

ACCESS TO INFORMATION LITIGATION IN BULGARIA



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PREFACE

The Bulgarian Access to Public Information Act was passed two years ago. During this period citizens, journalists and non-government organizations have sought information actively, thus exercising this basic right guaranteed by the Constitution. Efforts to defend the right to access to government held information before court proved to be a necessary condition for making the law vital and for establishment of democratic practices.

This book contains the most important judgments of the Bulgarian Supreme Administrative Court on access to information cases.

Public interest litigation conducted by Access to Information Program is a necessary stage following the legal assistance provided by us from 1997 in cases of infringements of the people's right to freedom of information. The increasing interest of citizens to obtain information jealously kept within the state authorities resulted in access to information litigation. It was made possible due to the kind support of Open Society Institute in Budapest of the project „Freedom of information litigation“.

The text introducing the cases tends to briefly overview the main questions that arose in the course of litigation and to draw some conclusions on the constraints on free access to public information in Bulgaria. For its preparation we examined some case law on the same issues in the US having in mind that it is the richest one.

I hope that the book will be of some benefit to the people over the world battling for free access to information as well as to lawyers working for that sake in Bulgaria.

The book offered to your attention reflects the joint efforts of the Access to Information Program team.

I would like to express my profound gratitude and appreciation to the following persons for their contribution to this book: Dr Gergana Jouleva, attorney Daniela Mihailova, Fany Davidova, Hristo Petrov, Katina Kljavkova and Stoyan Terziyski.

Alexsander Kashamov

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**ACCESS TO
INFORMATION
LITIGATION
IN BULGARIA**

GENERAL PROBLEMS

The Bulgarian case-law regarding the right to access to information makes noticeable the following problems:

- The novelty of the law,
- The lack of clarity in certain provisions of the Access to Public Information Act (APIA) and the inconsistencies between APIA and other pieces of legislation,
- The influence of the case-law preceding the adoption of APIA, and
- The problems with the judicial reform.¹

In addition, administrative justice, within whose jurisdiction the examination of appeals against access to information refusals falls, has faced some specific challenges. The concept of administrative action as emanation of a powerful state to which citizens should obey changed radically to another, according to which it is civil service for citizens, who are of higher priority than the state.

This basic change requires a change in the court practice, which is gradually taking place, in spite of the circumstance that a modern administrative procedure act has not been adopted.²

This new definition of administrative activity results in a much more significant role of the courts when they exercise jurisdiction over disputes between citizens and institutions.

¹ The 2001 Regular Report of the European Commission on Bulgaria's accession points out that further efforts are needed to meet priorities in reforming the judicial system. The Report states, „*Significant efforts are required to develop a strong, independent, efficient and professional judicial system*“ and, subsequently, „*Progress made in strengthening the independence of the judiciary and the efficiency of the judicial system is still weak. **This priority is yet to be achieved***“.

² These issues were outlined by Justice Alexander Elenkov, the Supreme Administrative Court of the Republic of Bulgaria, during the round table talk on APIA and the Recommendations of the Council of Europe, 21 May 2002, Sofia, SAS Radisson Hotel.

LITIGATION ON ACCESS TO PUBLIC INFORMATION CASES

The examination of appeals against access to information denials by the courts follows the general trend of administrative jurisdiction in Bulgaria.

Usually there is no more than one hearing of the cases of this type, because the parties do not adduce any additional evidence to those submitted with the petition.

Nevertheless, the period of time between the institution of the proceedings before the relevant court instance and the adoption of the final adjudication is comparatively long, especially taking into account the fact that the applicant usually needs the requested information in short terms³.

At an earlier stage the adoption of judgments took longer than in the other types of cases and probably this was due to the fact that the legal matters were new and there was no established case-law.

In 2002 some panels began to decide upon the cases significantly faster.

³ Even if the law should change and provide for faster court proceedings, this issue would not be resolved. A satisfactory resolution is only possible by establishing the institution of the ombudsman, a commission or commissioner to protect the right to information, similarly to the Commission for Personal Data Protection. Such an institution can be found in the legislation of many countries.

COURT RULINGS PRECEDING THE ACCESS TO PUBLIC INFORMATION ACT

Several appeals against refusals of various institutions to grant information to citizens or non-governmental organizations were filed prior to the adoption of the Access to Public Information Act.

The records of the *Access to Information Program* contain information about five cases, including three where the appeals were drafted by the legal team of the Foundation.

In all of these cases, the appeals were found inadmissible by the panels of the Supreme Administrative Court. The most frequent argument was that there was no particular obligation for the respective institution to provide access to information, since such obligations were not described in the law, regulating the responsibilities of that particular institution⁴.

In its Decision on admissibility from 1999, a five-member panel of the Supreme Administrative Court came to an even more general conclusion, namely that the right of citizens to information as declared in Art. 41, para 2 of the Constitution, „has not been developed further by a special law, regulating the way of providing information as regards procedures, restrictions, forms“⁵.

Another issue, which came out in the course of the proceedings instituted and adjudicated upon prior to the adoption of APIA, referred to the scope of persons entitled to the right to access information. According to a three-member panel of the Supreme Administrative Court Art. 41, paragraph 2 of the Constitution „implies the right of citizens, and not of legal entities to receive information on questions, which constitute a legal interest for them“.⁶

A five-member panel of the Supreme Administrative Court expressed a different opinion, when quashed a decision of a three-member panel, declaring an access to information case inadmissible.

The court held that the applicant association, which filed the appeal „has the right to seek, obtain and impart information relative to environmental issues, c.f. Art. 41, paragraph 1 of the Constitution of the Republic of Bulgaria“⁷.

The above-discussed cases are an integral part of the case-law related to the right of access to information.

The very fact that such proceedings took place before the adoption of APIA shows that citizens are interested in the judicial protection of this constitutionally guaranteed right.

At the same time the opinions of the court indicate its unwillingness to recognize the direct effect of the Constitution in this respect, arising from a multitude of reasons, one of which is the interpretation given by the Constitutional Court in its Judgment No. 7 on Constitutional Case No. 1 of 1996.⁸

⁴ Decision No. 1893 dated 19 April 1999 on Administrative Case No. 5635/1998; Determination No. 1091 dated 24 February 2000 on Administrative Case No. 3147/1999; Determination No. 138 dated 14 January 2000 on Administrative Case No. 1950/1999.

⁵ Decision No. 4311 dated 28 July 1999.

⁶ Decision No. 138 dated 14 January 2000 on Administrative Case No.1950/1999.

⁷ Decision No. 5973 dated 15 December 1998 on Administrative Case No. 4652/1998: Presiding Judge: Nikolai Ouroumov; Member Judges: Srebrina Hristova, Alexander Elenkov, Yordanka Kostova and Boyan Magdalinchev; Rapporteur: Alexander Elenkov.

⁸ According to the Constitutional Court, „this right [the right of each person to seek and obtain information, as declared in Art. 41, para 1 of the Constitution] implies a respective obligation to provide information. The concrete contents of that obligation cannot be determined in any other manner but through legislation. The legislator is the one who, in view of the spirit of the constitutional provision, has to identify the multitude of cases in which the obligation should be subject to an express formulation“. It should be noted that, despite this comment, the ruling under discussion is of fundamental significance for the interpretation of the constitutionally guaranteed freedom of expression and information and represents a milestone in the progress towards the establishment of democratic principles in Bulgarian law.

LITIGATION AFTER THE ACCESS TO PUBLIC INFORMATION ACT CAME INTO EFFECT

As far as the *Access to Information Program* is informed, the first refusal pursuant to the Access to Public Information Act was registered on 18 July 2000, i.e. 11 days after the Act was published on 7 July 2000, and the first case when a citizen sought our assistance dates from about a month later. As of August 2002, the *Access to Information Program* has provided assistance to citizens and non-government organizations in drafting about 40 appeals against refusals to grant access to information⁹. The Foundation is currently providing legal assistance in thirty-three cases. Litigation on 10 of these cases is pending before the courts of first instance, 4 cases are pending before the instance of cassation, one is pending before the court of first instance after it was returned to it, one has been declared inadmissible by a decision that has come into effect, one has been declared inadmissible and the decision is appealed from, and 16 cases were decided by judgments, half of which have not come in effect. In addition, in several cases the plaintiffs withdrew their appeals because the requested information was provided in the meantime. For the first six months of 2002, the number of court hearings held on the cases supported by the Foundation are almost two times more than for the entire 2001¹⁰.

The cases on which AIP provides free-of-charge legal advice were selected on the basis of several criteria: public interest in the requested information, the need for court interpretation of vague provisions of the law, which are essential for its implementation, and the incapability of the person requesting information to afford the costs of the proceedings and legal representation in court. At the same time, citizens and non-government organizations filed court appeals by themselves.¹¹

Out of the eight court rulings that have come into force until the middle of August 2002, five are in favor of the applicants, and in three cases the appeals have been rejected¹². In six of the other eight cases on which the final court rulings have not come into force, the judgments were in favor of the applicants, in one case the appeal was rejected, and one of the complaints was found inadmissible¹³. In the above-mentioned decisions, as well as in some of the decisions and judgments which have come in force, the courts have considered some important questions such as the question of the admissibility of appeals against tacit refusals, of the lawfulness of these refusals, of the scope of units under the obligation to provide information, of the applicability of the consent of a third party concerned. The appeals also include some questions, on which no adjudication was made; a typical case is the case of the so-called partial access.

Some of the issues that were discussed during the public discussion on the Access to Public Information Bill prior to its adoption by the National Assembly were also raised in some of the court cases, either by the plaintiff, by the respondent, or of the own motion of the court. At the same time, new issues that had not been discussed previously emerged.

⁹ For more information about the cases of AIP, see: http://www.aip-bg.org/dela_bg.htm

¹⁰ Litigation on Cases Related to Access to Information is a project funded by the Constitutional and Legal Policy Institute, Budapest.

¹¹ For instance, two court procedures were started by Mikhail Ekimdjev and Snezhana Stefanova, Attorneys-at-Law of the European Integration and Human Rights Association, who appealed against refusals of the Chairman of the Plovdiv District Court to grant information about the number of permissions requested and granted over a certain period of time for the use of special means of surveillance, the number of cases where evidence gathered through the use of special means of surveillance has been presented, and the number of notifications of premature termination of the use of such means.

¹² It should be noted that in one of the cases, the plaintiff, InfoEcoClub, Vratsa, has chosen not to attack the court's judgment before an instance of cassation, because due the reasons stated in the judgment it found a faster way to obtain the requested information. The practical result of the case was that the Mayor of the Vratsa Municipality assigned an official to be responsible for granting access to information in the local government (*Administrative Case No. 45/02 of the list of cases of the Vratsa District Court*).

¹³ The case was terminated as inadmissible due to lack of legal interest and of an administrative act, in the opinion of the court.

Seekers of Access to Information

The number of appellants against refusals to provide information includes 18 non-government organizations and 15 individual citizens. Practice shows that there is a wide variety of sought information.

The non-government organizations need the information in order to provide the services they offer, a large part of which covers areas that, until recently, were the monopoly of the state. This is why they prove to be persistent information seekers, prepared to sue the government for each refusal in order to ensure their free access to certain information in the future. Some citizens who want to find out who exactly and why has wronged them and has deprived them of certain legal possibilities (.g. to exercise some of their rights provided for by the property restitution laws or deriving from a lease or some other contract with the municipality, etc.) show similar persistence.

Journalists are mostly interested in the information which state and municipal institutions disclose on their own initiative. In requesting information, they prefer the oral inquiries provided for by APIA, which is understandable: usually they need the information right there and then, not 14 days later, and do not show any willingness to defend their right to information before the court.

Gradually journalists began to understand the need of continuous pressure in order to ensure free flow of information in certain areas of governance, where „sun seldom shines“.

Thus, for instance, Alexei Lazarov, a journalist in „Capital weekly“ raised the question about the accessibility of the records of the Cabinet meetings¹⁴.

The cases that have been referred to the *Access to Information Program* reveal an interesting situation regarding the implementation of APIA.

The reforms in entire areas of governance as healthcare and social welfare have provoked a natural interest both among citizens and non-government organizations in obtaining more information about the way in which public funds are being spent in these fields.

For example, the overall reform of the healthcare system drew the attention of the public to the budgetary expenses of the National Health Insurance Fund (NHIF).

The Association of General Practitioners in the city of Veliko Turnovo lodged ten requests with the Regional Health Insurance Fund in Veliko Turnovo, that subsequently were re-sent to NHIF, but only three of the requests were answered. In this case it is evident that the interests of medical doctors, who demand transparency in view of the rational distribution of the funds, and the public sensitivity towards the reform of the healthcare system and the way public funds are being spent coincide. After all both these interests are aimed at an improvement of medical services.

Between March and June 2002, six of the above mentioned cases were heard by the court. The requested information concerns the planned and actually made expenses of the Regional Health Insurance Fund in Veliko Turnovo as well as certain administrative acts of the National Health Insurance Fund. Other applicants are still seeking similar information.

The Institute for Market Economy filed an appeal against the refusal of the NHIF Director to provide information about the planned and actually spent budgetary expenses of the regional departments.¹⁵

Tension remains high because of the unyielding attitude of the NHIF Director, who systematically-tacitly or expressly- refuses access to information.

¹⁴ See Notes 25 and 35 below.

¹⁵ For further information about this non-government organization, go to: www.ime-bg.org

The above-described cases should be viewed as part of the public debate about the activity of NHIF and of the pressure for its transparency and accountability to the public.

Information about the social policy of the government is being sought as well. In 2001, *The Center for Independent Life* (CIL)¹⁶ requested from the Minister of Labor and Social Policy copies of all the available documentation concerning the Social Worker Program, which the Minister had publicized in the media.

Since the Minister had said that the funds necessary to launch the Program had been provided, the non-government organization wanted to verify his statement and to learn what activity the funds were allocated for. The subsequent tacit refusal was canceled by the Supreme Administrative Court, but nevertheless the requested information has not been provided until now.¹⁷

In July 2002 the *Institute for Market Economy* requested information about the transfer of funds for disabled people, the amount of the available funds for preferential treatment of disabled people, and other similar data from the *National Social Security Institute*, the Ministry of Education, the Ministry of Labor and Social Policy, the Rehabilitation and Social Integration Fund and the Executive Employment Agency. The *Institute for Market Economy* needed the information in connection with a report on *Political Economy and Allocation of funds for the Rights of People with Disabilities* it was preparing at the request of the *Center for Independent Life*. All the above-mentioned institutions except the Executive Employment Agency provided the requested information, although some of them failed to meet the deadlines¹⁸.

The right of access to information was often exercised in favor of the weaker communities and in the realm of minority issues. Thus, for example, *the Bulgarian Helsinki Committee*, an organization addicted to the protection of human rights, inquired about the number of reported cases of police violence in the region of Sliven and about the number of criminal proceedings based on such reports. Since the victims of this type of violence quite often belong to the Roma minority, the obtained information could shed some light on the attitude of the public prosecution towards the protection of their rights.

Besides, the activity of the public prosecution in such cases quite naturally is a matter of interest for the entire society.

The district military prosecutor of the city of Sliven, who was the addressee of the request for access to information, issued a ruling by which he refused to satisfy the request on the ground that APIA did not oblige him.

This statement was the cause to raise the question about the scope of persons obligated under the Act before the court. At the same time, the refusal did not refer to the protection of anyone's right or legal interest.

This refusal was canceled as unlawful by the District Court of the city of Yambol, which obliged the district military prosecutor to provide the requested information¹⁹.

¹⁶ For further information about this non-government organization, which provides advocacy for achieving a better living environment for people with disabilities, go to: www.cil-bg.org

¹⁷ Enforcement of court decisions has emerged as an unexpected and serious problem. It clearly shows that the attitude of the executive towards the judiciary adds to the inefficiency of the judicial system. Thus, for example, Dolores Arsenova, Minister of Environment and Waters, has not yet complied with the court's judgment on Administrative Case No. 9822/01, which was delivered in November 2001.

¹⁸ This promptness may be due partially to the experience of the Ministry of Education and Science and the Ministry of Labor and Social Policy, which lost against access to information appeals. We believe that this case exhibits the positive effect of the process of litigating in public interest as a training tool for the executive in the application of this kind of legislation.

¹⁹ The case is pending before the Supreme Administrative Court. See Note 28 below.

Tacit Refusals

I. Admissibility of appeals against tacit refusals

One of the first questions that were raised concerned the admissibility of appeals against the so-called tacit refusals. The term is used in Art. 14 and Art. 22 of the Administrative Proceedings Act and is introduced for the purpose to guarantee the rights of citizens and legal entities through administrative and judicial supervision not only over the administrative acts of the public authorities but also over their omissions. On the ground that APIA does not use this term in two of the cases the panel of judges concluded that judicial review over omissions to answer a request for access to public information within the required time period was inadmissible²⁰. The panels of the cassation instance, however, accepted the opposite interpretation.

One of the decisions lays down the following argument: *„To accept that the fact that there is no special legal provision in the special law, establishing the said fiction [i.e. declaring that the omission to issue the requested act within the required time period constitutes a tacit refusal - Art. 14, paragraph 1 of the Administrative Proceedings Act], means that there is no tacit refusal would actually result in a denial of justice and of protection of the rights of citizens, which is inadmissible. Courts cannot refuse to give a judgment, even if no law is applicable to the case.“*²¹.

This interpretation of the law was of crucial importance, because otherwise the very meaning and effectiveness of the Access to Public Information Act would have been doubtful, i.e. if the arbitrary and uncontrollable silence of the obliged persons²² were unchallengeable.

II. The conformity of Tacit Refusals with the law

Subsequently, the Supreme Administrative Court canceled as unlawful two tacit refusals²³. In one of these judgments a three-member panel of SAC held that: *„the presence of evidence that the requested information exists is not enough to enable the court to estimate the reasons for the refusal according to the prerequisites required by the law – whether the refusal is completely or partially lawful.“*²⁴

By the other decision a three-member panel of SAC canceled the impugned tacit refusal as unlawful because *„there is no administrative act issued in the form required by the law and consequently the file must be sent back to the administrative authority and it should prepare a decision conforming with the relevant procedural rules“*.²⁵

Five tacit refusals were recently canceled as unlawful by panels of the Sofia City Court²⁶.

²⁰ *Center for Independent Life Association vs. Refusal of the Minister of Labor and Social Policy (Administrative Case No. 1763/01)*, *Polina Kireva vs. Refusal of the Minister of Environment and Waters (Administrative Case No. 280/01)*.

²¹ Decision No. 8645 dated 16 November 2001 issued by SAC: Presiding Judge Andrei Ikonov; Member Judges: Alexander Elenkov, Zhaneta Petrova, Zaharinka Todorova, Tanya Radkova; Rapporteur: Alexander Elenkov.

²² The above-cited Decision presents a new approach to the issue of civil rights protection compared to the practice prior to APIA, which was discussed earlier. It should be noted that it is of general and fundamental significance for the protection of civil rights against omissions of the executive in all the realms of its activity. Its significance consists in the practical application of the will proclaimed in the Preamble to the Constitution to raise the rights of the individual to a supreme principle.

²³ Decision No. 1795 dated 26 February 2002 on Administrative Case No. 7176 of the Supreme Administrative Court, three-member panel; Decision No. 2764 dated 25 March 2002 on Administrative Case No. 1763/01 of the Supreme Administrative Court, three-member panel.

²⁴ Decision No. 1795 dated 26 February 2002 on Administrative Case No. 7176/01.

²⁵ Decision No. 2764 dated 25 March 2002 of SAC, Division V.

²⁶ Decisions on Administrative Case No. 512/02 of III-C, Administrative Case No. 515/02 of III-A, Administrative Case No. 510/02 of III-E, Administrative Case No. 2295/01 of III-C and Administrative Case No. 723/01 of III-E of the Sofia City Court, Administrative Division.

Who is Obligated to Provide Information under APIA?

The question who exactly the obliged person is was raised in the practice. This question was raised mostly by the respondents. The reason for asking it is the fact that sometimes it is not clear who exactly in the system of a state or municipal institution is authorized to rule on requests for access to information. According to the provision of Art. 3, paragraph 1 of APIA, the obligation relates to the authorities of the state and of the local self-government. Sometimes, however, the decisions to refuse access to public information are signed by persons other than the respective authority, most often – by heads of administrative units, e.g. departments.

In the *Karaivanov vs. the Minister of Economy*²⁷ case, where the applicant was refused access to a record of a meeting of the Liquidation and Insolvency Committee of the Ministry of Economy, the decision for refusal was taken by the Director of the Liquidation and Insolvency Directorate. The three-member panel of SAC found that the request was re-sent to the Director. This opinion was sustained by a five-member panel²⁸.

In our opinion, since the Director of a Directorate is not vested with authority, the request could not be re-sent to him and it should be accepted instead that there is a tacit refusal of the Minister.

More consistent with SAC's own practice, however, is the view accepted in the judgment of the first instance court on the *Alexei Lazarov vs. Refusal of the Director of the Press Center and Public Relations Directorate of the Council of Ministers*²⁹ case (2001). In this judgment it was found that a person other than the relevant authority could rule on a request only on the condition that this person has been expressly authorized according to Art. 28, paragraph 2 of APIA. The Sofia City Court reached the same conclusion in its judgment on the above-cited *Karaivanov case* after that case was re-sent to it by the five-member panel of SAC according to the rules of jurisdiction. A panel of the Sofia City Court held that the Director, in the absence of authorization, was not competent to respond to the request for access to information and sent the file back for a ruling of the competent authority - namely the Minister of Economy³⁰.

There was an interesting case connected with these issues. In order to avoid the declaration of the nullity of a refusal of the Municipal Secretary of Vratsa to provide information on the ground of his incompetence to rule on requests for access to information, the Mayor of the municipality requested the court to cancel the proceedings on the merits and to appoint a new hearing. At that hearing a representative of the Mayor presented an order dating from the previous year, by which the Municipal Secretary was appointed to be the person responsible for the provision of information.

Despite the doubts of the legal representative of the plaintiff that the order may have been antedated in order to avoid an unfavorable court decision, the appointment of such a person in the municipality is definitely a positive step³¹.

Practice gave rise to questions about the so-called public law persons, who are obliged to grant access to information under the provision of Art. 3, paragraph 2, item 1 of APIA, and their units, for example, the National Health Insurance Fund /NHIF/ and its regional units.

²⁷ Administrative Case No. 1736/01 of SAC, Division V.

²⁸ According to the provisions of Art. 32 of APIA and Art. 8 of the Administrative Proceedings Act, and in view of the fact that the respective right can be satisfied only if the request is re-sent to a competent authority, this conclusion could be based only on the premise that the director is an obliged person.

²⁹ Administrative Case No. 7189/01 of the Supreme Administrative Court, Division V.

³⁰ Such a ruling has not been made yet.

³¹ The lack of officials assigned to handle access to information matters has emerged as a major problem in the implementation of the law. C.f. the results from a survey conducted by the Access to Information Program in October 2001. See www.aip-bg.org/rep-bg.htm

Various organizations filed about 10 appeals against refusals of the National Health Insurance Fund to provide information on its budget³². In four of the cases, the Sofia City Court held that NHIF is obliged under APIA³³.

Although the provision of Art.3, paragraph 1 of APIA, according to which the authorities of the state and of the local self-government are bound to grant access to information, seems to be quite clear and had not given rise to any questions during the public debate preceding the adoption of APIA, the question whether the authorities of the judicial system are obliged under APIA was put forward.

The question was raised not only at forums, but also in legal practice, since in December 2001 the district military prosecutor of the city of Sliven refused access to information to *the Bulgarian Helsinki committee*. His refusal was based on the argument that prosecutors were not civil servants and therefore no obligations for them derived from APIA. This opinion was not shared by the District Court of Yambol, which canceled the refusal as unlawful and obliged the district military prosecutor to provide the information requested³⁴.

Another question of particular significance is whether the respective institution is obliged to respond to a request for access to information if the requested information is not available in that institution.

In one of its judgments, a three-member panel of the Supreme Administrative Court found the objection of the respondent that the request had been addressed wrongfully groundless since „*what is relevant is the request made by the applicant in writing; the addressee of the request is the authority, which is to decide whether it is competent to respond to the request or should re-send it to another authority*“³⁵.

This judgment is of great practical significance since in many cases the relevant institutions do not bother to respond to the requests for information and their representatives state before the court that this information is available elsewhere or does not exist at all. Such cases give rise to the question about the effective protection of the right of access to public information. Even if such a refusal has been canceled by the court as unlawful, the entire procedure of seeking information has to start from the beginning.

³² A relatively large number of such appeals were filed by the Association of General Practitioners, Veliko Turnovo. So far, the Sofia City Court has canceled two of the refusals of the NHIF Director as unlawful. (Administrative Cases No. 512/02 and No. 515/02, as per the case register of the Sofia City Court).

³³ Decisions on Administrative Case No. 512/02 of III-C, Administrative Division, Administrative Case No. 515/02 of III-A, Administrative Division, Administrative Case No. 510/02 of III-E, Administrative Division, Administrative Case No. 2295/01 of III-C, Administrative Division, all ref. Nos. of the list of cases of the Sofia City Court.

³⁴ *Decision No. 48 dated 25 April 2002 on Administrative Case No. 162/01 of the Yambol District Court.*

³⁵ *Decision No. 7616 dated 29 July 2002 on Administrative Case No. 3631/02: Strashimir Kozarov vs. Refusal of the Minister of Labor and Social Policy.* Presiding Judge: Ekaterina Gruncharova; Member Judges: Milka Pancheva and Diana Dobрева; Rapporteur: Milka Pancheva

What does „public information“ mean?

The notion of „*public information*“ was not defined precisely by the legislator, as the Supreme Administrative Court has also noted in its practice.

The provision of Art. 2, paragraph 1 of APIA is unclear but it is not so with the provisions of Art. 10, Art. 11 and other Articles of APIA. These provisions define the two types of public information: official information, covering the acts of the authorities, and administrative information, generated, received and stored in connection with the other type or for the purposes of the operational activity of the authorities and their administrations.

Apparently the courts also accept that these provisions could give a more clear idea what kind of information is public³⁶. In its judgment on the *Y. Lazov vs. the Minister of Environment and Waters case*, the Supreme Administrative Court, sitting in a three-member panel, notes as follows: „*The provision of Art. 2, paragraph 1 of APIA defines the notion of „public information“ as „any information, relating to the public life in the Republic of Bulgaria and enabling citizens to form opinions of the activities of the persons having obligations under this Act“*. However, there is no legal definition of the term „*information relating to the public life*“ and it is not defined what characteristics a certain piece of information should have in order to be „*enabling citizens to form opinions*“. This opens up the doors for discretionary decisions of the administrative authorities on the provision of public information.“³⁷

So far, the argument that a certain piece of information is not public has been used rarely by the respective persons who are obliged under APIA.

Until now such a statement has been made in the refusal of the Chief Tax Director³⁸ to provide a copy of a letter and in the refusal of the Mayor of Berkovitsa to provide a copy of a title-deed certifying municipal ownership.

So far, there has been no court judgment finding that the information sought is not public. In the *Alexei Lazarov vs. the Council of Ministers case* the five-member panel of the Supreme Administrative Court made a detailed interpretation of the notion of „public information“, based on the purpose of the law and on international standards.

„... Therefore, the notion of „public information“ should be understood as data or knowledge about someone or something, relating to the public life in the country, or, respectively, about the activity of the persons obliged under Art. 3 of APIA. In a democratic society the access to public information is of primary importance in view of ensuring the transparency of state administration and the availability of information on matters of public nature.“

In its Recommendation /2002/ 2 to the Member Countries on the access to official documents, the Committee of Ministers of the Council of Europe stated that „*Considering that wide access to official documents, [...]*

- *allows the public to have an adequate view of, and to form a critical opinion on, the state of the society in which they live and on the authorities that govern them, whilst encouraging informed participation by the public in matters of common interest;*
- *fosters the efficiency and effectiveness of administrations and helps maintain their integrity by avoiding the risk of corruption;*

³⁶ Reference to these provisions in determining the public character of a requested information can be found in a number of SAC decisions.

³⁷ Decision No. 9822/02 on Administrative Case No. 5736/01 of the list of cases of SAC, Presiding Judge: Ekaterina Gruncharova; Member Judges: Milka Pancheva and Diana Dobрева; Rapporteur: Diana Dobрева.

³⁸ *The case of D. Totev vs. Refusal of the Tax Director General*. See below.

– contributes to affirming the legitimacy of administrations as public services and to strengthening the public's confidence in public authorities.”

While determining the scope of the law, the legislator has excluded from the scope of public information the information, which is provided in connection with the provision of administrative services to citizens and legal entities.

The question how to distinguish between information provided in the course of provision of administrative services and public information was raised many times during the training courses that were held in several district centers with the participation of representatives of municipal administrations and of local units of the state administration³⁹.

This question was put forward before the court due to the refusal of the Director of the National Building Control Directorate - Vratsa to provide a copy of a building license. According to the Director, the requested information was related to an administrative service and did not fall within the scope of APIA.

In a similar way the Mayor of Berkovitsa refused to give a citizen a copy of a municipal title-deed.

The District Court of Vratsa found that indeed another law was applicable in that case, namely the Provision of administrative services to natural and legal persons Act⁴⁰.

The criterion for distinguishing the provision of information in these two cases remains unclear.

In our opinion, it should be defined on the ground of the interest at stake. If the information is related to an administrative action, which the applicant is legally interested in (an argument drawn from Art. 3, paragraph 1, item 3 of the Provision of Administrative Services to Natural and Legal Persons Act), then it does not have to be provided according to the procedure prescribed by APIA.⁴¹ The intent of the legislator is to exclude these cases from the scope of APIA in order to prevent the use of the cheaper procedure for access to public information with the aim to obtain information, which is of private interest.

However, this does not mean that the administration is permitted to refuse to give the requested information on this ground⁴².

³⁹ These seminars were organized by the *Access to Information Program* and the *American Bar Association (ABA CEELI)* in Sofia, Plovdiv, Montana, Varna, Bourgas and Rousse in the first half of 2002.

⁴⁰ *Decision on Administrative Case No.379/01 of the Montana District Court dated 22 July 2002.*

⁴¹ Unlike the right of anyone to have access to public information regardless of interest, which is a right based on Art. 41, para 1 of the Constitution, the right to information connected with the provision of administrative services is based on Art. 41, para 2 of the Constitution, as pointed out by Justice Alexander Elenkov in a presentation made at a training seminar, 26-28 November 2000 in Hissarya, organized by the Center for Training of Magistrates.

⁴² In certain countries, these two cases of access to information are dealt with in one and the same piece of legislation. Whatever the case may be, the only difference between the two situations is the applicable law and the fee payable; hence any refusals stating as grounds the inapplicability of APIA are, in our opinion, unlawful, since the applicable law should be identified by the administrative authority and not by the applicant requesting information.

Formulation of the Request

In two of the cases there came up the question how precisely citizens must formulate the information required. This question is connected with the interpretation of the provision of Art. 25, paragraph 1, item 2 of APIA, according to which the written request for access should include a description of the requested information, and of the provision of Art. 29, paragraph 1, according to which if it is unclear what information has been requested, or if its formulation is made in too general terms, the applicant should be accordingly notified of this fact and has the right to specify the subject of the request.

In the *Lazarov vs. the Council of Ministers of the Republic of Bulgaria* case the Supreme Administrative Court, sitting in a five-member panel, found that the request of the appellant did not contain any description of the requested information and was „of a general wording“, although the applicant had requested to be given a copy of the minutes of the meeting of the Council of Ministers held on 26 July 2001⁴³. The judgment does not indicate what possible description could have been more precise. In its judgment on another case the Sofia City Court found that the written request did not specify precisely the information that was being requested, given that the applicant was requesting to be provided with copies of two audit reports, issued as a result of audits conducted in two schools in the city of Sliven in 1999.⁴⁴

In our opinion, the purpose of the legislator in formulating the provision of Art. 25, paragraph 1, item 2 of APIA was not to create a convenient mechanism for the administration to decline requests for access to information. On the contrary, according to the provision of Art. 25 the request for access must indicate a minimum number of data enabling the administration to register the request and to fulfill its obligations precisely. The law allows the requests to be made orally as well, i. e. with minimum formalities. In the interpretation of APIA, it should also be kept in mind that the administrative authority always enjoys a more favorable position than the citizen as to knowledge about the information requested. This is so because it is stored exactly in the records of the institution. Contrary to the interpretation accepted by the courts, we believe that the law uses the expression „description“ instead of „indication“ of the required information precisely in order to avoid the possibility for administrative authorities to make instructions like „please, indicate the number of the order you wish to receive a copy of“.

⁴³ Decision No. 4694 dated 16 May 2002 on Administrative Case No. 1543/02.

⁴⁴ Decision No. 109 dated 4 March 2002 on Administrative Case No. 2001/01: Public Barometer Association vs. Director of the Public Internal Financial Control Agency.

Title of the Act of Refusal

In connection with the question about refusals, there is an administrative practice, which does not comply with the law and impedes the examination of the cases by the court.

In many cases state authorities or the respective administrations respond to citizens' requests for access to information with a notice, a notification, a letter, which usually does not have any title.

Subsequently, the legal representative of the respondent in some cases states before the court that a notification does not represent an act of refusal, and therefore is not subject to judicial review.

In their practice courts accept that the relevant criterion is whether the impugned decision, regardless of its title, affects the rights of the person requesting access to information.

Restrictions. Right to Partial Access

The most important issues in relation to the exercise of the right to access to information arise out of its conflict with other rights and protected interests, i. e. the question about the so-called restrictions. They represent exceptions from the rule of free access to information, according to the Judgment of the Constitutional Court No. 7/96 on Constitutional Case No. 1 /96:

„When they apply these restrictions, the authorities of the legislative, the executive and the judiciary are obliged to bear in mind the high public importance of the right to express an opinion, of the freedom of the mass media and of the right to information; hence the restrictions on (exemptions from) these rights [freedom of expression, the right to seek, receive and impart information and the right to access information] may be applied only restrictively and only for the protection of a conflicting interest.“

Despite the above cited interpretation of the Constitutional Court of 1996 the Access to Public Information Act does not include the three-part test, existing in the legislation of many countries, according to which any restriction must be provided for by law, must be applied only for the protection of someone's right or legal interest, and must be necessary in a democratic society, i. e. it must pass the tests of substantial harm and of balance of interests⁴⁵.

Among the instances of restrictions of the right to access, most numerous are the cases of refusal on the following grounds: official secrecy, possible infringement of the rights and interests of a third party concerned, and the restriction under Art. 13, paragraph 2, item 1 of APIA. With the adoption, in 2002, of the Protection of Personal Data Act and of the Protection of Classified Information Act, the restrictions on the right to information were made clearer, and hence, there is more clarity as to the scope of accessible information.

Some of the recently impugned refusals were issued after these Acts came into force and, therefore, the latter Acts were applicable.

The right of partial access has been applied rarely and only in the form of provision of copies of some instead of all of the requested documents.

So far, there has not been any case of provision of a copy of a document with some blackened paragraphs or sentences, namely those, which are subject to a legal restriction. Consequently the necessary balance between contesting rights and legal interests, required by the Constitutional Court (c.f. its Decision No. 7 on Constitutional Case No. 1/1996) is still not made properly.

In this sense it is important to note the SAC decision on the *Lazov vs. Refusal of the Minister of Environment and Waters* case, which reads as follows: *„... Moreover, even in case of an express disagreement of the third party to permit the provision of information about it, according to Art. 31, paragraph 4 of APIA, the Minister could provide the requested information within a scope and in a manner, not disclosing the information about the third party. In the present case, this is absolutely possible and there is nothing to prove the existence of grounds for refusal according to Art. 37, paragraph 1, item 2 of APIA.“*

⁴⁵ These standards have received a clear formulation in Recommendation 2002 (2) of the Ministerial Committee for the Council of Europe Member States on access to official documents. A Bill to Amend the Access to Public Information Act has been introduced to the National Assembly and to a certain extent it complies with these standards.

State and Official Secret*State Secret*

On 30 April 2002, the Protection of Classified Information Act (PCIA), which regulates state and official secrets, was published. Thus the legislator fulfilled his constitutional obligation under Art. 41, paragraph 1 of the Constitution, as interpreted by the Constitutional Court in its Decision No. 7/96 on Constitutional Case No. 1/96.

At the same time the Act was adopted as a necessary step in the process of applying for NATO membership, which led to some concerns, namely, that this circumstance could be used as an opportunity to restrict the right of citizens to access information.

These concerns proved to be justified⁴⁶.

At the same time some significant achievements of the Act in question should be underlined. State secret was defined as information falling within the categories listed in an Annex to the Act, whose disclosure would result in harm or would threaten to harm the interests of national security, defense, foreign policy or the protection of the constitutionally established order⁴⁷.

The restriction on the ground of state secrecy is applicable only on the condition that all these elements are present, yet it is important how this provision will be applied by the executive and interpreted by the courts.

The same Act introduced limited time periods during which a piece of information may be secret, which periods can be extended only in exceptional cases by the State Commission for Information Security⁴⁸.

Despite the above-cited provisions of PCIA, the Director of the Press Center and Public Relations Directorate of the Council of Ministers refused to provide a copy of the Rules for Handling Documents and Materials Constituting State Secret, written in 1980. The refusal states that the document bears the marking „secret“ and, therefore, it constitutes a state secret.

According to PCIA, the access to a document of this level of classification can be restricted for no more than 5 years after the document was generated⁴⁹.

⁴⁶ Constitutional case No. 11/2002 on the constitutionality of four of the provisions of the Protection of Classified Information Act was instituted at the request of a group of Members of Parliament. The request for declaring two of the provisions unconstitutional is based on the opinion of the Access to Information Program stated when the Bill was being discussed in the National Assembly.

⁴⁷ Art. 25 of the Protection of Classified Information Act.

⁴⁸ Depending on its level of classification (degree of secrecy), information can constitute a state secret for 5; 15 or 30 years (Art. 34, para 1 of PCIA).

⁴⁹ The refusal has been appealed against by *the Access to Information Program* before the Supreme Administrative Court.

Official Secret

The Protection of Classified Information Act regulated official secrecy. Art. 26 of the Act, however, only defines the notion of „official secret“, while the specific categories of information that fall within this restriction on the right of information are described in the various acts regulating the activity of various institutions, as it was before the adoption of this Act. These Acts have not been complied with the requirement to indicate the protected interest clearly and to describe precisely the categories of information the access to which can be denied.

The cases reported to the *Access to Information Program* precede the coming of PCIA into force.

