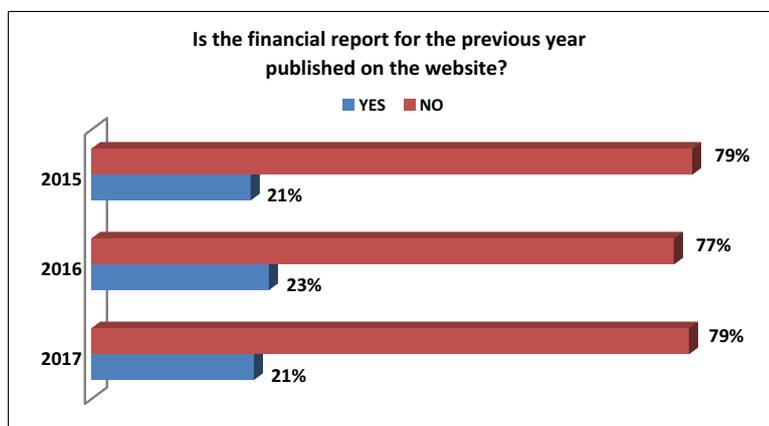
²² See [Annex 3](#) to the report containing comparative data from the AIP surveys for three successive years with regards to the categories of information related to the budget, financial transparency, and integrity.

The main „culprits“ responsible for the observed growth are the central executive bodies and the municipalities. It is now more of an exception to find one of these structures that has not published its budget (see the table below). The comparative data show a decrease in the publications by independent authorities, but this does not change the overall picture significantly, as the independent authorities are only 11.

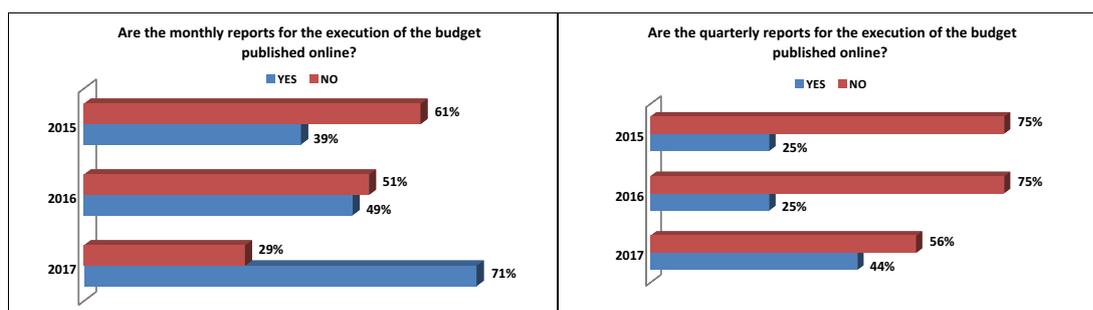


The only category in which we see a decrease in the publication in comparison to the previous year is the one associated with the annual financial reports. This obligation covers only the first degree budget spending units. We have found only 121 annual reports on the spending of the 2016 budgets. These are 21% out of all institutions or 39.5% out of the first degree budget spending units. The number is smaller compared to the data from last year where 132 (about 23% out of all audited institutions or about 43% of the first degree budget spending units) had published their 2015 financial reports. At the same time, the current results are closer to the ones from 2015 - also 21% out of the total. This outcome may have been influenced by the period in which the survey was performed. In 2017 and 2015, we reviewed the websites of the institutions in March, while in 2016 - in the beginning of April. It is also obvious that the procedures for the adoption of the reports have not

been completed everywhere during these months, since as usual we have found considerably more published reports for 2015 - 2016 (about 38% out of all audited institutions or about 70% out of the first degree budget spending units). There is an increase under the two indicators compared to the previous survey.



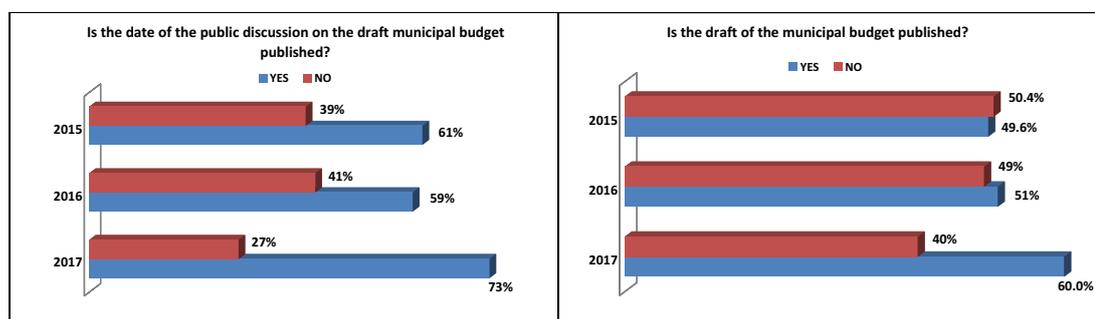
The Public Finances Act obligates the first degree budget spending units to publish monthly and quarterly reports regarding the execution of their budgets. Implementing this obligation is easy, as the first degree budget spending units prepare and send these reports to the Ministry of Finance. Nevertheless, the implementation of the obligation for publication has been slow in previous years. In 2016, just about 49% of the first degree budget spending units had monthly reports available on their websites. Even less, around 25%, had published quarterly reports. The results from the last survey show a sudden rise in the number of obliged bodies that have published their monthly reports - 22% (217 out of a total of 306 first degree budget spending units). There is a rise in the number of institutions that have published quarterly reports as well. However, this number is 134, which is still less than half of all first degree budget spending units.



22 public bodies - Council of Ministers, ministries and state agencies, classified as first degree budget spending bodies, are obliged under the Public Finances Act to also apply the so-called program budgeting. The latter dictates that the expenditure be in line with the policies supported by the government under different budget programs and in view of the midterm financial forecast for the budget. 20 out of the 22 institutions have published their 2017 budgets in a program format, and 16 of them have published their annual report on the execution of the program budget. Among the institutions which have not complied with the obligations related to the program budgeting are the Ministry of Interior and the

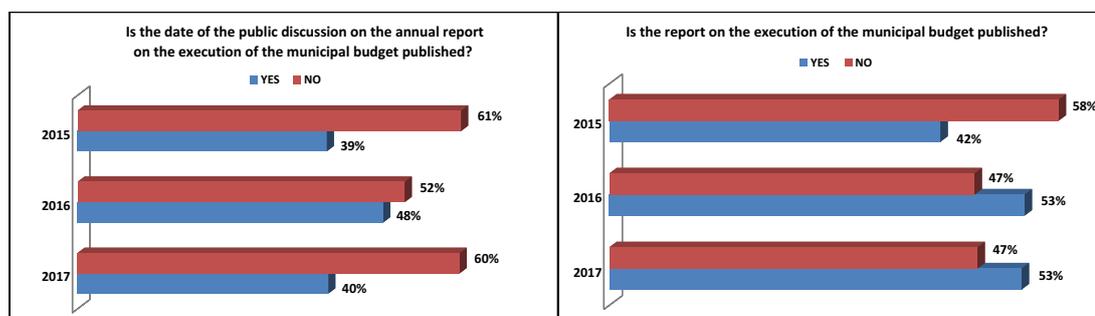
Ministry of Defense. They have published neither the program formats of their budgets, nor data or reports on their execution.

Other specific obligations for publications carried out by a group of public bodies are the obligations for the municipalities to publish announcements for public consultations on the draft annual budget and the reports on their execution. Regarding that phase of the preparation of the financial documents, the law establishes an obligation to publish only the date of the public discussion with the local community, but not the actual drafts of the documents. It is clear that the citizens can hardly form an informed opinion about the discussed documents if they have not been acquainted with their drafts, and thus their participation would be pointless. That is why, the AIP is assessing whether the drafts of the budgets and the annual reports on their execution are published.

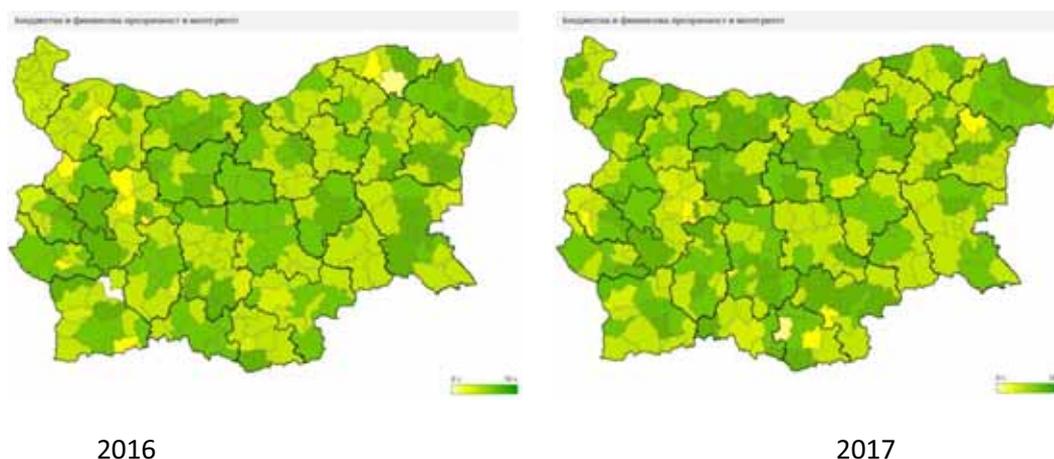


This year, the municipalities have considerably improved the implementation of their obligations under the Public Finances Act. The first example is the substantial rise in the publishing of announcements and draft budgets compared to last year. Compared to 2016, an additional 37 municipalities have published announcements, thus making the total number rise to 193 (about 73% of all municipalities). At the same time, 159 municipalities (about 60% of the total) have published their draft budgets, compared to 135 in 2016.

There is a minor regress in the publications about the date of the public discussion of the reports on the execution of the municipal budgets. The number of local administrations that have published the dates of the public discussions on the drafts of the annual financial reports has decreased by 23, falling at 105 (about 29%) for 2017. The tendency remains that we could find more reports on municipal budgets than announcements for their public discussion. In 2017, the number of these reports was 139 (about 52%) or 2 less compared to the 2016 data for the municipalities.