So far, we have worked on cases where the persons obliged under APIA refer to official secrecy as regulated by the Internal Financial Control Act⁵⁰ and by the Code of Taxation Procedure (CTP)⁵¹.

Usually, decisions refusing access to information indicate only the provision, which prescribes a secret protected by a law, without stating any detailed arguments or proof that the information requested would, indeed, damage the protected interest.

Thus, for example, no indication is given as to what constitutionally protected interest justifies the application of that particular legal restriction on the right of access, or whether it is possible to grant partial access. No proof is given in support of the claim that there is a legal restriction, and most often, the impugned decision does not describe any specific circumstances, i. e. no statement of facts is formulated⁵².

This practice of the executive authorities is „nourished“ by some vague and broadly worded legal provisions, for example the definition of the term „official secret“ in Art. 3, paragraph 4 and in Art. 12, paragraph 3 of the Internal State Financial Control Act.

The imprecise wording of these provisions is, in our opinion, one of the major reasons for the court, which is competent to rule only on the lawfulness of a refusal, to reject the appeal in the *D. Karaivanov vs. Refusal of the Minister of Finance* case⁵³.

At the same time, the question why the law has allowed for an official secret, and the question about the possibility for granting partial access have not been considered in court judgments.

In the *Totev vs. Refusal of the General Tax Director* case, the Sofia City Court found that there was an official secret, the obligation for whose protection derives from Art. 12 and Art. 242, paragraph 1, item 3 of CTP. The plaintiff had requested a copy of a letter, in which the Tax Director General had expressed his opinion about the application of the Settlement of Bad Debts Act in response to an inquiry.

In his request for access, Totev stated expressly that he did not want the disclosure of the name of the individual or the company that requested the said interpretation.

⁵⁰ *D. Karaivanov vs. Refusal of the Minister of Finance*; and Public Barometer Association vs. Refusal of the Director of the Public Internal Financial Control Agency

⁵¹ *D. Totev vs. Refusal of the Tax Director General*; Institute for Market Economy vs. Refusal of the Director of the National Health Insurance Fund.

⁵² An example of this is the refusal of the Tax Director General in *D. Totev vs. Refusal of the Tax Director General*.

⁵³ Decision No. 7340 dated 19 July 2002 on Administrative Case No. 3363/02.

According to the court, however, official secret always is an instrument for the protection of certain interests, which the legislator has deemed necessary to regulate. In that particular case the protected right was that of any taxpayer to confidentiality of his data that have become known to the tax administration according to Art. 23, paragraph 1, item 7 of CTP. According to the court, the conditions requisite for the provision of partial access were not present.

This decision was reversed by the Supreme Administrative Court, and the Tax Director General was obliged to provide the requested information⁵⁴.

In some cases, state authorities that have been requested to grant access to public information do not make any reference to any secret provided for by any special law. The question about the lawfulness of such a refusal has already been raised⁵⁵.

⁵⁴ Decision No. 6017 dated 26 June 2002 on Administrative Case No.10496/01.

⁵⁵ Bulgarian Helsinki Committee vs. Refusal of the Supreme Prosecution of Cassation.

Third Party Concerned

This ground for restricting the right of access is quite often met in court practice. In litigation, there are cases where the requested information concerns natural or legal persons.⁵⁶ In some cases, the restriction in connection with the protection of a third party coincides with the less clear restriction protecting official secrecy⁵⁷. In its interpretation of the provisions of Art. 31 of APIA the court held that in view of their proper application, it is necessary to notify the third party concerned of the information request in order to be possible to obtain its consent to grant the requested access. In case the third party concerned does not agree to the provision of access, the person obliged under APIA must, nevertheless, examine the possibility to grant partial access in the appropriate manner and in the appropriate scope so as to withhold the protected third party data.⁵⁸

So far there has not been any court ruling determining the scope of data regarding which the denial of a third party concerned binds the person obliged under APIA. In several cases we maintained that, in view of the provision in Art. 41, paragraph 1 item 2 of the Constitution, a third party – an individual or a legal entity – expresses a binding disagreement on the disclosure of their data only when by this declaration it defends its own rights.⁵⁹

At the same time, the statement of the reasons supporting the judgment on the *Lazov vs. the Minister of Environment and Waters* case leads to the conclusion that personal data connected to actions performed in official capacity are not subject to this restriction on the right of access.⁶⁰

In the above cited case, the plaintiff had requested the Minister of Environment and Waters to provide copies of penal orders and of acts establishing the commitment of administrative violations concerning the actions of a company affecting the environment, and copies of some other documents. The refusal referred to a restriction protecting personal data, namely the names of the persons who have issued the acts in question and the names of the witnesses indicated there.

After the Protection of Personal Data Act (PPDA) came into force,⁶¹ the scope of protected personal data was clarified to a certain extent.

Nevertheless many questions remained to be solved by legal practice. This is due to the unclear definition of the notion of „personal data“ given in Art. 2 of the above-cited Act⁶² and to the lack

⁵⁶ In *Lazov vs. Refusal of the Minister of Environment and Waters* the refusal referred to personal data of an individual; in the cases of *InfoEcoClub Association, Vratsa vs. Refusal of the Municipal Secretary of Vratsa*, *Naidenov vs. Refusal of the Municipal Secretary of Vratsa*, *Totev vs. Refusal of the Tax Director General*, and in *For the Wild Life – Balkans Association vs. Refusal of the Director of the Executive Agency for Roads* was claimed protection of the interests of legal entities.

⁵⁷ For example, in the above-cited case of *Totev vs. Refusal of the Tax Director General*.

⁵⁸ *Lazov vs. Refusal of the Minister of Environment and Waters*. In *Totev vs. Refusal of the Tax Director General* the court of first instance held that granting partial access without affecting the rights of the third party concerned was impossible. This particular conclusion was then brought up for reassessment by the instance of cassation.

⁵⁹ Thus, for example, the definition of personal data provided in the Protection of Personal Data Act establishes the scope of personal data with respect to which a person has the right to demand from state authorities and other persons non-disclosure. The argument was developed in the case of *Ivan Naidenov vs. Refusal of the Municipal Secretary of Vratsa*.

⁶⁰ The case brought up the issue whether the names of persons drawing up the statements fall within the remit of protected data.

⁶¹ The Act was published in *State Gazette* No. 1 dated 4 January 2002 and came into effect on 1 January 2002.

⁶² Art. 2. (1) *Personal data shall be any information about a natural person which discloses his physical, psychological, mental, family, economic, cultural or community identity.*

(2) *The provisions of this Act shall apply also with respect to personal data of natural persons, which are related to their participation in civil partnerships or in the management, control and supervision bodies of legal persons, as well as in case they perform functions of state authorities.*

of clarity concerning the applicability of APIA and PPDA in exercising the right of access of a third party to personal data⁶³.

Another unsolved question is that of proper balancing between the public interest in access to public information and the right to privacy⁶⁴.

Several cases gave rise to the question of the scope of protected information about companies. So far, there has been no judgment on such a case. The dispute is whether a company is entirely free to determine the scope of information about it, which must be protected, or this scope has its objective limits. The provision of the Protection of Competition Act, defining commercial secret is not clear enough⁶⁵.

To allow companies to define the scope of their own interest without any limitation, however, would be as unjustified as to adopt a law entitling to unlimited right of access to information.

Therefore, the scope of data constituting commercial secret must be subordinated to the purpose of the Protection of Competition Act. Hence the restriction on the right to access on this ground should not be allowed, for example, when the company is a monopolist⁶⁶.

The above questions are of great public importance for Bulgaria in view of the problems with corruption, arising in the area of privatization and public procurement⁶⁷.

State and municipal institutions, however, tend to tolerate the unwillingness of companies to consent to the provision of information concerning them and their major transactions.

Such is the case with the refusal of the Council of Ministers to provide a copy of its contract with the company *Crown Agents* for consulting services concerning the Customs, the case with the refusal of the Executive Agency for Roads to provide a copy of its contract with the company SPEA for designing the Struma highway, and the refusal of the Mayor of the Municipality of Vratsa to provide a copy of the ecological assessment prepared in connection with the possible environmental impact of a *LUKOIL* gas station under construction.

That is why we are looking forward with particular interest to the court judgments on these traditional disputes on the boarder line and the balance between the public and the private interest.

⁶³ The lack of clarity arises from the wording of Art. 35, para. 1, item 2 of PPDA, according to which the request for access should be filed following the procedure of Chapter Five of the Act, when such information is kept in documents containing public information to which access is available under a procedure established by a law (i.e. APIA).

⁶⁴ The test is mentioned as a requirement in the above-cited judgment of the Constitutional Court but it is not stipulated in the Acts.

⁶⁵ According to para 1, item 7 of the Act, „Commercial secret refers to facts, information, decisions and data connected to business activity, where keeping those confidential is in the interest of the parties entitled to this right, for which they have made the necessary provisions“.

⁶⁶ This issue has been discussed by US courts in their case practice under the 1966 Freedom of Information Act. C.f. *National Parks vs. Morton* – D.C.Cir., 1974.

⁶⁷ In recent years, the necessary regulatory framework has been set up in these fields. The Public Procurement Registry is public under the 1999 Public Procurement Act, and a large part of documentation related to privatization is accessible under a Regulation on the Terms and Procedures for the Provision of Information Constituting Administrative Secret in Sales Transactions under the Transformation and Privatization of State and Municipal Enterprises Act of 2001.

Working documents

A common argument stated as a ground for refusal is connected with the so-called information with no significance of its own – remarks, opinions or recommendations produced in the course of preparation of the acts of public authorities. Since the relevant provision allows public authorities as well as the other persons obliged under the law to exercise discretion in this case, judicial review is restricted to the determination of the scope of documents covered by Art. 13 and to the conformity of the refusal with the purpose of the law.

Various questions appeared in relation with the refusals based on this provision. One of them concerns the wide or narrow interpretation of the expression „*preparation of legal acts*“. The case *Lazarov vs. Refusal of the Director of the Press Center and Public Relations Directorate of the Council of Ministers* put forward the question whether the access to information about the discussion of a bill at a Cabinet meeting is subject to the restriction provided for by Art.13.⁶⁸ The question about the access to the minutes and transcripts of deliberations conducted by various collective authorities came up in other cases as well.⁶⁹ At the same time, there was also the question of the access to noise level assessments done by the units of the Hygiene and Epidemiology Institute, which have also been refused on those grounds.⁷⁰ It seems that the court interpretation of this provision of APIA will be crucial for the implementation of the law and consequently for the level of transparency of the activity of the executive.⁷¹ Depending on the future interpretation, there will be a need either for advocacy of a Sunshine Government Act – if the courts accept that such information is not generally accessible under APIA, or for further elaboration and development of the court practice – if they accept that the various types of records of sessions do not fall under the restriction of Art. 13, paragraph 2, item 1 of APIA.

⁶⁸ The court of first instance rejected the appeal. The instance of cassation ruled in favor of the plaintiff without, however, providing any clear guidance as to how the person obliged under APIA should proceed in such cases.

⁶⁹ Polina Kireva vs. Refusal of the Minister of Environment and Waters; *Karaivanov vs. the Minister of Economy*/first case/.

⁷⁰ *Ecoglasnost National Association vs. Refusal of the Director of Health Prophylactics and State Sanitary Control Directorate of the Ministry of Healthcare*.

⁷¹ In view of providing safeguards for the right of every citizen to have access to information of this type, the U.S. have adopted a special Sunshine Government Act, which enacts an express principle of openness to the public of the meetings of all the authorities of the executive, respectively-of access to the minutes of such meetings. The right of access can be restricted only on the grounds provided for the law and does not depend on the discretion of the respective authority.

INSTEAD OF CONCLUSION

Practice in developed democracies proves that, as the case with the other human rights is, citizens hold their future in their own hands. Therefore, their knowledge how to exercise their right to access the information kept by their institutions is of primary importance. In order to be effective, it must go hand in hand with training the administration to apply this law, with the progress of courts in its interpretation and with improving the legislative framework.

The legal assistance provided to citizens and their organizations and public interest litigation has proved to be a vital instrument, strengthening the effect of the above mentioned activities. It can bring together, in practical situations, the citizens and their representatives in the executive and the judiciary and – indirectly- their representatives in the legislative body, in order to defend, although through controversy, the values of a democratic society, whose essential goal is freedom.

TABLE OF CASES

***Access to Information Programme
v. Minister of the Education and science***

**To: THE MINISTER
OF EDUCATION AND SCIENCE**

APPLICATION

by

„Access to Information Programme“ Foundation Sofia, „Triaditsa“ Municipality,

Correspondence address: No.120 „Rakovski“ Street, floor 4

represented by Gergana Zhuleva

under Article 24 of the Access to Public Information Act

Dear Mr. Minister,

Would you please issue a decision to grant me access to the following public information:

I. The acts issued or approved by you, referring to the organization, the technical supply and the tuition of the optional subject „Religion-Islam“, namely:

1. Conception for the tuition of Muslim children in the subject „Religion“ in the comprehensive schools, which includes motives, goals and educational contents of the subject „Religion“;
2. Methodological guidance for the issuance, distribution and a system for the usage of the tuition aids for this subject;
3. The act for the approval of the list of the approved textbooks and tuition aids in Bulgarian;
4. Instructions for the experimental study of Islam in the school hours of the optional subject „Religion“ during the second term of the year 2000-20001 in the municipal schools of the republic of Bulgaria.

II. All your existing acts or acts approved by you, related to the organization, the technical supply and the tuition of the optional subject „Religion-Christianity“ or „Religion“ (I do not know the exact name of the subject, but it is related to the education of the children that wish to study the Christian values), including concepts, methodological manuals, guidance, circular letters, instructions, textbooks, school aids etc.

In relation to point I I would prefer to receive access to the requested information in the form of paper copies, and regards point II – in the form of a written summary.

Sofia

26.02.2001

Sincerely:

Gergana Zhuleva

Chairperson

**THROUGH: THE MINISTER OF EDUCATION AND
SCIENCE
TO: SOFIA CITY COURT
ADMINISTRATIVE DIVISION**

COMPLAINT

from

**„Access to Information Programme“ Foundation
seat: City of Sofia, „Triaditza“ Municipality
correspondence address: No.120 „Rakovski“ Street,
floor 4
represented by Gergana Zhuleva**

AGAINST: refusal to grant information by the Minister of Education and Science

ON THE GROUNDS OF: Article 40, Paragraph 1 of the Public Information Access Act in conjunction with Article 5, item 1 of the Supreme Administrative Court Act

Honorable Supreme Judges,

On the grounds of Article 5, item 1 in conjunction with Article 40, Paragraph 1 of the Supreme Administrative Court Act I am duly appealing the refusal by the Minister of Education and Science to grant me access to public information I have requested.

A. FACTS

On 28.02.2001 we submitted an application to the Minister of Education and Science on the grounds of Article 24, Paragraph 1 of the PIAA, with the request to be granted acts, concerning the optional subjects „Religion-Islam‘ and „Religion – Christianity“ in the comprehensive schools. The Minister of Education and Science responded neither in the 14-days time limit provided for in the Public Information Access Act, nor after its expiry.

B. CONTRADICTIONS OF THE REFUSAL TO THE LAW

The failure of the Minister of Education and Science to make a pronouncement in time is in substantial contradiction to procedural and substantive law:

1. Contradiction to procedural law - Article 15 of the Administrative Proceedings Act and Art. 38 of the Public Information Access Act

The law provides for that the respective authority has to make a pronouncement with a substantiated decision, when it issues the requested administrative act or when it refuses to issue it (Art. 15, Paragraph 1 of APA). A decision in this case is apparently missing. The imperative provision of Article 15, Paragraph 2 of the Administrative Proceedings Act provides for a written form of the act, respectively, the refusal. The provision of the special act also requires a written form of the refusal – Article 38 of the Public Information Access Act, and the decision for the refusal has to indicate the legal and factual grounds for the refusal. These legal requirements have not been complied with at all, which is a substantial violation of the procedural legal provisions.

The complete absence of motives for the refusal is an obstacle for us to realize our right to defense, because we do not know against what we have to defend.

2. Contradiction to substantive law – Articles 2 and 3 of PIAA.

The requested information is public information in the meaning of Article 2, Paragraph 1 of PIAA, because it is connected to public life in the Republic of Bulgaria, and in case we receive it, we would be able to form our own opinion about the activity of the Minister of Education and Science in the course of executing his legal powers. Without doubt, the information about how the state realizes its obligation to provide education to the young citizens, and in particular in the area of the subject „Religious Education“ is related to public life in the country.

Having in mind the above and on its grounds I ask the Honorable Court **TO REPEAL** the refusal of the Minister of Education and Science to make a pronouncement on our application for access to public information and to decide the case in substance, **TO ACKNOWLEDGE** our right to access to the requested information and **TO SENTENCE** the Minister of Education and Science to grant it in the requested form of access.

We enclose:

1. 2 copies of the submitted application.
2. a copy of the complaint for the respondent.

Sofia

27.03.01

Sincerely:

(Gergana Juleva, Chairperson)

JUDGMENT

No.1795

Sofia, 26.02.2002

IN THE NAME OF THE PEOPLE

The Supreme Administrative Court of the Republic of Bulgaria – Fifth Division sitting on 4th of December 2002 in a panel composed of:

CHAIRPERSON: VESSELINA KULOVA**MEMBERS: ZAHARINKA TODOROVA, TANYA RADKOVA**

with Secretary Madlen Dukova and in the attendance of Public Prosecutor Maria Begumova heard the report of **Judge TANYA RADKOVA** on administrative lawsuit No. 7176/2001. The proceedings are under Article 12 and the following of the Supreme Administrative Court Act in conjunction with Article 40, Paragraph 1 of the Access to Public Information Act (APIA).

They have been instituted on a complaint by the Foundation „Access to Information Programme“ with a seat and address in the city of Sofia against a refusal of the Minister of Education and Science to provide information on its application of 28.02.2001 specified in detail in four points. It deems the failure of the Minister of Education and Science to make a pronouncement contrary to the law with an argument that the administrative agency under Article 38 of the APIA in case of refusal should make a pronouncement with a substantiated decision. It requests the repeal of the Minister of Education and Science’s refusal and the „recognition of the right to access to the requested information through sentencing the Minister of Education and Science to provide it“, according to the wording of the complaint.

In spite of the imprecise wording of the request in the complaint, the Court accepts that what is being requested is a repeal of the refusal and passing judgment in substance.

The respondent, through its agent, is challenging the complaint and requests to leave it with no further action.

The representative of the Chief Administrative Prosecutor’s Office deems the complaint inadmissible since the subject of the appeal is tacit refusal while the Access to Public Information Act regulates only express refusal in writing.

The complaint has been served within the time limit of Article 13, Paragraph 2 of the Supreme Administrative Court Act in conjunction with Article 28, Paragraph 1 of the APIA.

The Court finds the complaint procedurally admissible due to the following considerations:

The plaintiff has registered an application for access to public information in the Ministry of Education and Science on 28 February 2001. His request has been materialized in the application in four detailed points.

There is no evidence of the application being considered within the time limit under Article 28 of the APIA, neither is there evidence that the Minister, under Article 28, Paragraph 2 has expressly assigned another person to make a decision on granting or refusing access to information. The premise of Article 32 of the APIA does not exist either – referral of the application on providing

access since there is evidence in the administrative file attached to the case neither of referring the case nor of notifying the plaintiff about that. Under these circumstances the Court accepts that the matter refers to a tacit refusal by the Minister of Education and Science, which is the subject of the appeal in this lawsuit.

The provision of Article 38 of the APIA prescribes what content the refusal decision should have. However it does not preclude the opportunity of appealing against tacit refusal which premise exists always when the authority fails to issue a decision of refusal. APIA is a special law in relation to the Administrative Proceedings Act, which regulates legal relations in connection with the issuing and control over administrative acts. Both laws are of the same degree and the general one (the Administrative Proceedings Act) should be applied in those cases which have not been regulated in the special law (the premise of tacit refusal) if in the latter there is no express provision excluding the application of the general law.

On the legal compatibility of the act being appealed against:

The Minister of Education and Science has been approached with a request for granting access to the following public information: „Your acts or acts approved by you concerning the organization and conduct of teaching in the optional subject „Religion – Islam“, namely the conception of teaching the subject „Religion“ in the comprehensive schools; methodological guidelines for publishing, distribution and use of teaching aids in this subject; an act of approval and a list of the approved textbooks in the Bulgarian language; instruction on the experimental teaching of Islam in the lessons on the optional subject Religion in the second school term of 2000-2001; existing and approved acts concerning the organization and conducting of teaching in the optional subject „Religion – Christianity“. The preferred form of obtaining the access to public information is also specified.

Scenarios of a press conference „Teaching of Islam Religion in Bulgarian Schools“, participants in the press conference, organized by the Ministry of Education and Science and the Chief Mufti Office in the Republic of Bulgaria – 02.04.2001, contributions, information of the Ministry of Education and Science press center and information on teaching Islam in the second term of the 2000-2001 school year are also attached to the administrative correspondence in the file with the complaint. There is no evidence whatsoever in the case that the documents specified above and attached to the administrative correspondence were received by the complainant. There is no evidence either that the application of the complainant was considered by the approached administrative agency.

The APIA through the provision of its Article 3 specifies the circle of the subjects obliged by this act to provide access to public information. This circle includes the government bodies, which compile and keep such information. In this case the Minister of Education and Science is a subject obliged by the law to provide the requested information. Article 13, Paragraph 1 of the APIA stipulates the principle of free access to public information and the provision of Paragraph 2 the cases when this access may be limited. The grounds for refusing to provide public information are regulated in Article 37, Paragraph 1 of the APIA. It is undoubted that in this case the premise of item 1, proposition 1 „state or official secret“ is absent since it is established from the evidence of the administrative correspondence that part of the information to which access is sought is compiled and kept in the Ministry of Education and Science. The possible premise of refusal is proposition II of Article 37, Paragraph 1, item 1 of the APIA – the provision of Article 13, Paragraph 2 of the act regulating the cases of limited access to official public information.

As it was indicated above there is tacit refusal of the subject obliged by the law to provide access to the requested information and evidence of the existence of such information. The Court is not in a position to assess the motives for the refusal in view of the substantive and legal premises referred to in the act – to what extent there should be comprehensive or partial refusal.

In view of the above the tacit refusal that is being appealed against is contrary to the law and should be repealed. Since the matter has been left to the discretion of the administrative authority,

the Court cannot rule on the issue in substance due to which on the grounds of Article 42 in conjunction with Article 28 of the Administrative Proceedings Act the file should be referred back to the administrative authority for making a pronouncement on the application with which it has been approached.

Led by the above the Supreme Administrative Court - Fifth Bench

DECIDES:

DISMISSES the tacit refusal of the Minister of Education and Science to provide access to public information under application No. 034/28.02.2001 of the Foundation „Access to Information Programme“ Sofia.

REFERS the file back to the Minister of Education and Science for making a pronouncement on the request applied for.

This judgment can be appealed against with a cassation appeal before a five-member bench of the Court within 14 days following the notification of the parties.

True to the original

CHAIRPERSON: (signed) **Vesselina Kulova**

MEMBERS: (signed) **Zaharinka Todorova, (signed) Tanya Radkova**

***Bulgarian Helsinki Committee
v. Sliven Regional Military
Public Prosecutor***

**TO: THE REGIONAL MILITARY PROSECUTOR'S
OFFICE – SLIVEN
COPY: THE CHIEF PUBLIC PROSECUTOR**

APPLICATION FOR PROVIDING ACCESS TO PUBLIC INFORMATION

Ladies and Gentlemen,

The Bulgarian Helsinki Committee is a non-governmental organization for protecting human rights, a member of the International Helsinki federation on human rights. The organization is registered as a citizens' association under the Persons and Family Act with a decision of the Sofia City Court of 1993. The seat of the organization is the city of Sofia, 7 Varbitsa Street.

On the basis of the Access to Public Information Act (Official Gazette, No. 55 of the year 2000) I request to be provided with information on how many signals on the unlawful use of physical force and firearms by police or military officers have been received in the Regional Military Prosecutor's Office – Sliven in the years 2000-2001 as well as on how many of them investigation proceedings have been initiated.

We would prefer the information to be provided to us on paper. The correspondence address of the organization is: 7 Varbitsa Street, Sofia 1504. Should it be necessary we shall be prepared to cover the costs for the preparation of the requested information. Please take into account (inst. of have in mind) the time limit under Article 28, Paragraph 1 of the APIA.

Yours sincerely:

**Yonko Grozev,
Bulgarian Helsinki Committee**

ORDINANCE

(Today, 12 December 2001) the undersigned Colonel P. Khitov – Regional Military Public Prosecutor in Sliven having reviewed the evidence in file No. B-1149/2001 instituted on the occasion of an application for granting access to public information by a representative of the Bulgarian Helsinki Committee, found as established the following:

The submitted application is unfounded and should be withheld.

Pursuant to the Access to Public Information Act obliged subjects in the meaning of Article 3, Paragraph 1 are the government authorities or the authorities of local government in the Republic of Bulgaria, which generate, or keep public information. In view of this definition of the law the Public Prosecutor's Office in the Republic of Bulgaria and in particular the Sliven Regional Military Public Prosecutor's Office is not an obliged subject in the meaning of the Access to Public Information Act. This is so because as part of the judiciary the Public Prosecutor's Office is not a government authority and in this sense there exists a premise of incompatibility between the requirements of the APIA and the obligations of the Public Prosecutor's Office.

Of determining significance for the existence of this incompatibility is the meaning in which the notion of „civil service“ is used in Article 68, Paragraph 1 of the Constitution of the Republic of Bulgaria. As a rule the notion of „civil service“ is used in administrative law where it is connected with the government of the state and the government administration, i.e. the functions of the executive. Except in the narrow sense as performing administrative functions it perceives government agencies in a wider sense too – it encompasses the structures of the government administration through which the executive performs its functions in relation to public property. One can speak about civil service with a specific content also in other branches of the law. Therefore in the absence of a uniform doctrinal or legal definition of civil service the meaning and the contents of the notion in the individual cases should be exposed through the specific aims of the provisions and institutions with which it is connected (Decision 25 of 06.06.1993 of the Constitutional Court of the Republic of Bulgaria). For the sake of clarifying this notion and the status of the Prosecutor's Office the provision of Article 132, Paragraph 1 of the Judiciary Act should be taken into consideration, which is formulated in the following manner:

„Article 132. Judges, public prosecutors and investigating magistrates while occupying their position cannot:

1. be members of parliament, ministers, deputy ministers, mayors and municipal councilors;
2. (add. – Official Gazette, No. 133 of 1998) exercise the profession of attorney at law and perform lawyers activity;
3. occupy elected or appointed office in **government**, municipal or economic **agencies;**“

It is apparent that since public prosecutors cannot occupy appointed office in a government agency they are not such and in conformity with that in this case granting information pursuant to the Access to Public Information Act is unfounded.

The procedure for making public the circumstances about the activity of the investigating authorities is regulated in the provisions of the Code of Penal Procedure.

There is no obstacle to granting specific information representing interest of general significance on a specific lawsuit and on specific case but not as a formulated statistical configuration.

In view of the above and on the grounds of Article 180, paragraph 1 of the Code of Penal Procedure.

ORDER:

I REFUSE to provide the requested public information under the Access to Public Information Act about how many signals on unlawful use of physical force and firearms by police or military officers have been received in the Sliven Military Regional Public Prosecutor's Office in the years 2000-2001 as well as about on how many of them investigations have been instituted.

A copy of this ordinance shall be sent for information to the Bulgarian Helsinki Committee ref. No. A-115/06.12.2001.

This ordinance can be appealed against before the Military Appellate Public Prosecutor □ Sofia.

**MILITARY REGIONAL PUBLIC PROSECUTOR – SLIVEN
(KHITOV)**

**THROUGH: REGIONAL MILITARY
PROSECUTOR – SLIVEN**

**TO: SLIVEN REGIONAL COURT
ADMINISTRATIVE DIVISION**

COMPLAINT

BY: Association „Bulgarian Helsinki Committee“

represented by **Krassimir Ivanov Kanev**, Chairman

THROUGH: Attorney at law Alexander Kashumov

AGAINST: refusal of access to public information under file No. 114972001 of the Sliven Regional Military Public Prosecutor

ON THE GROUNDS OF: Article 40, Paragraph 1 of the Access to Public Information Act in conjunction with Article 33 of the Administrative Proceedings Act

Honorable Judges,

On the grounds of Article 38, Paragraph 1 of the Administrative Proceedings Act (APA) in conjunction with Article 40, Paragraph 1 of the Access to Public Information Act (APIA) I appeal before you against the refusal of the Sliven Regional Military Public Prosecutor to provide access to public information requested by the „Bulgarian Helsinki Committee“ Association.

A. FACTS

On 06.12.2001 the BHC submitted an application with ref. No. A 115/ 06.12.2001 with a request for access to public information to the Sliven Regional Military Public Prosecutor on the grounds of Article 24, Paragraph 1 with which data was requested on how many signals on unlawful use of physical force and firearms by police and military officers have been received in the Regional Military Public Prosecutor's Office in the years 2000-2001 as well as on how many of them preliminary investigations have been initiated. A file was started on the application with ref. No. B-1149/2001 of the Regional Military Public Prosecutor's Office – Sliven. On 12.12.2001 access to the requested public information was refused with an ordinance of the Sliven Regional Military Public Prosecutor in which the argument was set forth that the Prosecutor's Office was not a government authority and consequently was not an obliged subject in the meaning of the APIA.

B. CONTRADICTION OF THE REFUSAL TO THE LAW

The ordinance that is being appealed against which enacts the refusal of access to public information constitutes a decision in the meaning of Article 38 of the APIA. It is an act which concerns the right of access to public information, i.e. an act in the meaning of Article 2, Paragraph 1 of the APA, which is any decision under Article 38 of the APIA. Pursuant to Article 40, Paragraph 1 of the APIA the decisions on granting or refusing access to public information are appealed against the regional

courts under the procedure of the APA. Consequently the ordinance that is being appealed against can be appealed only before the Sliven Regional Court in spite of the instruction contained in it. This is so because the APIA is the act which regulates the matter connected with the right of access to public information, including the proceedings on issuing, fulfillment and control over the decisions on providing or refusing access to public information. Secondly, pursuant to Article 116 of the Judiciary Act the control of the superior Prosecutor's Office is admissible if the law does not provide for judiciary control. Since in this case the law provides for such, the competent authority to consider the complaint against the refusal to provide access to the requested public information is exclusively the Sliven Regional Court.

The refusal to provide access to public information is decreed in contradiction to the law – the argument that the Prosecutor's Office is not a subject that is obliged under the APIA is unfounded.

Firstly, the central and local government authorities are not the only subjects obliged under the APIA. On the contrary, the circle is wider as can be seen from Article 3, Paragraph 2 of the APIA, since according to the motives to the law too „the effective exercise of this right allows members of the public to form their own opinion both on the activity of the government authorities and also of other subjects whose activity has a **public character**“. According the purpose of the law so formulated the so-called subjects of public law are also obliged to provide access to information (Article 3, Paragraph 2, item 1). The meaning of the provision of Article 3, Paragraph 2, item 1 is clear – to avoid the problem of a purely formalistic, narrow interpretation of the notion of „government authority and authority of local government“ and to establish an obligation for any institution that is exercising power on the strength of the law to the benefit of society to provide access to public information. The obligation to provide access to information is an obligation of sorts for reporting on the activity performed and being performed before the citizens. The Prosecution authorities, even had they not been government authorities, which they still are, are without any doubt subject of public law – they exercise power on the strength of the special laws authorising them – the Judiciary Act, the Code of Penal Procedure, etc and their actions are designed for the public benefit and for the benefit of any single member of society.

Secondly, the argument that the Public Prosecutor's Office of the Republic of Bulgaria and in particular the Sliven Regional Military Public Prosecutor's Office is not a subject obliged by the APIA is unfounded. It is beyond any doubt that Sliven Regional Military Public Prosecutor's Office is a separate structural entity which has powers assigned to it by law pursuant to Article 3, Paragraph 2 in conjunction with paragraph 1, Article 67, Paragraph 2 and others of the Judiciary Act, Articles 388-408 of the Code of Penal Procedure. In this capacity it is part of the authorities of state power. Pursuant to Article 8 of the Constitution state power is divide into executive, legislative and judiciary, and pursuant to Article 1, Paragraph 2 of the Constitution it is exercised only in two ways – directly by the people and through the authorities provided for in the Constitution. Article 117, Paragraph 2 of the Constitution unequivocally places the prosecution authorities amongst the legal subjects that have functions in exercising judicial power. These legal subjects cannot be something other than authorities of power, as it is seen by the Article 1, Paragraph 2 of the Constitution. In Article 4, Paragraph 2 of the Judiciary Act the court is referred to as an „authority“ which by analogy refers also to the Prosecutor's Office, Article 17, Paragraph 1 specifies the number of members of the Supreme Judicial Council elected by the „authorities of judiciary power“. The Code of Penal Procedure is full of provisions in which the Prosecutor's Office is referred to as an authority, e.g. Chapter Five.

It cannot be accepted that the term „state authority“ is different from the term „authority of state power“. On the contrary, these two terms are identical – Article 20 of the Code of Penal Procedure specifies the conditions when the competent state authority is obliged to initiate penal proceedings, and pursuant to Article 192, Paragraph 1 of the Code of Penal Procedure preliminary proceedings are instituted by the Prosecutor. Consequently the Prosecutor is a state authority.

The considerations set forth in the refusal that is being appealed against concerning the notion of „civil service“ are irrelevant since nowhere does the APIA differentiate persons occupying civil service from others, neither does it use this term. The only question that has to be clarified with a view of solving the problem with the existence of an obligation to provide access to information is whether the respective legal subject falls within the field of application of Article 3 of the APIA.

The arguments of the notion of „civil service“ besides being irrelevant are in their substance unfounded but this issue cannot be the subject of this case.

C. REQUEST

In view and on the grounds of the above I request the Honorable Court to repeal as the refusal of the Sliven Regional Military Public Prosecutor contrary to the law and to refer the case back for making a pronouncement in substance with compulsory instruction on the application of the law.

Enclosures:

1. A copy of the ordinance of the Regional Military Public Prosecutor - Sliven
2. A copy of application No. A-115/ 06.12.2001
3. A copy of letter No. B 1149701r. of the Regional Military Public Prosecutor - Sliven
4. A copy of decision of the Sofia City Court under company file No. 3168793r. of 16.03.96
5. A copy of decision of the Sofia City Court under company file No. 3168793 of 12.06.00
6. A copy of the motives to the APIA
7. Power of attorney

Yours respectfully:

(agent)

JUDGMENT NO. 48

City of Yambol, 25 April 2002

IN THE NAME OF THE PEOPLE

The YAMBOL REGIONAL COURT, Second Civil Circuit, sitting on 28th of March 2002 in panel composed of the following justices:

ANGELINA DIMITROVA in the Chair

and members ROSSITSA CHOKOVA and NIKOLINA OBRETENOVA

In the attendance of the Public Prosecutor Gr. Grozev and the Secretary D. Stoyanova after hearing the report of **Judge R. Chokova** on administrative civil lawsuit No. 162 on the register of the Yambol Regional Court **of 2002** and in order to pass judgment considered the following:

The legal proceedings before the Yambol Regional Court were brought about on the basis of a complaint of the „Bulgarian Helsinki Committee“ Association represented by the Chairman Krassimir Ivanov Kanev against the refusal of access to public information on file № B-1149/2001 of the City of Sliven Regional Military Prosecutor's Office concerning the number of signals on the unlawful use of physical force and firearms by police or military personnel that have been received by the Sliven Military Prosecutor's Office in the years 2000-2001 and concerning the issue of how many of them have been subject to investigation on a ruling of the Regional Public Prosecutor of 12 February 2001.

The complaint specifies some considerations on the contradiction of the rejection so decreed to applicable law – the Access to Public Information Act (APIA). It is pointed out in the first place that the ruling that is being appealed against, with which the rejection of access to public information has been enacted, on the one hand is a decision in the meaning of Article 38 of the APIA and is an act in the meaning of Article 2, paragraph 1 of the Administrative Proceedings Act, and in the second place it is pointed out that the Public Prosecutor's Office is a subject obliged under the APIA in view of the motives and the purpose of the law (Article 3, Paragraph 2, item 1) since its activities have a „public nature“ on account of which it is „a unit subject to public law“ and as such it is obliged to provide access to public information. The Court is required to repeal the unlawful refusal of the Sliven Regional Public Prosecutor's Office and to refer the lawsuit back for judgment in substance with compulsory instructions on applying the law. The litigation is fully upheld in the courtroom on the basis of the considerations set forth in it. It is being claimed to annul the expenses incurred on the case.

The respondent – the Sliven Regional Military Prosecutor's Office in a letter No. B-1149/ 2001 of 10.01.02 accompanying the complaint is expressing an opinion that no action should be taken on the complaint due to the fact that the Public Prosecutor's ruling is not an individual administrative act in the meaning of Article 2 of the Administrative Procedures Act, and in this specific case the ruling refusing access to information should be linked to the premise of Article 7, Paragraph 1 of the APIA, since access to information, related to the Public Prosecutor's Office procedural activity is limited through the provisions of Articles 179, Paragraph 1 and Article 191, Paragraph 4 of the Code of Penal Procedure and should be appealed against before a superior Prosecutor's Office. It is maintained that according to the motives of the APIA the scope of the act is unconditionally limited within the actions of the government administration. The respondent's agent, Military Public Prosecutor first lieutenant V. Purvapov, finds the litigation unjustified due to considerations set forth both in the ruling itself and in the opinion of the Regional Military Public Prosecutor and also in the courtroom and namely that the Prosecutor's Office is not a subject which is obliged under Article 3 of the APIA and as an argument he adduces Article 132, Paragraph 1 of the Judiciary

Act. Besides, he points out that what is at hand is the provision of Article 37, Paragraph 1 of the APIA since the required information is protected by secrecy under Article 191, Paragraph 4 and Article 179, Paragraph 1 of the Code of Penal Procedure where a prohibition is fixed on making public information on preliminary proceedings and preliminary investigation, all the more so that the complaint does not point out a specific provision of the Code of Penal Procedure and the Sliven District Military Prosecutor's Office is not in a position to provide the required information and to express an opinion after performing a preliminary investigation on the signal.