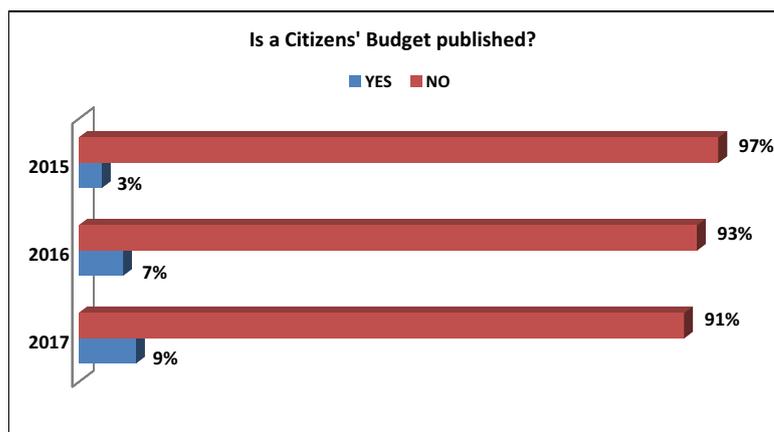


Despite that, the municipalities show a serious improvement with regards to the other indicators pertaining to budget transparency, including the publication of monthly and quarterly reports. This improvement is visible from the Financial and Budget Transparency Maps of the Municipalities for 2016 and 2017. The darker green signifies the local authorities that have better implemented the obligations for publication.



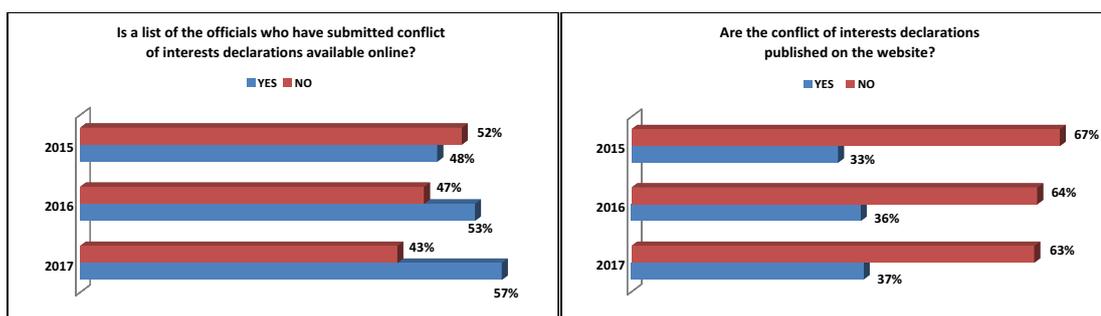
There are small clusters of municipalities with high level of implementation close to each other. Apparently, competition plays a role in the improvement of financial transparency.

For a fourth year, the AIP is assessing whether the authorities have published an explanation regarding the collection and spending of delegated funds. This is the so-called **citizens' budget**. Currently, only the Minister of Finance is obliged to regularly prepare and publish such a document, called the *Budget in Brief*, which explains in simple terms the priorities and allocation of the government budget. Local authorities can also be bound to such obligations by their normative acts. Such an example is the Sofia Municipality which has included in its regulations on the municipal budget an obligation to publish in a separate document an explanation of how the budget will be spent in a simple, non-technical language. It would be positive if such a practice spreads among other administrations as well, in order to further clarify their activity to the citizens. Since there are no strict requirements on how to draft or what to include in such a document, we have often counted any additional text or visualization that might help for understanding the budget of the respective administration. Very often these are the presentations delivered at the public discussions of the draft budgets, or even the minutes of these discussions. The good news is that in 2017, the number of *citizens' budgets* found on the websites of public bodies has increased, albeit only slightly. We have found 10 more such documents compared to 2016, i.e. a total of 49. Unfortunately, these instances scarcely go beyond the limit of the statistical error - their total number is about 8%.



Conflict of Interest Declarations

Part of the AIP survey since 2012 onward has been focusing on the assessment of the implementation of the legal norm aiming to achieve higher integrity within the administration by enhancing transparency regarding potential conflicts of interest of the public officials and their management. The assessment includes an investigation into whether there is a list of the persons who have submitted declarations, and whether the declarations themselves are published.



It is clear that citizens could exercise control only by reviewing the declarations themselves. However, most of the institutions still publish only the lists of the officials who have submitted them. In comparison to previous years, the number of public bodies which publish such lists is slightly increasing. The institutions which publish the declarations themselves, although slightly more than before, are still only one third out of the total.

Transparency and Public Procurement

Legislative amendments in the area of proactive publication of information concerning public procurement orders 2014-2016

Transparency of the information concerning public procurement orders has become possible with the 2014 amendments to the Public Procurements Act (PPA), which introduced new obligations for the contracting authorities. The new Art. 22b introduced an obligation for the public procurement contracting authorities to create a section - Buyer's Profile - which should be available on their website or on another web address that is publicly accessible.

The section should contain 21 categories of information related to the public procurement procedure in the form of electronic documents. In practice, that information encompasses the whole process of procurement tenders.

In the spring of 2016, a new PPA was adopted and came into force. The new law preserved the obligations for publication of information in the Buyer's Profile, with the exception of the requirement to disclose data concerning the payments under procurement contracts. Currently, the information mandatory for publication in **the Buyer's Profile Section** pursuant to Art. 42 of the PPA is the following:

- All the decisions, notices and invitations, related to the opening, awarding, fulfillment and termination of the public procurement procedure;
- The documentations for public procurement procedure with the exception of the cases, in which because of technical reasons or such, related to the protection of information, provision of unlimited, complete and direct access is impossible through electronic means;
- The explanations provided by the contracting authorities in relation to the public procurement orders;
- The protocols and final reports of the commissions for conducting the procedures;
- Public procurement contracts and framework agreements, including the Annexes to them;
- Additional agreements on amendments to public procurement contracts and framework agreements;
- The notices for collecting offers and the invitations to certain persons;
- The opinions of the Public Procurement Agency in relation to preliminary control exercised by it.

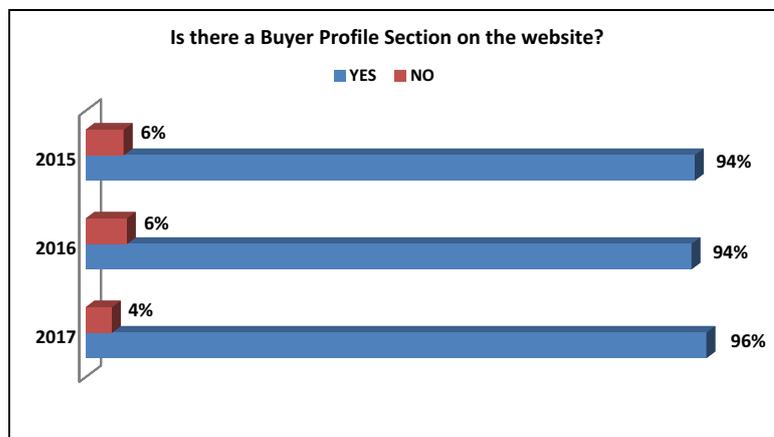
The AIP survey in 2017 assessed how and to what extent the legislative amendments in the area of proactive publication of information related to public procurement procedures in the country have led to changes in the existing practices.

Results

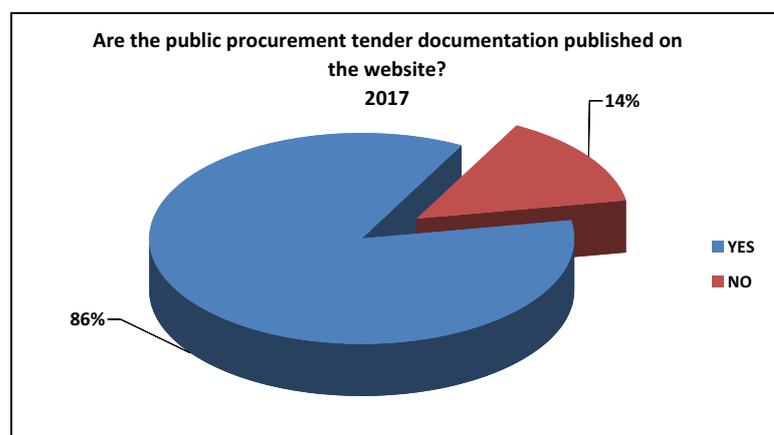
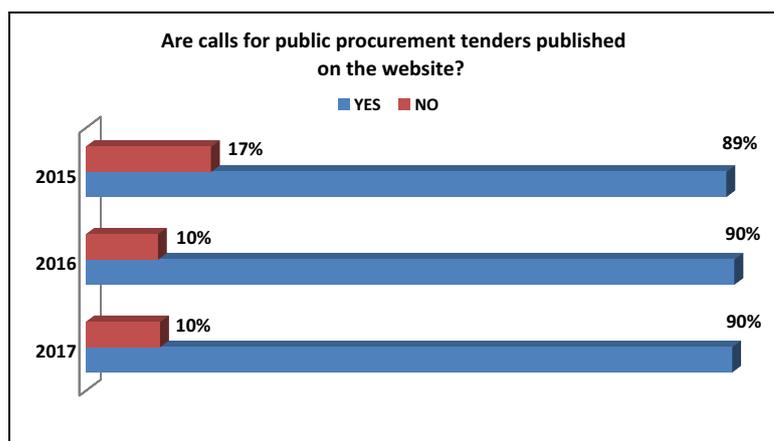
In 2017, the survey contained 11 questions related to public procurement, some of them containing sub-questions related to the date on which the information was published. An assessment on the presence/absence of data concerning the updating of the published information was necessary in view of the time limits for publications introduced by the Regulations for the Implementation of the PPA. Pursuant to the provision of Art. 24, Para. 4 of the Regulations, the contracting authorities should maintain the „Buyer's Profile“ section in a way that could provide verification for the uploading of the documents in it.

The results from the 2017 survey show a progress in the publication of information concerning the public procurement contracts in several directions.