The Regional Public Prosecutor's Office agent challenges this court on the grounds of being incompetent to review the litigation and respectively points to the Military Appellate Prosecutor's Office in Sofia as the body competent on the litigation. He pleads alternatively the groundlessness of the litigation since the manner of raising the question by the Association does not represent public information under the APIA since the reply of the question so posed does not provide citizens with an opportunity of forming an opinion on the activities of the Regional Military Prosecutor's Office on the one hand, and on the other hand it cites Article 13 of the APIA which allows restrictions of the access to public information when it is connected to the operational preparation of the acts and has no significance of its own.

On the basis of the evidence collected on the case the Court finds as **established facts** the following:

With an application for obtaining access to public information ref. No. 149/10.12.2001 of the Sliven Regional Military Public Prosecutor's Office the complainant has requested from the respondent on the grounds of the APIA to be provided with information on how many signals on the unlawful use of physical force and firearms by police or military personnel have been received by the Sliven Regional Military Public Prosecutor's Office in the years 2000 and 2001 as well as on how many of them investigation proceedings have been instituted. In his application the complainant has indicated his preference that the information should be on paper, his correspondence address and has expressed preparedness to cover the costs for preparing the requested information.

With a ruling of 12.12.2001 sent to the complainant with a letter No. B-1149/2001 of 12.12.01 the Sliven Regional Military Public Prosecutor's Office has refused to provide the public information under the APIA, requested in the complainant's application. According to the grounds set forth in the ruling the refusal has been enacted due to the fact that the Republic of Bulgaria Public Prosecutor's Office and in particular the Sliven Regional Military Public Prosecutor's Office is not a subject which is obliged in the meaning of the APIA since as a section of the judiciary the Prosecutor's Office is not a government authority and besides the procedure for making public the circumstances on the activities of the investigation is regulated in the Code of Penal Procedure. It is maintained that there is no obstacle to the provision of specific information representing significant public interest on a specific case but not as a generally formulated statistical configuration.

Under the above factual circumstances the District Court is drawing the following **legal conclusions**:

This Court, having consideration to the constant practice of the Republic of Bulgaria Supreme Administrative Court, accepts that the complaint is admissible as being submitted in the timeframe of Article 37, paragraph 1 of the Administrative Procedures Act. Since on the one hand there is no written evidence by the respondent on delivering letter No. B-1149/01 of 12.12.01 of the Sliven Regional Military Public Prosecutor's Office with which it has enclosed for information a copy of the ruling and on the other hand the respondent has not challenged the time limit of the appeal previously and as submitted to the competent authority – the City of Yambol Regional Court, designated for hearing the case with a ruling No. 1349/15.02.02 under administrative lawsuit No.108/02 of the Republic of Bulgaria Supreme Administrative Court - First Bench on the grounds of Article 14, paragraph 2 of the Code of Civil Procedure instead of removing all regional judges of the Sliven Regional Court due to a challenge against them under Article 12, Paragraph 2 of the Code of Civil Procedure. Besides, the rejection of access to public information that is being appealed against, enacted in the ruling of the Sliven Regional Military Public Prosecutor's Office of 12.12.2001

under file No.1149/6.12.011 is as a matter of substance a decision refusing access to public information and pursuant to Paragraph 2 of Article 40 of the APIA it is subject to appeal before the regional courts.

Considered on the merits the complaint is well-founded on the ground of the following:

The dispute between the parties can be reduced to the following: Is the Sliven Regional Military Public Prosecutor's Office a unit, subject to the APIA and obliged to provide access to public information and are the requested by the complainant statistical data a „protected secret“ respectively an „official secret“.

The APIA regulates public relationships connected with the right of access to public information. Pursuant to the provision of Article 2 of the APIA the notion of „public information“ requires the existence of two cumulatively set premises: the first one is that the information should be related to public life in the Republic of Bulgaria, and the second one is that this information should provide citizens with an opportunity to form an independent opinion on the activities of the subjects that are obliged by the law. In this specific case the access to public information requested by the complainant is actually concerned with public information, which will provide citizens with an opportunity to form an independent opinion on the activity of the Sliven Regional Military Public Prosecutor's Office. In accordance with the motives of the act the effective exercise of the right to public information allows members of the public to form an independent opinion both about the government authorities and about other subjects whose activities have a public nature. The provision of Article 3 of the same act **defines** the subjects that are obliged to provide access to public information and among the ones specified are the government authorities and the authorities of local government, which compile or keep public information pursuant to Paragraph 1 and according to Paragraph 2, item 1 also **the persons subject to public law that are different from the ones under Paragraph 1**. The Sliven Regional Military Public Prosecutor's Office is a unit, subject to APIA and obliged to provide access to public information in view of the fact that he is subject to public law in the meaning of Paragraph 2, item 1 of Article 3 which is different from the ones under paragraph 1 of the same act. That the Public Prosecutor's Office (and in particular the Sliven Regional Military Public Prosecutor's Office) is subjected to public law follows from the fact that pursuant to § 2a-new of The Former State Security and the Former Intelligence Department of the General Staff Documents Access Act (Official Gazette, No. 24/2001) among the listed public positions is the one of the Public Prosecutor. As a result of this the Public Prosecutor is performing public activity which on the other hand makes the Public Prosecutor's Office subject to public law which is different from the government authorities and the authorities of local government in the Republic of Bulgaria, which are compiling and keeping public information to which the persons listed in Article 4 of the APIA have a right of access. On the other hand that the Prosecutor's Office is subject to public law is indicated by the fact that the judiciary is part of the state power (Article 8 of the Republic of Bulgaria Constitution, pursuant to which State Power is divided into legislative, executive and judiciary powers, and according to Article 1 of the Judiciary Act the judiciary is state power which is administering justice in the Republic of Bulgaria).

Pursuant to Article 4 of the APIA a right of access to public information has any Bulgarian citizen, foreign citizen, stateless person and legal person under terms and conditions determined by law and an exception from this general rule are the cases when another law provides for a special procedure for seeking, obtaining and disseminating such information and when public information is state or another protected secret in the cases provided for by law whereas the access to it may be full or partial. As it is clear from the provision of Paragraph 2 of Article 136 of the Judiciary Act for Public Prosecutors (regardless whether civic or military) official secret is the data that have become available to them in the course of their office and concern the interests of citizens, legal persons and the state. In this case Article 179, Paragraph 1 and Article 191, Paragraph 4 of the Code of Penal Procedure provides for a prohibition on making public the materials of preliminary proceedings and preliminary investigation while at the same time sanctions are foreseen for failing to observe this prohibition.

In the specific case however the complainant is not requesting specific data concerning materials on preliminary proceedings, respectively preliminary investigation, neither is he requesting to make public the names of persons who have submitted signals, respectively of those against whom signals have been submitted, on the unlawful use of physical force and firearms. Therefore the data requested with the application does not fall within the notion of „official secret“.

To put it otherwise the Yambol Regional Court deems that the rejection of access to public information by the Sliven Regional Military Public Prosecutor's Office is unlawful on the basis of the considerations set forth above and therefore being such it should be repealed on the grounds of Article 41, the file should be referred back to the respondent with an obligation to provide to the complainant access to the requested public information under the provisions of the APIA.

Led by the above the Yambol Regional Court

DECIDES:

REPEALS the enactment of the Sliven Regional Military Public Prosecutor's Office rejecting access to public information to the „Bulgarian Helsinki Committee“ Association – City of Sofia, represented by the Chairman Krassimir Ivanov Kanev **under file No. 1149/2001** concerning how many signals on unlawful use of physical force and firearms by police and military personnel have been received by the Sliven Regional Military Public Prosecutor's Office in the years 2000-2001 and on how many of them have become subject to investigation, enacted in a ruling of the Regional Military Public Prosecutor Colonel Khitov of 12.02.2001 **on the grounds of being contrary to the law.**

REFERS BACK file No. B-1149/2001 and OBLIGES the Sliven Regional Military Public Prosecutor's Office to provide access to public information requested with an application with the same number and date by the „Bulgarian Helsinki Committee“ Association – City of Sofia, represented by the Chairman Krassimir Ivanov Kanev concerning how many signals on unlawful use of physical force and firearms by police and military personnel have been received by the Sliven Regional Military Public Prosecutor's Office in the years 2000-2001 and on how many of them have become subject to investigation for execution according to the instruction given above.

This decision is subject to appeal before Supreme Administrative Court within fourteen days from the notification

CHAIRPERSON:

MEMBERS:

*Center for Independent
Life Association
v. Minister of Labor and Social Policy*

**TO THE ATTENTION OF
MR. IVAN NEYKOV,
MINISTER OF LABOR
AND SOCIAL POLICY**

Esteemed Minister,

By press publications it came to our knowledge that the Ministry of Labor and Social Policy (MLSP) has developed a project amounting to a total of BGN 50 million, according to which about 2,000 released nurses and teachers will be involved in taking care of disabled children, suffering and lonely people, at their homes.

Please, find attached copies of the newspaper publications. We have already discussed them with other non-governmental organizations, potential beneficiaries of similar project activities.

Those publications raised a number of questions, so we decided to request the documentation under this project from you.

Based on your previous knowledge of activities and priorities of the Center for Independent Life (CIL) – Sofia (we have been providing you with detailed information on more than one occasion so far), it would hardly be a surprise to you that our organization manifests an interest in the project documentation, since:

- 1 . Our activities involve would-be beneficiaries of the proposed project.
2. We might be of considerable assistance in achieving better and more sustainable results in terms of project activities.

We rely on the manifested by the Government intention, to maintain a constructive and effective dialogue with civic structures in the country, which would not be possible, unless these have some knowledge of basic documents.

Enclosures: as stated above.

Respectfully yours,

Ms. Kapka Panayotova

Executive Director

**TO THE ATTENTION OF
MR. IVAN NEYKOV,
MINISTER OF LABOR
AND SOCIAL POLICY**

REQUEST FOR ACCESS TO INFORMATION

Filed by **Center for Independent Life Association – Sofia**

Esteemed Minister,

On 11th September 2000 we have sent you a letter /your Ref. No 740033/ with which we requested from you the project documentation, of whose existence we had learned through the press. Till now we have received neither a reply to our request letter, nor any project-related documentation.

On the basis of the Access to Public Information Act we again insist on obtaining all the documentation related to the „Personal Social Worker“ project.

We would like to receive the information as a paper copy.

Enclosures: photocopies of project-related press publications.

Respectfully yours,

Ms. Kapka Panayotova

Executive Director

REPUBLIC OF BULGARIA
MINISTRY OF LABOR AND SOCIAL
POLICY

TO THE ATTENTION OF.
MRS. KAPKA PANAYOTOVA
EXECUTIVE DIRECTOR
CENTER FOR INDEPENDENT LIFE
ASSOCIATION

DEAR MRS. PANAYOTOVA,

In answer to your request we would like to inform you of the latest developments regarding the „Personal Social Worker“ Program.

Upon the initiative of the Syndicate of Bulgarian Teachers and the Health Syndicate Federation, the Ministry of Labor and Social Policy started an Employment and Social Services Program. In the course of negotiations it was agreed that unemployed teachers and middle-range medical staff would be offered work, in implementation of the Program, providing a package of services in home surroundings to needful children and elderly people with disabilities, people with chronic illnesses, and to lonely people.

According to its obligation the Ministry of Labor and Social Policy provided the initial Program funding of BGN 250,000. The funds expenditure will start only after all the arrangements to the Program are set.

At present project activities related to participants training for acquiring all necessary skills are being carried out.

The Program implementation will be accomplished by the initiator organizations and the Ministry of Labor and Social Policy

Respectfully yours,

Minister:

(Mr. Ivan Neykov)

REPUBLIC OF BULGARIA
MINISTRY OF LABOR AND SOCIAL
POLICY

To the attention of:
Supreme Administrative Court,
Fifth Division

WRITTEN STATEMENT

Submitted by: **Ministry of Labor and Social Policy**
Administrative Case No 1763/2001

Honorable Justices,

I hereby request you to state a judgment, which would reject the complaint of Center of Independent Life Associations as illfounded for the following arguments:

1. The letter from 11th September 2000, with which the Association requests access to public information, does not bear mandatory requisites of an application to this effect, as stipulated in Art. 25 APIA, so it has been left unexamined, i.e:

- The requested information has not been described but mentioned as a „project“, „program documentation“, and „interest in project-related documentation“, so finally it has remained unclear access to what information is requested.
- The preferred access to information form has not been specified.

2. With its request of 12th January 2001, the Association has requested access to the information to all the „Personal Social Worker“ Project related documents.

Having in mind that the requested information concerns interests of third parties – the Syndicate of Bulgarian Teachers and the Health Syndicate Federation – initiator organizations of the Program, – it was necessary to obtain their consent for access granting. Such express written consent has not been provided in time.

On 12th February 2001 the Ministry addressed a letter to the Center for Independent Life Association, which clearly evidenced that the Program was at an early stage of development and negotiations were forthcoming, as well as an exchange of views and opinions for the final agreement of all project-related stipulations. The letter mentioned only a draft Program, which was not

finalized, but undergoing a formal process of agreement. Any publications in the press presenting the Program as a *fait accompli* may not be regarded as reliable evidence to this effect. The fact of the initial program funding can not be interpreted as evidence, since no funds have so far been spent.

According to Art. 11 of the Internal Structure Regulations of the Council of Ministers and its Administration, the Council adopts programs for reducing unemployment. So is the anticipated „Personal Social Worker“ Program. The programs are accepted with decision and thus become a part of an act of the Council of Ministers. Thus programs become official public information, according to the sense of the Act, and access towards it is realized through publication (Art. 12, s. 2 APIA).

On grounds of Art. 13, s. 2 APIA access to public information related to routine preliminary activities under the „Personal Social Worker“ Program may be restricted. At present, the Ministry disposes only of the aforesaid type of information /items 1 and 2 (Art. 13, s. 2)/, and whereas no written agreement of the third parties concerned is available, MLSP would adopt the option of restricting access thereto.

In its letter of 12th February 2001 MLSP has given the Association information, which does not concern the interests of third parties and might be disclosed to it.

Junior Legal Counsel,

Mr. Rumen Kotzev

TO THE ATTENTION OF:
SUPREME ADMINISTRATIVE
COURT
FIFTH DIVISION

WRITTEN STATEMENT

Filed by

Mr. Alexandar Emilov Kashamov,

Ms. Vanya Atanassova Bozhinova,

Attorneys-at-law, Sofia Bar Association,

Acting for the Applicant in Administrative Case No 1763 of 2001

Honorable Justices,

We hereby plead the complaint to be granted. Beside the arguments therein submitted, we supplement the following:

1. Violation of the Procedural Law

The Access to Public Information Act requires the obliged addressees thereof to rule on the received requests, delivering a decision in writing – Art. 28, s. 2. Following our complaint to the Supreme Administrative Court, on 12th February 2001 the Minister of Labor and Social Policy submitted a brief notification to the Center for Independent Life Association, which according to the Minister seems to represent a combination of a decision for granting access to information and the very act of providing the information. First of all it should be mentioned that the letter does not possess the requisites, provided in Art. 34, s. 1 APIA, whereof it could not arise the envisaged legal consequences, related to obtaining access to public information. Should this be regarded at all as a decision in the sense of Art. 28, s. 2 APIA, it would again amount in substance to a denial of granting the information requested under the form requested.

2. Violation of the Substantive Law

Together with the above stated, the cited notification may not represent a format for granting the information requested, since formats are thoroughly listed in Art. 26, s. 1 APIA. The applicant has requested a paper copy of the „Personal Social Worker“ Program. The choice of an access format is conferred upon applicants by law, whereas compliance therewith is an obligation of a relevant obliged act addressee.(Art. 27, s. 1 APIA). This particular obligation is one of a **great** significance to the rights of access of public information implementation, since it has been set to guarantee the basic principle of „openness, authenticity, and completeness of the information“ – Art. 6, item 1 APIA. Authenticity may only be guaranteed through providing access, to the extent possible, of authentic carriers of certain public information, accordingly the applicant's request. It is in this manner precisely that the applicant might put together a corresponding to the reality opinion about the activity of the liable legal subjects, which is obviously the aim of the law, under Art. 2,s.1.

Under Art. 2,s.1 of APIA, the information requested by the Center for Independent Life Association is public, because it is related to the public life in the Republic of Bulgaria and, if granted to applicant, would give the opportunity of composing one's view with regard to the MLSP operations. The aforesaid is supported by the fact of press publications on this issue, including a kind of public report of the Minister of Labor and Social Policy in one of his interviews in the Sega newspaper of 13th September 2000.

Moreover the MLSP does not contest that the requested information is „public“. On the contrary – it even acknowledges so in the notification cited above. It is a separate issue, however, that the Ministry has thus not fulfilled its legal obligation to grant access to the information in the requested format. Same notification evidences that MLSP does not see any obstacles to granting access to the information requested.

Respectfully yours,

1.

(The Attorney)

2.

(The Attorney)

DECISION**NO 5482****Sofia, 10th July 2001****The Supreme Administrative Court of the Republic of Bulgaria Fifth Division,**sitting on 9th of May 2001, in panel composed of the following justices:**PRESIDING JUDGE: JUSTICE EKATERINA GRANCHAROVA****PANEL MEMBERS: JUSTICES MILKA PANCHEVA AND DIANA DOBREVA**

In presence of the court secretary, Ms. Maria Popinska, attended by Lydia Anguelova as a representative of prosecution, heard a report of **Justice Milka Pancheva** on administrative case No 1763 of 2001.

Proceedings were formed under Art. 20, s. 1, item 5 of the Supreme Administrative Court Act (SACA) in conjunction with Art. 40, s. 1 and Art. 3, s. 1 of the Access to Public Information Act (APIA).

The case was brought to court following a complaint filed by the Center for Independent Life Association – Sofia against a refusal of the Minister of Labor and Social Policy to grant access to a document containing the „Personal Social Worker Program“. The failure of the Minister of Labor and Social Policy to rule is a serious violation of procedural and substantive law. The Court was requested to repeal the refusal of the Minister to rule on the application for access to public information.

Applicant acting through his legal representative was of the view that the complaint should be sustained and pleaded that it should be honored, due to the considerations stated therein and in the written observations.

The defendant Ministry of Labor and Social Policy acting through his legal counsel, suggest that the complaint should be dismissed. He was on opinion that access to the requested information may be denied, according to the regulations of Art. 13, s.2 APIA. Submitted written observations.

The representative of the Supreme Administrative Prosecution Office present suggested that the complaint should be dismissed. In the instant case there is a lack of an express refusal in writing coming from a duly authorized body in the sense of Art. 37 and Art. 38 APIA, and Art. 15, s. 1 of the Administrative Proceedings Act (APA), therefore the object of a complaint under Art. 40, s. 1 APIA was non-existent.

Based on the accepted to the case written evidence : Letter Ref. No 206 of 11th September 2000, Request for Access to Information Ref. No 003 of 12th January 2001, Decree of the Council of Ministers No 251 of 27th November 2000, Letter Ref. No 74-00-3300 of 12th February 2001 of the MLSP, a Certificate issued by the Sofia City Court on 29th January 2001, all of which were assessed separately and in their entirety, the Supreme Administrative Court found the following:

The applicant in the instant proceedings – a not-for-profit association under the company name of Center for Independent Life and seated in Sofia has been registered under company file No 1229 of 1995 of the Sofia City Court to pursue the following goals and objectives – assistance to citizens in a non-equivalent social position, suffering from physical, mental, and social disabilities and facing problems in their labour and everyday life adaptation“.

With a letter under ref. No 206 of 11th September 2000 the Association has informed the Minister of Labor and Social Policy of its interest in the „Personal Social Worker Project“, of which it had become aware from publications in the press, and requested an access to the project documentation. No reply followed, and therefore an application for access to information was addressed under outgoing ref. No 003 of 12th January 2001, according to the Access to Public Information Act. There was no decision taken within the law terms, which represented a significant contravention of procedural and substantive law. The Association demands the Minister refusal to deliver a decision regarding the application to be repealed and the MLSP be sentenced to submit the information requested in the format of access requested.

In accordance with Art. 2, s. 1 APIA any information related to public life in the Republic of Bulgaria, which gives citizens the opportunity to form their own view of the operations of obligated addressees of the act is public in the sense of this act.

According to Art. 3, s. 1 APIA the act applies to access to public information generated or kept by state authorities or those of local governance. Section 2 of the same provision includes other public law entities in the scope of the act, which are different from those under s. 1, i.e. individuals and legal entities, insofar only however, as their activities funded through the consolidated state budget and the mass media are concerned, where the information requested is related to transparency in their operations.

There is no dispute in this case regarding the fact that the Ministry of Labor and Social Policy ranges among state authorities obligated under the act to provide information related to its operations, pertaining to public life in the Republic of Bulgaria.

According to the provision of Art. 28, s. 2 APIA authorities or individuals specifically nominated by them, are competent to make decisions for granting or refusing to grant access to requested public information. Regardless of the content (permission or refusal), a decision is delivered in writing and expressly notified to applicant through its submission, which is to be attested by signature, or by mail, with a return receipt – Art. 34, s. 3 and Art. 39 APIA.

This panel of the court is of the view that, following interpretation of the cited provisions in relation to Art. 40, s. 1 APIA, a conclusion may be drawn whereby only appeal of acts delivered with express reference to hypotheses under Art. 28, s. 2 and Art. 38 of the act is admissible, i.e. where acts have been submitted in observance of procedural requirements and contested before the relevant courts, following a procedure either under APA, or SACA, depending on the authority that delivered them.

APIA special provisions have no equivalent of Art. 14, s. 1 APA – failure to rule within a time limit is considered tacit refusal, which may be subject to appeal following the procedure set by law. Where a procedure has been regulated in special provisions, applicability of general provisions is derogated, if contradiction is found between the two normative sets, as in the instant case.

Applicant does not contest the fact that a letter under outgoing ref. No 74-00-3300 of 12th February 2002 from the Ministry of Labor and Social Policy has been addressed to and received by the Executive Director of the Association, which gives information on the progress of the „Personal Social Worker Program“. The Syndicate of Bulgarian Teachers and the Health Syndicate Federation have been indicated as program initiators, and along with the Ministry of Labor and Social Policy they would be its implementers. Data is also given regarding the stage of program activities, the provided funds and conditions necessary to trigger expenditure thereof. It has been stated that the „Personal Social Worker Program“, requested by the applicant, is only a draft, used for routine preliminary processes to prepare an act and, therefore subject to forthcoming final agreement.

During the court sitting, a remark was made by the applicant's representative, stating that the submitted in the case letter does not present the format and nature of deeds envisaged in APIA,

which means that it could not be accepted as an express refusal under Art. 38 APIA, therefore the object of the dispute, determined in the complaint, remains unchanged (failure of the Minister of Labor and Social Policy to rule).

The Supreme Administrative Court considers that the instant case does not represent a refusal in the sense of Art. 38 APIA in relation to grounds under Art. 37 APIA, subject to judicial review under Art. 40 of this act, i.e. the complaint appear to be procedurally inadmissible and the case should be terminated.

Based on the above statement and on the grounds of Art. 20, s. 1, item 5 SACA, the Fifth Division of the Supreme Administrative Court

HAS DESIDED, AS FOLLOWS:

REPEALS RULING OF 9th May 2001 opening examination of the merits of the case.

LEAVES UNEXAMINED the complaint of the Center for Independent Life Association □ Sofia against failure of the Minister of Labor and Social Policy to rule on the request for granting access to information.

TERMINATES proceedings in the instant case.

This decision is subject to appeal upon private motion before a 5-member panel of the Supreme Administrative Court within 7 days of notification of its delivery.

In Conformity to the Original,

PRESIDING JUDGE: (signed) **Ms. Ekaterina Grancharova**

MEMBERS: (signed) **Ms. Milka Pancheva**, (signed) **Ms. Diana Dobрева**

**TO THE ATTENTION OF FIVE-
MEMBER PANEL
SUPREME ADMINISTRATIVE
COURT
REPUBLIC OF BULGARIA**

PRIVATE APPEAL

Filed by: **Mr. Alexandar Emilov Kashamov,**

Attorney-at-Law, Sofia Bar Association

Acting for the Center for Independent Life Association,

The Applicant in Administrative Case No 1763 of 2001

AGAINST

Decision No 5482 of 10th July 2001, Supreme Administrative Court Fifth Division

ON THE BASIS

Of Art. 20, S. 3 Comb. S. 1, Item 5 SACA¹, Comb. Art. 213, Item „b“ CPC²

Honorable Justices,

I hereby am appealing against Decision No 5482 of 10th July 2001 of the Supreme Administrative Court Fifth Division. This Decision is illegal. It has wrongly determined that a tacit refusal to grant access to public information may not be subject to appeal.

I. The interpretation defended in the Decision contested, namely that tacit refusals under APIA may not be subject to appeal, deprives the entire law, along with rights therein envisaged, of any meaning. In presence of such interpretation no addressee of the act would fulfill its obligations and thus enjoyment of both the right of access to public information and its effective protection would be prevented through simple failure to act. An absurd conclusion is thus reached – the legality of express refusals of obligated addressees shall be controlled, whereas refusals in relation to which legal duties may be fully disregarded would stay beyond control.

II. The interpretation adopted in the Decision contradicts Art. 46, s. 1 of Normative Acts Act (NAA), whereby provisions of normative acts are to be given the meaning that mostly corresponds to other provisions and the objectives of the act interpreted. The objective of APIA is to ensure effective access to public information. The Court has made this interpretation without taking into consideration the provision of Art. 6, s. 1, item 4, which protect the right to information as a basic principle of the act, neither has it taken into consideration the one of Art. 7, s. 1, whereby the only possible limitations of this right may be in relation to state or other protected secret and solely in cases set by law. The interpretation adopted in the Decision imposes an additional restriction to the right of access to information, which has not initially been included in APIA, namely – failure of an obligated addressee to act. This new restriction, in contrast to those included in the law, may not even be subject to judicial review.

III. According to Art. 41 of the Constitution a limitation on the right of access to information to be imposed by state authorities and agencies is allowed only in cases, where the information is a secret protected by law and pertains to rights or legal interests exhaustively enumerated. Adopting

¹ Supreme Administrative Court Act – *Remark of Translator*

² Civil Procedure Code – *Remark of Translator*

the view that a limitation on this right is allowed upon failure of an obligated addressee to act, amounts to a contravention of the Constitution.

IV. According to Art. 120, s. 2 Constitution „citizens and legal entities may appeal against administrative acts, which have an impact on their situation, except those specifically listed in an Act of Parliament“. Therefore, tacit refusals are also subject to appeal, unless an Act of Parliament expressly specifies otherwise. Such express provision is not to be found within APIA.

V. Even if a similar provision had been included in APIA, it would have been unconstitutional, as in accordance with Judgment No 7 of the Constitutional Court rendered in Constitutional Case No 9 of 1995 „the provision of Art. 120, s. 2 of the Constitution of the Republic of Bulgaria, allowing for certain administrative acts to be exempted from judicial review for legality, should be narrowly interpreted and would not apply to acts touching upon basic constitutional rights“. The systematic location of Art. 41 of the Constitution is inside Chapter 2, „Basic Rights and Obligations of the Citizens“.

VI. Since the right of access to public information is basic, set in the Constitution, the right to judicial protection is an integral part thereof in accordance with Art. 56, s. 1 of the Constitution. This right provides an opportunity to citizens to submit legal arguments before a court of law or other independent body, not only in relation to violations, but also to alleged rights (Judgment No 4 of the Constitutional Court in Constitutional Case No 15 of 2001). Interpretation in the Decision is incompatible with the one of the Constitutional court.

VII. By legal nature decisions for granting or refusing to grant information under APIA are individual administrative acts. It is so, since they acknowledge the right of individuals and entities of access to public information sought by them, which has been provided for in Art. 41 of the Constitution and Art. 4, s. 1 APIA. Therefore decisions for granting or denial of access to public information fall under Art. 2, s. 1 Administrative Proceedings Act (APA), insofar they have an impact on said rights. Hence, with regard to these decisions general rules concerning delivery, control, and enforcement of individual administrative acts should apply, insofar any provisions of special legislation – APIA – otherwise stipulate. Therefore the finding in the Decision conclusion that APIA does not contain „an equivalent of Art. 14, s. 1“ APA does not lead to the conclusion that tacit refusals under APIA are not subject to appeal. Many other APA provisions with regard to individual administrative acts and the procedure for delivery, control, and enforcement thereof are not replicated within APIA. This, however, does not mean said provisions would not apply with regard to decisions under APIA. There hardly may be any doubt as to the fact that APIA decisions correspond to the definition of Art. 2, s. 1 APA, being delivered by an authority made competent to this effect and in compliance with its powers; also that a superior authority may not take competence over from the inferior one, or that an administrative authority would independently deliver the act at stake, etc.

VIII. Art. 46, s. 2 NAA has clearly phrased the means to fill in lacunae in a normative act – „provisions applicable to similar occurrences should apply“. No provision is to be found in APIA applying to tacit refusals and control thereof, therefore provisions of the general law – APA – should apply. On account namely of the absence in APIA of any provision on tacit refusals the idea expressed in the Ruling may not be shared, namely that such a provision, even though non-existent, is in contravention of Art. 14, s. 1 APA and that special legislation should therefore apply.

In view and on account of the foregoing I plead the honorable court to reverse the Decision and remit the case to another three-member panel of the Supreme Administrative Court for new examination.

Respectfully yours,

The Attorney

DECISION NO 8645 OF 2001

The Supreme Administrative Court of the Republic of Bulgaria,

Five-member Panel, sitting and composed of the following justices:

Presiding Judge: Justice Andrey Ikonov

Members: Justices Alexandar Elenkov, Zhaneta Petrova, Zaharinka Todorova, and Tanya Radkova

Heard a report presented by **Justice Alexandar Elenkov** in administrative case No 6393 of 2001.

Proceedings were pursued under Art. 213 *et seq.* of the Civil Procedure Code (CPC) in combination with Art. 11 and Art. 20, s. 3 of the Supreme Administrative Court Act (SACA).

They were formed upon a private appeal of the Center for Independent Life Association filed by its attorney Mr. Alexandar Kashamov, attorney-at-law, from Sofia against Decision No 5482 of 10th July 2001 on administrative case No 1763 of 2001 of the Supreme Administrative Court Fifth Division.

The private appeal has been filed within the time limit specified in Art. 214, s. 1 CPC, it is admissible, and as regards its merits – well founded.

The three-member panel of the Supreme Administrative Court, Fifth Division decided in the appealed Decision to declare the complaint of the Association against a tacit refusal of the Minister of labor inadmissible. In order to reach this conclusion the three-member panel has determined that under the Access to Public Information Act (APIA) only written decisions delivered under Art. 28, s. 2 and Art. 38 could be appealed, i.e. where a decision in written is delivered and the applicant notified of it. The provisions of the APIA, the court has noted, do not contain an equivalent of Art. 14, s. 1 of Administrative Proceedings Act (APA). Consequently failure of the respective authority to rule within the time limit provided by law could not be presumed as a tacit refusal and subject to judicial review. The court further stated that the provisions of special legislation [*lex specialis*], are applied instead of those of general legislation [*lex generalis*], where they are contradicting, as in the instant case. That is why, according to the three-member panel, there has been no refusal in this case, in the sense of Art. 38 APIA, being subject to judicial review, so the complaint had no object.

The above conclusions of the three-member panel are wrong.

In fact, the question that had to be answered by the above Decision is whether failure of an authority to deliver a decision on a request within the terms, amounts to a tacit refusal in the case of APIA. The answer to this question, according to the five-member panel of the Supreme Administrative Court, needs to be positive, for the arguments outlined below:

Everyone is entitled to seek and obtain information, according to Art. 41, s. 1, sentence 1 of the Constitution of the Republic of Bulgaria. And s. 2 further specifies: „Citizens are entitled to obtain information from a state authority or agency on matters, which are of their legal interest, unless the information is a state or other secret provided by the law and does not touch upon rights of others“.

This particular constitutional right to information is tied to a corresponding obligation of the state administration: „While carrying out its operations the state administration is bound to submit information to citizens, legal entities, and authorities of State Government following a procedure set by law,“ reads the provision of Art. 2, s. 3 of the Administration Act (AA). That law in the case is the Access to Public Information Act. Art. 2, s. 1 determines the „public information“ as follows:

„Any information related to public life in the Republic of Bulgaria, which enables citizens with an opportunity to form an opinion on the operations of the bodies subject to the act“. The provision of Art. 3 enlists the bodies obliged to provide for access to information. State and municipal authorities have been specified as subjected to APIA, i.e. the executive (state administration) is among those. Chapter Three of APIA regulates the procedure for granting access to public information. The logic underlying the provisions of the Chapter leads to the conclusion that legislators meant that failure of an authority to rule within time limits specified in Articles 28 – 31 is unlawful.

The idea that administrative authorities are under the obligation to provide expressed decisions with reasons for their refusal to provide requested information has been laid out not only in the Access to Public Information Act, but also in the legislation as a whole. However, there are still cases where administrative authorities fail to rule on citizens' and legal entities' requests within the time limits specified. Where these failures fall under Art. 14, s. 1 APA no problem exists. Question arises if the special legislation provisions do not reproduce or refer to the provision of Art. 14, s. 1 APA. If we accept the view that the absence of such express legal provision in the special legislation means that failure to rule is not a tacit refusal, we will admit a denial of justice and of effective protection the citizens' rights. That cannot be accepted. Courts may not deny justice, even in the absence of law.

The five-member panel of the Supreme Administrative Court has had the opportunity to rule that in absence of legal provisions in a special act regulating matters differently from APA, applicability of APA is not excluded (See expressly in this sense Decision No 5679 of 13th July 2001 on administrative case 5190 of 2001).

In the Decision the three-member panel of the Supreme Administrative Court Fifth Division has, in two consecutive sentences, adopted two contradicting statements: page 3 starts with a correct finding, i.e. „special APIA provisions do not envisage an equivalent of Art. 14, s. 1 APA“ followed by a generally valid conclusion, however incorrect in the instant case (which, on account of its incorrectness contradicts and derogates the previous one). The second statement is that „where special regulations contradict with the provisions of a general regulation, they derogate the norms of the latter, as in the present case“. The incorrectness of this statement bears upon the fact that there is no provision in APIA (*lex specialis* in the case), according to which failure to rule within time limits is proclaimed a tacit refusal. Thus, this statement is incorrect in this case. The lack of regulation of the issue in APIA amounts to absence of namely that special legislation, which would derogate applicability of the general legislation (APA) and, more specifically, the rule of its Art. 14, s. 1. The three-member panel has rightly noted that APIA contains no provision on the failure to rule within time limit. There is no rule, either, derogating the applicability of the general administrative procedural legislation – APA. And in the absence of regulation in special legislation, the general law will be applied. Therefore when obligated bodies in the sense of Art. 3 APIA fail to rule within time limits on an application for access to public information lodged, tacit refusal in the sense of Art. 14, s. 1 APA would be found, which is subject to judicial control. This is the only legal mechanism to force obliged bodies under Art. 3 APIA to fulfill their obligation, provided by law, to rule within the time limits set under Articles 28 – 31 and in the formats under Art. 38 APIA.

It is true that according to Art. 40 APIA (in both its sections) decisions to grant or deny access to public information are subject to judicial review. This, however, does not implicitly exclude judicial review over tacit refusals for granting access to public information, since in the meaning of Art. 120, s. 2 of the Constitution such exclusion may only be express, not tacit.

On the basis of the above arguments the Five-Member Panel of the Supreme Administrative Court finds that the appealed Decision is wrong and should therefore be reversed, and the case – returned to the same three-member panel, which has to deliver a judgment on the merits of the dispute, as outlined within the complaint of the Center for Independent Life Association.

In view of the foregoing the five-member panel of the Supreme Administrative Court has decided, as follows:

Reverses Decision No 5482 of 10th July 2001 on administrative case No 1763 of 2001 of the Supreme Administrative Court Fifth Division and returns the case to the same three-member panel of the Supreme Administrative Court Fifth Division to pursue court proceedings.

This Decision is final and may not be appealed.

Presiding Judge: (signed) Mr. Andrey Ikonov

Panel Members:

(signed) **Mr. Alexandar Elenkov**

(signed) **Ms. Zhaneta Petrova**

(signed) **Ms. Zaharinka Todorova**

(signed) **Ms. Tanya Radkova**

**TO THE ATTENTION OF:
SUPREME ADMINISTRATIVE
COURT
FIFTH DIVISION**

WRITTEN STATEMENT

In administrative case no 1763 of 2001

Filed by: **Mr. Alexandar Emilov Kashamov, Attorney-at-Law**

Acting for the Applicant

Honorable Justices,

I am hereby pleading that the process tacit refusal be rescinded as illegal and that the relevant authority be obligated to grant access to the public information requested, and that the defendant be sentenced to cover costs and expenses incurred on the occasion of the instant proceedings.

1. The refusal to grant access to information is illegal. It is so, since the failure of the Minister of Labor and Social Policy to rule within the time limits specified by law is violation of procedural law, including the imperative provision of Art. 38 of the Access to Public Information Act (APIA), whereby in case of a refusal the obligated addressee of the act should deliver a reasoned decision. Said omission is extremely serious, since failing to make a decision the Minister of Labor and Social Policy has refused to fulfill his obligations and vest his will in the form required, to observe procedural and substantive provisions of the law, to take the objective of the act into consideration, and to certify his will through affixing his own signature thereto. If failure to fulfill any of the above obligations of the competent authority would separately constitute a defect in the administrative act and would be conditioning its repeal, the more a failure to fulfill all of the above, taken together, would bring about the same consequences.

2. Defendant claimed at hearing that the applicant had not formulated a clear request for access to information. This allegation is ill founded.

A. It is so for a number of reasons. First, because the information requested is very specifically outlined – access is sought to the information contained in documentation regarding the Social Worker Program. The reason behind the provision of Art. 25, s. 1, item 3 APIA is for the applicant to clearly delineate the object of his request, so that the object of the duty of the relevant obligated addressee of the act is in turn clear, not to indicate minutia, of which he/she may not obviously be previously aware. The very nature of the right of access to information is such that the applicant would become more knowledgeable of the information requested only after his right thereto has been satisfied.

B. Where an obligated APIA addressee finds it is necessary that a request for information is further specified, it may have recourse to the competence described in Art. 30 APIA, i.e. to notify applicant to this effect and require the further specification of his/her request. The Minister of Labor and Social Policy has not done so, therefore it is obvious he had not been of the view the request was unclear. The same conclusion could be inferred from the content of the letter he has sent to the applicant after expiration of the time limit for delivering an official response. It does not transpire therefrom he had been having difficulties gathering what information was requested and this is only natural – documentation related to the Social Worker Program was in his possession, since it is being kept in the Ministry. What is more, if the information requested by the applicant had been unclear, defendant would not have been able to allege he was prevented from granting the information requested on account of legal limitations – Art. 13, s. 2, item 1 APIA, as well as the lack of consent of the third party. Once he has stated this, though, it is clear that defendant has well gathered what information was being sought.

3. The allegation of defendant with regard to the presence of a limitation on the basis of Art. 13, s. 2, item 1 APIA is ill founded. According to Art. 13, s. 1 access to official information is free. Section 2 contains a derogation from the rule of s. 1, namely that an obligated addressee of APIA may, of his/her own motion, decide, on the basis of discretion, whether to allow access or not. This power may only be exercised through an individual administrative act, which manifests the will of the competent authority that has delivered it. The allegation that such discretion could only be exercised in a court hearing, less the form required by the law and, what is more, by the legal representative of the defendant, and not by him-/herself, is absurd.

4. The allegation of defendant with regard to the presence of a limitation on account of third party interests concerned – of syndicates, whose consent should be obtained – is ill founded.

A. The allegation is not supported by the very conduct of defendant during administrative proceedings initiated with a request of the applicant. As witnessed from the administrative file submitted in the instant proceedings, he has not sought the agreement of the syndicates cited, following the procedure laid out in Art. 31 APIA, and has not indicated any evidence in this sense.

B. Article 31, s. 1 APIA cumulatively requires the presence of two conditions prior to seeking consent from a third party: the information requested should bear on him/her and his/her consent for disclosing the information should be required. The test with regard to the second condition should necessarily include finding a legal provision, whereby third party enjoys the right of personal data protection. Where no such right is found, third parties would have no valid ground to interfere in relations between the applicant seeking information and the obligated addressee of APIA, for lack of any legal interest thereto. And conversely, allowing such interference would lead to restricting the right of citizens of access to information, the latter being guaranteed by Constitution, on account of a discretionary act of wishful thinking of some third party.

C. Syndicate organizations do not carry out commercial operations in the sense of the Commercial Act, therefore it may not be argued they should enjoy the right to secrecy with regard to facts, which could affect their situation and are a commercial secret in the sense of the Competition Protection Act. Even if they carried out commercial operations the information stored on file by the Ministry of Labor and Social Policy does obviously not contain data whose disclosure would bring about unfair competition. What is more, involvement of syndicate organizations in decision-making processes of the Executive is directly related to the public utility of their operations – to represent and defend the interests of workers and employees. This particular circumstance is of a significant importance and renders it inadmissible to conceal information under the excuse that a „private“ interest of syndicate organizations would otherwise be affected.

4. Failure of defendant to rule within time limits, as well as various arguments submitted by him in view of maintaining the appearance his refusal was legal, only demonstrate that the Minister of Labor and Social Policy is neither too concerned to perform his legal duties and rule on requests of citizens and legal entities for access to public information, nor wishes to shed publicity over his activities, though this may be stipulated in the Access to Public Information Act – providing everyone with access to documentation, upon request. Quite on the contrary, the presence of a tacit refusal testifies to legal nihilism, which is intolerable in a democratic society, as is ours according to Constitution principles, whereby rights of people and citizens are an intrinsic value guaranteed through the supremacy of law.

In view and on basis of the foregoing I would plead to this honorable court to rescind the process tacit refusal as illegal and obligate defendant to grant access to the public information requested.

Respectfully yours,

The Attorney

JUDGMENT**No 2764**Sofia, 25th March 2002**IN THE NAME OF THE PEOPLE****The Supreme Administrative Court of the Republic of Bulgaria,**

Fifth Division, at a sitting held on this fifth day of February, the year two thousand and two, in panel composed of the following judges:

PRESIDING JUDGE: JUSTICE EKATERINA GRANCHAROVA**PANEL MEMBERS: JUSTICES MILKA PANCHEVA and DIANA DOBREVA**

In the presence of court secretary Ms. Maria Popinska,

And attended by Ms. Liliana Krastanova, as a representative of prosecution, heard the report of **Justice Milka Pancheva** on administrative case No 1763 of 2001.

Proceedings were formed under Art. 12 of the Supreme Administrative Court Act (SACA).

The case was brought to court following a complaint filed by the Centre for Independent Life Association - Sofia against a refusal of the Minister of Labor and Social Policy to grant access to information, namely a document containing the „Personal Social Worker Program“ outline. The failure of the Minister of Labor and Social Policy was alleged to be a serious violation of the procedural and substantive law provisions. The law requires that the relevant authority should deliver a motivated decision when issuing or refusing to issue the requested administrative act. Art. 15, s. 2 of the Administrative Proceedings Act (APA) and Art. 38 – 39 of the Access to Public Information Act (APIA), correspondingly, require a written form for the issued administrative act, as well as the legal and factual grounds for the refusal. The refusal contravenes with the substantive law provisions, as the requested information is public, in the sense of the act, it is generated and stored by MLSP and does not fall under the set by law restrictions to the right of access to information. Applicant requests the Court to repeal the Minister’s refusal to rule on the request for access to public information.

At sitting applicant acting through his attorney was of the view that the complaint should be sustained and requests the complaint to be granted. There are no evidences that consent had been sought from the Syndicate of Bulgarian Teachers and the Health Syndicate Federation. Applicant requests the court to repeal the process act as illegal and remit the administrative file for a new decision. If the court considers the process act null and void, it should expressly proclaim so.

Duly summoned, the defendant Ministry of Labor and Social Policy remained non-represented.

The representative of the Supreme Administrative Prosecution Office present suggested that the complaint should be dismissed, as being filed after expiration of the provided term, and alternatively

– ill founded. The request in the present case does not meet the requirements of Art. 25, s. 1, item 2 APIA, therefore it should be left unexamined. Since official information in the sense of Art. 11 APIA had been at stake, access thereto could be restricted where the administrative authority has decided so.

Based on the written evidences accepted in the case, i.e. Letter Outgoing Ref. No 206 of 11th September 2000, Request for Access to Information Outgoing Ref. No 003 of 12th January 2001, Decree of the Council of Ministers No 251 of 27th November 2000, Letter Outgoing Ref. No 74-00-3300 of 12th February 2001 of MLSP, and a Certificate of the Sofia City Court Issued on 29th January 2001, the Supreme Administrative Court approves as standing the following:

The applicant in the instant case – a not-for-profit association under the company name of Center for Independent Life, seated in Sofia, registered under company file No 1229 of 1995 of the Sofia City Court, with the pursue of „assisting citizens in an non-equivalent social position, suffering from physical, mental, and social disabilities in their employment and everyday life adaptation“.

With a letter under ref. No 206 of 11th September 2000 the Association has informed the Minister of Labor and Social Policy of it's interest in the „Personal Social Worker Project“, of which existence it had become aware by press publications, and requested the project documentation. No reply came following this letter, hence an application for access to information was addressed under outgoing ref. No 003 of 12th January 2001, referring to the Access to Public Information Act.

The APIA distinguishes two types of public information – formal and official. The information contained in acts of state or municipal authorities, delivered in exercise of their law established competence, is considered as formal – Art. 10 APIA. The information collected, generated, and stored in relation to formal information and on the occasion of actions of authorities and their administration is official – Art. 11 APIA.

Access to this information is free and accomplished following the procedure set out in this act, as the grounds for denying access thereto are being laid out in Art. 37, s. 1 APIA – where the information is a state or official secret, affects the interests of third parties and there is no express consent of the latter, or where the requested information has already been provided to the applicant in the course of the previous six months.

According to Art. 28, s. 1 APIA a request for providing access to public information is examined as soon as possible, but not later than 14 days from its registration. The administrative authority is allowed to assess whether law requirements for information granting are met, or grounds for access denying, under Art. 37, s. 1 APIA are on hand. Where no hindrance is found, relating the applicant's request, relevant authorities, or individuals expressly authorized by the latter, take a decision to grant access to the public requested information, in respect of the provision of Art. 34, s. 1 and 2 APIA. Applicant should be expressly notified of the decision – s. 3 of the above cited provision.

There is no act of the Minister of Labor and Social Policy found in the case, which might be considered as a decision for access granting in the sense of Art. 34 APIA, or as a refusal – in the sense of Art. 38 read in conjunction with Art. 37 APIA, specifying both legal and factual grounds for refusal, a date of adoption, and a procedure for its review.

Letter Ref. No 74-00-3300 of 12th February 2001 submitted in the case-file outlines the Minister's point of view, why he does not provide the applicant with the requested information, but it, however does not meet APIA requirements as to form and does not fulfill all relevant requisites. There is no administrative act delivered in compliance with form, as law specifies and that is why the file should be remitted to the administrative authority, which should take a decision in respect of the applicable procedural requirements.

Based on the above said and on the grounds of Art. 28 SACA in conjunction with Art. 42, s. 1 APA, the Fifth Division of the Supreme Administrative Court:

DECIDED:

TO REVERSE the refusal of the Minister of Labor and Social Policy to deliver a decision with regard of the request of the Center for Independent Life Association from Sofia for granting information on developments related to the „Personal Social Worker Program“.

TO RETURN the file to the administrative authority, which will examine request outgoing ref. No 003 of 12th January 2001 of the Center for Independent Life Association from Sofia, conforming to the instructions provided by the present case.

The present judgment may be appealed before a 5-member panel of the Supreme Administrative Court within 14 days of its notification to the parties.

PRESIDING JUDGE: (signed) **Ms. Ekaterina Grancharova**

PANEL MEMBERS: (signed) **Ms. Milka Pancheva, /signed/ Ms. Diana Dobрева.**

In conformity with the original,

(signed) The Secretary

Grigorov
v Mayor of Berkovitsa

THE MAYOR
BERKOVITSA MUNICIPALITY

ACCESS TO INFORMATION REQUEST

By **Kuiril Linkov Grigorov**
Manager of „Maki“ OOD

Dear Mr. Mayor,

On the grounds of the Access to Public Information Act would you please provide me with all available information about the „Ashikdar“ bungalow owned by the Berkovitsa Municipality.

- Documents about acquiring and ownership of the bungalow and the adjacent terrain
- Documents about announcing and conducting tenders and competitions for the sale of the „Ashikdar“ bungalow
- The respective evaluations of the experts of the bungalow and terrain value.

I would like to receive the requested information in the following form:

- paper copies.

Town of Berkovitsa

23.10.2001r.

Signature:

**BERKOVITSA MUNICIPAL
ADMINISTRATION****ORDER****Nº RD-15-426**

Town of Berkovitsa 31.10.2001r.

On the grounds of Article 44 of the Local Self Government and Local Administration Act in connection with Article 28, paragraph 2 of the Public Information Access Act I

ORDER:

1. To provide access to information concerning announced and conducted tenders and competitions for the sale of a bungalow located in plot No.713, „Ashiklar“ locality on the land of Berkovitsa, namely:

- Order No. RD-15-288 of 03.09.1999r. and a protocol of a conducted tender, published in the „Kom“ newspaper, issue 30/10.09.1999 and the „Duma“ newspaper, issue 176 of 07.07.1999.
- Order No RD-15-340 of 09.10.2000 and a protocol of 14.11.2000 and protocol of 21.11.2000 on conducted competitions published in the „Standart“ newspaper. issue 2806/12.10.2000 and the „Kom“ newspaper, issue 36 of 13.10.2000.

2. Access to the documents concerning the ownership of the facility as well as to the evaluation of the experts should not be granted since they are not public information in the meaning of Article 2 of the Access to Public Information Act.

3. The access to the required information shall be provided within one month following the delivery of the notification and after payment of certain expenses and producing a payment document.

4. The form in which the access to information shall be granted shall be paper copies of the following documents:

- Order Nº RD-15-288 of 03.09.1999.
- Protocol on conducted tender of 07.10.1999.
- Order Nº RD-15-340 of 09.10.2000.
- Protocol on conducted public offering of 14.11.2000.
- Protocol on conducted public offering of 21.11.2000.

5. The expenses for granting access to information amount to BGN 2,80.

This Order is subject to appeal under the procedure of the Administrative Procedures Act within 14 days.

Legal Advisor:

MAYOR:**(Dr. I. Floreskov)**

**THROUGH THE MAYOR
OF BERKOVITSA MUNICIPALITY
TO THE MONTANA DISTRICT
COURT
ADMINISTRATIVE PANEL**

COMPLAINT

by

**Kiril Linkov Grigorov,
Manager of „MAKI“ – OOD**

AGAINST

Order No. RD–15–426/31.10.01

of the Mayor of Berkovitsa

on the grounds of Article 41, paragraph 1 of the Access to Public Information Act (APIA)
connected with Article 33 of the Administrative Proceedings Act

Honorable Judges,

I am appealing within the prescribed time limit against order No. RD–15–426/31.10.01 of the Mayor of Berkovitsa in its part refusing access to documents requested by me (item 2 of the order).

With a request of 23.10.01 I requested access to documents concerning the Ashikdar bungalow. A decision was issued in the time-frame prescribed by law on the basis of the Access to Public Information Act (the order that is being appealed against) in which part of my request was accepted as justified and another part was rejected. Pursuant to item 2 of the order that is being appealed against the documents concerning the ownership of the facility as well as the respective evaluations of the experts do not represent public information under Article 2 of the Access to Public Information Act. I received the order on 1.11.2001.

The order that is being appealed against is contrary to the law. An interpretation of the law in a sense that the definition of public information is formulated in each particular case by someone's subjective judgment about what information is connected with public life and allows to form an opinion is unacceptable. The law allows still less that this judgment be made by the very person of whose activities the information allows to form an opinion and who is obliged to grant it.

The Access to Public Information Act provides an objective definition of public information – Article 9, paragraph 1 specifies which information is connected with public life and allows to form an opinion of the activity of the obliged subject – that is public and official information.

The municipal ownership deeds are compiled on the occasion of the activities of the Mayor and the municipal administration and consequently fall within the framework of official municipal information – Article 11 of the APIA and the access to such information is free.

According to the Municipal Ownership Act anybody has right of access to the municipal ownership deeds.

According to Article 7, paragraph 1 of the Access to Public Information Act the access to public information may be limited only on the existence of state or other secret protected by law. In the

specific case there is no such secret since the Municipal Ownership Act does not provide for one; neither is this claimed in the order that is being appealed against.

In view of the above and on the grounds of it I request the Honorable Court to recognize my right of access to the requested information, to amend the order in the part that is being appealed against and to oblige the Mayor of Berkovitsa to provide me with access to the requested information.

Enclosures:

1. Request for access of 23.10.2001.
2. Order No. RD-15-426/31.10.01.
3. Receipt for paid state fee.
4. Copy of the complaint and the enclosures for the respondent.

Yours respectfully:

(K. Grigorov)

**MONTANA REGIONAL COURT
ADMINISTRATIVE PANEL****WRITTEN DEFENSE**

by

**Kiril Linkov Grigogov
Manager of „Maki“ OOD**

Plaintiff under administrative lawsuit No. 379/2001

Honorable Judges,

I ask you to reverse the order that is being appealed against in its part that is being appealed against on the grounds of it being unlawful. It has been enacted in contradiction to substantive law. My considerations for this are the following:

The order that is being appealed against is a decision refusing access to information in the meaning of Article 38 of the Access to Public Information Act (APIA) and is subject to appeal pursuant to Article 40, paragraph 1 of the APIA in connection with Article 33 and the following of the Administrative Proceedings Act. The Mayor is obliged to grant access to information on request pursuant to Article 3, paragraph 1 of the APIA.

The requested information is public in the meaning of the law. Article 2, paragraph 1 of the APIA defines as public the information connected with public life in the Republic of Bulgaria allowing citizens to form an opinion on the activities of the obliged subject. This definition is elaborated in Article 10 according to which, public information is the information contained in the acts of the authorities and in Article 11 according to which official information is the information compiled, kept or collected in connection with the public life, as well as related to the activity of the authorities and their administrations. Pursuant to Article 12, paragraph 3 and Article 13, paragraph 1 of the APIA the access to public and official information is free.

The municipal ownership deeds are public information as it can be seen from their very name. Their compilation is provided for by law, they are signed by the compiler and are approved by the municipal mayor pursuant to Article 58, paragraph 1 of the Municipal Ownership Act (MOA). Although the certificate of ownership is not an individual administrative act in the meaning of the Administrative Proceedings Act and it does not concern rights or legal interests, neither does it establish rights or obligations, it is issued by a competent authority by way of authorization by the law in compliance with the respective requirements in terms of form and the provisions of substantive law and procedural rules. Its compilation undoubtedly falls within the legally regulated activity of the mayor and the municipality and consequently is subject to access on request by anybody.

According to the interpretation adopted by the Constitutional Court in its Judgment No. 7/1996 on constitutional lawsuit No. 1/1996 the right of anybody to seek, receive and disseminate information including the right of access to information, compiled by the public authorities may

be subject to limitation only as a matter of exception. The right is the principle and its limitation is allowed only as a matter of exception of this principle. Therefore, in the opinion of the Constitutional Court limitations cannot be interpreted extensively. According to the same interpretation it should be accepted also that a narrow interpretation of the scope of the notion of „public information“ is inadmissible either. Since the aim of the legislator is to regulate anybody's right of access to public information as a matter of principle and the limitation of the right is only an exception of the principle then the subject of the right is any information compiled and kept by the public authorities.

The information does not fall within the scope of the limitations of the right of access to information provided for by law. The right of access to information may be subject to limitation only if there is such limitation – Article 7, paragraph 2 of the APIA. However there is no data of such limitation – this is not claimed in the order that is being appealed against. Consequently, one has to accept that in this case there is no limitation provided for in an act of parliament.

In addition to the above Article 62, paragraph 2 of the Municipal Ownership Act provides for general accessibility to the municipal ownership deeds, contained in the deed register books. The Regulation on the Application of the Municipal Ownership Act specifies no special procedure for effecting this access and consequently one could apply in general terms the procedure provided for in the APIA. However, in the existence of provisions on the general accessibility in both acts it is immaterial which one will be applied. In both cases access to the act must be granted.

In view and on the grounds of the above I ask the Honorable Court to amend the order in its part that is being appealed against and to oblige the Mayor of Berkovitsa to allow me access to the requested information

Yours respectfully:

(K. Grigorov)

JUDGMENT

City of Montana, 22.07.2002

IN THE NAME OF THE PEOPLE**The Montana Regional Court, Civil Panel**

in a public hearing held on 15 July of the year 2002 in the following composition:

CHAIRPERSON: LYUDMILA DRAGOMIROVA

MEMBERS: ALEXANDER ATANASSOV and NIKOLINA ELENKOVA

with Secretary Petranka Alexandrova and in the attendance of Public Prosecutor Oleg Dimitrov, having considered the report of **Judge Dragomirova** on administrative lawsuit No. 379 of the register for 2001 and in order to pass judgment took into consideration the following:

The proceedings are based on Article 40 of the Access to Public Information Act.

They have been instituted on a complaint by Kiril Linkov Grigorov, manager of „Maki“ OOD of Berkovitsa against order No. RD-15-426/30.10.2001 of the Mayor of the Berkovitsa Municipality in the part which refuses access to documents concerning the ownership of the facility specified in the request and the appropriate information on evaluation of experts on the grounds that they do not represent public information in the meaning of Article 2 of the APIA. The complaint is about contravention to the law. The plaintiff maintains that municipal ownership deeds are compiled as a result of the activity of the mayor and the municipal administration and fall within the framework of public information – Article 11 of the Access to Public Information Act, access to which is free and according to Article 62 of the Municipal Ownership Act anybody has access to the municipal ownership deeds. He maintains in substance that the Regulation for the Application of the Municipal Ownership Act does not provide for a special procedure for implementing access to municipal ownership deeds and therefore the procedure provided for in the APIA should be applied without exception.

The respondent to the complaint is not expressing a position.

The representative of the Public Prosecutor's Office is expressing an opinion that the complaint is justified.

The evidence on the case is in writing.

The Court, taking into consideration the objections in the complaint in connection with the evidence on the case and the positions of the parties, accepts the following:

There is no evidence in the case when the order that is being appealed against was communicated to the applicant and therefore the Court accepts that the complaint was served in the time limit prescribed by law and is procedurally admissible. Reviewed in substance the complaint is unjustified.

It is obvious from the evidence in the case that the applicant has requested access to public information with an request with ref. No. RD-94-K-1/23.10.2001 concerning the ownership document of the procedural facility – a bungalow in the locality of „Ashiklar“, conducting tenders and competitions for its sale and the evaluations of experts of the value of the facility and the terrain. The applicant has received permission for access to the information specified in item 2 of the request and on item 3 – a refusal that was appealed against. They are not the subject of the

present proceedings. What has been appealed against is the refusal of access to the municipal ownership deeds of the facility in question.

Indeed, Article 62, paragraph 2 of the Municipal Ownership Act prescribes that the deed register books of the municipal property are generally accessible and anybody may request information from them but this text provides that this is effected under terms and conditions specified in the Regulation for the application of the act. The provisions of Article 40 of the Regulation for the Application of the Municipal Ownership Act regulates the terms and conditions for obtaining such information – both for submitting an request and for making the respective checks and possibly for issuing an official certificate or a copy of the deed. This activity is performed in connection with providing administrative services to citizens and legal persons and in this case the provisions of the Municipal Ownership Act, the Regulation for the Application of the Municipal Ownership Act, the Providing Administrative Services to Physical and Legal Persons Act are applicable, which excludes the application of the procedure under APIA which are expressly regulated in the provisions of Article 4, paragraph 1 and Article 8, paragraph 1 of the APIA. Under these circumstances the refusal is compliant with the law and the complaint served against it should be rejected.

Led by the above the Regional Court

RULES:

REJECTS the complaint of Kiril Linkov Grigorov – Manager of „Maki“ OOD, of 30, Stefan Stambolov Street, Berkovitsa, against order No. RD-15-426/30.10.2001 of the Mayor of Berkovitsa Municipality in the part which refuses access under the APIA to the documents concerning the ownership of bungalow „Ashiklar“ located in the same locality on the land of the town of Berkovitsa, on the grounds that it is unjustified.

This judgment may be appealed against before the Supreme Administrative Court within 14 days from the notification to the parties that it has been drafted.

CHAIRMAN:

MEMBERS:

***„InfoECOclub“ Association – Vratsa
v. Secretary of the Vratsa***

TO VRATSA MUNICIPALITY

ACCESS TO INFORMATION REQUEST

by

InfoECOclub

Pursuant to the **Access to Public Information Act** I request the provision of copies of documents certifying the ownership of the construction site of the petrol station in quarter 44a of the Vratsa urban plan with investor „Lukoil – Bulgaria“ EOOD, including:

1. Sale/purchase contract.
2. Ownership title deed.

Chairperson of InfoECOclub

TO

**Info ECO club
City of Vratsa
On No.2/05.12.2001**

Concerning your letter under the above number, regarding the ownership of the municipal part of the land in quarter 44-a of the urban plan of the City of Vratsa, under the terms of Article 28, paragraph 1 and Article 31, paragraph 5 of Access to Public Information Act (APIA), we are sending, enclosed herewith, as follows:

- Municipality ownership act;
- Decision of the Vratsa Municipal Council for the sale of a municipal piece of land;
- Sale contract.

With regard to the documents on the other part of the land in the above quarter, in compliance with Article 31, paragraphs 1,2,3 and 4, we have requested the consent of the third party.

Secretary of Vratsa Municipal Council

VRATSA MUNICIPALITY

To

Info ECO, City of Vratsa

Your ref. No. 2 /05.112001

In relation to your letter with the above reference number concerning the ownership of the land in quarter 44-a of the city of Vratsa urban plan and pursuant to Article 28, paragraph 1 and Article 31, paragraph 5 of the Public Information Access Act we inform you that:

With a letter with ref. No. 10046/18.12.01 „LUKOIL – BULGARIA“ informed us that the requested information is confidential and they do not give their consent for providing the documents of ownership of the land on which they are building a petrol station in quarter 44-a of the city of Vratsa urban plan.

**THROUGH THE MAYOR OF THE
MONTANA MUNICIPALITY
TO THE REGIONAL COURT
MONTANA**

COMPLAINT

by

Association „InfoECOclub“ – Vratsa,
represented by **Maria V. Moleshka**

AGAINST

Decision № 2/ 02.01.02 of the Secretary of the Vratsa Municipality

ON THE GROUNDS

of Art. 40, paragraph 1 of the Access to Public Information Act (APIA) in conjunction with Art. 33, paragraph 1 of the Administrative Proceedings Act (APA)

Honorable Judges,

On 05.12.2001 we served the mayor of the Montana Municipality an application ref. No. 02-11/03.12.01 with which we requested to be provided with photocopies of „documents certifying the ownership of the construction site of a petrol station in quarter 44a of the Vratsa urban plan with investor „Lukoil – Bulgaria“ LTD, including a sale/purchase contract and a title deed“.

The application was registered with ref. No. 2/5.12.2001 and on 12.12.2001 we received a notification under Art. 31, paragraph 1 of the APIA on extending the term of delivering a decision on our application due the need to request the consent of a third concerned party. This notification included in its contents a decision with which our request for information was partially granted and we were given copies of three documents, namely: municipal ownership title deed, a decision of the Vratsa Regional Council and a real estate sales/purchase contract. On 2.01.2002 we were handed a refusal for providing the rest of the requested information, namely: the title deeds of the site in quarter 44-a of the Vratsa urban plan based on the express objection of „Lukoil – Bulgaria“ LTD.

The letter with ref. No. 2/02.01.2002 addressed to us constitutes a decision in the meaning of Art. 38 of the APIA, in spite of the fact that it has no title. This is so because it concerns our right of access to public information provided in Art. 4, paragraph 3 in conjunction with paragraph 1 of the APIA and in Art. 41 of the Constitution. The decisions under Art. 33 of the APIA are nothing less than individual administrative acts in the meaning of Art. 2, paragraph 1 of the APA which concern our right of access to public information.

In its part concerning the refusal to grant information the decision of the Montana Municipality Secretary is contrary to the law.

1. First, we do not know whether the Secretary of the Montana Municipality has been authorized by the Mayor to decide on applications for access to public information. Pursuant to Art. 3, paragraph 1 of the APIA the obligation to decide on requests for access to public information has been assigned also to the local authorities and the mayor undoubtedly is such an authority (Art. 139, paragraph 1 of the Constitution). The Secretary of the Municipality however is not a public authority and therefore his competence to decide on applications under the APIA may flow only from authorization by the Mayor pursuant to Art. 28, paragraph 2 of the APIA. We have no information of such authorization and if it does not exist, then the authority of the Municipal Secretary is **NULL AND VOID**, and respectively such is the act that is being appealed against.

2. The refusal is enacted also in contradiction to substantive law. The provision of Art. 31, paragraph 1 of the APIA sets two preconditions that must be met together for seeking the consent of a third party:

- 1) requested information should refer to that party and
- 2) its consent should be necessary for the communication of the information.

The examination for the existence of the second prerequisite includes by necessity the finding of a legal provision that would envisage a right of the third party concerning the protection of certain data of it. If such a right is not at stake then there are no grounds for a third party to interfere with the relationship between the seeker of the information and the unit obliged under the APIA due to the lack of legal interest. On the contrary, to allow such interference will lead to restricting citizens' right of access to information which is constitutionally guaranteed, by the arbitrary will of a certain third party.

3. In this specific case there is not only lack of legal provision recognizing the right of a third party to deny consent for communication of the requested data, but on the contrary – there is an explicit provision proclaiming the requested information as generally accessible. The requested data – copies of title deed for the respective site are included in the title real estate registry pursuant to Art. 3, paragraph 2 of the Cadastre and Property Register Act. The Property Register is public pursuant to Art. 8, paragraph 1 of the same act and publicity is expressed in general accessibility. Consequently the refusal is **CONTRARY TO THE LAW** due to contradiction to substantive law.

In view and on the grounds of the above I request the Honorable Court, recognizing the above, to proclaim that the act subject to appeal is null and void, in case you accept the argument that the respective authorization was absent. If you don't accept this argument, I request the Honorable Court to **REVERSE** Decision 2/02.01.02 of the Montana Municipality Secretary as contrary to the law and to **DECIDE** the case on the merits pursuant to Art. 41, paragraph 1 of the APIA in conjunction with Art. 42, paragraph 2 of the APA and to order the competent authority to provide the requested information.

Enclosures:

1. A copy of the decision that is being appealed against
2. A copy of notification of 12.12.01
3. A copy of application No. 2/01r.
4. A copy of the complaint and the written evidence for the respondent
5. A receipt for paid state fee

Yours respectfully:

(**M. Moleshka**)

VRATSA MUNICIPALITY**ORDER**

On the grounds of Art. 3, paragraph 1 of the Access to Public Information Act I

ORDER:

1. The Chief Secretary of the Vratsa Municipality shall organize, consult, coordinate and control the process of decision- making on providing or refusing access to requested public information and shall notify in writing physical and legal persons pursuant to this act.

2. All deputy mayors, heads of departments and heads of sections shall be deemed responsible in the meaning of Art. 28, paragraph 2 as well as the other officials of the municipal administration to whom the implementation of providing access to public information has been directly assigned.

3. The Chief Secretary shall ensure implementation of the APIA providing the necessary administrative, legal and other assistance services, the drafting and enacting an instruction on its implementation by the officials who are obliged as part of their official duties.

3. The submission of applications and their registration shall be effected in the registration office of the Vratsa Municipality.

A special registry shall be opened for this purpose as well as an information field in the software application for monitoring the circulation of the applications with the purpose of keeping the time limits prescribed by the act.

This order is to be brought to the attention of all officials responsible pursuant to this act for information and implementation.

I assign the control over the implementation of this order to the Chief Secretary of the Vratsa Municipality.

Mayor:

JUDGMENT

City of Vratsa, 26. 04. 02

IN THE NAME OF THE PEOPLE

The VRATSA REGIONAL COURT – Civil Bench sitting on 19 April 2002 in panel consisting of the following justices:

CHAIRPERSON: M.ADJEMOVA

MEMBERS: IV. RADENKOV, M.DOSOV

With the participation of the Secretary Chr. Tsekova and the Public Prosecutor Dilkov after considering administrative lawsuit registered under No. 45/02 in the Vratsa Regional Court, reported by **M. Adjemova** in order to deliver a judgment took into consideration the following:

The proceedings are taking place on the basis of Art. 40, paragraph 2 of the Public Information Access Act – APIA, and in conjunction with Art. 33 and the following of the Administrative Procedures Act

The non-profit association „InfoECOclub for Healthy Environment“ through the representing it Chairperson Maria Moleshka has appealed against a PARTIAL refusal of the Secretary of the City of Vratsa Municipality delivered in a letter with ref. No.2/2.1.02 for providing access to public information concerning the ownership of „Lukoil Bulgaria“ LTD of the City of Sofia over part of the land in quarter 44 of the city of Vratsa where the company is building a petrol station. The applicant claims that the refusal being appealed against was null and void since an incompetent authority issued it. Further on the applicant expresses alternatively an opinion of inconsistency of the refusal with the law and detailed considerations are added in this relation. It is pleaded that the decision subject to the complaint should either be pronounced null and void or be repealed and that the dispute be decided in substance, the Court giving obligatory instructions to the Vratsa Municipality to grant the requested information.

The respondent – the Vratsa Municipality, which has been duly summoned, is not represented in the dispute and has not expressed an opinion.

The interested company „Lukoil Bulgaria“ LTD of the City of Sofia is not being represented and has not expressed an opinion either.

The representative of the District Public Prosecutor’s Office deems the complaint unjustified since the interested company has not given the required consent for granting the requested information.

The complaint is procedurally admissible being served by a person with legal interest and within the time frame prescribed by law.

As a matter of substance after considering the collected written evidence the Regional Court finds the complaint unjustified due to the following considerations:

The legal person that is the plaintiff has requested from the city of Vratsa Municipality on the basis of the APIA with an application ref. No. 2/5.12.01 to be provided with copies of the documents certifying the ownership of the construction site of a petrol station in quarter 44-a of the Vratsa city plan with investor „Lukoil Bulgaria“ LTD, including a sale and purchase contract and a deed of public ownership. With a letter ref. No. 2 /12.12.01 on page 5 of the case file the legal person has been granted the requested information □ a municipal ownership deed, decision of the Vratsa Municipal Council for the sale of a property which is private municipal property and a sales and purchase contract. The plaintiff did not dispute this fact. The procedural refusal

of the Vratsa Municipality refers only to the documents for the ownership of part of the land which is property of the concerned company in the case - investor „Lukoil Bulgaria“ LTD of the city of Sofia. In order to refuse to provide access to these documents with letter No. 2/2.1.02 the Vratsa Municipality has referred to the fact that „Lukoil Bulgaria“ had refused their consent for access to this information with a letter ref. No. 10046/18.12.01.

Letter No. 2 is signed by the Secretary of the Vratsa Municipality. Another document submitted to the Court was order No. 300/23.03.01, with which the Mayor of the city of Vratsa authorizes the Municipality Secretary to organize the work of the Municipality and to issue decisions on requests of physical and natural persons under the APIA.

Having in mind what has been factually established the Regional Court made the following legal conclusions:

In spite of the inappropriate language of the Vratsa Municipality Secretary's letter No. 2 (the name of the act which the latter had to issue was a decision) its text indicates that it contains an expression of the will of authority of the Secretary and its content is a decision that is negative for the applicant in the meaning of the APIA. The letter contains the main elements of an individual administrative act and is subject to control by the Court. The Court finds that the letter is issued by an authority within its powers since it accepts that with the served order No. 300 of the Municipality Mayor the requirements of Art. 28, paragraph 2 of the APIA have been satisfied, namely that the „authority“, within the meaning of paragraph 1 of Art. 3 of the Act, should designate expressly a person to make decisions.

It is undoubted that the requested information in the case is of a public nature having in mind the definition given in the provision of Art. 2, paragraph 1 of the APIA. In spite of this in this specific case this information was partially granted to the person that has right of access to it (the plaintiff in the case).

This partial access was necessitated due to the limitations imposed by the provision of Art. 31 of the APIA protecting the interests of third parties. In these circumstances the third party „Lukoil Bulgaria“ LTD did not give consent for granting the requested information.

The argument of the plaintiff that the third party consent for access to the requested information should not be sought in the case or there was not a right of protection to this information because of the provisions of the Cadastre and Property Register Act (that it was generally accessible according to Art. 8, paragraph 1), is not shared by the Court.

The fact that the property registry is generally accessible does not repeal the norm of Art. 31 of the APIA to which the refusing authority has correctly referred. The general accessibility of the information on property ownership provides the plaintiff with the opportunity of obtaining this information through an inquiry at the registrar's office of the Vratsa District Court.

Finally the Regional Court finds that the refusal to grant public information that is being appealed against is issued in keeping with the substantially and procedurally applicable legal provisions – Art. 41, paragraph 3 therefore the complaint should be rejected.

In keeping with the above the Regional Court

DECIDES:

REJECTS the complaint of „InfoECOclub for a Healthy Environment“ of the city of Vratsa against a refusal of access to public information materialized in a letter No. 2/2.1.02 of the Vratsa Municipality as unjustified and unproven.

This judgment is subject to appeal before the Supreme Administrative Court within 14 days from the notification to the parties that it has been drafted.

CHAIRMAN:

MEMBERS:

Karaivanov
v. Minister of the Economy

**DEPUTY PRIME MINISTER
AND MINISTER OF THE
ECONOMY
MR. PETER ZHOTEV**

REQUEST FOR ACCESS TO INFORMATION

by **Kiril Dimitrov Karaivanov,**

DEAR MR. DEPUTY PRIME MINISTER,

I address you for the second time with a request, on the grounds of the Access to Public Information Act, to receive all the available information regarding a DECISION, issued by the former Ministry of Industry for:

a/ the conclusion of contract No. 5 of 14.08.1998 between „BULBANK“ AD, Gorna Oriahovitsa Branch and „Brilliant“ EOOD- the village of Krusheto for a credit of 2000000000 (two billion) non-denominated leva and

b/ the conclusion of three contracts - 1, 2, 3 – for establishing a pledge for securing the mentioned credit (the same contracting parties), entered in the Central Register for Special Pledges under number 11813 (sun flower seed and its derivatives) and 1999040700225 (machines and installations) according to inventory.

The contracts indicated above have been concluded at a time when „Brilliant“ EOOD was in an announced privatization procedure. According to Article 21, paragraph 1 of State-Owned and Municipal Transformation and Privatization Act – these contracts could have been concluded only with a permission of the authority under Article 3 of State-Owned and Municipal Transformation and Privatization Act – the former Ministry of Industry.

On the grounds of the Access to Public Information Act I would like to receive the following documents:

1. Proposal for the permission to conclude the described credit contracts and securing the receivables, including the request of the manager of „Brilliant“ EOOD of June 1998 for granting the credit;
2. Permission from the former Ministry of Industry for the conclusion of the credit contracts and securing the receivables, including a letter with ref. No. 26–B–401 of 01.07.1998 of the Minister of Industry.

I would like to receive the information I request in the form of paper copies (xerox copies) against payment. Hoping that this time I will receive your complete understanding, I remain

Sincerely:

**THE REPUBLIC OF BULGARIA
MINISTRY OF THE ECONOMY**

**TO
MR. KIRIL DIMITROV
KARAIVANOV
CITY OF SOFIA**

Ref: Your letters (Ref. No. 94-K-72 27. 04. 2001 г. and Ref No. 03-00-1 05.06. 2001 of the Ministry of the Economy) with a request for granting: Proposal for the permission to conclude a credit agreement and the permission or concluding the specified agreement.

DEAR MR. KARAIVANOV,

I am sending you enclosed herewith certified copies of: 1. A proposal for the permission to conclude a credit agreement between „Bulbank“ AD, branch office Gorna Oriahovitsa and „Brilliant“ EOOD- the village of Krusheto and 2. The permission of the Minister of Industry for the conclusion of the agreement.

Sincerely,

Deputy Minister of the Economy

THROUGH THE MINISTER OF THE
ECONOMY
TO THE SUPREME
ADMINISTRATIVE COURT
OF THE REPUBLIC OF BULGARIA

COMPLAINT

by

Kiril Dimitrov Karaivanov,

Personal Registration No. 3212306767

AGAINST

Decision No. 94-K-72/ 18.06.01r. of the Minister of the Economy

(signed by the Deputy Minister of the Economy)

ON THE GROUNDS OF: Article 40, paragraph 1 of the Access to Public Information Act, in connection to Article 5, item 1 of the Supreme Administrative Court Act

Honorable Supreme Judges,

On 04.06.01 on the grounds of Article 24, paragraph 1 of the Access to Public Information Act I submitted a request, with which I requested to receive all the available information concerning a permission, given by the Minister of the former Ministry of Industry (currently Ministry of the Economy) for the conclusion of a credit agreement from „Brilliant“ EOOD (a business establishment with public partnership where the rights of the owner are exercised by the mentioned Minister).