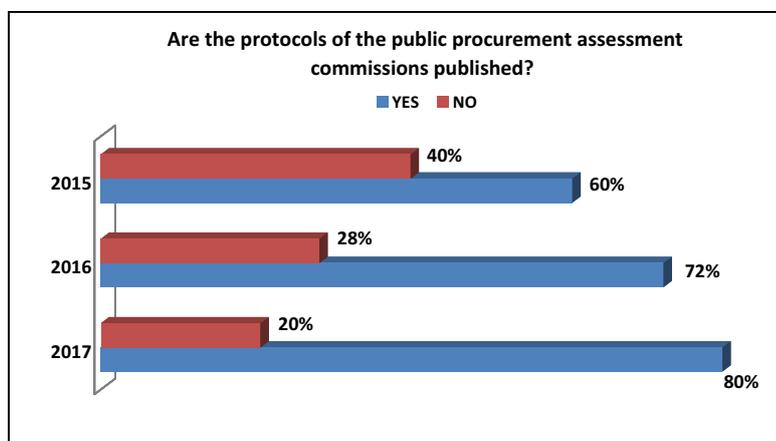
There is an increase in the number of institutions that have a **Buyer's Profile Section** - in 2017, they are 96%, with only 23 institutions out of all 566 failing to comply with the obligation.



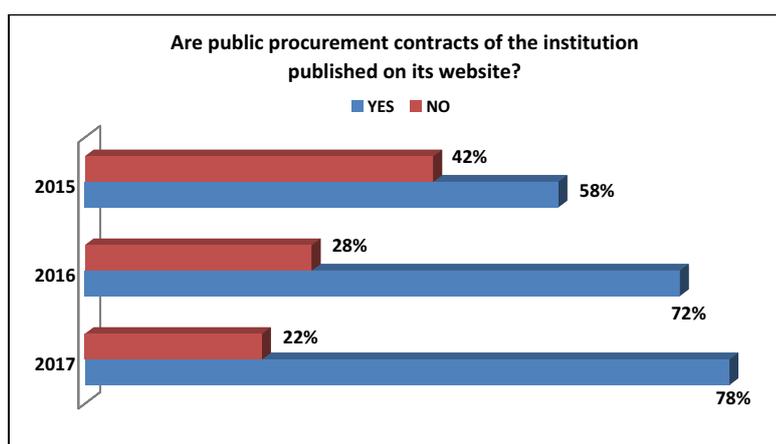
The percentage of implementation of the obligation for publication of information related to the opening of procedures for public procurement tenders is the same as in 2016.



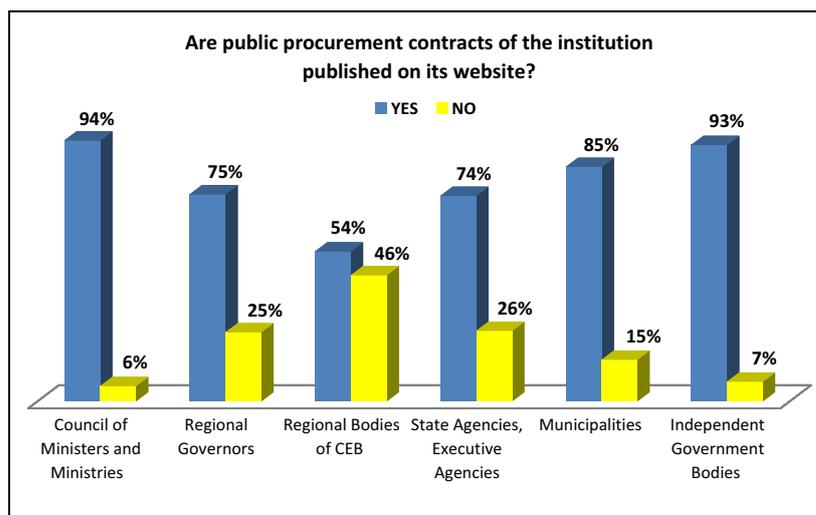
There is an increase in the publication of information related to the decision-making process regarding public procurement. In 2017, 80% of the assessed institutions have published protocols of the public procurement assessment commissions.



The number of institutions which have published public procurement contracts has been increasing. For two years, there has been a 20% increase in the implementation of that obligation - from 58% in 2015 to 78% in 2017.



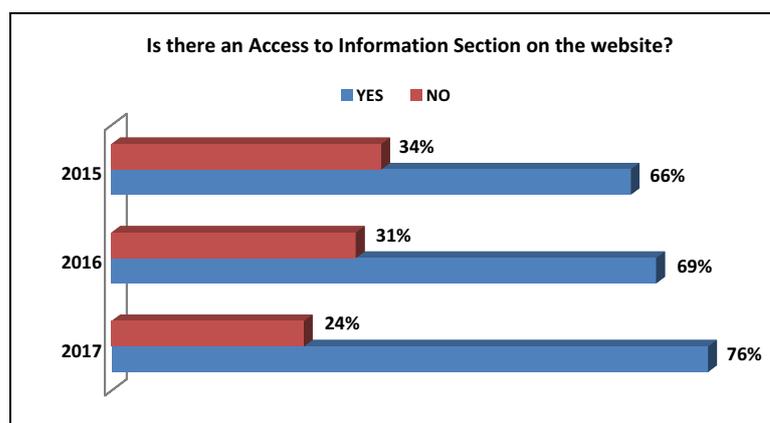
Data related to the publication of contracts by type of public body show that the weakest implementation of the obligation is reached in the regional bodies of central government authorities, while the highest levels are achieved by the ministries and the Council of Ministers.



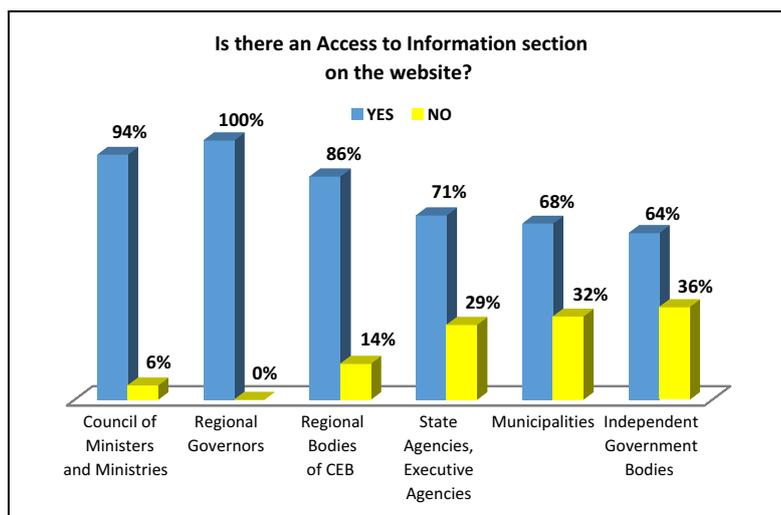
Access to Information Section²³

The APIA amendments as of December 2015 require a review of the content of the *Access to Information* sections. They The latter should contain explanatory information for citizens on how to exercise their right of access to information in the respective institution, information regarding the position of the responsible access to information person or office within the administration, information about the procedure and conditions for re-use of public sector information, the regulations with respect to the fees for access to information and re-use of public sector information, as well as the old obligations for publication of the annual reports on the implementation of the APIA and the procedure for accessing the maintained public registers.

The launching of that section, an obligation since 2008, has been ignored by the institutions for a long time. In 2017, 76% (428) out of the 566 institutions have such sections. This is a considerable improvement compared to the previous year. The ministries and the regional governors' administrations are with the highest level of implementation, the latter reaching 100%.



²³ See [Annex 4](#) to the report which contains comparative data from the AIP surveys encompassing three successive years of implementation of old obligations and two years of implementation of new obligations for publications in the Access to Information Section introduced with the APIA amendments as of December 2015.



Although the number of AI sections has been increasing, their content still does not comply with the requirements of the law in most cases.

That is why the public bodies that maintain an *Access to Information* section whose content is in line with the requirements of the law should be emphasized. The best *Access to Information* section is maintained by the Ministry of Finance. Among the other institutions that should be recognized are: the Customs Agency, the National Audit Office, the East Aegean River Basin Directorate - Plovdiv, the Regional Inspectorate on Environment and Waters - Pazardzhik, and the Regional governors' administrations in Blagoevgrad, Burgas, Dobrich, and Yambol. Out of the municipalities, the ones with good sections are Dobrich, Troyan, Razgrad, Targovishte, Strazhitsa, Chelopech, Plovdiv, and Krivodol.

The identified weaknesses in the *Access to Information* sections are the following:

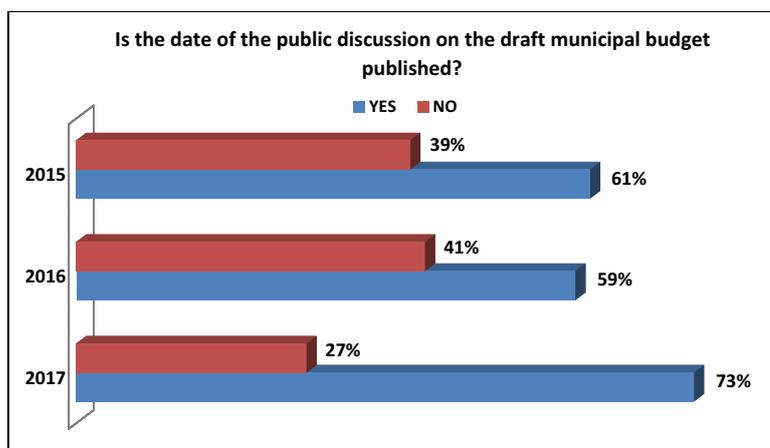
- Although 428 public bodies have created an Access to Information section, 28 of them have not responded to the e-request filed within the survey;
- 209 out of the 566 public bodies have not published information about their department responsible for the access to information;
- 287 out of the 566 public bodies have not prepared and published explanatory information on how to exercise the right of access to information;
- 243 out of the 566 public bodies have not updated their internal APIA implementation rules in line with the new requirements of the law;
- More than half of the public bodies have not published reports on the implementation of the Access to Public Information Act;
- There are administrations which still use the already repealed Order by the Minister of Finance from 2001 on the fees for the access to information.

Municipalities²⁴

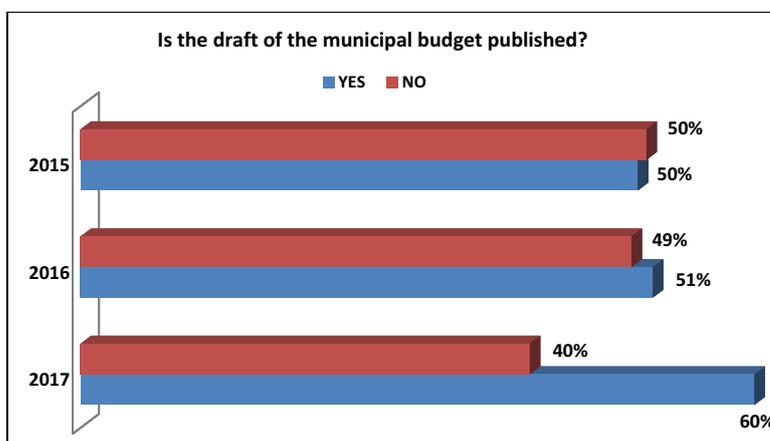
With regards to the municipalities, there is a considerable improvement in the results compared to the previous year.

There is only one municipality without a register of the decisions of the municipal council - the Municipality of Yakimovo, and two municipalities with outdated decisions of the municipal council on their websites - the Municipality of Zemen and the Municipality of Yakimovo.

There is a considerable improvement in the publication of the dates for public discussion of the draft municipal budgets.

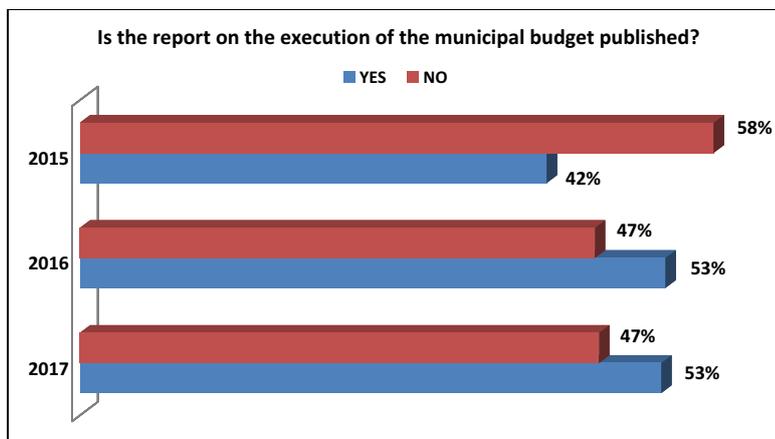


The level of publication of the draft budgets before their public discussion has also improved.



²⁴ See [Annex 5](#) to the report which contains comparative data from the AIP surveys encompassing three successive years of implementation of old obligations and two years of implementation of new obligations for publications particularly for the municipalities introduced with the APIA amendments as of December 2015.

Although the publications of the reports on the execution of the budgets have been increasing, only 140 out of all 265 municipalities have published them on their websites.



The same tendency is observed with regards to the publication of urban development master plans and construction permit registers.

There is a 7% increase compared to last year in the number of municipalities (54 in total), which have published urban development master plans on their websites. The number of municipalities which have published construction permit registers has increased by 3%, though the total number remains negligible - 40 municipalities.

THE TYPES OF RESPONSES ON ELECTRONIC REQUESTS²⁵

As part of its 2017 survey on websites maintained by public bodies, the AIP team filed electronic access to information requests to **566** institutions.²⁶ We requested from each institution a list with the categories of information related to its sphere of activity that are subject to mandatory online publication, as well as inquired about the formats in which this information is available in accordance with Art. 15a, Para 3 of the APIA.

The requirement to draft such a list was introduced with the amendments to the APIA promulgated in the end of 2015 (State Gazette, issue 97/ 2015, in force since 12.01.2016). The new Para. 3 in Art. 15a introduced the obligation for all heads of administrative structures to annually publish an updated list of categories of information subject to mandatory publication online related to the sphere of activity of the respective body, as well as the formats in which this information is available.

353 institutions²⁷ responded within the legally prescribed 14-day period. **95** institutions responded after the specified time limit. **118** institutions did not respond at all.

How did the ministries respond?

Seven ministries responded within the relevant time limit: the Ministry of Foreign Affairs; the Ministry of Economics; the Ministry of Education and Science; the Ministry of Regional Development and Public Works; the Ministry of Transport, Information Technologies and Communications; the Ministry of Labor and Social Policy; and the Ministry of Finance.

Eight ministries, headed by the Council of Ministers (18 days)²⁸ sent overdue responses: the Ministry of Interior (26 days), the Ministry of Energy (22 days), the Ministry of Healthcare (18 days), the Ministry of Agriculture and Food (33 days), the Ministry of Culture (30 days), the Ministry of Environment and Waters (22 days), the Ministry of Defense (20 days), and the Ministry of Justice (15 days). The shortest delay was of the Ministry of Justice, only one day. The longest delay - 19 days - was of the Ministry of Agriculture and Food.

Two ministries did not respond at all - the Ministry of Tourism and the Ministry of Youth Affairs and Sports.

377 institutions provided full access to the requested information. **27** institutions provided partial access. Two institutions refused to grant access.

The cases in which the institutions provided partial access can be divided in several categories. In some cases, the institutions sent the requested list, but did not let us know the formats in which the information was accessible. In other cases, the administrative bodies granted partial access, stating that several categories of information were available

²⁵ See: <http://www.aip-bg.org/en/surveys/db/2017ii/stats.php>

²⁶ See: http://www.aip-bg.org/en/surveys/Results_by_Institution/204475/

²⁷ See the responses in Bulgarian:

<http://www.aip-bg.org/surveys/db/2017ii/responses.php?type=RESPONSEFILES>

²⁸ The information in brackets refers to the number of days that the relevant institution took to provide a response, counted from the time of submission of the electronic request.

on the website at that moment and that the mandatory list was being drafted. Institutions which referred us to the Open Data Portal and which have published more than three data sets also fall within the category of institutions which have provided partial access.

The two refusals are of the Municipality of Stara Zagora and the Regional Department of Agriculture - Vidin. These are not typical refusals. The refusal of the municipality was grounded on the declared fact that the information had not been created yet and the decision stated that access was thus refused. The regional department stated that access was granted and the requested information was available on the website of the institution, however the relevant researcher from the AIP team could not find it on the website and qualified the response as a refusal.

The number of institutions which have responded is higher than the number of institutions which have actually provided the information. The cases in which the institution responded but did not provide the requested information can be divided in two types - some of the institutions responded that they did not have such a list, while others tried to deceive the requestor that they had complied with the requirement to draft such a list by responding that they had published whatever should be published on their website.

329 institutions²⁹ have provided the requested information together with a decision granting access. In over 70 cases the information has been provided without an issued decision.

It should be hereby noted that the practices related to electronic provision of information are various. In some cases, the information is being sent together with a letter and a decision granting access. This is the most appropriate way. However, sometimes the accompanying letter, the decision, and the provided information are all in the same PDF file, which creates some difficulties for the requestor with respect to the successive use of the information.

A considerable number of institutions continue to send the requested information attached to an empty e-mail. This is a negative practice. Moreover, since the file attached to the email often has an automatically generated name, it becomes difficult to distinguish the institution's response from any spam email.

In 2017, there are no institutions that insist on the signing of a protocol verifying the electronic provision of information, which shows that virtually all officials are already acquainted with the amendment to the APIA, specifying that no protocol and fees are due for information provided electronically. Only two institutions³⁰ included a price for granting access in their decisions. However, they have sent the requested information electronically free of charge. The stated price is only applicable if the requestor wants to receive the information in the form of hard copy.

The lists with the categories of information and the formats in which they are published on the Internet, provided by the public bodies, show that the filing of the request has produced a strong educational effect. Often, together with the list, the institution has sent the order

²⁹ See the provided information in Bulgarian:

<http://www.aip-bg.org/surveys/db/2017ii/responses.php?type=RESPONSEDATA>

³⁰ Ministry of Environment and Waters and the Regional Department of Forests - Ruse.

by the head of the administration which approves the list, revealing that the institution did not have such a list and only complied with the obligation to draft and publish it after it had received the access to information request.

In the most frequent case, the list of the institution is a table with four columns - number, category of information, web link, and format. There are a number of cases in which the table contains three columns. It often lacks the columns containing a web link to the information or the format in which it is maintained. In rare cases, the document contains a list of the categories of information without numbering and general indication of the formats in which the information is maintained. Often times, institutions have copied the categories of information subject to publication in accordance with Art. 15, Para 1 of the APIA and have added some other categories related to their activities, which they had already published under the procedures of other special laws.

The survey has shown that some institutions do not understand what the list should be or claim that they do not understand, assuming that the site map represents such a list of categories of information that should be published. There are some institutions which admitted that it was not very clear to them what the list should be and asked us to send them examples, after which they have drafted their own lists.

Most often, the lists were sent by e-mail as attached files. However, some institutions referred us to web addresses where the relevant data are stored or published. Sometimes, the web addresses (links) were incorporated in a PDF response letter, which made it difficult to click on or copy the relevant link, so it had to be copied by hand.

CASES, REFERRED TO AIP FOR LEGAL ADVICE AND CONSULTATION

General Review

The provision of legal aid is a priority activity of the AIP. In some cases in 2016, the AIP provided legal assistance at the initial stage of the information seeking process when the legal team provided advice and/or drafted a request for access to information. In another category of cases, legal aid was provided after a refusal to grant access to public information had already been issued.

There is a tendency for the number of consulted cases to decrease - there were 296 cases in 2016, while the number in 2015 was 322, and in 2014 - 391. The number of consultations provided on referred cases, however, remains high - 821³¹ in 2016, a little more compared to 2015 when that number was 806.

The largest number of cases referred to AIP for legal assistance is cases of refusals to provide information - 113, followed by cases in which requestors needed a consultation prior to filing a request - 102.

An emerging tendency is the higher number of cases in which information is sought from local self-government bodies in 2016, compared to previous years when information was mostly sought from central executive bodies.

A considerable number of cases (101) have not been resolved until the end of 2016. Out of the total 296 referred cases, 40 have developed in court proceedings.

An essential part of the legal aid provided by the AIP's legal team takes the form of preparing complaints to courts and representing requestors in the courtroom.

The Number of Cases Referred for Legal Aid

The number of cases referred to AIP for legal aid within the period January - December 2016 is 296. Seekers have requested assistance in person in our office, by e-mail, or by phone.

Depending on their characteristics and legal qualification, the following types of cases are identified:

- related to practices of non-fulfillment of obligations under the Access to Public Information Act by public bodies - 278 instances;
- related to violations of the right of personal data protection guaranteed under the Personal Data Protection Act - 8 instances;
- related to violations of the fundamental right to seek, receive, and impart information - 7 instances;
- related to the re-use of public sector information - 2 instances, etc.

³¹The number of provided consultations is higher - 821, since in some cases more than one consultation was provided.