My request was partially granted, since on 20.06.01 I received from the Ministry of the Economy copies of a report and a permit from the Ministry of Industry. The documents I received had actually been requested in my request for access. However, at the same time, I had requested not only one /the received/, but all the permissions issued by the Minister of Industry, concerning the credit agreement. From a certificate in the Central Register for Special Pledges it is clear that in the lot of „Brilliant“ EOOD under No. 1999040700225 a pledge of machines and installations is entered according to an inventory, which obviously does not concern the permission I have received. Hence, the record of that collateral has been permitted by the Minister of Industry separately with another permission in his capacity of an authority under Article 3 of Transformation and Privatization of State-owned and Municipal Companies. Such permission has been issued because the company was in a privatization procedure up to its termination with an Order No. RD-21-246/10.10.2000.

There is also no pronouncement over my request to receive **all** the available information, connected to the issuance of the mentioned permissions, which includes not only the acts of the Minister of Industry, but also the standpoints expressed by the Legal Department and the Financial-Credit Policy Department, the Chief Privatization Department and the Food, Wine and Tobacco Industries Department in the Ministry of Industry, which accompany a letter with ref. No. 26-B-401/01.07.98 (the existence of these documents has been confirmed in a letter No. 03-00-01/26.04.01 addressed to me by the Privatization Department Director).

The failure to make a pronouncement over my request for information as a whole constitutes a violation of my right to information, as well as a refusal in the meaning of the Access to Public Information Act. This failure to make a pronouncement is in substantial contradiction to the procedural and substantive law:

The law requires that when the respective authority issues the requested administrative act or when it refuses to issue it, it has to make a pronouncement with a motivated decision (Article 15, paragraph 1 of the Administrative Proceedings Act), which has to be made in writing (Article 15, paragraph 2 of the Administrative Proceedings Act). The provisions of the **special** act also require a written form of the refusal – Article 38 of the Access to Public Information Act, as the decision for the refusal has to indicate the legal and factual grounds for the refusal. In the present case these legal requirements have not been complied with. The request for access to information refers to various documents, and therefore it actually includes several requests. Therefore, if the body obliged under the Access to Public Information Act thinks that some of the requests for granting certain documents are justified and have to be granted, and for others there are reasons not to be granted, he has to indicate this in his written decision. In the present case this has not been done which constitutes a substantial violation of the above-mentioned procedural provisions.

On the other hand, the lack of an explicit refusal for granting copies of these other documents is an indication, that in this instance the Minister of the Economy does not see legal obstacles to grant the information. I myself presume and hope that the failure to pronounce over my other request is due to oversight, which can be corrected on the initiative of the Minister himself.

On the grounds of the above I ask the Honorable Court TO REVERSE the partial refusal of the Minister of the Economy to grant me copies of his permissions for the collateral security of a credit agreement for „Brilliant“ EOOD, as well as copies of all the standpoints that accompany the issuance of these permissions and of permission ref. No. 26-B-401/01.07.98, on account of a contradiction with the procedural and substantive law and on the grounds of Article 41, paragraph 1 of the Access to Public Information Act in connection with Article 42, paragraph 2 of the Administrative Proceedings Act and to decide the case in substance and oblige the Minister to grant what I requested.

Enclosed:

1. Copy of an appealed decision No. 94-K-72/ 18.06.01 with 2 enclosures.
2. Copy of request for access to information
3. Copy of a certificate No.15431/01 from the Special Pledges Central Register
4. Copy of the publication of an order No. RD -21-34/1998 in the „Official Gazette“ No. 19/ 1998
5. Copy of the publication of an order No RD-21-246/2000, “Demokratsia“ newspaper
6. Letter with ref. No.03-00-01/26.04.2001 from the „Privatization“ Department
7. Copy of the compliant and written evidence for the respondent
8. Copy of a postal envelope
9. Receipt for paid state fee

Sincerely:

REPUBLIC OF BULGARIA
MINISTRY OF THE ECONOMY

TO
THE SUPREME ADMINISTRATIVE
COURT
SOFIA 1000,

WRITTEN STATEMENT

Honorable Supreme Judges,

On the grounds of Article 39, paragraph 1 of the Administrative Procedures Act I am sending herewith the complaint received at the Ministry of the Economy (our ref. No. 94-K-72 / 02. 07. 2001) by Mr. Kiril Dimitrov Karaivanov against letter with our ref. No. 94-K-72 / 18. 06. 2001 against the Deputy Minister of the Economy, together with all the correspondence on the issue.

I think that no action should be taken on the complaint on the grounds of inadmissibility due to lack of substance. It is clear from the correspondence enclosed that the applicant has been sent a letter from the Deputy Minister of the Economy which does not represent an individual administrative act in the meaning of Article 2 of the APIA and it is not subject to judicial control. No administrative relationship of power and acquiescence is present in this case, which might give rights or obligations to individual citizens or organizations. The matter does not concern partial refusal of providing access to permission for instituting a pledge on machinery and equipment either, since such a permission has never been given.

In the request for access to public information (at the end) the documents that are the subject of the request are expressly specified. They have been provided due to which no partial refusal to provide information is at hand. The complaint is inadmissible also due to the fact that the dispute does not fall within the jurisdiction of the Supreme Administrative Court. The Supreme Administrative Court Act specifies the agencies whose acts are subject to review and amongst them the Deputy Ministers are not present.

Should you consider the complaint admissible, I ask you to reject it as unfounded on the grounds of the following considerations:

Even had there been a request to provide all available information connected with the issuing of the said permissions, which includes also the opinions expressed by the different directorates, they are not subject to access under Article 13, paragraph 2, item 1 of the APIA. The access to official public information may be limited when it is connected with the operational preparation of the agencies' acts and is of no significance of its own (opinions and recommendations, drafted by or for the agency, positions and consultations).

Article 15 of the Administrative Proceedings Act provides for the requirement that an administrative act should be substantiated and in this case no act has been issued and the provisions of the law have not been violated due to the fact that no access to the requested information has been refused and the special norm of Article 38 of the APIA has not been violated.

Yours sincerely,

Secretary General, MF

JUDGMENT

No. 1824, Sofia, 26.02.2002 г.

IN THE NAME OF THE PEOPLE

The Supreme Administrative Court of the Republic of Bulgaria – Fifth Panel in a court hearing on the thirteenth of November of the year two thousand and one, composed of:

Chair: Andrei Ikonov

Members: Zaharinka Todorova, Tanya Radkova

with a Secretary Madlen Dukova and in the attendance of the Public Prosecutor Ognyan Topurov on administrative lawsuit No. 6242/2001.

The proceedings are under Article 12 and the following of the Supreme Administrative Court Act and Article 40, paragraph 1 of the Access to Public Information Act.

The proceedings have been instituted on a complaint by Kiril Dimitrov Karaivanov of the city of Sofia against decision No. 94 – K – 72/18.06.2001 of the Minister of the Economy (signed by the Deputy Minister of the Economy).

In a court hearing the applicant has specified in person and through his procedural agent – lawyer Kashumov, that as a result of his two requests which are of identical content he has received a partial answer and with the present complaint is appealing against the **tacit refusal of the Minister of the Economy to provide to him all available information connected with the issuing of the permissions concerning a credit agreement to the company „Brilliant“ EOOD – the village of Krusheto**. What is requested is to grant the complaint and to oblige the Minister to provide the requested information.

The defendant – the Minister of the Economy through lawyer Nikolov is challenging the complaint. It is pointed out that the latter is inadmissible since the letter indicated that the subject of the complaint has an informative nature and does not represent an individual administrative act. On the other hand, except the permission provided to the applicant, the Minister has not issued anything else, therefore there is no tacit refusal to provide something that is nonexistent.

The representative of the Supreme Administrative Public Prosecutors Office is expressing an opinion that the complaint is justified without presenting specific substantiation.

The complaint has been submitted within the timeframe specified by law and is **procedurally admissible**.

From the evidence of the case the following has been established:

With requests of 27.04.2001 and of 05.06.2001 the applicant has requested from the Minister of the Economy to be provided with all available information concerning a permission issued by the former Ministry of Industry to conclude a credit contract No. 5 of 14.08.1998 between ‘Bulbank‘ AD Gorna Oryakhovitsa branch and ‘Brilliant‘ EOOD, the village of Krusheto and to conclude three contracts – 1,2 and 3 on establishing a pledge as a collateral to the said credit, entered in the Special Pledges Central Register under No. 11813 (sunflower seeds and its derivatives) and 1999040700225 (machinery and equipment according to an inventory). The requests specify expressly the requested documents.

With a letter No. 94-K-72 / 18.06.2001 signed by Deputy Minister Panayotova the applicant **has been provided** with a proposal allowing the conclusion of a credit contract between ‘Bulbank‘ AD and ‘Brilliant‘ EOOD and the permission of the Minister of Industry to conclude the contract.

In spite of the fact that the complaint indicates that it is appealing against this letter which actually is of an informative nature and is not an individual administrative act, after the clarification at the court hearing it should be considered to what extent it represents a partial fulfillment of the submitted request.

In its essence the complaint against the tacit refusal of the minister to provide all available documentation on issuing „all permissions“ for concluding the credit contract and its collateral cannot be accepted.

The provision of Article 3 of the APIA specifies the circle of the subjects obliged under this act to provide access to public information. The Minister of the Economy is undoubtedly among the subjects keeping in this case the requested information. But the latter has been provided to the applicant within the limits of availability. In its remaining part the request cannot be accepted due to two considerations:

It is clear from the categorical statement of the respondent's procedural agent made in a court hearing on 13.11.2001 that no other permission besides the one of 01.07.1998 has been issued. The latter concerns a single credit contract of the company, secured on two occasions □ as it is clear from the entry in the central Register, and the second has been effected three months later than the original one. The applicant's claim that there are other permissions and three contracts rests on an assumption connected with the prohibition of Article 21 of the Transformation and Privatisation of State-Owned and Municipal Companies Act. Therefore, a request to oblige an administrative authority to provide information, which could not be established as categorically existing, could not be satisfied.

Secondly, the complaint in its part concerning the non-provision of positions of different directorates, opinions, recommendations, consultations etc, is unfounded either, pursuant to Article 13, paragraph 2, item 1 of the APIA. What is requested is information on the operational preparation of a certain act, which is of no significance of its own.

In view if the considerations set forth the complaint should be rejected, the tacit refusal of the Minister of the Economy is in compliance with the law due to which and on the grounds of Article 28 of the Supreme Administrative Court Act in connection with Article 42 of the Administrative Procedures Act the Supreme Administrative Court, Fifth Panel,

RULES:

Rejects the complaint of Kiril Dimitrov Karaivanov of the city of Sofia against the tacit refusal of the Minister of the Economy to provide access to public information.

This judgment may be appealed against before five-member panel of the Supreme Administrative Court within fourteen days of the receipt of the notification.

True to the original,

Chairman: (signed) **Andrei Ikonov**

Members: (signed) **Zaharinka Todorova, (signed) Tanya Radkova**

THROUGH THE SUPREME
ADMINISTRATIVE COURT FIFTH
BENCH TO THE SUPREME
ADMINISTRATIVE COURT □ FIVE
MEMBER PANEL
Re. Admin. Lawsuit № 6242/01

CASSATION APPEAL

by

lawyer. Alexander Emilov Khashumov

representing **Kiril Dimitrov Karaivanov,**

plaintiff under administrative lawsuit No. 6242/01

AGAINST

JUDGMENT No. 1924/26.02.02

of the **SUPREME ADMINISTRATIVE COURT – FIFTH PANEL**

ON THE GROUNDS: Articles 33 - 40 of the APIA

Honorable Judges,

On the grounds of Article 218 b, paragraph 1 „b“, „c“ of the Code of Civil Procedure in connection with Article 1, paragraph 1 and in connection with Articles 33-40 of the Access to Public Information Act I am appealing against Judgment 1924/26.02. 02 on administrative lawsuit No. 6242/01 in the register of the Supreme Administrative Court – Fifth Panel in its section concerning the rejection of the complaint against the tacit refusal to grant the positions, opinions and recommendations requested by the plaintiff. In the part that is appealed against the judgment has been passed in contravention to the substantive law.

1. It is clear from the substantiation of the judgment that is appealed against, that the respondent's representative has not expressed the position, that the matter refers to the premise of Article 13, paragraph 2, item 1 of the Access to Public Information Act. Pursuant to Article 13, paragraph 2, item 1 the access to public information can be limited at the discretion of the body obliged by the APIA in conditions of operational independence. Consequently this limitation of the right of access to information is not „absolute“ but rather is brought about solely through the assessment of the respective obliged body in this case the Minister of the Economy. Since generally the access to such information is free and is limited only as an exception, one cannot make the conclusion that there is limitation in the specific case without the existence of evidence about that.

2. Even if the respondent's representative had expressed in court the position that the right of refusing access to information had been exercised in conditions of operational independence, this would not have made the refusal compliant with the law. This is so because decision making in conditions of operational independence takes place only through action of the administrative authority and not through inaction. When the law provides for a premise of operational independence its objective always is to allow the administrative authority to take into consideration the specific circumstances and to consider which decision would be the most expedient one. At the same time the administrative authority is obliged to adhere to the purpose of the law, which actually is the subject of control by the administrative courts. The failure to make a pronouncement

on time however evidences that in this case the specific facts have not been taken into consideration. The freedom of judgment of the administrative authority extends to the limits of the question which decision is the most effective one from a management point of view and not to a situation where administrative authority decides arbitrarily whether to exercise its right of operational independence or not. It is obliged to make a pronouncement in any case, assessing specifically the facts with a substantiated decision (Article 38 of the APIA).

3. The only way of exercising operational independence is through an individual administrative act, complying with the legal requirements of lawfulness including the requirements of competence. The competence of the Minister to issue this act cannot be replaced by an expression of will by his representative in a court hearing. The authorization to make a decision may be effected solely if it is provided by law and at that through an explicit act of the authorizing authority in this sense.

4. The failure to make a pronouncement on time represents a substantial violation of procedural law by the administrative authority all the more so that APIA provides for an explicit obligation of making a pronouncement and a fine for failure to make a pronouncement on time.

5. Having in mind the above the Court has decided in contravention to the law that in this case the access to information has been refused correctly. Under the premise of operational independence there are no grounds for the court judgment replacing the administrative act since it would intervene in the sphere of expediency, i.e. in the functions of the executive, stepping outside the frames of the constitutional powers of Article 120, paragraph 1 of the Constitution.

Having in mind the above and on its grounds I ask the Honorable Court to reverse the judgment of the court of first instance in the part that is being appealed against and to declare judgment on the substance of the case through reversing the decision of the Minister of the Economy in the part concerning the request of access to positions, opinions and recommendations.

Respectfully:

(Agent)

REPUBLIC OF BULGARIA
MINISTRY OF THE ECONOMY

MR. KIRIL DIMITROV
KARAIVANOV
CITY OF SOFIA

Ref: Your letter referred by the Council of Ministers of the Republic of Bulgaria (ref. No. 03-00-136 / 20. 02. 2002 of the ME) with a request for granting certified copies of documents.

DEAR MR. KARAIVANOV,

Concerning your request for granting you permissions given by the Minister of the Economy to the Manager of „Brilliant“ EOOD – the village of Krusheto, for instituting a pledge over sunflower seeds and machinery and equipment, I am informing you that an overall inquiry in the Ministry of the Economy’s archives is under way and you will receive a reply as soon as possible.

Yours sincerely,

Director of Directorate

“Normative Base of the Economy“

REPUBLIC OF BULGARIA
MINISTRY OF THE ECONOMY

MR. KIRIL DIMITROV
KARAIVANOV
CITY OF SOFIA

Ref: Your letter referred by the Council of Ministers of the Republic of Bulgaria (ref. No. 03-00-136 / 20. 02. 2002 of the ME) with a request for granting certified copies of documents.

DEAR MR. KARAIVANOV,

I am sending you herewith enclosed a certified copy of a permission of the Minister of the Economy to the Manager of „Brilliant“ EOOD – the village of Krusheto, for instituting a pledge over sunflower seeds against obtaining a bank credit from „Bulbank“ AD.

Concerning your request for granting you a permission of the Minister of the Economy to the Manager of „Brilliant“ EOOD – the village of Krusheto, for instituting a pledge over machinery and equipment I am informing you that no such permission is kept in the office archives of the Ministry.

Yours sincerely,

Director of Directorate

“Normative Base of the Economy“

**THE SUPREME ADMINISTRATIVE
COURT OF THE REPUBLIC OF
BULGARIA
FIFTH PANEL**

Re: administrative lawsuit 3362/02

WRITTEN STATEMENT

by

lawyer Alexander Emilov Kashumov

agent of the applicant

Honorable Supreme Judges,

I ask you to reverse the decision issued by the Supreme Administrative Court – three- member panel – as contrary to the law – on the cassation grounds of Article 218b, paragraph 1, letter „c“ of the Code of Civil Procedure and to decide the case on merits through reversing the tacit refusal for granting access to part of the information requested by the applicant which is contrary to the law. My considerations for this are the following:

1. The three member panel of the Supreme Administrative Court found correctly that the Minister of the Economy is the obliged body according to the Access to Public Information Act /APIA/ and for him arose the obligation to make a pronouncement over the request of the applicant to obtain copies of documents, containing public information. The findings that a tacit refusal of the Minister of the Economy to grant access to part of the requested information is being appealed against are also correct. However, the findings that the complaint against the tacit refusal to grant the requested information is unjustified are incorrect.

2. The decision that is being appealed against accepts that „the complaint is unjustified its part with respect to the failure to provide positions of different departments, opinions, recommendations and consultations“ pursuant to Article 13, paragraph 2, item 1 of the APIA, because what is requested is „the granting of information on the operational preparation of a certain act, which does not have significance of its own“. The limitation of Article 13, paragraph 2, item 1 of the APIA can be applied only in the circumstances of operational independence of the deciding authority, which follows from the usage of the word „can“ in the text of Article 13, paragraph 2. The operational independence includes the assessment of the specific facts in every particular case with a view to make the best decision from a managerial point of view, therefore perform it is realized through an explicit expression of will. There is no data for such an expression of will at the present moment – there is no pronouncement on the request of the applicant for access to information and there is a tacit refusal. The tacit refusal is therefore contrary to the law – the Minister of the Economy did not fulfill his legal obligation to examine and to make a pronouncement in substance in the form of the request provided for in Article 38 of the APIA.

3. The expressed interpretation of the tacit refusal as contrary to the law is in concordance with the practice of the Supreme Administrative Court. In decision No. 1795/26.02.02 on administrative lawsuit No. 7176/01 about the tacit refusal and the possible hypothesis for refusal on the grounds of Article 13, paragraph 2 of the APIA the Supreme Administrative Court in a three member panel finds: „ when there is data on the existence of such /the requested information/ the court cannot assess the motives for the refusal with a view to the indicated in the law substantive legal prerequisites – to what extent there should be a total or a partial refusal“. With a judgment

No. 2764/25.03.02 the Supreme Administrative Court in a three member panel repealed the tacit refusal as being contrary to the law because „ there was no administrative act which has been enacted in compliance with the established legal form, due to which the file should be referred back to the administrative authority for preparing a decision in compliance with the appropriate procedure“. The same deficiency exists in this case – a refusal, which is neither enacted in the form required by the law – in writing, nor does it specify the legal a factual grounds for the refusal. The absence of an administrative act cannot be substituted by the procedural agent of the respondent at the court hearing, neither can the failing of the law be remedied at the court hearing.

4. The judgment that is being appealed against is in breach of Article 120, paragraph 1 of the Constitution and Article 42, paragraph 3 in accordance of Article 11 of the Administrative Proceedings Act because the pronouncement of the court substitutes a lacking pronouncement of the administrative authority. Since this lacking pronouncement should have been materialized in an administrative decision it follows that the court judgment, substituting this lacking administrative decision has as a matter of fact gone beyond the examination of compliance with the law and has stepped into the area of expediency. The court examination should have been limited only to the existence of the competence provided for by law, compatibility with the purpose of the law, compliance with substantive law and the procedural rules, while the last three of these requirements have not been complied with.

5. In relation to the objection of the respondent at the court hearing concerning which information the applicant has declared at the court hearing on 13.11.01 that he had not received, it should be borne in mind that in his request for access the applicant had requested „all available information relating to a permission given by the former Ministry of Industry for: a) concluding a contract, b) concluding three contracts – 1,2 and 3 for establishing a pledge“. The subject of the complaint is clearly defined; the Court is presented with the Minister of the Economy’s letter giving the applicant a copy of a permission to conclude a credit. Legal advisor Nikolov has not presented any evidence that the requested permissions, positions and opinions have been given to the applicant and they have not been provided to him as it is clear from the Minister of the Economy’s letter. The issue raised by legal advisor Nikolov has already been discussed in the preceding instance, due to which in the judgment that is being appealed against the matter of the three permissions of the Minister of the Economy is being considered separately from the one concerning the positions, opinions and recommendations.

6. There is data about the existence of the information requested by the applicant – opinions, recommendations and positions since in letter 03-00-01/26.04.01, attached to the case, the Director of the Privatisation Directorate at the Ministry of the Economy refers to „positive opinions expressed“ by several departments. Besides it is clear that the Minister would not have taken a decision (to provide to the applicant a permission for credit) without such opinions. Therefore the three-member panel of the Supreme Administrative Court has concluded that this information is available with the Minister of the Economy.

7. I appeal to the Court to make a pronouncement on the substance of the case with a judgment, giving instructions to the Minister of the Economy to apply the law. I appeal to the Court to instruct the respondent when he makes a pronouncement to take into consideration also the new version of Article 13, paragraph 3 of the APIA (State Gazette, No. 45 of 2002), according to which the limitation under paragraph 2 cannot be applied after the elapse of two years after such information has been compiled. Since the Minister of the economy so far has not made a pronouncement in compliance with the law, the assessment of the new pronouncement will be made at the time of the pronouncement. In support of this view is also the fact that the new act issued by the Minister complying with the court judgment is subject to appeal on its own merits and the procedural prerequisites for the admissibility of such appeal, including the time limit should be present, separately from the prerequisites for the appealability of the preceding act. Because of this the objection of the respondent that when making a new pronouncement the

repealed act should be applied should not be granted, all the more so that in such a way the applicant would be placed in an unequal position compared to citizens who would request access to the same information now.

8. I believe that the tacit refusal of the Ministry of the Economy is contrary to the law also in its part concerning the three permissions for credit contracts. The finding of the three-member panel of the Supreme Administrative Court that „a request to oblige the administrative agency to provide information, of which it has not been categorically established that it exists, cannot be satisfied“ is correct. The matter in question in this case, however, is whether the failure of the administrative agency to make a pronouncement on the request for access to information is compatible with the law. The premise of the applicant of the existence of additional permissions for credit, linked to the prohibition of Article 21 of the Transformation and Privatisation of State-Owned and Municipal Companies, is quite logical and he is in no position to know that there is a lack of compliance with legal obligations, proceeding from the assumption that the authorities have acted in compliance with the law. Moreover, he has requested access to all available information and part of this information is the information that **other permissions have not been issued**. The Minister of the Economy has this information as it is clear from the statements of his procedural agent and from the letter to the applicant received after serving of the cassation complaint before this court panel. The minister therefore cannot be freed from his obligation to provide the requested information although it concerns a negative fact. The applicant has not specified that he wanted only information concerning positive facts and the purpose of the APIA itself - Article 2, paragraph 1, is to provide the information in such a manner that the citizen would form an opinion on the activity of the obliged subject, because of which the obliged subject owes „openness, reliability and completeness of the information“ – a principle established by Article 6, paragraph 1 of the APIA. The Minister of the Economy was obliged to make a pronouncement, notifying Mr. Karaivanov in an appropriate manner in compliance with Article 27 of the APIA of the absence of the three permissions that were requested. The failure to make a pronouncement is contrary to the law and burdens the applicant with the expenses and burdens of conducting court proceedings which would not be the case had there been a pronouncement.

Due to the above I ask the Honorable Court to reverse the judgment passed by the Supreme Administrative Court – three member panel as contrary to the law – on cassation grounds of Article 218b, paragraph 1, letter „c“ and to decide the case in substance by reversing the tacit refusal to provide access to part of the information requested by the applicant that is being appealed against on the grounds of being contrary to the law and to refer the file back to the Minister of Finances for making a pronouncement with compulsory instructions on the application of the law. I also request the court to award to us the court expenses amounting to the paid state fees.

Yours respectfully:

(agent)

JUDGMENT

№ 7339

Sofia, 19.07.2002

IN THE NAME OF THE PEOPLE

The Supreme Administrative Court of the Republic of Bulgaria – Five Member Panel, in a hearing held on twenty-eighth of June of the year two thousand and two, composed of:

CHAIR: EKATERINA GRANCHAROVA

MEMBERS: ALEXANDER ELENKOV

VESSELINA KULOVA

MILKA PANCHEVA

VANYA ANCHEVA

with secretary MadlenDukova and in the attendance of the Public Prosecutor Ivan Lulchev heard the report of **judge MILKA PANCHEVA** on administrative lawsuit No. 3362 / 2002.

The proceedings are under Article 33, paragraph 1 of the Supreme Administrative Court Act. With a judgment No. 1824/ 26.02.2002 pronounced on administrative lawsuit No. 6242/ 2001 a Three Member Panel of the Supreme Administrative Court has rejected the complaint of Kiril Dimitrov Karaivanov against the tacit refusal of the Minister of the Economy to provide access to public information. A cassation complaint has been served by Kiril Dimitrov Karaivanov through his agent against this decision with a request that the decision be reversed.. Pursuant to the provision of Article 13, paragraph 2, item 1 of the APIA the access to public information may be limited at the discretion of the subject obliged by law in conditions of operational independence. In the general case the access to this information is free. The court in this case has presumed in contravention to the law that access has been refused correctly. He pleads that the judgment that is being appealed against be reversed and that the dispute be decided in substance by reversing the refusal of the Minister of the Economy concerning the request that is the subject of the proceedings.

The appellant who has been correctly summoned, appears in person and with an agent at the court hearing, he supports the complaint and asks that it be granted. He submits written defense. The appellee - the Minister of the economy, who has been correctly summoned, is represented by legal counsel who pleads that the complaint be rejected. The appellant has specified that he has been provided with copies of the two documents, i.e. only the remaining documents– opinions, recommendations, positions, etc. are requested. Operational independence may be exercised not only with action but also with inaction.

The representative of the Chief Cassation Prosecutor's Office deems the cassation appeal unjustified and the judgment correct. The matter does not concern a limitation of the access to public information but rather information connected with the operational preparation of the Minister's act and it is of no significance of its own. The Supreme Administrative Court, having considered the objections set forth in the complaint, considered the written evidence collected on the case

and deemed the cassation complaint procedurally admissible and unjustified in substance due to the following considerations:

The Court has accepted and considered the subject matter of the complaint in the manner that has been orally specified by the applicant at the court hearing – tacit refusal of the Minister of the Economy to provide to him the documentation requested in item 2 of the request of 01.06.2001.

The cassation complaint contains an appeal against the violation of substantive law by the Court. The administrative agency is obliged to deliver a substantiated administrative act while exercising operational independence and considering the specific facts. The failure to deliver on time is a substantial violation of the procedural law and the court judgment cannot replace the administrative act since it would intervene in the sphere of expediency.

The present panel finds the theoretical reasoning of the appellant correct. However, it is not consistent with the specific factual circumstances of the dispute and with the evidence collected on the case. The facts established by the Court that are of legal relevance indicate that the cassation objections cannot be accepted.

It is obvious from the letter No. 94-K-72/ 18.06.2001, signed by the Deputy Minister of the Economy and attached to the case, that the appellant has been provided with a paper copy of the proposal for allowing to conclude a credit contract between „Bulbank“ AD – Gorna Oryakhovitsa and „Brilliant“ EOOD – the village of Krusheto and a proposal of the Minister of the Economy to conclude the contract.

This fact is not challenged by the appellant. The Court has accepted as undisputable the statement of the Minister's procedural agent that another permission except the one of 01.07.1998 has not been issued, which determines the existence of a premise in Kiril Karaivanov's request for providing other permissions and contracts. The plaintiff has not refuted this conclusion of the Court by citing specific documents, containing information the access to which has not been granted by the administrative authority.

The provision of Article 2, paragraph 1 of the APIA defines the notion of „public information“ as connected with public life in the Republic of Bulgaria and allowing citizens to form an independent opinion concerning the activities of the subjects obliged by the law“. Two types of public information are differentiated in the act – public and official. Public is the information contained in the acts of government bodies and local authorities issued in the course of exercising their legal powers – Article 10 of the APIA. Official is the information collected, compiled and kept in connection with the public information and the activities of the authorities and their administrations – Article 11 of the APIA.

In the particular case what is being requested is access to official public information and pursuant to Article 13 of the APIA the access to such information is free and takes place under the procedure of this act.

Pursuant to Article 25, paragraph 1, item 2 of the APIA the request for granting access to public information should contain a description of the requested information. It has been assumed correctly in the substantiation of the decision that is being appealed against that it cannot be

imposed as an obligation of the administrative body to grant access to information about which it has been categorically established that it exists. It is not specified in the cassation complaint what information is being refused. The three-member panel has not gone further than the control and repealing function, which it exercises when it considers the legality of a tacit refusal of an administrative body. The generally formulated request of the applicant for granting the positions of the different departments, opinions, recommendations, consultations, etc. has been correctly interpreted by the Court as a matter concerning documents containing information on the operational preparation of the issuing of an act, which act in its final form has been granted to the applicant by the very administrative body itself.

Due to the considerations set forth there are no cassation grounds for reversing the judicial act under Article 218 b, paragraph 1, letter „c“ of the Code of Civil Procedure in connection with Article 11 of the Supreme Administrative Court Act. The judgment of the three-member panel is correct; it has been passed in compliance with substantive law and in observing the procedural rules. Lead by the above and on the grounds of Article 40, paragraph 1 of the Supreme Administrative Court Act the Supreme Administrative Court – Five Member Panel

RULES:

LEAVES IN FORCE JUDGMENT No. 1824/ 26.02.2002 passed on administrative lawsuit No. 6242/ 2001 by a Three Member Panel of the Supreme Administrative Court. This judgment is final and is not subject to appeal.

True to the original,

Secretary:

CHAIRPERSON:(signed) **Ekaterina Gruncharova**

MEMBERS: (signed) **Alexander Elenkov**

(signed) **Vesselina Kulova**

(signed) **Milka Pancheva**

(signed) **Vanya Ancheva**

Karaivanov
v. Minister of Finance

**TO THE ATTENTION OF:
THE MINISTER OF FINANCE**

REQUEST FOR ACCESS TO INFORMATION

Filed by:

Mr. Kiril Dimitrov Karaivanov

Sofia, 21st May 2001

Esteemed Minister,

I hereby request, on the basis of the Access to Public Information Act, to be given the opportunity to obtain the audit report issued following an examination and checking of accounts and financial records of *Brilliant-V* Ltd., seated in the village of Krusheto within Gorna Oriahovitza Municipality.

The Territorial Directorate for State Financial Control in the town of Veliko Tarnovo conducted the audit in the last several months of this year. Please, find enclosed copies of the correspondence exchanged between the above directorate and me (S., namely, letters of 16th December 2000, 22nd January 2001, and 19th March 2001).

I would like to obtain the information requested as a paper-/photocopy of the above mentioned audit report and I am ready to pay the required fees.

Enclosures: As stated above.

Respectfully yours,

REPUBLIC OF BULGARIA
AGENCY FOR INTERNAL STATE FINANCIAL CONTROL

TO THE ATTENTION OF:
MR. KIRIL KARAIVANOV

Dear Mr. Karaivanov,

Further to your request for information of the audit report completed after a financial audit at *Brilliant Ltd.*, seated in the village of Krusheto, Gorna Oriahovitza Municipality, we would like to inform you of the following:

In accordance with Art. 3, item 4 of the Internal State Financial Control Act establishing a requirement for safeguarding official secrecy, AISFC¹ officials are not entitled to disclose such information. In case they made public a document whose content pertains to official secrecy, they would be liable under penal administrative law (in accordance with ISFCA, on the basis of Art. 42 read in conjunction with Art. 12, s. 1, item 3 thereof) or criminal law (under Art. 284 of the Criminal Code).

On grounds of the above provisions and the ones set forth in Art. 37, s. 1, item 1 APIA² we are prevented from giving you access to the requested audit report.

THE DIRECTOR:

¹ Agency for Internal State Financial Control – *Remark of Translator*

² Access to Public Information Act – *Remark of Translator*

SUPREME ADMINISTRATIVE
COURT
REPUBLIC OF BULGARIA
C/O MINISTER OF FINANCE

COMPLAINT

From **Mr. Kiril Dimitrov Karaivanov**

Against

A Refusal of the Minister of Finance to Grant Information

Legal Grounds

Art. 40, s. 1, Access to Public Information Act (APIA) in Combination with Art. 5, Item 1, Supreme Administrative Court Act (SACA)

Honorable Justices,

On the basis of Art. 24, s. 1 APIA I filed a written request on 21st May 2001 to obtain the copy of an audit report completed following the financial audit in 2000 at *Brilliant Ltd.*, seated in the village of Krusheto, Gorna Oryahovitza Municipality. I had been following through the financial status of the company for some time, since I had requested compensation in shares, following the rules and procedures of the Compensation for Owners of Expropriated Estates Act. I have knowledge of financial violations, which have been committed inside this enterprise, and have therefore, beside addressing a request for access to public information, also signaled the Territorial Directorate for State Financial Control in the town of Veliko Tarnovo, suggesting an inspection to be conducted by Internal State Financial Control officials in the course of the present year, too (letters of 16th December 2000, 22nd January 2001, and 19th March 2001).

On 5th June 2001 the Director of the Internal State Financial Control Directorate rejected my information request. He made reference to the Art. 3, item 4 principle of the Internal State Financial Control Act (ISFCA), whereby officials of the Agency for Internal State Financial Control (AISFC) are not entitled to provide the information requested.

The refusal is in serious contradiction with substantive and procedural legal provisions and does not follow the purpose of the law.

1. As witnessed in written notification No K-94000027/5th June 2001 of AISFC Director addressed to the Ministry of Economy the above enterprise had been audited and an audit report had completed the audit process. The requested audit report is an act of a competent authority delivered in exercise of its powers and, therefore, contains **official information**, in the sense of Art. 10 APIA.

2. AISFC is an official administrative authority attached to the Minister of Finance. My request was addressed to the Minister of Finance in his capacity of a state authority, who has the information requested in his disposal. The Minister of Finance, who is obligated in the sense of Art. 3, s. 1 of APIA, did not issue a decision on the request. No evidence is to be found, either, that the Minister of Finance has delegated powers upon AISFC Director to decide on requests for access to public information. Failure of the Minister of Finance to issue a written decision is in serious contradiction with procedural law – Art. 15, APA and Art. 38, APIA. The Act requires from relevant authorities concerned to deliver reasoned decisions when completing any deed of administration requested or when refusing to do so (Art. 15, s. 1 APA). Such decision with

reasons was obviously not issued in the present case. The provision of Art. 15, s. 2 APA is imperative in requiring to serve a written decision to provide or deny information. A written refusal is also required in *lex specialis* provisions – Art. 38 of the Access to Public Information Act, i.e. a decision to withhold information with reference to the legal and factual grounds underlying it. The above requirements of the law have been completely disregarded, which amounts to a serious violation of procedural provisions.

3. The information I requested is accessible and is not covered by APIA restrictions. The reason behind is that in accordance with Art. 3, item 4 ISFCA, ISFC authorities are under the obligation to keep in official secrecy facts and events they have come to know in the course of exercising official powers. Consequently, the information should be classified as official secret in the first place, and should, then, have gone to officials' knowledge during or on the occasion of vesting their office. Cases where certain information is classified as official secret need to be envisaged by law, in compliance with the imperative provisions of Art. 7, s. 1 APIA. The Internal State Financial Control Act does not establish any specific hypotheses, i.e. cases where certain information is considered as official secret. Consequently, content of the official secrecy notion under Art. 3, item 4 ISFC Act would be defined by various laws where such separate specific categories of official secret are envisaged in view of protecting rights and interests listed in Art. 41, s. 1 of the Constitution and Art. 5 of the Access to Public Information Act. It has not been evidenced that the audit report requested contained any specific categories of information whatsoever considered to be official secret. The reverse however is proven – it contained a number of categories of information, which are not at all considered to be secret, i.e. that an audit had been conducted at the above enterprise by certain authorities, the legal grounds of it, the exact time of the audit, as well as the findings of competent authorities (e.g. deficiency in the accounts, data indicative of criminal activity, etc.). Such categories of information are of the utmost public interest, which mainly is the objective of the Access to Public Information Act – provide the public with an opportunity to form enlightened views on any matter related to public life and to activities of obligated addressees under provisions of the act – Art. 2, s. 1 of the Access to Public Information Act.

On this basis I would plead, your Honors, that the refusal of the Minister of Finance to grant a copy of the audit report requested be repealed as illegal, since it contradicts both substantive and procedural legal provisions, and on grounds of Art. 41, s. 1 of the Access to Public Information Act read in combination with Art. 42, s. 2 of the Administrative Proceedings Act, that the merits of the case be ruled upon.

Enclosures:

1. Copy of the request for access to public information.
2. Copy of Notification No K-94000027/05th June 2001.
3. Letter under outgoing registration No 664/22nd January 2001.
4. Request of 16th December 2001.
5. Letter of 19th March 2001.
6. Copy of the envelope and notification of delivery.
7. Copies of this complaint and written evidence attached, for defendant.
8. Receipt for state taxes perceived.

Respectfully yours,

**TO THE ATTENTION OF
STATE LEGAL COUNSELLING
DIRECTORATE AT
MINISTRY OF FINANCE
Re: Your ref. No K-9400025 of
20th May 2001**

OFFICIAL NOTICE

The Agency for Internal State Financial Control has the following view with regard to the file you have submitted:

In accordance with Art. 9, s. 3 of the Internal State Financial Control Act (ISFCA) the Director of the Agency for Internal State Financial Control and the Minister of Finance are authorized to inform the public of Agency operations. The above authorities may only provide information whose disclosure would not entail any type of liability envisaged by law.