The Most Active Information Seekers

The experience of AIP shows that the APIA is most frequently used by citizens, journalists, and nongovernmental organizations (NGOs). In 2016, the largest number of consultations was provided to citizens who sought the assistance of AIP in 122 instances. In 79 cases, NGOs asked for legal assistance, while 67 cases were referred to AIP by journalists and AIP coordinators (all of them journalists) from central and local media. In 14 cases, the legal team of AIP was approached for legal advice by public officials, in 6 - by business persons, etc.

The Most Frequently Addressed Public Bodies

The number of cases in which information seekers requested information from local self-government bodies (mayors and municipal councils) is the largest - 105 cases, while information was sought from central executive bodies in 79 cases.

Less frequently, information was sought from regional units of the central executive bodies - 29 cases; from public-law bodies and organizations - in 23 cases; from judicial power bodies - 22, etc.

There are 17 registered cases in the AIP data base that do not involve an institution. These are cases in which our team has been approached for general advice on the law or on the litigation process.

The Most Frequently Used Grounds for Refusal

In 2016, the number of registered silent refusals remains high - 31. Most of the grounded refusals are related to the third party interests exemption - 15, and the protection of personal data - 12. The number of refusals grounded on the third party interests exemption has been decreasing. To illustrate, in 2015 their number was 24. This is mostly due to the changes in the provision of Art. 31 of the Access to Public Information Act (APIA) where the lack of response from the relevant third party is regarded as consent to the disclosure of the requested information, instead of a dissent as the case used to be.

The preparatory documents exemption provided by Art. 13, Para. 2 of the APIA was invoked in 6 refusals, the state secret - in 6, and the trade secret exemption - in 2.

The Most Frequently Sought Information in 2016

In 2016, the general topics on which information was mostly sought were: public money spending; prevention and revealing of corruption practices and wrongdoings; and accountability of public bodies. Based on the cases referred for legal aid, it is clear that there are still difficulties associated with obtaining information concerning results from inspections, information related to the protection of animals, environmental information, construction documents, prosecutor's office activities, etc.

There is a considerable improvement in the transparency of information related to public procurement.

The new obligations for the provision of information electronically have made the process considerably easier for both the information seekers and the responsible officials within institutions. In practice, these obligations have expedited the provision of information, which is undoubtedly an improvement in the access to information area in Bulgaria.

The Areas of Highest Public Interest

Urban Planning and Road Infrastructure

Urban planning, renovation and construction of roads in the country, construction of public buildings, parks, and the renovation of emblematic city zones are, traditionally, sensitive topics for citizens, journalists, and NGOs working in the respective field. The requested information is unconditionally public and is mostly related to access to public registers of construction permits, displacement of illegal constructions, reports on the implementation of big infrastructure projects, including projects funded under EU programs, municipal urban development plans, and public procurement contracts for reconstructions of municipal property. This information should be easily accessible and in most cases should be available on the websites of the public bodies.

Information related to Public Money Spending

Information seekers have always been interested in the way public bodies spend their budgets. Lack of proactive transparency often triggers the filing of requests to obtain information not only regarding how much has been spent on a particular activity, but also regarding whether the spending was made in an efficient and economic manner and in line with the relevant procedures. During the past year, citizens were especially interested in the spending of public and budget money for the organization and holding of entertainment events, official trips, media services, legal and attorney services, and municipal companies

Transparent Administration

There was a considerable number of requests seeking information related to the transparency of the work of the administration, the transparency of competitions held by public bodies, and the transparency of remunerations received by public officials under EU projects, etc.

Information on Inspections and Control Activities

Some of the information requested throughout the year was related to reports from inspections carried out by the authorities, identified violations and wrongdoings, audit reports, etc.

Access to Information Related to the Protection of Animals

Another topic of high public interest were the measures undertaken by the competent authorities to take care of stray animals. The majority of the municipalities have budget funded programs for overcoming problems with stray animals. In 2016, information was sought from the municipalities or from the municipal stray animals shelters regarding the execution of those programs and the public money spent on resolving existing problems in the area.

Information from Public Law Organizations

The number of cases related to seeking information from municipal schools, hospitals, state universities, municipal Water and Sewage System companies, and other public law organizations has been increasing. The requestors demand information concerning money expenditure, general contract conditions, the rules guaranteeing the safety of school-students, and the remuneration of the management.

Environmental Information

NGOs and citizens working in the area of environmental protection were addressing AIP for consultation on particular cases. The information they sought mainly related to decisions or reports on environmental impact assessments carried out in the context of investment proposals and projects. The persisting lack of transparency with regards to the future management of national and nature parks remains problematic. Based on the referred cases, a weakness that pervaded the work of the competent institutions working in the environmental area was the inefficient and inadequate publication of information associated with the implementation of the implementation of the relevant legal obligations.

Information about the Management of State and Municipal Property

Requests have been filed for access to contracts for the use of municipal property, to information concerning state property management, and to disposal transactions of real estate private state property, etc.

Information About the Decision-making Process

Although the information related to the decision-making process is subject to restrictions for a limited period of time, the law requires that the administration should consider the overriding public interest in the disclosure of such information. Based on the cases referred to the AIP for legal aid, such consideration and balancing of rights and interests does not happen. There are refusals to provide financial feasibility reports connected with Council of Ministers Decrees, preparatory documents related to the issuing of a mayor's order, transcripts from sessions of working groups, etc.

Information Related to the Health, Life, and Safety of Citizens

Information that would prevent harms to the health, life, and property of citizens should be published on the Internet and the authorities which possess such information should use all possible information channels to disseminate it to the citizens. However, such information is being refused even after a request has been filed.

LITIGATION

Statistics

In 2016, the AIP legal team continued to provide legal aid to citizens, non-governmental organizations (NGOs), and journalists on court cases concerning refusals to grant access to information. In 2016, the AIP legal team prepared 66 complaints and written submissions to courts, (23 in cases led by citizens, 18 - by NGOs, and 25 - by journalists).

In 2016, the AIP legal team drafted a total of 49 complaints and appeals to courts, including: first instance complaints - 40 (Supreme Administrative Court - 5, Administrative Court - Sofia City - 18, Administrative Court - Sofia District - 2, other Administrative Courts in the country - 15), cassation appeals - 8, and appeals against rulings - 1.

Out of the 40 complaints filed before first instance courts, 25 were against explicit refusals to provide the requested information and 13 - against silent refusals.

The legal team drafted two complaints for cases that were not associated with refusals of access to information. The first one was a complaint from a group of journalists against an order of the president of the Supreme Administrative Court (SAC) concerning the adoption of Internal rules for the deletion of personal data in court acts (decisions, rulings, and instructions), published on the Court's website. The other one was a complaint against the decision of the Commission for Personal Data Protection which found that Georgi Serbezov (an animal protection activist and software engineer from Plovdiv) had violated the law when he created the Internet site <http://zdoi.gkzj.org>, which re-publishes the SAC case-law on the APIA.

AIP provided legal representation in lawsuits against refusals to provide information in 54 cases. In the reported period, AIP's legal team drafted 17 written submissions in cases on which the organization provided legal aid.

In the reported period, the courts issued 81 judicial acts (decisions - 68, and rulings - 13) regarding cases on which AIP provided legal aid (Supreme Administrative Court - 31, Administrative Court - Sofia City - 25, Administrative Court - Sofia District - 4, Administrative Courts in the country - 21). In 55 cases the courts ruled in favor of the information seekers and in 20 - in favor of the administration. In 6 cases the courts ruled partly in favor of the information seekers and partly in favor of the administration.

Hereafter we present the more interesting court decisions, delivered in cases won with the help of AIP's legal team in 2016. The cases are listed in chronological order based on the publication date of the court decision and are organized according to the grounds for refusal and the subject of the case.

Obligated subjects

With a decision³² dated 29 November, the Administrative court - Sofia Region repealed a refusal by the Pirdop Hospital (MBAL Pirdop AD) to provide information concerning the contracts with the tenants of some of its facilities. The information was requested by Alexander Iliev - AIP's coordinator for Sofia District. The refusal claimed that the hospital was not an obliged subject under the APIA. The court ruled that this was not the case, since the hospital was a public law organization within the meaning of Article 3, par. 2, item 1 of the APIA and the request was also related to public information. The decision was not appealed and it became final. As a result, the requested information was provided.

The „public information“ concept

With a decision³³ dated 11 February, the Administrative court - Varna partially repealed the refusal by the mayor of the „Mladost“ city district in Varna to provide information on the issuing of orders for the removal of 61 illegal buildings in Varna's „Maksuda“ borough. The information was requested by Equal Opportunities Initiative Association. The request consisted of five points related to the legal grounds for issuing the orders, as well as to the identity of the people living in these illegal buildings. The mayor's refusal claimed that the information sought was not public, since it concerned procedures under the Spatial Planning Act and the Administrative Procedure Code and, therefore, it could only be provided to the relevant interested parties. The court repealed the refusal, ruling that the information was public, since the mayors of city districts and the mayors of municipalities determine the policy of, and take the actions on, urban planning. Urban planning and respecting the legal norms associated with it form part of the public life in the country and the citizens must have the opportunity to make an opinion with regards to the work of the responsible bodies. The court upheld the refusal in its part concerning the data of the people occupying the illegal buildings, ruling that this information related to the exercise of the procedural rights of the addressees of those orders and constituted a request for the collection of factual data. AIP launched an appeal against the part of the decision upholding the refusal. The SAC scheduled a hearing of the case in May 2017.

With a decision³⁴ dated 12 February, the SAC upheld a decision of the Administrative court - Yambol which repealed the refusal of the Secretary of the Yambol Municipality to provide information related to the income and expenses of the municipality associated with all finalized court cases for the period January 2011 - December 2013. The information was requested by the Yambol municipal councilor Marieta Sivkova . The Secretary's refusal claimed that the information sought did not fall into the category of „public information“ under the APIA, since it was not readily available, but had to be created on occasion of the request. The court ruled that the information sought was public within the meaning of the APIA and that it should be readily available in the municipality, due to the fact that these expenses should be reflected in the municipality's annual budget. Since the information was public, meaning that it was created and stored by the obliged subject, the first court

³² Decision no. 1106/29.11.2016 of the ACSR, Seventh panel on administrative case no. 593/2016.

³³ Decision no. 264/11.02.2016 of the AC Varna, 22 panel on a. c. no. 3248/2015.

³⁴ Decision no. 1576/12.02.2016 of the SAC, Fifth Division on a. c. no. 3549/2015.

instance had rightfully held that there were no grounds for it to be refused. The decision was final. The information was provided.

With a decision³⁵ dated 17 May, the SAC repealed a decision of the ACSC which upheld the refusal of the Secretary of the Sofia Municipality to provide information concerning the procedures on coordination of payments of indemnity insurance to tenants of municipal property. The information was requested by Ivan Petrov (from Sofia). The refusal claimed that the information was not public. The court ruled that the requester sought public information related to the management of municipal real estate properties. Its provision would give the requester the opportunity to form a personal opinion on the municipality's actions associated with the management of municipal property and specifically with the giving of consent to the payment of indemnity insurance to tenants of municipal property. The decision was final.

With a decision³⁶ dated 13 November, the Administrative court - Pazardjik repealed the refusal of the general director of the Directorate General "Execution of Penalties" (DGEP) to provide information concerning an inspection carried out in the Pazardjik prison. The information was requested by Todor Grozdev - AIP's coordinator in the Pazardjik region and senior reporter for the „Zname“ newspaper. The refusal claimed that the inspection report was not public information, but formed part of the institution's internal documentation. The court ruled that the information sought was indisputably public, since the scope of public information according to the APIA includes all data related to public life, contained in documents and other material mediums, created, gathered or kept by the relevant obliged subjects under the law. The decision was appealed by the DGEO before the SAC. A hearing of the case is scheduled for November 2017.

Access to information - access to documents

With a decision³⁷ dated 29 March, the SAC upheld the decision of the Administrative court - Yambol which repealed the refusal by the Secretary of the Yambol Municipality to provide access to a copy of an out-of-court settlement between the Municipality and a construction company. The information was requested by the Yambol municipal councilor Marieta Sivkova. The Secretary's refusal argued that the request did not contain a valid description of the information sought, but only a claim for the provision of a document, which is inadmissible under APIA. The court ruled that the request for the provision of a copy of a document (the out-of-court settlement) was valid under the APIA, since the document would provide the requester with information on the subject of the settlement contract, its conditions, price, and possible sanctions for violation of the conditions. The information sought was public, since the requester would be able to form an opinion on the obliged subject's activities associated with expenses of budget funds. The decision was final and the information was provided to the requester.

³⁵ Decision no. 5898/17.05.2016 of the SAC, Fifth Division on a. c. no. 5305/2015.

³⁶ Decision no. 522/13.10.2016 of the AC Pazardzhik, IV panel on a. c. no. 488/2016.

³⁷ Decision no. 3541/29.03.2016 of the SAC, Fifth Division on a. c. no. 3046/2015.

With a decision³⁸ dated 11 July, the SAC upheld a decision of the ACSC which repealed the refusal by the General Secretary of the National Construction Control Directorate to provide access to two orders and an inspection report on the legality of different facilities in the ski zone „Bansko“ in the Pirin Mountain. The information was requested by the Association „WWF - World Wildlife Fund, Danube - Carpathian Program“. The Secretary general's refusal claimed that the information sought was not related to the environment within the meaning of Article 19 of the Environment Protection Act (EPA) and was not public within the meaning of Article 2, par. 1 of the APIA. The Secretary further stated that what was requested was access to documents, which is not covered by the APIA. The supreme justices endorsed ACSC's reasoning that the claim that APIA only provides for access to information, and not access to a document, was unfounded. The law defines the information which should be provided under its provisions as any information related to the public life in the country, which can provide citizens with the opportunity to form a personal opinion about the activities of the obliged subjects. It is irrelevant whether the request relates to the material carrier (medium) of the information or to the information itself, as the obligation to provide access to the information applies in both cases. The decision was final and the information was provided.

Protection of Third Party Interests

With a decision³⁹ dated 13 May, the ACSC repealed the refusal of the „Road Infrastructure“ Agency (RIA) to provide information concerning the construction of the „Struma“ highway. The information sought originated under a contract between the National Company „Strategic Infrastructure Projects“ (NCSIP) and the private „Consortium Lot 3.2 Project“ company. The information was requested by Ivaylo Hlebarov (from Sofia) and related to a specific set of documents, including: a geodetic survey report, a geological survey report, a blueprint report on the road section, a report on the conceptual design of the tunnel part, and a report on the reference project under the construction contract for the relevant part of the highway. The refusal claimed that the project was just a possible version of Lot 3.2's execution of the „Struma“ highway project within the framework of an environmental impact assessment (EIA) procedure. Providing the information would put the participants in future public procurement procedures in a disadvantaged position, since a third party would have an advantage because of this information. This would infringe the principles of free and fair competition, and equality, laid down in Art. 2 of the Public Procurement Act (PPA). The court ruled that the information sought concerned the environment and that in this case it did not find any grounds for refusal under the Environment Protection Act (EPA) or under the APIA. The decision also states that under the APIA there are no obstacles to seeking and receiving documents. It also adds that the possibility of affecting the interests of future participants in public procurement procedures cannot justify a refusal, since it has not been demonstrated how the principles of fair competition would be violated. In addition, basing the claim on a possible future event is illegal. The decision was appealed by the RIA. The SAC will hear the case in February 2018.

³⁸ Decision no. 8555/11.07.2016 of the SAC, Fifth Division on a. c. no. 7044/2015.

³⁹ Decision no. 3265/13.05.2016 of the ACSC, Second Division, 37 panel on a. c. no. 2396/2016.

With a decision⁴⁰ dated 11 July, a five-member panel of the SAC upheld a decision of a three-member panel of the SAC which repealed the refusal of the Minister of Environment and Waters to provide access to inspection reports related to the project „Establishment of a regional waste management system in the region of Yambol“. The information was requested by Gergana Bogdanova (from Sofia). The Minister's refusal claimed that the affected third party - the mayor of Yambol - had not consented to the provision of the information. The court ruled that the body which had not issued its explicit consent to the disclosure, i.e. the mayor of Yambol Municipality, was also an obliged body under the APIA and, therefore, had the obligation to provide the public information when requested. Consequently, the mayor was not a third party within the meaning of Article 37 of the APIA and his consent was not necessary. The decision was final.

With a decision⁴¹ dated 19 October, the SAC upheld a decision of the ACSC which repealed the refusal by the Secretary of the Sofia Municipality to provide access to the order for the appointment of the former Chief Architect of Sofia - Petar Dikov. The information was requested by Ivan Petrov from Sofia. The refusal claimed that the Chief Architect, as a third party, did not provide his consent to the disclosure. The court held that the information sought was public and administrative within the meaning of Art. 11 of the APIA and the lack of consent of the third party did not provide sufficient grounds for refusal. According to the court, the obliged body had not taken into account the fact that the information sought affected the interests of a public figure - the Chief Architect of Sofia, whose powers and responsibilities are determined by the law. The decision was final.

Overriding Public Interest and Protecting the Interests of Third Parties

With a decision⁴² dated 20 January, the SAC repealed a partial refusal of the Governor of the Bulgarian National Bank (BNB) to provide information related to the methodology for determining the remuneration received by the Bank's employees and to the basic remuneration and bonuses received by the members of the Management Board (MB) and the BNB Governor in 2014 and 2015. The information was requested by the members of the National Assembly Martin Dimitrov and Petar Slavov. In his response, the BNB Governor indicated to the requesters that during its meeting on 30.07.2015, the BNB board had adopted a policy on the determination and publication of the remuneration of the Governor, the Deputy Governors, and the members of the BNB board. This policy was published on BNB's website. The Governor refused to provide the specific information regarding his, the Deputy Governors' and the board members' remunerations, claiming that these were protected personal data, as well as information classified as administrative secret during the specified period. The court held that since these persons had public functions and held high public offices, their remuneration should be public. The amount of received remuneration does not concern the protection of the relevant persons and their private life, but is an objectively existing fact. The remuneration is determined and paid based on public rules. There is an overriding public interest in the disclosure of the entirety of the information related to the remuneration of the BNB management. In addition, the court

⁴⁰ Decision no. 8750/11.07.2016 of the SAC, Five-member panel - II college, on a. c. no. 4907/2016.

⁴¹ Decision no. 10947/19.10.2016 of the SAC, Fifth Division on a. c. no. 9192/2015.

⁴² Decision 652/20.01.2016 of the SAC, Fifth Division on a. c. no. 9103/2015.

noted that the remuneration of the BNB management could not be classified as administrative information, since it did not fall into any of the categories of information under Art. 43 of the Bulgarian National Bank Act, which defines the „administrative secret“ for the purposes of the BNB. The court decision entered into force and the information was provided.

With a decision⁴³ dated 4 February, the SAC upheld the decision of the ACSC which repealed the refusal of the Government Information Services (GIS) to provide access to three inspection reports of the General Inspectorate of the Council of Ministers (CoM). The information was requested by Victor Ivanov (journalist in „24 hours“ newspaper). The GIS' refusal claimed that the information sought contained the names and positions of civil servants from the administration of the CoM and from the „Boyana“ complex, i.e. it constituted protected personal data under the Personal Data Protection Act (PDPA). The ACSC held that this claim was ungrounded, since the goal of the request was to gain access not to the personal data, of the civil servants, but to the reports on the relevant inspections carried out by the General Inspectorate of the CoM. The fact that these reports may contain personal data, which are protected and the provision of which cannot happen without the respective persons' consent, does not mean that the entire information in the reports should not be disclosed. The SAC upheld these conclusions of the first instance court. It added that in this case there was an overriding public interest in the disclosure, since the provision of the information would increase the accountability of the administration of the CoM. The decision was final, the information was disclosed.

With a decision⁴⁴ dated 9 March, the SAC upheld a decision of the ACSC which repealed the refusal of the Ministry of Agriculture and Food (MAF) to provide copies of six market assessments of state property, which was used by the Ministry in different transactions in the period 2008 - 2012. The information was requested by Alexander Dunchev (WWF activist) from Sofia. The MAF's refusal claimed that the assessments were not public information and their provision would violate the copyright of the independent experts who prepared them. The court held that there was an overriding public interest in the disclosure of this information. The APIA provides a presumption that an overriding interest to disclose exists when the information relates to commercial activity and concerns the conditions, rights and obligations, terms, and sanctions specified in contracts where one of the contracting parties is an obliged body under the APIA. The decision was final and the information was provided.