1. Art. 360 of the Criminal Code provisions that it is a crime to disclose information pertaining to military, economic or other areas, which is not state secret, but is protected on other ground by law, decree or any other type of administrative act. In his/her capacity of head official of the Agency for Internal State Financial Control, its Director is bound by the legal prohibition contained in Art. 12, s. 1, item 3 ISFCA. Financial audit as a form of control under the formerly applicable State Financial Control Act consisted in an inspection of financial and economic activities of the respective entity. Therefore a audit report incontestably reflects facts and circumstances of an economic nature in the sense of Art. 360 of the Criminal Code.

2. The Internal State Financial Control Act does not establish a procedure for providing copies of audit reports to the public. The absence of any such procedure and the provisions cited above support the conclusion that providing audit reports to third parties is contrary to the law.

3. Providing a audit report in the case under dispute would entail unjustified costs and expenses (a audit report being quite voluminous and making copies very costly), on account of which and on the basis of Art. 27, s. 1, item 2 APIA the competent authority is not under the obligation to grant access in the form of access indicated by the applicant.

4. The applicant's request, contrary to requirements of Art. 25, s. 1, item 2 APIA, relates to a copy of the audit report, not to specific questions, i.e. there is lack of description of the information requested. APIA regulates those relations connected with the right to access public information and it further guarantees namely that specific right, but does not regulate access to originals or copies of documents.

5. Art. 28, s. 2 of the Access to Public Information Act indicates those competent to make decisions for granting or refusing access to the information requested. Hence, the Director of the Agency for Internal State Financial Control is competent to rule and has, in accordance with his/her powers, made a decision to deny access, outlining his arguments in a letter with ref. No K-9400027/05th June 2001.

In view of the above we consider that the refusal of the Director of the Agency for Internal State Financial Control to provide a copy of a audit report to a citizen is in conformity with the law and good administrative practice.

**INTERNAL STATE FINANCIAL CONTROL AGENCY,
THE DIRECTOR**

TO THE ATTENTION OF:
SUPREME ADMINISTRATIVE
COURT
FIFTH DIVISION

RE: ADMINISTRATIVE CASE No
6234/2001

WRITTEN STATEMENT

Submitted by: **Mr. Alexandar Emilov Kashamov, attorney-at-law,**

Duly authorized to act as counsel for the applicant

Honorable Justices,

I hereby plead to declare the refusal of the Minister of Finance unlawful and to order him to issue a new decision providing the requested information.

A audit report may not be considered secret with regard to the public. Indeed, Art. 3, item 4 of the Internal State Financial Control Act (ISFCA) introduced the principle of non-disclosure in respect of information, which has been gathered by controlling authorities **with the purpose of or in connection with** the exercise of their duties, unless the reverse has been stipulated by a law.

However, this should not mean, that their activities should remain far from public scrutiny forever. On the contrary, it is well known that information regarding audits conducted by ISFC officials is permanently disseminated through the media.

In cases where criminal acts are found auditing documentation should be submitted to prosecution authorities to bring charges in the public interest, which goes to an open court trial. Where deficiency in the accounts is found, but it does not constitute crime, ISFC officials are obliged to submit auditing documentation to the civil courts for civil proceedings, which should be open as well, following Art. 299 *et seq.* of the Civil Procedure Code.

Beside the principle of non-disclosure of the information, another principle should be applied with regard to activities of ISFC officials. That principle, the one of public access to the information, enlightens how the authorities of state operate. It is envisaged in another law – APIA. ISFC authorities are an integral part of state authorities in the sense of Art. 3, s. 1 APIA.

The central issue in the present case, according to us, is where does the line between these two principles pass. Do we need to agree that information found with regard to infringements and criminal actions, information of individuals punished, should never be made public, since under all circumstances its disclosure would touch upon interests of the state?

The duty to keep certain facts secret, as provided for within ISFCA, should be regarded as strictly fit to the purpose, which ties all the obligations of financial control authorities. That purpose is to control financial activities of entities, which receive public funds, with the aim to prevent, discover, and repair damages – Art. 2, sections 1 and 2 of the Internal State Financial Control Act. Bearing in mind this particular relation of the duty for non-disclosure of information to the purpose of the law, ISFCA makes reference to time limits under which the information may not be disclosed – *while exercising internal state financial control functions* (Art. 3., s. 1), *in the course of exercising one's official duties* (Art. 12, item 3).

Any exercise of official duties has some time limits. Auditing activities (the new law expressly makes use of the notion of *audit*) are completed with a report – Art. 21, s. 1 ISFCA – and its submission to the authority that has requested the audit. After the report requested has been finished, which is evidenced by a letter of the Internal State Financial Control Agency, it is open for access following the procedure set out in APIA.

The objection of defendant that in accordance with the Rules and Regulations Concerning the Application of the Internal State Financial Control Act auditors are held to keep certain facts secret is irrelevant. A request for access to public information is addressed to the Minister of Finance, who is an obligated addressee of APIA provisions, not the internal auditors. Since the audit is finished, information related thereto may be disclosed.

The objection that ISFCA does not provide for a procedure to disclose information to the public is unacceptable. That procedure has been laid out in APIA, which regulates in detail a process for granting access to public information upon request. ISFC authorities, along with all other state authorities, need to apply by all the laws in force in the Republic of Bulgaria, not by only a few of these.

The objection that a response had actually been received from the Director of the Agency for Internal State Financial Control and, therefore, no obligation had arisen for the Minister of Finance to rule a decision on the matter, is not relevant. The Minister of Finance is an authority of the Executive and in this particular capacity, on a separate ground, is an obligated addressee of APIA provisions in the sense of Art. 3, s. 1 APIA. The fact that another authority has ruled or failed to rule on a similar or precisely the same issue that it had been approached with, is not sufficient ground for the Minister to abstain from examining the matter and fail to rule on the request for access to public information. On the contrary, the request has initiated administrative proceedings under APIA, which should be completed upon delivery in writing of an official deed – a decision. Since the Agency for Internal State Financial Control is part of the administration attached to the Minister of Finance, he is the one who holds the information requested and there has been no constraint for him to rule on the matter.

The objection that the applicant's request did not contain a description of the information is unacceptable. Interpretation of Art. 25, s. 1, item 2 APIA read in conjunction with Art. 29, s. 1 indicates that the reason behind requiring a description is to identify the information requested or to specify a request formulated in a too broad way. In the present case the information requested has been identified with precision, i.e. a very specific audit report. Defendant does not claim that more than one revision has been completed and more than one audit report drafted within the period indicated in the application. The particular audit report, we do suppose,

consists of a precise number of pages, therefore the obligated addressee of APIA provisions might have provided it without further specifications.

It is quite unreasonable to argue that a whole document, consisting of a sufficiently bulky content, as is any audit report, would entirely bear facts and circumstances subject to non-disclosure. As stated in Decision of the Court of Cassation No 7/1996 restrictions to the right to seek, obtain, and impart information need to be narrowly interpreted. Art. 41, s. 1, sentence 2 of the Constitution and Art. 5 APIA states that the exercise of this right shall not be exercised in a way to harm the rights and legal interests enlisted. Therefore the secret provided for by the law may only cover information, the disclosure of which would actually harms these protected rights and legal interests. At the court hearing the defendant and his counsel made no reference to any of these rights and legal interests. We consider, even if there had been grounds to believe the report contained some data that may be secret, that relevant paragraphs should have been blackened and the remainder, which is public information – provided to us,.

In view of the above and on the grounds stated I plead to declare the denial of the Minister of Finance unlawful, to recognize the applicant's right to access the requested information, and order the defendant to provide access to the requested information.

Respectfully yours,

(The Attorney)

REPUBLIC OF BULGARIA
MINISTRY OF FINANCE

Attn.: Supreme Administrative
Court

WRITTEN OBSERVATIONS

On grounds of Art. 16, s. 2 of the Supreme Administrative Court Act (SACA), please, find attached a complaint filed with the Ministry of Finance under reg. No K-94-00-0025/20th June 2001 by Mr. Kiril Dimitrov Karaivanov from Sofia, 11A, Yanko Sakazov blvd., against a tacit refusal of the Minister of Finance.

The view of the Ministry of Finance is that the complaint is inadmissible and ill-founded, therefore it should be rejected on account, namely, of the following arguments:

1. In an application addressed to the Minister of Finance, on the basis of the Access to Public Information Act (APIA), Mr. Kiril D. Karaivanov made a request to be given the opportunity to examine the deed of revision following the financial and accounting audit of *Brilliant Ltd.*, seated in the village of Krusheto, Gorna Oriahovitza Municipality, also demanding to obtain a photocopy thereof.

In accordance with Art. 1, s. 2 and Art. 5, s. 1 of the Internal State Financial Control Act (ISFCA) in force (publicized in the State Gazette No 92 of 10th November 2000, in force as of 1st January 2001) internal state financial control is governed and delivered by the Agency for Internal State Financial Control (AISFC), which is a budget-funded legal entity and whose competences include the one of its Director to issue decrees for conducting scheduled and unscheduled audits. The statement of the applicant, namely that information he requested was accessible and did not come under APIA restrictions, is not true. In accordance with Art. 360 of the Criminal Code disclosure of data pertaining to military, economic or other areas, which is not placed under state secrecy, whose propagation, however, is prohibited by law, decree or any other administrative ruling, amounts to a criminal act.

Art. 8, item 6 of the Rules and Regulations Concerning the Application of the Internal State Financial Control Act has expressly stipulated that an internal auditor is bound not to disclose facts and circumstances, which he might have come to know during or on the occasion of exercising his/her official duties, para. 1, item 4 of the enforcement provisions of the Rules and Regulations specifying the meaning of the notion of „disclosure“ – i.e. granting information regarding facts and circumstances, which have become known while exercising controlling functions over individuals and entities, which are not part of the Agency and the relevant site under audit, including the mass media.

In accordance with Art. 9, s. 3 ISFCA in force, the Minister of Finance and the Agency Director are the authorities entitled to inform the public of operations of the Agency for Internal State Financial Control. The information these authorities may provide should be falling outside the scope of the prohibition established in the provisions of Art. 12, s. 1, item 3 read in combination with Art. 31, item 4 ISFCA. While exercising their official duties Agency officials need to comply with official secrecy, not disclosing facts and circumstances they might have come to know during or on the occasion of exercising their official duties, as incontestably does, in the present case, the deed of revision requested. Revision as a basic form of control under the former act on state financial control is related to an inspection of budgetary, financial, economic, and reporting practices at the revision site. Therefore the deed of revision itself contains facts of an economic nature in the sense of Art. 360 of the Criminal Code.

The statement of the applicant with regard to the absence of legal and factual reasons for the refusal he was served by AISFC in a letter under outgoing reg. No K-94-00-0027/05th June 2001 does not correspond to the truth, either. The Agency for Internal State Financial Control, in accordance with the provisions of Art. 38 et seq. of the Access to Public Information Act, has sent the applicant the official refusal of the Agency to grant the information by him requested, having also provided legal and factual reasoning.

ISFCA does not establish a separate procedure for providing copies of deeds of revision under financial and accounting audits conducted to the public. In the absence of any such procedure and following the prescriptions of legal provisions cited above a conclusion is imposed that providing deeds of revision to third persons is inadmissible Besides, the applicant has not taken into account the provision of Art. 25, s.1, item 2 APIA, either – to include in his application a description of the information requested. He has requested a copy of the deed of revision as an official act, a hypothesis not covered by APIA.

In accordance with requirements of Art. 28, s. 2 APIA AISFC Director is the authority competent to rule on requests and in compliance with powers conferred upon him has made a legally and factually reasoned decision while denying Mr. Kiril Karaivanov access to the information requested and issuing the letter mentioned above.

In view of the foregoing we believe that the refusal of AIFSC Director to provide a copy of the deed of revision is in conformity with the law, does not run counter to common principles, and is delivered to enforce normative provisions – both substantive and procedural.

I would therefore request that the complaint filed be rejected as procedurally inadmissible. In case the complaint is admitted for examination, I would request its rejection as ill-founded.

THE MINISTER:

JUDGMENT

No 1826, Sofia, 26th February 2002

IN THE NAME OF THE PEOPLE

The Supreme Administrative Court of the Republic of Bulgaria, Fifth Division, sitting on 13th of November 2001, in panel composed of the following justices:

Presiding Judge: Justice Mr. Andrey Ikonov

Panel Members: Justices Ms. Zaharinka Todorova and Ms. Tanya Radkova

In presence of court secretary Ms. Madlen Dukova and attended by Mr. Ognian Topurov, as a representative of prosecution, heard a report of **Justice Tanya Radkova** on administrative case No 6234/2001.

Proceedings were formed under Art. 12 *et seq.* of the Supreme Administrative Court Act (SACA) in conjunction with Art. 40, s. 1 of the Access to Public Information Act (APIA).

The case was brought to court following a complaint lodged by Mr. Kiril Dimitrov Karaivanov from Sofia against a refusal of the Minister of Finance to provide information on his request of 21st May 2001, namely to obtain a paper copy of a audit report following a financial and accounting audit of Brilliant Ltd., a state-owned company seated in the village of Krusheto. In his complaint he alleged that the Director of the Agency for Internal State Financial Control had refused to provide him access to the requested information, acting without authorization to decide on behalf of the Minister of Finance on access to public information requests addressed to the Minister. He claimed that the failure of the Minister of Finance to act in the case was illegal since under Art. 38 APIA a denial to provide information should be delivered in written with reasons. He pleaded for repeal of the Minister's refusal and for a judgment on the merits.

Defendant acting through his legal representative was of the view that the complaint should be dismissed.

The representative of the Supreme Administrative Prosecution Office present suggested that the complaint should be dismissed. He was on opinion that the requested information fell under the exemptions of the access to that kind of information.

In the absence of any data regarding the notification of the administrative act contested, to the benefit of the applicant should be accepted that the complaint was sent within the legal time limits and therefore the complaint is deemed admissible.

On the merits of the complaint:

In his request of 21st May 2001 addressed to the Minister of Finance applicant requested a paper copy of the audit report issued following a financial and accounting examination of Brilliant Ltd. in the village of Krusheto, a state-owned company. Applicant was notified by letter under outgoing reg. No K-94000027/05th May 2001 of the Director of the Agency for Internal State Financial Control (AISFC) the information he requested was official secret.

The applicant filed a complaint to the Supreme Administrative Court, a copy of which, as evidenced by the Ministry of Finance Official Notice attached, has been sent to AISFC for opinion. The latter is part of the written evidence in the case.

The provision of Art. 3 APIA determines who are the units subjected to the act, whose obligation is to provide access to public information. Among these are state authorities generating and keeping such information. In accordance with Art. 5 ISFCA AISFC is an administrative authority

subdued to the Minister of Finance and a legal entity subsidized from the state budget. In accordance with Art. 9, s. 3 the Minister of Finance and the Agency Director keep the public informed of Agency operations. Therefore, the Minister of Finance in his capacity of a state authority is obligated in the sense of Art. 3 APIA to provide access to information (within certain limitations). There is no evidence in the case that the Minister of Finance, following the provisions of Art. 28, s. 2 APIA, has expressly indicated AISFC Director as competent to decide on providing or refusing information. Art. 32 APIA is not applicable in the case (providing obligation for the requested authority to send the request to the relevant authority), since the administrative file attached to this case does not contain evidence that either the request was sent further to another authority, or that applicant was notified of such action. In presence of the above information the court finds that the subject of the complaint is a tacit refusal of the Minister of Finance.

The provision of Art. 38 APIA prescribes the requisites of a decision for refusal. The same does not however exclude the opportunity of appealing a tacit refusal, which is presumed in any case when the authority does not deliver a decision. APIA is *lex specialis* in relation to the Administrative Proceedings Act, which regulates legal relations concerned with the delivery of and supervision over administrative acts. Both normative sources stand at an equally binding level and the general law [*lex generalis*] (APA in the case) is applicable where there is not special law [*lex specialis*] (in the case APIA lacks regulations on „tacit refusal“), unless the latter contains an express provision excluding the subsidiary of the general law.

The refusal complained is in conformity with the law.

Art. 37, s. 1 APIA specifies the grounds for refusal of access to public information. One of these is when the requested information is considered official secret. According to Art. 7, s. 1 APIA access to information is restricted, where the information is secret in cases, provided by the law. The paper copy of the audit report requested is official secret in the sense of Art. 37, s. 1 APIA for the following arguments. According to Art. 3 ISFCA internal state financial control officials need to stick to the principle of keeping official secrecy – non-disclosure and non-provisioning of information they have come to know for the purpose of and in connection with the exercise of their official duties, unless the reverse has been expressly stipulated by the law.

While exercising their official duties (Art. 12) agency officials are bound to withhold facts and circumstances they have come to know for the purpose of and in connection with the exercise their official duties. According to para. 1 of the Supplementary Provisions of the Regulation for the Application of ISFCA „disclosure“, in the sense of Art. 8, item 6, is providing information regarding facts and circumstances, which have become known in the course of exercising controlling functions over individuals and entities, which do not belong to the Agency and the relevant unit under audit, including the mass media.

Taking into account the above arguments the court finds that the Art. 13, s. 1 APIA principle of free access to official public information may not be applied. The information requested is an official secret, which is the basis for the refusal to provide it. It also falls under the category „another kind of secret provided by law (in that case, ISFCA), in the sense of Art. 7, s. 1 APIA.

Drawn upon the above arguments the refusal of the Minister of Finance appears in conformity with the law and consistent with the substantive premises under APIA, and the complaint should be dismissed.

Based on the above statement and on grounds under Art. 42, s. 1 APA in conjunction with Art. 28 SACA, the Supreme Administrative Court, Fifth Division,

DECIDED:

TO DISMISS the complaint of Mr. Kiril Dimitrov Karaivanov from Sofia against the tacit refusal of the Minister of Finance to provide access to public information.

The present judgment is subject to appeal on matter of law before a five-member panel of the court within 14 days of notification to parties.

Presiding Justice: (signed) **Mr. Andrey Ikonov**

Panel Members: (signed) **Ms. Zaharinka Todorova** and (signed) **Ms. Tanya Radkova**

**ATTN. SUPREME ADMINISTRATIVE
COURT
FIFTH DIVISION
C/O THE SUPREME
ADMINISTRATIVE COURT**

CASSATION COMPLAINT

APPEAL ON POINTS OF LAW TO A FIVE-MEMBER PANEL

IN ADMINISTRATIVE CASE No 6234/01

Filed by **Mr. Alexandar Emilov Kashamov, attorney-at-law**

Acting for Mr. Kiril Dimitrov Karaivanov,

Applicant in administrative case No 6234/01

AGAINST

Judgment No 1826/26th February 2002

of the Supreme Administrative Court, Fifth Division

ON THE BASIS OF

Articles 33 through 40 of the Supreme Administrative Court Act (SACA)

Honorable Justices,

On grounds of Art. 218b, s. 1, item „c“ of the Civil Procedure Code read in conjunction with Art. 11 SACA and Articles 33 – 40 SACA I hereby appeal Judgment No 1826 of 26th February 2002 delivered on administrative case registered by No 6234 in the Supreme Administrative Court, Fifth Division. Judgment has been delivered in contradiction of substantive legal provisions.

1. It appears the 3-member panel of the Supreme Administrative Court found it satisfactory to consider only the question whether the information requested by applicant fell under the category of a secret provided by law and based on that consideration the conclusion that access had been denied in conformity with the law. However the sole consideration of this issue is insufficient for the determination of refusal to grant access as lawful.

2. The court has not considered the issue whether all the information in the requested audit report fell under the category of official secrecy, as provided for in Art. 3, s. 4 and Art. 12, s. 3 of the Internal State Financial Control Act (ISFCA). According to the text of the above provisions Agency officials are bound to withhold facts and circumstances, which they might have collected for the purpose of or in connection with the exercise of their official duties. Each audit report, however, contains, beside the aforementioned category of data, other kinds of information, i.e. generated by AISFC officials. The latter would obviously fall out of the category of secrecy as provided by law.

3. In view of having enough knowledge of the facts for judging whether all the information in the audit report falls under official secrecy exemption, the court had had to collect as evidence ex officio, in accordance with Art. 41, s. 3 of the Access to Public Information Act (APIA), a copy of the audit report for inspection in camera.

4. As the Constitutional Court held in its Judgment 7/96 the restrictions on the right of access to information are only admissible in sake of the protection of other rights and legal interests, which are also guaranteed by the Constitution. Therefore the matter of the case should have been to establish whether the restriction on the right of access to information has been intended to reach the Constitutionally proclaimed purpose. For that examination the court had had to find clearly and undoubtedly which rights or legal interests would have been threatened if eventually access to the audit report had been provided (if such purpose of protection had been borne at all by the defendant).

5. Obviously in the audit report there is information the disclosure of which would not harm anybody's rights. At the same time, if a ground of restriction on the access to information right were found related to protection of rights of the legal entity audited, the court had had to seek evidence whether this entity had been asked for consent to disclose the information requested in conformity with Art. 31, s. 2 APIA. Besides, yet another issue needs to be decided on, i.e. whether a third person under state audit procedure is entitled to control over such information, since by Art. 31, s. 5 APIA the legislators have determined that public interest in obtaining the information overrides the interest of the entity to keep the information confidential.

6. In the course of proceedings before the 3-member panel of the Supreme Administrative Court defendant provided no evidence with regard to the presence of any right or legal interest protected by a restriction on the right to access to information. Defendant had been under the obligation to do so as he was subjected to APIA, and in the course of his review on the legality the court was subject to the obligation to investigate this issue, since „...restrictions on (exemptions from) these rights [freedom of expression, the right to seek, impart and receive information and the right to access information] may be applied only restrictively and only for the protection of a conflicting interest“, as per Judgment of the Constitutional Court No 7/97.

In view of the above and on grounds mentioned I plead that this esteemed court reverse the judgment complained against, which was delivered by a 3-member panel of the Supreme Administrative Court and further rule on the merits of the case, declaring the refusal of the Minister of Finance unlawful.

Special request: I would request that the court obtain a copy of the audit report, access to which had been denied, by official order, and inspect it in camera.

Respectfully yours,

The Attorney

**ATTN. FIVE-MEMBER PANEL OF
SUPREME ADMINISTRATIVE
COURT
REPUBLIC OF BULGARIA**

WRITTEN STATEMENT

UNDER ADMINISTRATIVE CASE No 3363/02

Filed by

Mr. Alexandar Emilov Kashamov, attorney-at-law,

Acting for the applicant

Honorable Justices,

I am hereby asking to reverse a judgment delivered by a three-member panel of the Supreme Administrative Court for the reason it is not in conformity with the law – a ground for cassation under Art. 218b, s. 1, item „c“ of the Civil Procedure Code, and to issue a judgment on the merits of the case, in the sense of declaring the tacit refusal to grant access to the information, subject to this case unlawful. I have the following arguments in support of the above:

1. In the course of enforcement of the Access to Public Information Act (APIA) the purpose of that law should be borne in mind. APIA was adopted as part of the legislation related to the administrative system reform. At the same time it undoubtedly is part of anti-corruption legislation.

A five-member panel of the Supreme Administrative Court has found in Judgment No 4696 of 16th May 2002 ruled in administrative case No 1543 of 2002 that: „Access to public information is of considerable importance in a democratic society for ensuring transparency in state administration and the availability of information on matters of public interest. In Recommendation (2002)2 of the Committee of Ministers of the Council of Europe to Member-States on access to official documents it has been set forth that „wide access to official documents – allows the public to have an adequate view of, and to form a critical opinion on, the state of the society in which they live and on the authorities that govern them, whilst encouraging informed participation by the public in matters of common interest; fosters the efficiency and effectiveness of administrations and helps maintain their integrity by avoiding the risk of corruption; contributes to affirming the legitimacy of administrations as public services and to strengthening the public's confidence in public authorities“.

Authorities exercising financial control over budget expenditure fulfill important functions intended to protect the public interest, therefore their activities may not remain cocooned in secrecy and unaccountable to citizens, who are the main source of budgetary income and to whose benefit it should be spent and managed.

2. Quite rightly in the present case the three-member panel of the Supreme Administrative Court has found that the Minister of Finance is subjected to APIA provisions, therefore an obligation had arisen for him to rule on the applicant request to produce a copy of the demanded audit report, which contained public information. Yet another finding proves to be correct, i.e. Internal State Financial Control Act (ISFCA) contains a restriction on communication of information related to official secrecy. According to Art. 3, s. 4 ISFCA internal state financial control officials observe the principle of „protecting official secrecy“ in the process of implementing the act – non-disclosure and non-provision of information they collected for the purpose of and in connection with the exercise of their official duties, unless law stipulates otherwise“.

3. In the present case, however, the obligation to grant information has been provided for by the law. The Access to Public Information Act (APIA) regulates the constitutional right of citizens of access to information, which has been generated and kept by state authorities. According to APIA the right of access may only be restricted where the information is a secret protected by law – Art. 7, s. 1. According to Judgment of the Constitutional Court No 7 of 1996 delivered in constitutional case No 1 of 1996 the right of citizens of access to information, respectively the duty of the State to grant such, is set forth in Art. 41, s.1 of the Constitution (division V, para. 1, sentence 1 of the operational part of the Judgment). According to Art. 41, s. 1, sentence 2 „The exercise of this right may not be directed against the rights and reputation of other citizens, national security, public order, health and morals“. Therefore grounds for restriction on the right of access to public information should not only be provided for in an act of the Legislative branch of Government, but should also be tied to the protection of rights and legal interests narrowly and exhaustively listed in the Constitution; and division III, para. 3, sentence 2 of the operational part of Judgment No 7 of 1996 of the Constitutional Court states that „their restriction by law is not allowed (of rights under Articles 39 – 41) on grounds falling outside those listed in the Constitution“; and division III, para. 3 emphasizes „...restrictions on (exemptions from) these rights [freedom of expression, the right to seek, impart and receive information and the right to access information] may be applied only restrictively and only for the protection of a conflicting interest“.

4. The above outline illustrates that constitutional authors have introduced a requirement that restrictions on the right of access to public information should satisfy together two conditions: they should be:

- 1) provided by act of Parliament and
- 2) intended to protect some of the rights and legal interests listed in the Constitution.

The use of the word „only“ in the interpretation given by the Constitutional Court and cited above introduces implicitly a third obligation on the authorities:

- 3) to follow the principle of proportionality while applying restrictions, i.e. restrictions may be imposed only for the purpose of protection and to the extent they protect constitutional rights and interests.

The same third obligation is drawn out of the expression that restrictions should be „restrictively applied“.

5. In the Internal State Financial Control Act legislators did not follow the requirements set forth in Art. 41, s. 1 of the Constitution to describe precisely, in an express provision, the rights and interests protected by the exemption of official secrecy. This gap was not filled in by secondary legislation as well (see Regulation for the Application of ISFCA). The above lack of norms, however, does not exempt the Minister of Finance from his duty to take into account the aforementioned

constitutional requirements when applying restrictions to the right of access to information. In Division III, para. 3 of the operational part of the constitutional judgment cited the court has clearly indicated that the duty to apply restrictions in compliance with above-mentioned requirements is addressed to legislative, executive, and judicial authorities. Therefore the Minister of Finance who belongs to the executive is subjected not only of ISFCA, but also to the Constitution, and consequently he is obliged to balance between the constitutional right of citizens of access to public information and relevant conflicting rights or interests.

6. APIA indicates the manner of drawing this balance without impairing anyone's rights □ Art. 7, s. 2 envisages granting partial access to information, and Art. 37, s. 2 envisages granting partial access in cases where a restriction is applicable, which pertains to state or official secrecy, or to the working documents exemption (Art. 13, s. 2). Where third party rights are concerned, their consent should be sought in accordance with Art. 31. If such consent is not given he should apply Art.31, s., i.e. to provide information to the necessary scope and in an appropriate manner (in this sense Judgment No 9822 of 18th December 2001 in administrative case No 5736 of 2001 of the Supreme Administrative Court, Fifth division, a three-member panel). To fulfill these legal obligations, the Minister had to identify rights and interests, which are protected by the exemption of official secrecy first. That is what the defendant didn't do in the present case.

7. Art. 15 of the State Financial Control Act repealed (publicized in the State Gazette No 12 of 1996 and repealed in a State Gazette publication No 92 of 2000) may serve as an indication as to identifying rights and interests protected by official secrecy pertaining to taxation auditing. According to s. 1, item 4 of this provision state financial control authorities were bound „not to disclose or transfer to anyone information they had come to know in relation to their office, where this information represented a banking, commercial or another type of secret, which is under protection of a law“. According to s. 4 of the same provision information on audits could be provided by the Head of the relevant State Financial Control Directorate or auditing service after finishing the audit procedure.

These provisions support the conclusion that that secrecy protects three groups of rights:

- 1) rights of individuals to non-disclosure of personal data under the Personal Data Protection Act currently in force,
- 2) rights of legal entities to non-disclosure of banking and commercial secrecy, i.e. prevention from unfair competition under the Competition Protection Act,
- 3) the right to non-disclosure of the fact of commencing a taxation audit (analogous to the right under Art. 191, s. 4 of the Criminal Procedure Code), which is the right of citizens to a guaranteed and effective financial control over public funds expenditure.

The rest of the information, which is undoubtedly of public interest, may and should be made available. It would be a sufficient condition if that audit has been completed and, eventually, anonymity of individuals and numbers of bank accounts of the company under inspection (audit) are guaranteed.

8. After identifying the information from the audit report related to protected rights and interests, the authority should make yet another assessment □ whether disclosure would impair the above rights and interests. Impairment should be understood as harm or threat of harm, as our legislators accurately interpreted this notion in the definition of official secrecy set forth in Art. 26 of the Classified Information Protection Act.

9. The fact that certain information within the audit report requested was subject to disclosure to the public was supported also by a letter attached to the file, namely the one under ref. No K-94-00-0025 of 11th July 2001 issued by the Director of AISFC. In that letter the Director stated, „The access to information request did not contain „specific questions“. According to APIA, however, the obligation to provide protection to third parties and for blackening phrases or paragraphs from a document was on the authority, which holds the information, not on the ones who have the right. That protection may be done either by blackening paragraphs from the text, once it has been printed out, or (where the text to be blackened is quite voluminous) - referring to Art. 27 APIA and using an adequate form to grant information. Information, however, concerning results of an audit – whether any deficiencies or other infringements have been found, and if so, what they were – whether any wrong-doings have been found in reporting practices used, accounting included, whether data have been collected pertaining to criminal activity, etc. - is to be considered public and no grounds exist to deny access thereto.

10. The Constitution and APIA do not allow separate authorities of the State to be exempted from the duty to provide access to public information. According to Art. 2, s. 1 APIA the objective of the act is to provide the public with an opportunity to form their own view of the units subject to the act. If a statement was supported that all data related to activities of ISFC officials were secret, it should then be true that citizens would never be able to obtain information, under any circumstances, on the basis of which they might form a view of the operations of said authorities. Thus, the rule that restrictions to the right of access are tied to the content of the information, and not to the entity generating and keeping it, would be infringed upon.

11. In this case a tacit refusal of the Minister of Finance is being appealed. That refusal was not ruled in compliance with legal requirements as to form – in writing, as set forth in Articles 38 – 39 APIA, nor have procedural provisions been conformed to (S. in this sense Judgment No 2764 of 25th March 2002 of a three-member panel of the Supreme Administrative Court), therefore it is illegal.

Based on the foregoing I plead that you reverse the three-member panel judgment of SAC as contrary to the law and declare the tacit refusal of the Minister of Finance unlawful. The form required by law has not been complied with, examination of the application for access has not been in conformity with the law, and substantive legal provisions have not been correctly applied, on account of which I would request the to order the Minister of Finance to deliver a decision providing access, accompanied with binding instructions as to the application of the act.

Respectfully yours,

The Attorney

JUDGMENT**No 7340**Sofia, 19th July 2002**IN THE NAME OF THE PEOPLE**

A five-member panel of the Supreme Administrative Court of the Republic of Bulgaria, at a court sitting held on 28th of June 2002, in panel composed of the following justices:

THE PRESIDING JUDGE: JUSTICE EKATERINA GRANCHAROVA**AND THE FOLLOWING MEMBERS: JUSTICES ALEXANDAR ELENKOV, VESSELINA KALOVA, MILKA PANCHEVA, AND VANYA ANCHEVA**

In presence of Secretary Mrs. Madlen Dukova,

Attended by Mr. Ivan Lulchev, the Prosecutor,

Heard a report submitted by **Justice MILKA PANCHEVA** on administrative case No 3363 of 2002.

The case was preceded on the basis of Art. 33, s. 1 of the Supreme Administrative Court At (SACA). By Judgment No 1826 of 26th February 2002 a three-member panel of the Supreme Administrative Court rejected the complaint filed by Mr. Kiril Dimitrov Karaivanov from Sofia against a tacit refusal of the Minister of Finance to provide access to public information. Acting through his attorney, Mr. Kiril Dimitrov Karaivanov filed a request for review on matters of law asking that the appealed judgment be reversed as contradicting substantive legal provisions. The court found that the requested information constituted a secret protected by the law without considering the issue whether the information contained within the audit report requested fell, in its entirety, within the scope of official secrecy, as regulated in Art. 3, s. 4 and Art. 12, s. 3 of the Internal State Financial Control Act (ISFCA). The issue whether the legal entity audited had been asked for consent to provide the information in accordance with Art. 31, s. 5 of the Access to Public Information Act (APIA) was not addressed, neither the question of the applicability of Art. 31, s. 5 APIA was considered, whereby legislators have determined that public interest in obtaining information overrides the interest of an individual or entity to keep the information confidential.

Karaivanov's request to this court is to rule on the merits of the case and reverse the refusal of the Minister of Finance. At the hearing, being duly summoned, applicant appeared in person and was additionally represented by his attorney, he maintained his claims, and developed additional arguments. He also submitted written observations. Defendant in the case, the Minister of Finance, was represented by attorney, who requested rejection of the cassation complaint. According to him the three-member panel rightly considered that the information requested constituted an official secret.

The representative of the Supreme Administrative Prosecution Office considers the cassation complaint ill-founded. The court provided adequate arguments in support of its view that the tacit refusal of the Minister of Finance to provide the public information requested was in conformity with the law. According to Art. 37, s. 1 APIA access to public information, which constitutes an official secret, should be denied. Art. 12 ISFCA subjects Agency for Internal State Financial Control officials to the obligation to withhold facts and circumstances they have come to know for the purpose of and in connection with the exercise of their official duties.

The Supreme Administrative Court assessed submissions outlined in the cassation complaint, considered written evidence collected in the case, and found the complaint admissible, as regards procedural requirements, and ill-founded, as regards its merits, for the following arguments.

A basic constitutional right of citizens is the one to information, set forth in the provision of Art. 41, s. 2 of the Constitution of the Republic of Bulgaria. This constitutional right to information has been further guaranteed and its exercise regulated in the Access to Public Information Act (APIA) (Publicized in the State Gazette, No 55 of 7th July 2002). The notion of „public information“ has been defined in Art. 2, s. 1 APIA as „any information pertaining to public life in the Republic of Bulgaria, which provides citizens an opportunity to form their own view with regard to activities of the persons obligated under the present act“. The act distinguishes between two types of public information – official and administrative. The information contained in acts of state and municipal authorities delivered in exercise of their power, as provided for by the law, is official – Art. 10 APIA. The information collected, generated, and kept in relation to official information and to authorities' actions and the ones of their administrative services, is administrative – Art. 11 APIA. The present case concerns a request for access to administrative public information, access to which under Art. 13, s. 1 APIA is free and granted following procedures set out in the act.

The three-member panel has provided reasoning for the non-applicability of the general Art. 13, s. 1 APIA principle on free access to administrative public information, bearing in mind the information requested is an official secret, which is the ground for refusing access. The court has given arguments in support of this particular conclusion based on para. 1 of the Additional Provisions to the Regulation for the Application of ISFCA, the latter setting an obligation for the internal auditor to withhold facts and circumstances which he/she may have come to know in the delivery of controlling functions.

The above conclusion of the three-member panel is correct and in conformity with provisions of substantive law.

This view of the court is supported with provisions envisaged in yet another piece of special legislation. According to para. 1, item 1 of the Supplementary Provisions to the Taxation Procedure Code (as of the moment of submitting the request for access to information – State Gazette No 103 of 1999) the notion of „official secret“ covers specific personal data of individuals and entities within taxation procedures, as well as certain precisely enumerated facts, among which are: item „b“ – the nature, source and amount of income and/or revenue and expenditure; item „e“ – the value and type of assets and liabilities or property; item „f“ – any other data obtained, certified, prepared, or collected by a taxing authority in the course of taxation proceedings upon completion of activities envisaged in this act.

Provisions cited above lead to a conclusion that the classification of information contained within an audit report as „official secret“ is not left to the discretion of the relevant authority or of the individual or entity under inspection. Besides, the entire content of any audit report, not separate parts thereof, are labelled, by virtue of the act, as „official secret“. Therefore it has not been necessary under the present case for the administrative authority approached to request express written consent from the third party in accordance with the provision of Art. 31, s. 2 APIA or to establish the presence of hypotheses under Art. 31, s. 5 of the same act. Legislators have determined data included in a audit report on the occasion of a tax inspection should not become generally known.

On account of the above arguments the court has found that cassation grounds under Art. 218b, s. 1, item „c“ of the Civil Procedure Code in conjunction with Art. 11 SACA, as regards annulling the contested judgment, are not applicable, since the three-member panel has formerly ruled a correct judgment, which is in conformity with substantive legal provisions and in compliance with procedural rules.

Therefore and on the basis of Art. 40, s. 1 SACA the present five-member panel of the Supreme Administrative Court

DECIDED:

TO UPHOLD JUDGMENT No 1826 of 26th February 2002 delivered on administrative case No 6234 of 2001 by a three-member panel of the Supreme Administrative Court.

The present judgment is final.

PRESIDING JUDGE: (signed) Ms. Ekaterina Grancharova

MEMBERS: (signed) **Mr. Alexandar Elenkov**

(signed) **Ms. Vesselina Kalova**

(signed) **Ms. Milka Pancheva**

(signed) **Ms. Vanya Ancheva**

For conformity to the original,

The Secretary

(signed) M. P.

Kozarov
v. Minister of Labour and Social Policy

THE MINISTER OF LABOUR AND
SOCIAL POLICY
MRS. LYDIA SHULEVA

REQUEST FOR ACCESS TO PUBLIC INFORMATION

by **Strashimir V. Kozarov**

Dear Madam Minister,

I request on the basis of the Access to Public Information Act to be provided with paper copies of the following categories of information:

1. Number of the registered disabled persons in the Republic of Bulgaria as of 31 December 2001, respectively with physical, hearing, seeing and mental impairments, classified by the standard percentages of lost work capacity, namely from 50% to 70%, from 71% to 90% and above 90%.
2. Data on the employment of disabled persons in working age by type of impairment and loss of working capacity
3. For the period 2000-2001:
 - Number of the provided free hearing aids and free batteries from the Rehabilitation and Social Integration Fund (RSIF) to disabled persons with hearing impairments of more than 50%, i.e. with a loss of working capacity of over 50% recognized by the Labour Readjustment Commission as having lost 50% of their work capacity;
 - Number of the provided from the RSIF free hearing aids and free batteries to disabled persons with hearing impairments of more than 50% with a loss of working capacity of over 50% **not** recognized by the Labour Readjustment Commission as having lost 50% of their work capacity.

I would like to note the following in connection with my request for information:

The information I request is for aggregate data due to which the access to it could be limited on no legal grounds.

Due to the above I trust that I shall be granted access to the data requested by me in the 14-day time frame prescribed by law.

Yours sincerely,

S. Kozarov

Sofia

THE MINISTER OF LABOUR AND
SOCIAL POLICY
MRS. LYDIA SHULEVA

REQUEST FOR ACCESS TO PUBLIC INFORMATION

by **Strashimir V. Kozarov**

Dear Madam Minister,

On 29.01.2002 I sent you a request for access to public information. I have received no reply so far although the time limits prescribed by the Access to Public Information Act have elapsed.

If you do not have detailed data I request an official answer that you do not have them. If you do not have the right to provide such information I request an official answer with an express indication of the grounds on which you are refusing to provide me with the information.

I would like to note the following in connection with my request:

1. The Access to Public Information Act is in force and obliges expressly the government and local authorities to provide access to information. Should they fail to do so administrative sanctions should be imposed.

2. The law obliges you to reply to my request with a decision on granting access or on refusing access within a 14-day time limit. A tacit refusal as is yours is not admissible at all.

On the basis of the above I request once again on the grounds of the Access to Public Information Act that I be provided with paper copies of the following categories of information:

1. Number of the registered disabled persons in the Republic of Bulgaria as of 31 December 2001, respectively with physical, hearing, seeing and mental impairments, classified by the standard percentages of lost work capacity, namely from 50% to 70%, from 71% to 90% and above 90%.

2. Data of the employment of disabled persons in working age by type of impairment and loss of working capacity

3. For the period 2000-2001:

- Number of the provided free hearing aids and free batteries from the Rehabilitation and Social Integration Fund (RSIF) to disabled persons with hearing impairments of more than 50%, i.e. with a loss of working capacity of over 50% recognized by the Labour Readjustment Commission as having lost 50% of their work capacity;
- Number of the provided from the RSIF free hearing aids and free batteries to disabled persons with hearing impairments of more than 50% with a loss of working capacity of over 50% **not** recognized by the Labour Readjustment Commission as having lost 50% of their work capacity.

I would like to note the following in connection with my request for information: The information I request is for aggregate data due to which the access to it could be limited on no legal grounds.

Due to the above I trust that this time I shall be granted access to the data requested by me in the 14-day time frame prescribed by law.

Yours sincerely,

S. Kozarov

Sofia

THROUGH THE MINISTER OF
LABOUR AND SOCIAL POLICY
TO THE SUPREME
ADMINISTRATIVE COURT
OF THE REPUBLIC OF BULGARIA

COMPLAINT

by **Strashimir Kozarov**,

AGAINST: refusal by the Minister of Labour and Social Policy to grant information

ON THE GROUNDS OF: Article 40, paragraph 1 of the Access to Public Information Act in connection with Article 5, paragraph 1 of the Supreme Administrative Court Act

Honorable Judges,

On 29.01.200. I submitted a request for access to information to the Minister of Labour and Social Policy. I requested to be granted the following information:

1. Number of the registered disabled persons in the Republic of Bulgaria as of 31 December 2001, respectively with physical, hearing, seeing and mental impairments, classified by the standard percentages of lost work capacity, namely from 50% to 70%, from 71% to 90% and above 90%.

2. Data of the employment of disabled persons in working age by type of impairment and loss of working capacity

3. For the period 2000-2001:

- Number of the provided free hearing aids and free batteries from the Rehabilitation and Social Integration Fund (RSIF) to disabled persons with hearing impairments of more than 50%, i.e. with a loss of working capacity of over 50% recognized by the Labour Readjustment Commission as having lost 50% of their work capacity;
- Number of the provided from the RSIF free hearing aids and free batteries to disabled persons with hearing impairments of more than 50% with a loss of working capacity of over 50% **not** recognized by the Labour Readjustment Commission as having lost 50% of their work capacity.

I did not receive a reply to my request within the prescribed 14-day time limit. On 13.02.2002 I submitted a second request for access to public information with the same subject, in which I explained in detail my right to receive the requested data, noting that to be refused access to information is unacceptable without indicating which limitation under the APIA is precisely the reason for the refusal.

Once again I did not receive a reply within the prescribed 14-day time limit.

The refusal of the Minister of Labour and Social Policy to provide me with the required information is a violation of substantive and procedural law.

1. Contradiction to substantive law

The information I requested with the request represents public information in the meaning of Article 2, paragraph 1 of the APIA. It is connected with public life in the Republic of Bulgaria. The information I requested was connected with the social condition of disabled persons in Bulgaria – a social group needing a maximum level of protection from the state. The information collected by the government on these issues reveals also the level of its commitment and its capacity to undertake steps for complying with its legal obligations *vis a vis* this social group. Therefore, from the requested information I could form an opinion on the activities of the Ministry of Labour and Social Policy in this respect.

Nothing indicates that the information falls within any of the limitations provided for in the APIA.

Therefore the refusal of the Minister of Labour and Social Policy is in contradiction to substantive law

2. Substantial contradiction with procedural law – Article 38 of the APIA and Article 15 of the Administrative Proceedings Act

Whether issuing the requested administrative act or whether refusing to do so the law requires the respective authority to make a pronouncement with a substantiated decision (Article 15 of the Administrative Proceedings Act). Apparently there is no such decision in this case. The imperative provision of Article 15, paragraph 2 of the Administrative Proceedings Act requires a written form of the act, respectively of the refusal. A written form of the refusal is required also by the special law – Articles 38-39 of the APIA and the decision on refusing must indicate the legal and factual grounds for the refusal. These legal requirements have not been complied with at all, which is a substantial violation of the provision of the legal procedure.

On the basis of the above I ask the Honorable Court to **REVERSE** the tacit refusal of the Minister of Labour and Social Policy to make a pronouncement on my request for access to public information, to decide the case in substance and to sentence the respondent to provide me with the requested information.

I enclose:

1. A copy of request ref, No. 1/29.01.2002
2. A copy of request ref, No. 2/13.02.2002
3. A receipt for paid state fee.

Yours respectfully:

JUDGMENT**Nº 7616**

Sofia, 29.07.2002

IN THE NAME OF THE PEOPLE

The Supreme Administrative Court of the Republic of Bulgaria – Fifth Panel in a hearing held on the twenty-eighth of May of the year two thousand and two, composed of:

CHAIRPERSON: EKATERINA GRUNCHAROVA

**MEMBERS: MILKA PANCHEVA
DIANA DOBREVA**

with Secretary Maria Popinska and in the attendance of Public Prosecutor Elena Encheva heard the report of **Judge MILKA PANCHEVA** on administrative lawsuit No. 3631/2002.

The proceedings are under Article 40, paragraph 1 of the Access to Public Information Act. A complaint has been received from Strashimir Vassilev Kozarov of the city of Sofia against a tacit refusal of the Minister of Labour and Social Policy to provide information to his request of 13.02.2002. He has not received a reply within the time limit prescribed by the law, has submitted a second request with the same subject to which there was no reply either. It is believed that the Minister's refusal contradicts the substantive law and the procedural provisions. He is asking the tacit refusal of the Minister to make a pronouncement on his request for access to public information to be repealed, the case to be decided in substance and the respondent to be sentenced to provide the requested information. The respondent who has been duly summoned has not appeared at the court hearing and is not represented.

The respondent in the case - the Minister of Labour and Social Policy, duly summoned is represented by a legal advisor who is challenging the complaint and deems it inadmissible. The Ministry does not possess the requested information; it is being kept in the Rehabilitation and Social Integration Fund at the Ministry of Labour and Social Policy, to which the request should be referred. Such inaction is not tacit refusal and is not an act of the Minister, which is fit to be appealed against. The representative of the Chief Administrative Prosecutor's Office finds the complaint justified. The requested information is such in the meaning of Article 2, paragraph 2 of the Access to Public Information Act, the access to it does not fall within the limitations envisaged in Article 37 of the APIA.. The administrative authority has failed to comply with its obligations under Article 14 of the APIA.

The Supreme Administrative Court considered the objections in the complaint and the written evidence collected in connection with the case and deems as established facts the following:

ON THE ADMISSIBILITY OF THE COMPLAINT:

This panel accepts the complaint as procedurally admissible due to the following considerations:

There are two requests for access to public information in the case with almost identical content, on which there are incoming dates of the Ministry of Labour and Social Policy of 13.02.2002 and of 11.03.2002. There is no incoming date of the Ministry of Labour and Social Policy on Strashimir Kozarov's complaint addressed through the Minister to the Supreme Administrative

Court; there is no postal envelope from which to establish the exact date of serving the procedural complaint. The date on the accompanying letter No. 94-CC-100/ 11.04.2002 certifies the moment of sending the complaint by the Ministry to the Supreme Administrative Court and could not be taken into consideration when determining its procedural admissibility.

ON THE JUSTIFIABILITY OF THE COMPLAINT

The plaintiff has submitted to the Minister of Labour and Social Policy two requests with which he requested to be provided with information that is specified in detail. The claim in the complaint that the administrative authority has not responded to the request is not challenged by the respondent in the case. The Court finds the request attached to be in compliance with the requirements of Article 25, paragraph 1 of the APIA, consequently the respondent has been duly approached under the terms and conditions established in the provisions of the APIA and owes making a pronouncement. The law differentiates two types of information – public and official. Public is the information contained in the acts of government and local authorities issued in the course of their legally established powers – Article 10 of the APIA. Official is the information collected, compiled and kept in connection with the public information and the activities of the authorities and their administrations – Article 11 of the APIA.

The access to this information is free and takes place under the procedure of this act while the grounds for refusal are referred to in Article 37, paragraph 1 of the APIA – when the information is a state or official secret, affects the interests of a third party and it has not given its express consent or the requested information has been provided to the applicant during the preceding six months.

According to Article 28, paragraph 1 of the APIA the request for obtaining access to public information should be considered in the shortest possible time but not later than 14 days following the registration. The administrative authority has the right to judge: are the necessary prerequisites under the law present for providing the requested information or alternatively the grounds provided for in Article 37, paragraph 1 of the APIA for refusal of access. If there are no hindrances for satisfying the request of the applicant, the respective authorities or persons authorized expressly by them make a decision on providing access to the requested public information adhering to the provision of Article 34, paragraph 1 and 2 of the APIA of which the applicant should be expressly notified – paragraph 3 of the same provision.

An act of the Minister of Labour and Social Policy is not to be found in the case which might represent a decision in the meaning of Article 34 of the APIA on providing access or a refusal under Article 38 in connection with Article 37 of the APIA, which would indicate the legal and factual grounds for a refusal, the date of adopting this decision and the procedure for appealing against it. This Court cannot substitute the will of the administrative authority and make a pronouncement on the substance of the request.

Immaterial to the outcome to the dispute are the objections made in the courtroom by the procedural agent of the respondent about an incorrectly directed request. The request in writing made by the applicant is authentic and the addressee of the request is the authority, which is to judge whether to make a pronouncement on the request or whether it should refer it to a respective agency. Therefore the tacit refusal of the Minister of Labour and Social Policy to make a pronouncement on the request by Strashimir Vassilev Kozarov should be repealed and the file should be returned for consideration in substance.

Led by the considerations set forth above and on the grounds of Article 28 of the Supreme Administrative Court Act the Supreme Administrative Court – Fifth Panel:

RULES:

REPEALS the refusal of the Minister of Labour and Social Policy to make a pronouncement with a decision on the request by Strashimir Vassilev Kozarov of the city of Sofia, 32, Golash Street, entrance B for obtaining information pursuant to a submitted request with an incoming date of 13.02.2002.

REFERS the file back to the administrative authority for consideration of request ref. No. 94-CC-00/ 13.02.2002 in compliance of the instructions of this case.

This judgment can be appealed against before a five-member panel of the Supreme Administrative Court within 14 days from the notification of the parties that the judgment has been issued.

True to the original,

Secretary:

CHAIRPERSON: (signed) **Ekaterina Gruncharova**

MEMBERS: (signed) **Milka Pancheva**

(signed) **Diana Dobрева**

Lazarov
v. Council of Ministers

**ATTN. INFORMATION AND
PUBLIC RELATIONS DIRECTORATE
COUNCIL OF MINISTERS
REPUBLIC OF BULGARIA**

REQUEST FOR ACCESS TO INFORMATION

Filed by **Alexey Yurdanov Lazarov**
Head of Home Policy Department
Capital Newspaper
Sofia, 31st July 2001

Ladies and Gentlemen,

On the basis of the Access to Public Information Act I hereby wish to obtain a copy of the verbatim record of a meeting of the Council of Ministers held on 26th July 2001.

I wish to obtain this information as a paper copy or another type of appropriate technical means for storing information.

I would allow to take the occasion and wish you success, thanking you in advance for your efforts.

Respectfully yours,

Alexey Lazarov

REPUBLIC OF BULGARIA
COUNCIL OF MINISTERS

ATTN. MR. ALEXEY LAZAROV
HEAD OF HOME POLICY
DEPARTMENT
CAPITAL NEWSPAPER

DEAR MR. LAZAROV,

Further to your request for access to public information and, more specifically, for the verbatim report of a session at the Council of Ministers on 26th July 2001, I can inform you of the following:

A verbatim record of a meeting is a document related to Government preparatory work and is not significant in itself. The minutes of the Cabinet's will is related to preliminaries in preparation of its acts and **access to this information is restricted in accordance with Art. 37, s. 1, item 1 read in combination with Art. 13, s. 2, item 1 of the Access to Public Information Act (APIA)**. Sessions at the Council of Ministers are not public and information concerning them is provided through a specialized unit of the Government administration, namely the Information and Public Relations Directorate. This information is characterized as public information. Therefore access to the verbatim report of the session at the Council of Ministers on 26th July 2001 may not be granted to you.

Decisions refusing to grant access to public information may be appealed before the Supreme Administrative Court following the procedure laid out in the Supreme Administrative Court Act.

INFORMATION AND
PUBLIC RELATIONS
DIRECOTRATE

THE DIRECTOR:

**ATTN. SUPREME ADMINISTRATIVE
COURT
C/O THE DIRECTOR
OF INFORMATION AND PUBLIC
RELATIONS DIRECTORATE
AT COUNCIL OF MINISTERS**

COMPLAINT

Filed by **Alexey Yurdanov Lazarov**

AGAINST

Decision for Denying Access No 03-07-10 of 13th July 2001
Of the Public Relations Director

Honorable Justices,

On 31st July 2001 I filed a request for access to public information wishing to obtain a copy of the verbatim record from a meeting of the Council of Ministers held on 26th July 2001. My request was addressed to the Information and Public Relations Directorate at the Council of Ministers of the Republic of Bulgaria, whose Director has been delegated the function, by a decree of the Minister of State Administration, to provide public information.

On 13th March 2001 I received a response in writing from the Information and Public Relations Director at the CM of RB, whereby access to the information requested has been denied. According to him, access to similar information was restricted by virtue of Art. 37, s. 1, item 1 read in conjunction with Art. 13, s. 2, item 1 of the Access to Public Information Act (APIA).

The refusal to provide information is a decision in the sense of Art. 28 APIA, it is illegal and contradicts the objectives of said act.

1. The opinion stated in the decision that a verbatim record from the meeting of the Council of Ministers is a document insignificant in itself, does not correspond to the meaning of Art. 13, s. 2, item 1 APIA. The latter exhaustively enumerates documents falling into the category of those which are not significant in themselves. These are documents where opinions and recommendations are stated, prepared by or for the use of the relevant authority, as well as position and consultation papers. Each of the members of the Council of Ministers is an authority of the State, taken alone, and besides, the Council of Ministers is yet another such. The activity Ministers would carry out while taking part in meetings of the Council of Ministers is not aimed at offering an opinion or making a recommendation. Each of them takes part in deliberations and in adoption of the acts of the Council of Ministers, which is a significant element of the procedure for adoption of the acts of said authority, in whose absence it may not be carried out. Interpretation of Art. 13, s. 4 of the Administrative Proceedings Act (APA) evidences that an opinion is a manifestation of will by an authority, which is different from the one in charge of adopting a particular act, the latter being able to take the opinion into account based on discretionary judgment. There is no data that the verbatim record requested has reflected the will of individuals, entities, or authorities other than those composing the Council of Ministers.

Consequently, even though the information contained in a verbatim record is an official one, it falls outside the scope of the definition under Art. 13, s. 2, item 1 APIA.

2. Secondly, even if the information requested fell under the definition of Art. 13, s. 2, item 1 APIA, its interpretation in the process decision would again be in contravention of the objectives of this act. This provision has wrongly been interpreted as introducing an imperative limitation on the right of access to information. In fact it gives the relevant obligated addressee power to assess, on the basis of specific facts, whether to provide the information requested or not. While carrying out the assessment, the authority should draw a necessary balance between principles of openness and protection of the right to information, on the one hand, and of protection of the rights and interests of others, on the other. In the course of assessment it should identify those rights and interests for whose protection access to public information should be restricted. Such rights and interests have been exhaustively listed in Art. 41, s. 1, sentence 2 of the Constitution. Consequently, the act places the relevant authority under the obligation, while exercising discretion under Art. 13, s. 2, item 1, to take account of the specific facts, identify the interest under protection, and draw a balance, as described above. According to Art. 38 APIA this assessment should underlie the reasoning of any refusal. In the instant case the above assessment has not only been omitted, but the obligated addressee of the act, based on an erroneous interpretation of the act, has also decided that access to public information should, under any and all circumstances, be restricted, which contradicts the objectives of the act.

3. Meetings of the Council of Ministers have been alleged, in contravention of the law, not to be public. APIA is not concerned whether meetings of one or other collegiate authority are public or not in view of restricting the right of access to public information. Grounds for restricting access have been exhaustively laid out in Art. 7, s. 1 APIA. Beside this, the Internal Structure Regulations of the Council of Ministers and Its Administration have introduced the principle of publicity in Council of Ministers operations, insofar the preparation and enforcement of its decisions are concerned.

In view and on account of the foregoing I am pleading that the refusal to grant the public information requested be rescinded as contradicting substantive provisions of the law and its objectives.

Special claim: I plead on the basis of Art. 40, s. 3 APIA that you obtain, *ex officio*, posmeeting of the information requested in order to verify the legality of the refusal appealed.

Enlosures:

1. Request Incoming Ref. No 0307-10 of 31st February 2001
2. Decision for Refusing Access No 0307-10 of 13th August 2001
3. Decree No B-36 of 29th December 2001 of the Prime-Minister and the Minister of State Administration
4. A copy of this complaint and written evidence enclosed for defendant.

Respectfully yours,

**ATTN. FIFTH DIVISION
SUPREME ADMINISTRATIVE
COURT**

WRITTEN OBSERVATIONS

IN ADMINISTRATIVE CASE No 7189 of 2001

Filed by: **Alexandar Emilov Kashamov, Attorney-at-Law**

Acting for the Applicant

Honorable Justices,

I hereby am pleading that my complaint be honored and the act appealed rescinded as illegal on account of contravening substantive provisions of the law and the objectives thereof, as well as the file be remitted to the administrative authority in order for it to rule on the merits, in conformity to binding instructions provided by you with regard to the interpretation and enforcement of the law. In addition to the arguments outlined in my complaint, I hereby would wish to submit the following:

I. With Regard to Arguments for Inadmissibility of the Complaint

Counsel acting for the defendant and the representative of the Supreme Administrative Prosecution Office submitted at the court hearing an argument in support of the inadmissibility of my complaint, namely that the decision under dispute had not been made by a competent authority, but a Director of a Directorate, who had been delegated the function to rule on applications for access to public information.

Evidence has been submitted in the case with regard to due authorization of the Information and Public Relations Director. Authorization has been given in Decree No B-36, of 29th December 2001, of the Prime-Minister and the Minister of State Administration. The above piece of written evidence has not been contested following the procedure and within the time limits laid out in the Civil Procedure Code. At the same time, however, counsel for the defendant confirmed at hearing the presence of said authorization. The authorization has a legal basis in Art. 28, s. 2 of the Access to Public Information Act (APIA). Said provision gives the authorities, and individuals identified by them, power to make decisions for granting or denying access to information. These decisions are in substance individual administrative acts in the sense of Art. 2, s. 1 of the Administrative Proceedings Act (APA), since they affect rights of individuals and entities requesting access to information and are subject to review before the competent courts of law, following the rules and procedures of APA and the Supreme Administrative Court Act (SACA) (Art. 40, s. 1

APIA). Therefore the argument that the decision appealed may not be considered an act in the sense of Art. 2, s. 1 APA is ill founded. The fact that the Director who delivered the decision presently appealed is part of the Council of Ministers administration is inconsequential, as regards the issue whether he is competent to deliver acts in the sense of APA. In a number of cases heads of various organizational structures within the system of administration deliver acts of authority following express delegation of powers to this effect, therefore their acts are subject to judicial review if they affect rights and interests of citizens. Constant jurisprudence of the Supreme Administrative Court in this sense is illustrated in the following judgments, among others – 2859 of 27th April 2001 of the Supreme Administrative Court in administrative case No 5816 of 2000, delivered by a five-member panel; No 3716 of 9th June 2000 of the Third Division of the Supreme Administrative Court in administrative case No 3157 of 2000; No 3753 of 12th June 2000 of the Third Division of the Supreme Administrative Court in administrative case No 1514 of 2000. Besides, in the instant case no civil or commercial relations are to be addressed triggering the rules of Art. 36 *et seq.* of the Contracts and Obligations Act (COA) regarding authorization to act on behalf of others, but public ones. Therefore the Director who delivered the act presently appealed is authorized by virtue of the law and of a decree delivered in implementation thereof, to carry out activities of authority, as a complex of rights and duties therewith associated, which affect the legal situation of citizens.

II. With Regard to Illegality of the Decision Presently Appealed

The decision presently appealed has been delivered in contravention of substantive provisions of the law and in deviation from the act's objectives. The Information and Public Relations Director has acted at discretion in a hypothesis to which the act attaches a duty to act in a particular way, known as bound administration.

Art. 13, s. 2, item 1 APIA clearly delineates the scope of discretion regarding decisions for granting or denying access to information. Hypotheses envisaged under Art. 13, s. 2, items 1 and 2 are the only ones within APIA where obligated addressees do not act as bound administration. These provisions need to be interpreted in light of Judgment No 7 of the Constitutional Court rendered in Constitutional Court Case No 1 of 996 □ „As a matter of general principle applying to enforcement of all grounds for limitation, authorities of the Executive, Legislative, and the Judicial branches of Government need to consider the serious public significance vested in communication rights and freedoms, of which a requirement for the narrow enforcement of said limitations ensues“. Interpretation of the above provisions should also correspond to the objectives of the act, as specified in Art. 2, s. 1 APIA □ to provide citizens an opportunity to form their own view of the operations of obligated addressees of the act.

At the outset, Art. 13, s. 2, item 1 APIA covers only information related to routine preparation of the acts. It should, therefore, be clarified what routine preparation of acts includes. We are of the opinion that the stage of preparation should be distinguished from the stage of deliberations and adoption of acts. The first stage is intended to prepare the meetings of the Council of Ministers, and the second □ the deliberations and adoption of acts, which is carried out at meetings. These two stages have been separately provided for within the Internal Structure Regulations of the Council of Ministers and Its Administration, namely in the Preparation of Acts Unit (Articles 56 through 65) and the Council of Ministers Meeting Unit (Articles 66 through 79). Therefore the information generated in the course of procedures provided for in Articles 56 through 65 of the Internal Structure Regulations, which is constituted of views, opinions, and recommendations, may be the only subject of limitation under Art. 13, s. 2, item 1 APIA. This is also evidenced through the use of an additional description with regard to the information related to the preparation of acts □ it is called routine, which again is to emphasize its distinction from the process of deliberations following the stage of preparation.

The above also finds support in the principle of publicity in Council of Ministers operations - where decisions need to be made and then enforced - this principle being laid out in Chapter 6 of the Internal Structure Regulations (Articles 125 - 129). The expression „making decisions“ covers not only the final act, but also the process it completes - of deliberations. Publicity conforms to the objective of APIA, the supreme authority of the Executive being able to record to citizens the goals it intends to pursue in its acts only through said principle.

In addition to the foregoing, yet another ground exists for the absence of any possibility for a discretionary decision. No acts have been adopted at the first meeting, a copy of whose verbatim record has been requested, of the newly elected Council of Ministers. This is evidenced in the absence of any acts being publicized in the State Gazette, indicated in the decision appealed, or by the representative of the defendant at hearing. Had such acts been adopted, they should have been listed in the refusal reasoning, which, according to Art. 38 APIA, should specify the legal and factual grounds thereof.

Consequently, the refusal has been made in contravention of Art. 13, s. 2, item 1 and Art. 7, s. 1 APIA. The reason for this is that outside narrow hypotheses under Art. 13, s. 2, where the requested information could obviously not qualify, access to information may only be denied in presence of a secret stipulated by law and in the absence of any discretion.

The refusal has been made in deviation from the objectives of the act. While making the decision appealed, acting at discretion, the authority has been disserving a different purpose, not the one to ensure maximum access to information in accordance with APIA and to protect rights and interests listed in Art. 41, s.1, sentence 2 of the Constitution and Art. 5 APIA. This is evidenced in the lack of any indication with regard to the interest protected through refusal, to the facts (including what decisions have been made), in the allegation that access to the information requested was limited by virtue of the act, not because of a determination to this effect of the obligated addressee. All of the above occurred with regard to information falling outside the hypothesis of Art. 13, s. 2, item 1 APIA.

In view and on account of the foregoing I hereby am pleading that you honor the complaint and acknowledge the right of the applicant of access to public information, stating the information requested does not fall under restrictions to the right of access, set forth in APIA, to rescind the act appealed as illegal on account of its contradiction with substantive legal provisions, and to remit the file to the administrative authority, which will rule on the merits in conformity to mandatory instructions, provided by you, as to the interpretation and enforcement of the law.

Respectfully yours,

Judgment**No 88, Sofia,**8th January 2002**In the Name of the People**

The Fifth Division of the Supreme Administrative Court of the Republic of Bulgaria, sitting on 11th of December 2002 in panel and composed of the following justices:

Presiding Judge: Justice Ekaterina Grancharova

Panel Members: Justices Milka Pancheva and Diana Dobрева

In presence of Ms. Maria Popinska, the Secretary

And attended by Ms. Anna Bankova, the Prosecutor,

Heard a report presented by **Justice Diana Dobрева** on administrative case No 7189 of 2001.

Proceedings were pursued under Art. 12 *et seq.* of the Supreme Administrative Court Act (SACA) in conjunction with Art. 40, s. 1 of the Access to Public Information Act (APIA).

They were formed upon a complaint of Mr. Alexey Yurdanov Lazarov from Sofia against decision for refusal No 03-07-10 of 13th August 2001 issued by the Information and Public Relations Director with the Council of Ministers. The same decision issued in the form of a notification letter denied the applicant access to public information following his request under incoming ref. No 03-07-10 of 31st July 2001 for a paper or other technically appropriate copy of the verbatim record of a meeting of the Council of Ministers held on 26th July 2001. The reasoning for the refusal was that a verbatim record was a document related to official activities of the Government and had no significance in itself. Reflecting the Government will in a verbatim record was related to the preparation of its acts and access to similar information was restricted in accordance with Art. 37, s. 1, item 1 in conjunction with Art. 13, s. 2, item 1 APIA.

In view of the applicant the refusal was delivered in contravention of substantive provisions of the law – APIA – and contradicted its objectives. On the basis of arguments outlined in detail in his complaint and written observations, the applicant requested its rescission and remittal of the file thereafter to the administrative authority, which should be obligated to rule on the merits, in compliance to binding instructions with regard to the enforcement and interpretation of the law.

Defendant in the complaint – the Council of Ministers – maintained the view the former is inadmissible and ill founded, as regards its merits. Detailed legal arguments to this effect have been submitted in written observations outlining the objections of the Council of Ministers.

The representative of the Supreme Administrative Prosecution Office was of the view that the complaint is ill founded.

This panel of the Fifth Division of the Supreme Administrative Court considers the complaint admissible, as regards procedural requirements, and ill founded, as regards its merits.

Based on evidence submitted, it has been found that the information requested is in substance public. The provision of Art. 2, s. 1 APIA defines the notion of „public information“ as „any type of information related to public life in the Republic of Bulgaria, which gives citizens an opportunity to form their own view of the operations of obligated addressees of the act“. No legal definition,

however, is provided of the notion of „information related to public life“ and as to what characteristics should the information demonstrate, so that it may be considered that it gives „citizens an opportunity to form their own view“. Thus, administrative authorities are conferred a wide margin of discretionary appreciation with regard to providing public information to citizens, which in turn brings problems related to the administration of justice.

The act distinguishes between two types of public information – formal and official. The information contained in acts of state and municipal authorities, delivered in the course of exercising their duties set by law, is formal – Art. 10 APIA. The information collected, generated, and stored in relation to formal information and on the occasion of operations of the authorities and their respective administrations, is official – Art. 11 APIA.

The verbatim record at stake concerns the first meeting of the newly-elected Council of Ministers and parties to the instant proceedings do not dispute the fact that access to official public information is sought on this occasion. Generally, access thereto is free, according to Art. 13, s. 1 APIA, however it could be restricted in presence of hypotheses envisaged under the second section of the provision. These are cases where the information is concerned with routine preparation of the acts of authorities and does not have significance in itself (views and recommendations, prepared by or for the authority, as well as position and consultation papers) – item 1 or the information prepared by the administration of the relevant authorities, containing views and positions in relation to present or forthcoming negotiations conducted by or on behalf of the authority, as well as additional data pertaining thereto – item 2.

In presence of the above hypotheses, upon a decision of the relevant agency, access to the official public information requested may be denied. Otherwise, grounds for refusal to grant public information (formal or official) have been listed in Art. 37, s. 1 APIA and are present, where the information is a state or official secret, affects the interests of a third party, and no express written consent thereof has been provided for granting the information requested, or where the information sought has been provided in the course of the previous six months.

In the instant case the refusal to grant access to official public information presently appealed has been made by a competent authority. Evidence is found in the case – Decree No B-36 – with regard to the due authorization of the Information and Public Relations Director at the Council of Ministers by the Prime-Minister in accordance with Art. 28, s. 2 APIA.

The provision of Art. 40, s. 1 APIA stipulates that the refusal falls within the competent jurisdiction of the Supreme Administrative Court.

The refusal presently appealed has been motivated on the basis of Art. 37, s. 1, item 1 in conjunction with Art. 13, s. 2, item 1 APIA – the verbatim record of a meeting of the Council of Ministers requested concerns the routine preparation of its acts and has no significance in itself.

The analysis of possible grounds for refusal applicable, which APIA has introduced against the background of Art. 7, s. 1, clearly demonstrates that Art. 13, s. 2, item 1 of the act does not introduce an imperative restriction on the right of access to official information. The applicant also shared this view. According to him, this provision, in fact, gave power to the relevant obligated agency to conduct an assessment, drawing a necessary balance between the principles of openness and protection of the right to information guaranteed by Constitution – on the one hand – and the protection of the rights and interests of others – on the other.

According to the applicant said provision, which incontestably allows for discretionary assessment, appears inapplicable in this specific case, which in turn renders the refusal illegal. His argument is that wide interpretation of Art. 13, s. 2, item 1 APIA is inadmissible. Enumeration of clearly delineated hypotheses made by legislators is exhaustive and the information requested would not qualify under any of these. A verbatim record is not an opinion or recommendation, prepared by or for the Council of Ministers, nor is it an opinion or a consultation paper. Therefore there is no ground for making a decision for refusal at discretion.

Written observations argue that routine preparation of Council of Ministers acts should be distinguished from the stage of deliberations and adoption thereof, which would occur at its meetings. These two stages have separately been provided for within the Internal Structure Regulations of the Council of Ministers and Its Administration – correspondingly in the Preparation of Acts unit (Art. 56 – 65) and the Council of Ministers Meetings unit (Art. 66 – 79). Solely information generated on the occasion of procedures at the first stage, in the form of views, opinions, and recommendations, could be subject to restriction under Art. 13, s. 2, item 1 APIA. Following the adoption of the publicity principle with regard to Council of Ministers operations, to making and enforcing its decisions, a principle proclaimed in Chapter 6 of the Internal Structure Regulations (Art. 125 – 129), citizens should be allowed access not only to the final act, but also to the process of its adoption through deliberations. This would ensure compliance to APIA objectives – provide citizens the opportunity of forming their own view with regard to the operations of obligated addressees of the act.

Besides, there had been no ground, as alleged by the applicant, to make a decision at discretion on account of the fact also that no data has been found concerning any acts adopted at the first meeting of the Council of Ministers, a copy of the verbatim record of which has been requested.

The Court does not share the legal arguments of the applicant, noting that the enumeration in brackets under Art. 13, s. 2, item 1 APIA is not exhaustive, but intends to set examples and clarify its provisions. In practice, many various documents may bear upon the preparation of acts of the authorities, therefore exhaustive enumeration thereof in the law is impossible. All those material carriers of information, however, have a clearly outlined common trait – the information therein contained relates to the routine preparation of the acts and has no significance in itself.

The verbatim record requested has rightly been determined by the obligated addressee of the act as falling into the scope of restrictions on access, therefore a refusal for granting it has been made.

According to Art. 76, s. 1 of the Internal Structure Regulations of the Council of Ministers and Its Administration a memorandum is drafted outlining the issues examined at the meeting of the Council of Ministers and the acts adopted.

According to s. 2 upon an order of the Prime-Minister deliberations of certain issues may short-handed. The verbatim record thus prepared is attached to the original of the Memorandum of the respective meeting.

According to s. 3 materials submitted for examination at a meeting of the Council of Ministers, memoranda, and verbatim records of meetings of the Council are official information.

According to s. 4 (As amended in State Gazette No 4 of 2000 in force as of 23rd December 2000) an abstract of the verbatim record is handed over to Directorates that will prepare the final text of the Council of Ministers act, as well as to its author, where a memorandum of the meeting has specified he/she shall prepare the final text of the act. Abstracts of verbatim records are provided by the Director of the Government Chancellery Directorate.

A verbatim record is a short-hand recording of speech with special symbols, abbreviations, and logograms, the use of which allows for considerable rapidity in writing. It is more than obvious verbatim records are used as a means of supporting the operations of the Council of Ministers with regard to formulating the Government's will in their capacity of a collegiate authority of the State. It is used to document oral deliberations of certain issues, i.e. the expression of views, opinions, and recommendations of Council of Ministers members. Discussion is part of the routine preparation of a Council of Ministers act, whose adoption or eventual rejection are forthcoming. A chronologically delineated point in time is at stake of the progress of a process, whose completion is marked with the act adopted and access to which is provided in virtue of the act. The fact a verbatim record is enclosed to the memorandum of the respective meeting demonstrates the former has no significance in itself, in terms of documentation either.

The specificity of Council of Ministers operations, in its capacity of a supreme authority of the Executive Branch of Government, undeniably requires the presence of restrictions on access to official information generated and stored. In presence of such requirements binding administrative Government officials, taking argument from Art. 76, s. 4 of the Internal Structure Regulations, these would *a fortiori* apply to citizens. It is true that according to Art. 125 of the Regulations the Council of Ministers operates publicly, making and enforcing its decisions. The second sentence of this provision, however, states, as follows: „... unless considerations with regard to national security, the protection of state or official secrecy, or to other important issues impose restrictions on the above principle“. Consequently, Government activities may not uncontrollably be offered at display before the media and the public at any given point in time, prior to making decisions of authority of considerable importance to society and the State, which is not at all the objective APIA seeks to achieve. Adequate means and possibilities, as the ones, for example, under Articles 125 through 129 of the Internal Structure Regulations, for presentation of Council of Ministers operations to the public have been instituted in view of balancing such conflicting interests.

Therefore, as evidenced in item 4 of Decree No B-36 of the Prime-Minister, submitted in the case, he has introduced a rule of restricting the access to official information in cases under Art. 13, s. 2 APIA in conjunction with Art. 76, s. 3 of the Internal Structure Regulations of the Council of Ministers and Its Administration. This restriction applies to materials submitted to the Council for examination, to memoranda and verbatim records of meetings.

Consequently, the Prime-Minister in his capacity of an obligated addressee of APIA provisions, in the sense of Art. 3, s. 1 thereof, has used of his right under Art. 13, s. 2 of the act to impose a general, not an *ad hoc* restriction, on access of citizens to official public information contained in documents listed above, once it has been determined they fall into one of the above two categories. His assessment of the reasons for imposing a similar restriction, is discretionary and may not be subject to judicial review. The exercise of a right to discretion granted by law to an authority is at stake, not an assessment made in contravention of the bound administration principles of operation.

Bearing the above in mind and considering the requirements of Art. 38 APIA, the decision appealed bears the necessary requisites as to form and content. Legal grounds for refusal have adequately been stated, sufficient reasoning as regards circumstance (factual grounds) have been specified, as well as the date of its adoption and the procedure for review.

The objection of the applicant that no specific acts have been adopted at this meeting of the Council of Ministers is inconsequential with regard to the legality of the refusal.

Since grounds for rescission under Art. 12 SACA, as stated in the complaint, or any other, for that matter, have not been found, the complaint is ill founded and should, therefore, be rejected.

On account of the foregoing and on the basis of Art. 28 SACA read in conjunction with Art. 42 APA, the Fifth Division of the Supreme Administrative Court

DECIDED:

To rescind the complaint of Mr. Alexey Yurdanov Lazarov from Sofia against decision to deny access to public information No 03-07-10 of 13th August 2001 of the Information and Public Relations Director at the Council of Ministers.

The present judgment may be appealed on points of law before a five-member panel of the Supreme Administrative Court within 14 days of notification thereof.