With a decision⁴⁵ dated 18 March, a five-member panel of the SAC upheld the decision of a three-member panel of the SAC which repealed the refusal of the Minister of Economy to provide access to the permits issued to the private company „Videx“ for transfer of weapons in the village of Gorni Lom. The information was requested by Petar Penchev (member of the Public Council of the Free Speech Association „Anna Politkovskaya“). The refusal claimed that the commercial entity had expressly refused the provision of the information. The court confirmed the conclusions of the first instance that in order to

⁴³ Decision no. 1167/04.02.2016 of the SAC, Fifth Division on a. c. no. 8434/2015.

⁴⁴ Decision no. 2573/09.03.2016 of the SAC, Fifth Division on a. c. no. 1386/2015.

⁴⁵ Decision no. 3085/18.03.2016 of the SAC, Five-member panel - II college, on a. c. no. 354/2016

issue a lawful refusal based on the lack of a third party's consent to the disclosure, the lack of consent is not sufficient by itself, but the reasoning should also indicate specific facts as to how the third party's interest would be affected, and the obliged body should assess the existence or non-existence of an overriding public interest. The decision was final.

With a decision⁴⁶ dated 3 May, the ACSC repealed the refusal by the Director of the National Park Pirin Directorate to provide access to information related to the update of the management plan for the Pirin National Park. The information was requested by the WWF - World Wildlife Fund. The refusal claimed that the third party - the private company "Proles engineering"- did not provide 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. Lastly, the refusal stated that the project's Website was publishing the information necessary for the drafting of the update of the management plan within the meaning of the Environment Protection Act (EPA). The court held that the affected third party's interest was not indicated, that there was no reasoning on the lack or existence of overriding public interest, that the publishing of information under the PPA does not exclude the application of the APIA, as well as that the information sought was not among the documents published on the project's website. The court decision was not appealed, it entered into force and the information was provided.

With a decision⁴⁷ dated 19 May, the Administrative court - Blagoevgrad repealed the refusal of the mayor of Blagoevgrad to provide information concerning the main parameters of the 2012 contract for provision of municipal property - places for the installation of retail outlets - concluded between the Blagoevgrad Municipality and the Lafka network. The refusal was grounded on the explicit refusal of the third party - the other party to the contract - to give consent to the disclosure of the requested information. The court held that in this case there was an overriding public interest in the disclosure within the meaning of § 1, item 5, letter „f“ of the Additional Provisions (AP) of the APIA, since the requested information was related to the parties, subcontractors, the object, price, rules, and obligations, the conditions, terms, and sanctions specified in a contract, one of the parties to which is an obliged subject under the law. According to the court, the law provides a rebuttable presumption for the existence of an overriding public interest to disclose information in such cases. The mayor was bound to disclose the information or establish the lack of an overriding public interest. The decision was appealed by the mayor before the SAC. The SAC will hear the case in February 2018.

With a decision⁴⁸ dated 14 June, the ACSC repealed the refusal of the Director of the Natural Park „Vitosha“ Directorate to provide access to information related to implementation and accountability concerning the contract for updating the Park Management Plan. The information was requested by WWF - World Wildlife Fund. The refusal was based on the fact that the third party - the contractor company - had explicitly issued its dissent regarding the disclosure of the requested information. The court held that the refusal was unlawful, since it lacked reasoning concerning the existence of an

⁴⁶ Decision no. 639/03.05.2016 of the AC Blagoevgrad, on a. c. no. 8/2016.

⁴⁷ Decision no. 899/19.05.2016 of the AC Blagoevgrad, on a. c. no. 153/2016.

⁴⁸ Decision no. 4119/14.06.2016 of the ACSC, Second Division, 31 panel on a. c. no. 23/2016.

overriding public interest in the disclosure. The burden of proof for rebutting the presumption lied on the Director of the Directorate. According to the APIA, even if the information affects third parties and they have not agreed to its disclosure, the information must be disclosed if there is an overriding public interest in that. The court decision was not appealed and it entered into force, the information was provided.

Personal Data - Public Figures

With a decision⁴⁹ dated 18 April, the SAC repealed a decision of the ACSC which upheld a refusal of the Sofia Region Prosecutor's office to provide information related to who was the overseeing prosecutor who ordered the State Agency National Security (SANS) to investigate, on Nikolay Barekov's signal, the President of the Republic of Bulgaria Mr. Rossen Plevneliev in relation to the latter's meeting in Vienna with a representative of EVN. The information was requested by Ralitsa Petrova („Legal world“ magazine). The refusal claimed that the information was not public within the meaning of the law, but constituted protected personal data. The SAC held that the level of protection of the personal data of persons occupying public offices, among which are prosecutors, is far lower in comparison to the level of protection of the rest of the citizens. In this case, despite the fact that the information sought was personal data within the meaning of the Personal Data Protection Act (PDPA), there was no legal impediment for the provision of the information concerning the name of the respective prosecutor under the APIA. The decision was final.

With a decision⁵⁰ dated 29 August, the SAC repealed the refusal of the Bulgarian National Bank to provide information concerning the remuneration of its Governor for the period October 2003 - June 2014. The information was requested by Alexandra Markarian (OFFNews). The refusal claimed that the information sought constituted protected personal data. The court held that it was beyond doubt that the BNB Governor is a person occupying a high public office. According to the court, the protection of personal data awarded to public figures is far lower in comparison to the protection awarded to the rest of the citizens. An example of this is the annual online publication, in a specific register, of the data related to the remunerations, property, deposits, and loans, or of other protected personal data of public figures, carried out for the purposes of preventing conflict of interest situations. The fact alone that the involved persons have to declare these data in a public register indicates that these data do not qualify as protected personal data. Therefore, BNB's conclusion that the Governor's remuneration is not public information, but constitutes data related to his economic identity, is unlawful. The remuneration of the persons occupying high public offices does not fall into the category of personal data within the meaning of § 1, item 2 of the Additional Provisions of the APIA. In the specific case the information sought is public information which would allow the requester to form an opinion regarding the obliged body's activity and specifically regarding the implementation of the rules associated with determining the BNB management bodies' remuneration. The decision was not appealed and entered into force, the information was provided.

⁴⁹ Decision no. 4555/18.04.2016 of the SAC, Fifth Division on a. c. no. 3215/2015.

⁵⁰ Decision no. 9592/29.08.2016 of the SAC, Fifth Division on a. c. no. 3248/2015.

Preparatory Documents

With a decision⁵¹ dated 25 April, the SAC upheld a decision of the ACSC which repealed a refusal by the Secretary of the Sofia Municipality to provide access to a Mayor's order and to a report by the Chief Architect of the capital city related to an inspection of the movable objects (kiosks and small shops) in the „Borissova gradina“ park. The information was requested by Vessela Toncheva from Sofia. The refusal claimed that the information was of professional (internal) nature and did not have significance in itself (Art.13, para.2, subpara.1 of the APIA), since it was not a final administrative act (document ending the respective administrative procedure). The court held that the conclusions of the first instance court were correct. The requested information constituted official public information within the meaning of Article 10 of the APIA. It was contained in acts (documents) of the Mayor and the Chief Architect of the Sofia Municipality, which had been issued in the process of implementing their powers vested in them by the law. The information concerned the results of the administrative inspection which had been finalized prior to the request. Respectively, the information related to the grounds for the inspection and to the drafting of a plan-scheme for the park's movable objects. The said acts (documents) had proper meaning since they were not bound to a single administrative procedure which they would prepare. The decision was final.

With a decision⁵² dated 29 June, the ACSC repealed the refusal of the Director of the „Human Resources and Administrative Services“ Directorate to the Ministry of Finance (MoF) to provide information concerning the financial justifications of three decisions of the Council of Ministers related to adopting draft legislation and two decrees related to allowing additional expenses and payments from the state budget. The information was requested by Tanya Petrova from the „Sega“ newspaper. The refusal claimed that the information sought was of preparatory character and did not have a proper meaning (Article 13, par. 2, item 1 of the APIA). The court held that the information was indeed preparatory information which does not have a proper meaning falling in the scope of Article 13, par. 2, item 1 of the APIA. However, the access to this information should not be limited, since there was an overriding public interest in its disclosure. According to the court, there was an overriding public interest in the disclosure of the information, since its provision would promote the transparency and accountability of the obliged body within the meaning of § 1, item 6 of the Additional Provisions of the APIA. The decision was appealed by the MoF. The SAC will hear the case in February 2018.

With a decision⁵³ dated 22 June, the SAC upheld a decision of the ACSC which repealed the refusal by the General Secretary of the Supreme Judicial Council (SJC) to provide access to the Crisis PR Plan of the SJC adopted in November 2013 by the „Public Communications“ Committee of the SJC. The information was requested by the „Non-Governmental Organizations Center“ Razgrad. The refusal claimed that the requested information did not have a proper meaning and that the access to it was limited under Article 13, par. 2,

⁵¹ Decision no. 4897/25.04.2016 of the SAC, Fifth Division on a. c. no. 3220/2015

⁵² Decision no. 4562/29.06.2016 of the ACSC, Second Division, 39 panel on a. c. no. 4499/2016.

⁵³ Decision no. 7525/22.06.2016 of the SAC, Fifth Division on a. c. no. 6930/2015.

item 1 of the APIA. The SAC joined the first instance court in the conclusion that given the nature and purpose of the Crisis PR Plan, the claim under Article 13, par. 2, item 1 of the APIA was ungrounded, since the Plan did not concern the operative preparation of a final act and thus had a proper meaning. The fact that the plan had not a mandatory, but an advisory nature, did not qualify it as advice (recommendation) within the meaning of the law, since it was not aimed at the issuing of another final act (document). The Plan was an internal act (document), setting rules of behavior and had a proper meaning. The court decision was final and the information was disclosed.

With a decision⁵⁴ dated 18 November, the Administrative Court - Yambol repealed the refusal by the Secretary of the Yambol Municipality to provide access to the structural inspection of the cultural monument „Bezistena“. The information was sought by Marieta Sivkova from Yambol. The refusal claimed that the information sought was not public within the meaning of the APIA, as well as that it was related to the operative preparation of the acts (official legal documents) of the municipality and it did not have a proper meaning (Article 13, par. 2, item 1 of the APIA). The court pointed out that the monument „Bezistena“ has been part of the public List of cultural monuments of „National Significance“ since 1972. Having in mind its status, the information about its physical situation reflected in the structural inspection is public information within the meaning of Article 2 of the APIA and should be provided to every person who wants to form an opinion on this monument. The preparation of the structural inspection was ordered by the municipality and was paid with funds from the municipal budget. Having in mind that one of the goals of the APIA is to increase the transparency and accountability of the obliged bodies, then the information sought should have been disclosed. The structural inspection has a proper meaning associated with the state of the building and the limitation under Article 13, par. 2, item 1 of the APIA could not apply to it. The decision was appealed by the Municipality' Secretary.

Access to Information through Electronic Means

With a decision⁵⁵ dated 18 May, the SAC upheld a decision of Administrative Court - Plovdiv which repealed the refusal by the President of the Plovdiv District Court to provide information concerning requests for the disclosure of bank secrets received by the District court. The information was requested by Doroteya Dachkova from the „Sega“ newspaper. The refusal claimed that the request which was filed by electronic means, i.e. through e-mail, was not valid, since it was not signed with an e-signature. The court held that the request contained all the requisites specified in the law even before the legislative amendment of 2015, according to which the request is deemed written also in cases where it is sent electronically to the institutions e-mail address. In these cases, an e-signature is not required. The decision was final.

⁵⁴ Decision no. 143/18.11.2016 of the AC Yambol, Fifth panel on a. c. no. 189/2016.

⁵⁵ Decision no. 5974/18.05.2016 of the SAC, Fifth Division on a. c. no. 5809/2015.

Classified Information - State Secret

With a decision⁵⁶ dated 11 March, the ACSC repealed the refusal by the Director of the „Legal Activities“ Directorate to the Ministry of Interior (MoI) to provide information concerning the investigations on security companies/groups and organized crime groups in the period 1999 - 2001. The information was requested by Yovo Nikolov from the „Capital“ newspaper. The refusal claimed that the investigation/operative cases were a set of documents classified with the classification of the highest classified document in the set. The court held that the issuing of the refusal violated the procedural rules significantly, since the refusal did not include any information related to the legal grounds for the classification, the date of the classification, the position of the person who classified the documents, the level of classification, and the classification period. The decision was appealed by the MoI. The SAC will hear the case in October 2017.

Classified Information - administrative secret

With a decision⁵⁷ dated 28 April, the ACSC repealed the refusal by the Head of the National Service for Protection (NSP) to provide information concerning the reasons and grounds for appointing security detail to Mr. Lyutfi Mestan. The refused information also related to whether there was a decision to modify the security of Mr. Mestan and to the rules under which the commission established by virtue of Article 23 of the newly adopted NSP Act operated, since these rules should have been laid down in a Regulation, however such had not been adopted at that time. The information was requested by Yulian Hristov from the news website OFFNews. The refusal claimed that the administrative secret justification to refuse access applied and with respect to the last item of the request, in particular, it explained that the time period for adoption of the said regulation had not elapsed yet. The court held that the refusal was unlawful and the administrative secret justification could not be invoked in the case. The court instructed the NSP to provide the information, to disclose the rules on the functioning of the commission, or if such rules did not exist, the administrative body should state that clearly and also explain whether such rules are determined on a case-by-case basis. The decision was appealed by the NSP. The SAC will hear the case in October 2017.

With a decision⁵⁸ dated 19 October, the ACSC repealed a refusal by the Director of the „Customs“ Agency to provide information related to whether cigarettes produced in Bulgaria have been exported to the United Arab Emirates, through which border crossings, with what kind of transportation, and what is their total quantity. The information was requested by Atanas Tchobanov and Assen Yordanov - journalists from the website for investigative journalism „Bivol“. The refusal claimed that the information sought constituted statistical and tax data, as well as administrative and trade secret. The court held that no secrets justifications could be invoked, since the requested information was aggregated and itemized - what was sought was information related to whether cigarettes were exported and what their total amount is. These data are not aimed at individualizing the specific exporter of

⁵⁶ Decision no. 1704/11.03.2016 of the ACSC, Second Division, 29 panel on a. c. no. 3283/2015.

⁵⁷ Decision no. 2929/28.04.2016 of the ACSC, Second Division, 41 panel on a. c. no. 2082/2016.

⁵⁸ Decision no. 6342/19.10.2016 of the ACSC, Second Division, 32 panel on a. c. no. 6170/2016.

Bulgarian cigarettes, but just at informing the requesters whether cigarettes have been exported to certain contractors registered outside Bulgaria, through which border crossings, and in what amount. The court noted that the information sought was not statistical, since it was not created under the Statistics Act. The information sought did not constitute tax or trade secret, since its disclosure would not disclose data associated with the commercial activity of a specific company, as far as no information is requested regarding which the specific exporting companies are or who the Bulgarian cigarette manufacturer is. On another hand, the court found that there was an overriding public interest in the disclosure of the information, since it was undoubtedly aimed at increasing the transparency and accountability of the „Customs“ Agency in the customs control which it carries out, including over excise goods, such as cigarettes. The information would provide the opportunity to assess whether the Agency implements its legal obligations related to customs control lawfully and appropriately. The decision was appealed by the Customs Agency. The SAC will hear the case in February 2018.

Silent Refusals

With a decision⁵⁹ dated 15 January, the ACSC repealed the silent refusal by the Social Assistance Agency (SAA) to provide information on the project „I have a family too“ and other projects of the Association for Child Development „Article 24“. The decision was appealed by the SAA. The SAC will hear the case in May 2017.

With a decision⁶⁰ dated 15 February, the ACSC repealed the silent refusal of the Prosecutor's Office of the republic of Bulgaria to provide the requester Krassen Nikolov (Mediapool) with information regarding the creation and composition of the special unit „Anticorruption“. The court indicated that the obliged body can only issue an explicit act (official document). The court decision entered into force and the information was provided.

With a decision⁶¹ dated 4 October, the Administrative Court - Sofia Region repealed the silent refusal of the Mayor of Elin Pelin to provide the „Citizen Initiative - Elin Pelin“ Association with access to information concerning the preparation of the Master (general) Spatial Development Plan of the Elin Pelin Municipality. The court noted that the lack of an explicit decision is a violation of the requirements regarding the contents of the individual administrative act (document) issued by the obliged body, which is a specifically significant procedural violation.

With a decision⁶² dated 9 November, the Administrative Court - Smolyan repealed the silent refusal of the Mayor of Smolyan to provide Zarko Marinov („Echo“ newspaper) with access to the monthly protocols for the period January - May 2016 on contracts between the municipality and the cleaning companies „Titan cleaner“ and "Eco Titan Group“. The decision was appealed by the Mayor of Smolyan. The SAC will hear the case in May 2017.

⁵⁹ Decision no. 311/15.01.2016 of the ACSC, First Division, 6 panel on a. c. no. 9361/2014.

⁶⁰ Decision no. 851/15.02.2016 of the ACSC, Second Division, 36 panel on a. c. no. 9569/2015.

⁶¹ Decision no. 863/04.10.2016 of the ACSR, Sixth panel on a. c. no. 509/2016.

⁶² Decision no. 299/09.11.2016 of the AC Smolyan on a. c. no. 180/2016.

With a decision⁶³ dated 25 November, the ACSC repealed a refusal by the Mayor of the Lozenets District of Sofia to provide Dennitsa Kyuranova (from Sofia) with information concerning the public consultations and the publication of the new Detailed Spatial Plan for the memorial park „Grandpa Slaveykov's place and the Pencho Slaveykov's oak“ in Sofia. In their reasoning, the judges noted that the silent refusal was inadmissible under the APIA, that it was a significant violation of the administrative procedure rules, and that this was sufficient ground for it to be repealed. The decision entered into force and the information was provided.

With a decision⁶⁴ dated 28 November, the Administrative Court Sofia Region repealed the silent refusal of the Mayor of Bozhurishte to provide Yulian Metodiev (from Bozhurishte) with information concerning the court cases against the Bozhurishte Municipality in the period 2007 - 2016. The judge noted that a silent refusal was inadmissible under the APIA and that this was sufficient ground for its repeal. The Mayor appealed the decision. The SAC will hear the case in May 2018.

⁶³ Decision no. 7404/25.11.2016 of the ACSC, Second Division, 50 panel on a. c. no. 7410/2016.

⁶⁴ Decision no. 1097/28.11.2016 of the ACSR, First panel on a. c. no. 940/2016.

ANNEXES

Comparative Results from Audits performed by
the Access to Information Programme covering Websites
of 544 institutions in 2015; 565 in 2016 and 566 in 2017.
Results from the 2017 Audit by Type of Public Body.

[Annex 1](#)

Institutional Information - Legal Basis, Functions, Public
Services, Information Data Bases and Information Resources

[Annex 2](#)

Operational Information - Acts, Development Strategies,
Plans, Activities and Activity Reports

[Annex 3](#)

Financial Transparency - Budgets and Financial Reports,
Contracts, Conflict of Interest Declarations

[Annex 4](#)

Access to Information Section - information about
the right of access to information and how to exercise it

[Annex 5](#)

Data Only for MUNICIPALITIES

[Annex 6](#)

Excerpt from the Data Base of Consulted Cases 2016

[Annex 7](#)

Litigation 2016 - Annotation of Cases

ACCESS TO INFORMATION IN BULGARIA 2016

Report

English

First edition

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ACCESS TO INFORMATION PROGRAMME FOUNDATION



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

Access to Information Programme Foundation is a member of the International Freedom of Information Advocates Network (FOIA Net), The Access Initiative (TAI) network, the European Civil Liberties Network (ECLN), the Network of Democracy Research Institutes (NDRI), and the ATLAS network.

AIP maintains a countrywide network of coordinators in all regional cities in Bulgaria.

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

In 2010, AIP was recognized with a plaque for contribution to the opening of the archives of the communist secret services and strengthening the reputation of the Committee for Disclosing the Documents and Announcing Affiliation of Bulgarian citizens to the State Security and the Intelligence Services of the Bulgarian National Army.

In 2011, the Civil Association *Vidovden* recognized AIP with the annual award *Vidko* for contribution to the raised awareness about and the exercise of the right of access to government information.

In 2011, AIP was **recognized with the Human of the Year Special Award** for outstanding contribution to the protection and strengthening of human rights in Bulgaria, given by the Bulgarian Helsinki Committee.

In 2013, the Bulgarian National Audit Office recognized AIP with the Symbol of the National Audit Office and a Diploma for AIP contribution to the enhancement of the publicity and transparency of the institutions in Bulgaria and to the development of an informed society.

Goals

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

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

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

Activities

Monitoring of legislation and practices related to access to information.

Provision of legal help in cases of information seeking.

Trainings in the access to information area.

Public awareness campaign on access to information.



ACCESS TO INFORMATION PROGRAMME