Presiding Judge: (signed) **Ms. Ekaterina Grancharova**

Panel Members: (signed) **Ms. Milka Pancheva**, (signed) **Ms. Diana Dobрева**

JUDGMENT**No 4694**Sofia, 16th May 2002**IN THE NAME OF THE PEOPLE**

A Five-Member Panel of the Supreme Administrative Court of the Republic of Bulgaria, sitting on 12th of April 2002 in panel composed of the following justices:

PRESIDING JUDGE: JUSTICE ANDREY IKONOMOV

**PANEL MEMBERS: JUSTICES ALEXANDAR ELENKOV, MARINA MINAYLOVA,
ZHANETA PETROVA AND VANYA ANCHEVA,**

In presence of Ms. Maria Popinska, the Secretary,

Attended by Ms. Liliana Krastanova, the Prosecutor,

Heard a report submitted by **Justice Marina Mihaylova** on administrative case No 1543 of 2002.

The instant proceedings were formed on the basis of Art. 33 *et seq.* of the Supreme Administrative Court Act (SACA) upon a complaint on points of law, filed by Mr. Alexey Yurdanov Lazarov from Sofia, acting through his attorney, Mr. Kashamov, against a Judgment of the Fifth Division of the Supreme Administrative Court of 8th January 2001 delivered on administrative case No 7189 of 2001.

The cassation appeal alleges irregularity of the judgment appealed on account of violations of the substantive provisions of the law – a ground for cassation under Art. 218b, s. 1, item „c“ of the Civil Procedure Code.

The defendant Council of Ministers has contested the cassation complaint and submitted written observations with regard to its lack of foundation.

The representative of the Supreme Administrative Prosecution Office is of the view that the cassation complaint is ill founded and that the judgment presently appealed – reveals no irregularities.

The cassation complaint was filed within the time limit under Art. 33, s. 1 SACA – it is admissible and, as regards its merits, **WELL FOUNDED.**

A three-member panel of the Supreme Administrative Court has, by the judgment presently appealed, rejected the complaint filed by Mr. Alexey Yurdanov Lazarov against a decision for refusal to provide public information No 03-07-10 of 13th August 2001 of the Information and Public Relations Director at the Council of Ministers. Proceedings before the three-member panel had been conducted upon a complain filed by applicant in the instant proceedings against a refusal, cited above, of the administrative authority, which had been delivered with regard to his request of 31st July 2001, in which he had requested to obtain a verbatim record of the Council of Ministers meeting of 26th July 2001. In express refusal of 13th March 2002 the Council of Ministers denied applicant access to the information he requested, making reference in the

reasons for refusal to the provisions of Art. 37, s. 1, item 1 in conjunction with Art. 13, s. 2, item 1 of the Access to Public Information Act (APIA), justifying the refusal with the fact that a verbatim record of a Council of Ministers meeting is a document related to official Government operations and has no significance in itself, only reflecting the Government's will concerning the preparation of their acts.

Reasoning in the judgment appealed states that the Council of Ministers' refusal was in conformity with the law. According to the three-member panel, the refusal appealed was rightly justified under the provision of Art. 37, s. 1, item 1 in conjunction with Art. 13, s. 2, item 1 APIA – since the minutes requested concerned routine preparation of Council of Ministers' acts and had no significance in itself.

The court noted that the enumeration of types of documents in Art. 13, s. 2, item 1 of the law was not exhaustive, but exemplary, aiming to clarify the meaning of the provision. In practice, various documents might prove to be related to the preparation of acts of the authorities, therefore exhaustive enumeration thereof in a law would be impossible. All these documents, being material carriers of information, had a common characteristic – the information therein contained concerned routine preparation of acts and had no significance in itself.

According to the three-member panel, in the present case, the Prime Minister had, being subject to APIA in the sense of Art. 3, s. 1 thereof, used the discretion given by Art. 13, s. 2 of the act to impose a general restriction on access of citizens to official public information contained in documents mentioned above, once they were determined to fall under one of the two categories envisaged in that provision. The assessment carried out by administrative authorities of the reasons requiring such restriction was discretionary in substance and could, therefore, not be subject to judicial review. A discretion provided by the law, was at stake, not a duty to strictly follow the law. The fact that no acts were adopted in this particular meeting of the Cabinet was addressed, and the court concluded that this could not affect the legality of refusal.

The above judgment is wrong because it is in contradiction to substantive provisions of the law.

The right of everyone to seek, obtain, and impart information is guaranteed in Art. 41, s. 1 of the Constitution of the Republic of Bulgaria. Social relations concerned with the right of access to public information have been provided for in the Access to Public Information Act, in Art. 2 of which there is a definition of public information within the meaning of the act. According to the definition „any information relating to public life in the Republic of Bulgaria, which enables citizens to form opinion of the institutions subject to the act“ is public. The legal definition of „public information“ does not give citizens an adequate idea what that information could be.

The notion of „information“ has been defined in the Dictionary of the Bulgarian Language (*Nauka i Izkustvo Publishing*, 2001, Fourth Edition, Amended), as 1. A message, report, or knowledge of someone or something, which has been conveyed or received, 2. A service offering such data, and 3. Data and knowledge concerning objects and processes in the world - perceived, stored, and conveyed by man or through the use of special devices, etc. Consequently, the notion of „public information“ should be construed as data on, or knowledge of, someone or something concerning public life in the country, respectively of operations of units subject to Art. 3 APIA.

Access to public information is of great significance in a democratic society in view of ensuring transparency in state administration and the presence of information on matters of public character. In Recommendation (2002)² of the Committee of Ministers of the Council of Europe to Member-States on access to official documents it has been set forth that „wide access to official documents allows the public to have an adequate view of, and to form a critical opinion on, the state of the society in which they live and on the authorities that govern them, whilst encouraging informed participation by the public in matters of common interest;

– fosters the efficiency and effectiveness of administrations and helps maintain their integrity by avoiding the risk of corruption;

–contributes to affirming the legitimacy of administrations as public services and to strengthening the public's confidence in public authorities“.

The provision of Art. 4, s. 1 APIA offers each citizen of the Republic of Bulgaria a legal opportunity to have access to public information. Art. 7 of the same act states that restrictions could solely be allowed in cases, provided by law, where the information is classified as a state or other secret.

In the instant case the administrative authority has justified its refusal to provide the information requested by the applicant under the provision of Art. 13, s. 2, item 1 APIA, i.e. a legal restriction of the right of access to official public information, as defined under Art. 7, s. 1 of the act.

An administrative authority, however, is under the obligation, by virtue of Art. 38 APIA, to specify in its decision for refusal to grant public information, legal and factual grounds under the act, underlying its refusal, once formal proceedings under Chapter Three of the act (Art. 24 *et seq.*) have been completed.

Art. 24, s. 1 APIA sets forth that access to public information is granted on the basis of a written or verbal request, the content of the request being provided for in Art. 25, s. 1 of the act. The request should bear requisites under Art. 25, s. 1, items 1 to 4 APIA, item 2 requiring a **DESCRIPTION** of the information requested. The request filed by the applicant in the instant proceedings does not meet the requirements of Art. 25, s. 1, item 2 of the act – i.e. it does not describe the information requested. It has been laid out in general terms, the form of access preferred only being indicated – a requirement under item 3, s. 1 of Art. 25 of the act.

The administrative authority, either, has not fulfilled its obligation under Art. 29, s. 1 of the act, whereby, in case the information requested has not been clearly identified or where it has been described in most general terms, the administrative authority is bound to notify applicant to the above effect, the latter being entitled to further specify the object of the public information requested. S. 2 of Art. 29 APIA has even envisaged, in terms of a sanction for applicants who fail to specify the subject of the information requested within 30 days, that their request would be left unexamined.

In the instant absence of description of the information requested, the refusal of the administrative authority is still in contradiction of the above provisions of the act, failing to outline the necessary factual and legal grounds, on the basis of which the court should exercise its control for legality.

In view of the foregoing the three-member panel has ruled with regard to an administrative act, which does not provide reasoning in the sense of Art. 15, s. 2 of the Administrative Proceedings Act, the latter being referred to by rules of subsidiarity under Art. 11 SACA. Where reasoning has not been provided by an administrative act, the court may not substitute the will of the administrative authority, nor use reasoning, other than the one of the authority.

In this sense the court cannot review the legality of the administrative act as provided for in Art 41, s. 3 APA. Besides, where a refusal has been delivered, in the light of the fact that at the Council of Ministers meeting at stake no decisions had been made, i.e. no acts of said collegiate authority had been delivered. Consequently the applicable legal provision referred to as grounds for refusal, shall not be Art. 13, s. 2, item 1 APIA, since the latter provides for a restriction of access to public information only when the information concerns routine preparation of acts of the authorities and has no significance in itself. Once the applicant would specify the type of information he wants to obtain, the administrative authority would be placed under the obligation to explain what issues were discussed in the meeting, decisions on which of them were or will be taken or, and whether some of these issues are a state or other secret provided by the law. If some of these issues and/ or decisions on them fall under classification, and records of their discussion cannot be accessed, which are they, and which are the others that will be available to the citizen.

The spirit of the Classified Information Protection Act (Publicized in the State Gazette, No 45 of 30th April 2002) supports the same conclusion, as the categories of information subject to classification are precisely enlisted in Appendix No 1 attached to Art. 25. Whether any category

of information falls under the exemptions of state or official secrecy can be judged only when the refusal is precisely formulated. APIA purpose is to provide citizens with all the public information, which does not fall under any of the categories of state or other secret provided by law.

In view of the above, the judgment appealed should be rescinded and in its stead the present instance should render another, on the merits of the dispute, whereby refusal No 03-07-10 of 13th August 2001 should be repealed and the file remitted to the administrative authority, which will rule *de novo*, in conformity to the instructions of this court, provided in the reasoning of its judgment.

Based on the foregoing and on Art. 40, s. 2 SACA, the Five-Member Panel of the Supreme Administrative Court

DECIDED

TO RESCIND the judgment of the Fifth Division of the Supreme Administrative Court of 8th January 2002 in administrative case No 7189 of 2001 and in its stead **DETERMINED**:

TO DISMISS refusal No 03-07-10 of 13th August 2001 of the Information and Public Relations Director at the Council of Ministers.

TO REMIT the file to the Council of Ministers who will rule *de novo*, in conformity to the instructions of this court, provided in the reasoning of its judgment.

THIS JUDGMENT may not be further appealed.

In conformity to the original,

(signed) The Secretary

PRESIDING JUDGE: (signed) **Mr. Andrey Ikonov**,

PANEL MEMBERS: (signed) **Mr. Alexandar Elenkov**

(signed) **Ms. Marina Mihaylova**

(signed) **Ms. Zhaneta Petrova**

(signed) **Ms. Vanya Ancheva**

DISSENTING OPINION OF THE JUDGE-RAPPORTEUR

In compliance to substantive legal provisions, the judgment of the three-member panel contested had been rightly rendered. The right of every Bulgarian citizen to seek information is guaranteed in Art. 41, s. 1 of the Constitution of the Republic of Bulgaria. It is a universal right, which may only be restricted in cases the information sought is a state or other secret protected by law, where special grounds have been provided for its protection, or rights of others could thereby be affected – Art. 41, s. 2 of the Constitution. Said constitutional right - of everyone to seek and obtain information - has also been proclaimed in Art. 4, s. 1 APIA, whereby „every citizen of the Republic of Bulgaria has a right of access to public information following the rules and procedures set forth in this act, unless another act provides a special procedure for seeking, obtaining, and imparting such information“.

Art. 7, s. 1 of the act provides for grounds, set by law, where access to public information may be restricted, if the information is a state or other secret protected by law. Art. 13, s. 2 APIA envisages another ground for restriction on access to official public information. It authorizes the administrative authority to deny access to the so called official public information, related to the preparation of legal acts of the authorities and has no significance in itself. The categories of that information are enumerated in brackets and are: statements and recommendations, prepared by or for the authority concerned, as well as in position and consultation papers. Consequently, a literal interpretation of the text in brackets would mean that views and recommendations could be statements either of another authority or of the authority in charge of the decision-making. To an even greater extent this applies to statements that may be submitted in the preparation of the act of each minister – in his/her capacity of a member of the Cabinet. In view of these arguments it is irrelevant whether enumeration in brackets is exhaustive or exemplary, since the information concerning preparation of the legal acts may always be a view or a recommendation of the ministers themselves, as well as views and recommendations prepared by other authorities, as well as consultation papers, in case they prove to be necessary.

The fact is also irrelevant whether at the particular meeting of the Council of Ministers acts have been delivered or they have only been prepared and would be completed on the occasion of subsequent meetings, or the preparation process would not result at all in a decision of the authority. Legislators have not made such a distinction in the provision of Art. 13, s. 2, item 1 APIA, providing the administrative authority with discretion to deny access to public information, where it is related to the preparation of its acts and has no significance in itself. No dispute has arisen in the present case whether decisions have or have not been made at this particular meeting of the Council of Ministers, i.e. whether specific acts have been prepared or not.

The allegation of the applicant that the provision of Art. 13, s. 2, item 1 APIA has to be read in conjunction with Art. 13, s. 4 APA, an „opinion“ being construed as a statement of another authority only, may not be shared. Art. 13, s. 4 APA provides for cases where an administrative authority may seek the consent or opinion of another one, and the provision of Art. 13, s. 2, item 1 APIA covers views and recommendations of another authority, but also of the same – prepared by the authority itself.

The judgment rendered by the Five-Member Panel went in substance beyond the complaint and claims therein stated by applicant. The latter has requested information contained in a verbatim record of the Council of Ministers held on 26th July 2001, i.e. views of the Ministers with regard to preparation of decisions, which the Council has made or will make, not the types of issues

discussed. In this sense said judgment is inadmissible – on account of the fact the court has gone beyond the object of the complaint it had been approached with.

The fact that Art. 125 of the Internal Structure Regulations of the Council of Ministers and Its Administration introduced the principle of publicity in Council of Ministers operations in the process of making and enforcing its decisions, except in cases where national security, the protection of state or official secrecy, or other important reasons impose its restriction, should be taken into consideration. The restriction of the publicity principle, except in cases concerning the protection of state and official secret, has been provided for by law (the provision of Art. 13 APIA), therefore the higher normative act is applicable. Besides, Articles 66 through 79 of the Internal Structure Regulations of the Council of Ministers do not regulate the issue whether Council of Ministers meetings are public or held in camera, therefore this issue has been left at the Council's discretion.

In view of the above, the judgment of the three-member panel, having been rendered in conformity to substantive provisions of the law and in the absence of any grievous procedural omissions, needs to have been left in force.

Justice Marina Mihaylova

**REPUBLIC OF BULGARIA
COUNCIL OF MINISTERS**

**ATTN. MR. ALEXEY YURDANOV
LAZAROV
Head of Home Policy Department
Capital Newspaper**

DEAR MR. LAZAROV,

Further to your request for access to information, Incoming ref. No 03-07-10 of 31st July 2001, and in compliance with Judgment No 4694 of 16th May 2001 of the Supreme Administrative Court in administrative case No 1543 of 2002, I can inform you that the request does not meet the requirements of Art. 25, s. 1, item 2 of the Access to Public Information Act (APIA), since it does not describe the information you request. Verbatim reports of Council of Ministers sessions are not considered information in the sense of APIA and no conclusion may be inferred as regards the information you are interested in or, correspondingly, to assess the presence of legal grounds for provision thereof, on the basis of your request to obtain the verbatim report of a session of the Government.

In view of the above and on the basis of Art. 29, s. 1 APIA I would ask you, within the time limit under Art. 29, s. 2 of the act, to specify the object of the public information contained, in your view, within the verbatim report of a session of the Council of Ministers held on 26th July 2001, access to which you request.

**INFORMATION AND
PUBLIC RELATIONS
DIRECTORATE**

THE DIRECTOR

**Attn. Press-Center and
Public Relations Directorate
Council of Ministers
Mrs. Tzvetelina Uzunova**

**Re: Request for access to
Information
Incoming Ref. No 0307-10 of 31st
July 2001**

FURTHER PSECIFICATION OF REQUEST

Filed by **Alexey Yurdanov Lazarov**

Esteemed Director,

In response to your notification asking for clarification of my request for access to information, I hereby wish to specify I need access to the following information:

- The agenda of the Council of Ministers session held on 26th July 2001
- A list of those present at the session
- The view of each of those present with regard to the agenda and the result of votes thereupon
- The opening speech of the Prime-Minister addressed to Council of Ministers members
- The view of each of those present on item 1 on the agenda
- The view of each of those present on subsequent items on the agenda
- Deliberations with regard to the strategy and priorities in Government activities throughout its term of office and the distribution of functions among Council of Ministers members.

As stated in my request for access to information, I wish to obtain a copy of the verbatim report of deliberations held on the above date – in hardcopy or electronically – in terms of format of access.

Respectfully yours,

Alexey Lazarov

**ATTN. SUPREME ADMINISTRATIVE
COURT
C/O INFORMATION AND PUBLIC
RELATIONS DIRECTOR
AT COUNCIL OF MINISTERS**

COMPLAINT

Filed by **Alexey Yurdanov Lazarov**

AGAINST

A Tacit Refusal of the Public Relations Director

Honorable Justices,

A five-member panel of the Supreme Administrative Court in Judgment No 4694 of 16th May 2001 rescinded the refusal of the Public Relations Director to grant access to the public information I had requested. On 21st May 2002 the PR Director addressed a notification to my attention asking for the further specification of my request. On 7th June 2002 I sent the specification required. The 14-day time limit for ruling thereupon expired on 21st June 2002. So far I have not received any response.

1. The law requires from relevant authorities to rule in reasoned decisions, when delivering the administrative act requested or refusing to do so (Art. 15, s. 1 of the Administrative Proceedings Act - APA). No such decision, obviously, is to be found in the present case. The provision of Art. 15, s. 2 APA is imperative in requiring a written form with regard to the act, or the refusal to deliver such. A refusal in writing is also required by special legislation – Articles 38 – 39 of the Access to Public Information Act (APIA), the decision for refusal being also required to specify both legal and factual grounds underlying it. Said requirements of the law have not at all been observed, which is a grievous contravention of procedural legal provisions. A three-member panel of the Supreme Administrative Court has found in Judgment No 1795 of 26th February 2002 rendered in administrative case No 71767 of 2001, with regard to a tacit refusal and a possibility for refusal under Art. 13, s. 2 APIA, that „in presence of data with regard to the existence thereof (the information requested), the court is prevented from assessing the reasons for refusal in view of the substantive grounds set by law – to what extent there should be total or partial refusal“. By Judgment No 2764 of 25th March 2002 the three-member panel of the Supreme Administrative Court rescinded the tacit refusal appealed as illegal, since „there was no administrative act delivered in compliance to formal requirements set by the law, on account of which the file should be remitted to the administrative authority, which will have to prepare a decision conforming to the established procedures“.

2. The PR Director should have taken into account binding instructions provided by the Supreme Administrative Court, which obviously did not occur. Therefore the refusal is illegal.

In view of the above I plead you to rescind the refusal appealed as illegal.

Respectfully yours,

Lazov
v. Minister of the Environment
and Waters

**MINISTRY OF THE ENVIRONMENT
AND WATERS
MRS. EVDOKIA MANEVA**

REQUEST

by **Yordan Stamenov Lazov**

On the grounds of: Public Information Access Act

Dear Mrs. Minister,

I would like to receive information in regard to the following questions, concerning the activities of your Ministry towards „Presevni Instalatsii“ EOOD, with sole owner of the capital Dupnitsa Municipality:

- copies of all the violation acts and the subsequent penal ordinances, issued by the authorities of the Ministry of the Environment and Waters during the preceding year; which you specify in your reply to a parliamentary enquiry from Valentin Simov (National Concord Alliance);
- a copy of Order 131/ 29.03.00 of the Ministry of the Environment and Waters on the discontinuation of the operation of the sifting installation of the above-mentioned company and the other extraction machines;
- a copy of the act allowing the extraction to continue;
- copies of all the acts of the Ministry of the Environment and Waters for sanctioning the illegal extraction of mineral materials after the discontinuation of the operation of the above-mentioned installation.

I am ready to pay the respective amount for the copy expenditures.

Sincerely:

THE MINISTER OF THE
ENVIRONMENT AND WATERS
MRS. EVDOKIA MANEVA

REQUEST FOR ACCESS TO PUBLIC INFORMATION

Dear Madam Minister,

On the grounds of the Access to Public Information Act I request to be granted access to:

1. All available information on the deviation of the river Djerman to the „Dyakovo“ dam. I request an opportunity of reviewing the available information after which to be provided with xerox copies of documents specified by me. Pursuant to Article 26 of the act I have the opportunity of requesting two forms of access to information
2. All available information on the deviation of the Rila rivers Goritsa, Fudinya and Otovitsa. I request an opportunity of reviewing the available information after which to be provided with xerox copies of documents specified by me.

I am thanking you in advance in the hope of receiving a reply within the time frame specified by the law.

Yours sincerely,

Yordan Lazov

20.03.2001

Sofia

REPUBLIC OF BULGARIA
MINISTRY OF THE ENVIRONMENT AND WATERS

DECISION

of the Minister of the Environment And Waters
on refusing the granting of access to information

On the grounds of Article 2, paragraph 1 in conjunction with §1,item 2of the Access to Public
Information Act I

REFUSE

the granting of access to information under request with ref. No. G-137/20.03.2001 by
Yordan Stamenov Lazov

Motives:

Copies of acts issued for establishing administrative violations, the penal ordinances issued on their basis and copies of orders cannot be granted since these documents contain personal information on the compilers and the witnesses. In the meaning of the Access to Public Information Act this information is personal.

This refusal can be appealed against before the Supreme Administrative Court under the procedure of the Supreme Administrative Court Act

Evdokia Maneva,
Minister

**The Minister of the Environment
and Waters
Through the Minister of the
Environment and Waters
To the Supreme Administrative
Court
of the Republic of Bulgaria**

COMPLAINT

Against: Decision № 6/ 28.03.01
of the Minister of the Environment and Waters
on refusing access to public information

On the grounds: Article 40, paragraph 1
of the Access to Public Information Act (APIA) in conjunction with Article 5, item 1 of the
Supreme Administrative Court Act

Honorable Judges,

On 20 March 2001 I served a request for access to information to the Minister of the Environment and Waters. I requested to be granted copies of the violation acts and the subsequent penal ordinances composed by the authorities of the Ministry of the Environment and Waters sanctioning „Presevni Instalstii“ EOOD (with a single owner the Dupnitsa Municipality) as well as other acts specified in the request.

I received a decision No. 6/ 28.03.01 refusing the granting of the requested access. The refusal is based on the claim that the documents of which I requested copies contain personal data of the compliers of the documents and the witnesses.

The refusal of the Minister of the Environment and Waters to provide me with the requested information is a violation of substantive law due to the following considerations:

1. The information I requested represents „public information“ in the meaning of Article 2, paragraph 1 of the Access to Public Information Act since it is connected with public life in the Republic of Bulgaria and allows me to form an independent opinion of the work of the Ministry of the Environment and Waters' authorities. This is so in the first place because the requested information is contained in acts of government agencies and consequently is by definition public as it is clear from the provisions of Article 10 of the APIA. Besides that, the administrative and penal activity is public and is invariably connected with publicity having in mind one of the objectives of the administrative penalty – general prevention (Article 12 of the Administrative Violations and Penalties Act). Besides, two topical questions were raised in the National Assembly concerning the activities performed through the acts to which I have requested access.

2. In view of the fact that the acts of which I have requested copies contain public information the claim set forth in the motives of the decision that is being appealed against that they contain personal information may be only partially true. In the decision itself that is being appealed against it is expressly specified which data contained in the requested documents are personal information in the opinion of the Minister. Consequently the fact is not challenged that the rest of the data contained in these acts represent public information. According to the APIA the subject of the access is public information rather than documents. Consequently, in view of the

provision of Article 7 of the APIA I should have been provided with copies of the acts after the data that represent personal information has been crossed out.

3. The data specified in the decision that is being appealed against, which are claimed to be personal information is actually not such information. Witnesses are included only in the acts establishing violations and the penal ordinances but not in the remaining acts of which I have requested copies. They are specified in the acts with their names, which are not personal data. It is absurd to claim that the names of the persons who are acting in their capacity of a public authority and sign documents are information protected from access.

On the grounds of the above I ask the Honorable Court to reverse the refusal of the Minister of the Environment and Waters as contrary to the law, to recognize my right of access to the public information requested with the above application and to oblige the Minister of the Environment and Waters to provide me with the requested information.

I am enclosing:

1. A copy of the complaint for the respondent
2. A copy of an application
3. A copy of decision No. 6/28.03.00
4. A receipt for paid state fee

Respectfully yours:

Yordan Lazov

JUDGMENT**No. 9822,**

Sofia 18.12.2001 г.

IN THE NAME OF THE PEOPLE

The Supreme Administrative Court of the Republic of Bulgaria – Fifth Panel in a hearing on November six of the year two thousand and one, composed of:

Chairperson: Ekaterina Gruncharova

Members: Milka Rancheva, Diana Dobрева

With Secretary Maria Popinska and in the attendance of the Public Prosecutor Maria Begumova heard the report of **Judge Diana Dobрева** on administrative lawsuit No. 5736 / 2001.

The proceedings are under Article 12 and the following of the Supreme Administrative Court Act in conjunction with Article 40, paragraph 1 of the Access to Public Information Act.

It has been instituted on a complaint served by Yordan Stamenov Lazov of the city of Sofia against decision No.6/28.03.2001 of the Minister of the Environment and Waters with which he is refused access to public information in response to his request with a ref. No. G-137/20.03.2001. The refusal is motivated on the grounds that the copies of documents requested by the plaintiff contain personal information on the compilers and the witnesses. The provision of Article 2, paragraph 1 in conjunction with § 1, item 2 of the Access to Public Information Act is specified as legal grounds for the refusal.

According to the applicant the challenged refusal has been enacted in breach of substantive law. On the basis of the considerations set forth he requests its revocation and the recognition of his right of access to the requested public information and to order the Minister of the Environment and Waters to grant it.

The respondent to the complaint has not expressed an opinion.

The representative of the Supreme Administration Prosecutor's Office deems the complaint justified.

The Supreme Administrative Court, Fifth Panel in its present composition accepts the complaint as procedurally admissible and considered in substance as justified.

It is clear from the request of the applicant that he has requested the granting of information concerning the actions of the Ministry *vis-a-vis* „Presevni Instalatzii' EOOD with a single owner of the capital the Dupnitsa Municipality. It represents copies of all acts of violations and the resulting penal enactments compiled by the bodies of the Ministry of the Environment and Waters that have been specified by the Minister in a reply to a topical question of a Member of Parliament during the last year; a copy of order No. 131/29.03.2000 of the Ministry of the Environment and Waters on stopping the extracting installation of the above company and the other production equipment; a copy of the act with which the continuation of the extraction has been allowed; a copy of all acts of the Ministry of the Environment and Waters authorities on sanctioning the illegal extraction of mineral materials after stopping the operation of the installation.

It is clear from the explanations of the plaintiff in the courtroom that his interest is motivated by the extraction of sand and gravel that has been going on for forty years from the bed of the river Djerman as a result of which the whole eco-system has been destroyed. These data are to be

used before the Chief Prosecutor's Office where an investigation is under way on this case. He submits copies of a protocol and of an act of the Regional Environment Inspectorate in Sofia, which have been granted to another person while refused to him.

In the opinion of the Court it has been established from the evidence that the requested information is public in its essence. The provision of Article 2, paragraph 1 of the Access to Public Information Act defines the notion of „public information“ as „any information connected with public life in the Republic of Bulgaria and allowing citizens to form an independent opinion concerning the activities of the subjects obliged by the law“. However, there is no legal definition of the notions „information connected with public life“ and of what characteristics should a piece of information have in order to conclude that it „allows citizens to form an independent opinion“. This opens a wide scope for discretionary judgments by the administrative authorities concerning the provision of citizens with public information and this causes problems in law enforcement.

The law differentiates two type of public information – public and official. Public is the information contained in the acts of government and local authorities issued in the course of performing their functions provided for by law – Article 10 of the APIA. Official information is the one, which is collected, composes and kept in connection with the public information and on occasion of the activity of the authorities and their administrations – Article 11 of the APIA.

Apparently in this particular case what is requested is access to official public information and the applicable provision is the one of Article 12, paragraph 3 of the APIA. The access to this information is free and takes place under the procedure of this law while the grounds for refusing its granting are referred to in Article 37, paragraph 1 of the APIA – when the information represents state or official secret, concerns the interests of a third party and it has not given its express agreement or the requested information has been granted to the applicant during the preceding six months.

There is no indication in the administrative file of the existence of the first or the third access limitations. It is clear from the motives of the refusal that is being appealed against that the Minister of the Environment and Waters has considered that the requested information contains data concerning third parties whose interests may be infringed upon. The persons are expressly specified – compilers and witnesses, who have participated in the drafting of the requested acts on establishing administrative violations and the ordinances issued on the basis of them. There are no arguments concerning the refusal of the other requested documents.

It is the opinion of the Court that the Minister's referral to § 1, item 2 of the APIA as grounds for the refusal is incorrect. The provision defines the notion of „personal information“ which the applicant has not requested to be provided with. It is true, however, that in a large portion of the requested documents there exists personal data such as addresses, positions, etc. of the compilers and the witnesses. If the obliged subject in the face of the Minister of the Environment and Waters had nevertheless considered that revealing personal data would infringe upon the interests of third parties he could have implemented the procedure of Article 31, paragraph 2 of the APIA. There is no such data in the file. Besides, even had there been expressed refusal by the third parties to grant information concerning their persons, in the premise of Article 31, paragraph 4 of the APIA the Minister could have granted the requested information in a scope and in a manner, which would not have revealed the information about the third parties. In this case this is entirely possible and there is nothing to prove that there are grounds for a refusal under the conditions of Article 37, paragraph 1, item 2 of the APIA. Therefore the refusal is contrary to the law.

In view of the conclusions drawn decision No. 6/28.03.2001 of the Minister of the Environment and Waters that is being appealed against should be reversed and the Minister should be obliged to grant the applicant the requested information taking into consideration the substantiation of this judgment.

Led by the above and on the grounds of Article 28 of the Supreme Administrative Court Act and in conjunction with Article 42, paragraph 3 of the Administrative Proceedings Act and Article 41, paragraph 1 of the Access to Public Information Act the Supreme Administrative Court – Fifth Panel

RULES:

Reverses decision No. 6/28.03.2001 of the Minister of the Environment and Waters with which Yordan Stamenov Lazov of Sofia, 36 Smolyanska Street, block 47, entrance B is refused access to public information under his request ref. no. G-137/20.03.2001

Refers the file back to the Ministry and obliges it to grant the requested information, taking into consideration the substantiation of this judgment

This judgment may be appealed against with a cassation appeal before a five member panel of the Supreme Administrative Court within fourteen days from the notification of its drafting

True to the original

Chairperson: (signed) **Ekaterina Gruncharova**

Members: (signed) **Milka Pancheva**, (signed) **Diana Dobрева**

**THE MINISTER OF THE
ENVIRONMENT AND WATERS
MRS. DOLORES ARSENOVA**

APPLICATION

by **Yordan Stamenov Lazov**

Dear Mrs. Minister,

In connection to a judgement of the Supreme Administrative Court No.9822/18.12.2001 I would like to receive information related to the following questions:

- copies of all the violation acts and the subsequent penal ordinances, issued by the authorities of the Ministry of the Environment and Waters during the preceding year; that you specified in your reply to a parliamentary enquiry from Valentin Simov /National Concord Alliance/;
- a copy of Order 131/ 29.03.00 of the Ministry of the Environment and Waters for the discontinuation of the operation of the sifting installation of the above-mentioned company and the other extraction machines;
- a copy of the act allowing the extraction to continue;
- copies of all the acts of the Ministry of the Environment and Waters for sanctioning the illegal extraction of inert materials after the discontinuation of the operation of the above-mentioned installation.
- copies of all the available information related to the diversion of the Djerman river fro the „Diakovo“ reservoir.
- copies of all the available information about the diversion of the Rila rivers Goritsa, Fudinia and Otovitsa.

I am ready to pay the respective amount for the copy expenditures.

I enclose:

- 1) copies of two application with ref No..№ g-134 and 134/20.03.01;
- 2) a copies of the court judgement.

Sincerely:

(Y. Lazov)

**MINISTRY OF THE ENVIRONMENT AND WATERS
REGIONAL ENVIRONMENT AND WATERS INSPECTORATE – SOFIA**

**Mr. Yordan Stamenov Lazov
Chairman of an Initiative
Committee
of the Community in the Village of
Resilovo, Sapareva Banya
Municipality**

Dear Mr. Lazov

Please find enclosed the requested information in connection with the extraction of mineral materials from the river Djerman between the town of Sapareva Banya and the town of Dupnitsa:

1. Compiled violation acts :

No.	Compiled acts, No./Date	Law	Penal ordinance in BGN	Current stage of the procedure
1	2	3	4	5
1.	Act No. 45 /22.05. 1998	Environment Protection Act	1000	Unfinished judiciary procedure
2.	Act No. 63 /05.06. 1999	Environment Protection Act	1000	Unfinished judiciary procedure
3.	Act No. 24 /02.04. 1999 r	Waters Act (old)	50	Not appealed against
4.	Act No. 137 /27.08. 1999	Environment Protection Act	200	Unfinished judiciary procedure
5.	Act No. 185 /20. 12.1999	Environment Protection Act	100	Confirmed by Court
6.	Act No. 28 / 27.03.2000	Waters Act	5000	Confirmed by Court
7.	Act No. 29 / 27.03.2000	Environment Protection Act	200	Not appealed against
8.	Act No. 121 /09.06.2000	Mineral Resources Act	6000	Unfinished judiciary procedure
9.	Act No. 128 /21 .06.2000	Mineral Resources Act	10000	Unfinished judiciary procedure

2. Imposed financial sanctions:

No.	Order No. /Date	Law	Sanction	Current stage of the procedure
1	2	3	4	5
Of the Regional Environment and Waters Inspectorate - Sofia				
1.	Order No. C-8-64-1-1/ 04.03.1999	Financial Sanctions Regulation	BGN 266/month as of 12.01.1999	Not appealed against
2.	Order No. C-8-64-1-2/ 04.05.1999	Financial Sanctions Regulation	Amended BGN 76/month as of 19.04.1999	Not appealed against
3.	Order No. C-8-64-2/ 01.12.1999	Financial Sanctions Regulation	Repealed as of 17.11.1999	
4.	Order No. C-8-64-3-2/ 26.05.1999	Financial Sanctions Regulation	BGN 1647 one-off	Confirmed by Court

Head of Pernik Department

(eng. M.Tsatsov)

DIRECTOR:

(eng. Tsv. Dimitrova)

REPUBLIC OF BULGARIA
MINISTRY OF THE ENVIRONMENT AND WATERS
COORDINATION OF THE REGIONAL ENVIRONMENT AND WATERS INSPECTORATES
DIRECTORATE

Mr. Yordan Stamenov Lazov
Chairman of an Initiative
Committee
of the Community in the Village of
Resilovo,
Kyustendil Region

Dear Mr. Lazov,

In relation to your request to the Minister of the Environment and Waters ref. No. G-421/13.11.2000 experts of the Regional Environment and Waters Inspectorate – Sofia, Pernik Directorate have conducted an inquiry according to their competence. A report has been prepared under point 3 of your complaint, which is hereby enclosed, on the compiled acts and financial sanctions connected with the extraction of mineral materials from the river Djerman between the town of Sapareva Banya and the town of Dupnitsa

1. Complied acts:

No.	Complied acts , No. / Date	Law	Penal ordinance in BGN	Current stage of the procedure
1	2	3	4	5
1.	Act No. 45/22.05. 1998	Environment Protection Act	1000	Unfinished judiciary procedure
2.	Act No. 63/05.06. 1999	Environment Protection Act	1000	Unfinished judiciary procedure
3.	Act No. 24/02.04. 1999	Waters Act /old/	50	Not appealed against
4.	Act No. 137/27.08.1999	Environment Protection Act	200	Unfinished judiciary procedure
5.	Act No. 185/20. 12. 1999	Environment Protection Act	100	Unfinished judiciary procedure
6.	Act No. 28/27.03.2000	Waters Act	5000	Confirmed by the Court
7.	Act No. 29/27.03.2000	Environment Protection Act	200	
8.	Act No. 121/09.06.2000	Mineral Resources Act	6000	Unfinished judiciary procedure
9.	Act No. No. 128/21.06.2000	Mineral Resources Act	10000	Unfinished judiciary procedure

2. Imposed financial sanctions:

No.	Order No. /date	Law	Sanction	Current stage of the procedure
1	2	3	4	5
Of the Regional Environment and Waters Inspectorate - Sofia				
1.	Order No. C-8-64-1-1/04.03.1999	Financial Sanctions Regulation	BGN 266/month as of 12.01.1999	Not appealed against
2.	Order No. C-8-64-1-1/04.05.1999	Financial Sanctions Regulation	Amended BGN 76 /month as of 19.04.1999	Not appealed against
3.	Order No. C-8-64-2/01.12.1999	Financial Sanctions Regulation	Repealed as of 17.11.1999	
4.	Order No. C-8-64-3-2/26.05.1999	Financial Sanctions Regulation	BGN 1647 one-off	Confirmed by the Court
MINISTRY OF THE ENVIRONMENT AND WATERS				
1.	Order No. C-14-3175/29.08.1999	Financial Sanctions Regulation	BGN 14070/month	Presevna Instalatsiya EOODtown of Dupnitsa
2.	Order No. C-14-3174-1/29.08. 1999	Financial Sanctions Regulation	One-off BGN 12060	Sapareva Banya Municipality

Yours sincerely,

Deputy Minister:

(Manoela Georgieva)

REPUBLIC OF BULGARIA
MINISTRY OF THE ENVIRONMENT AND WATERS

TO:
MR. YORDAN LAZOV

WITH REGARD TO: The ecological condition of the Djerman river valley

Dear Mr. Lazov,

In your successive complaint you note the positive development in the solution of the existing ecological problem. Indeed, the regional managerial office of Kustendil received the support of the MINISTRY OF THE ENVIRONMENT AND WATERS to include in the title registers of the MINISTRY OF REGIONAL AND URBAN DEVELOPMENT and THE MINISTRY OF AGRICULTURE AND FORESTS and for the funding of some overall and complex project developments for the river valley of the Djerman river. This is part of the implementation of the measures, adopted at the expanded public discussion, carried out with the governor of the Kustendil Region. The next step after providing the resources is the announcement by the Kustendil Region of a competition for the preparation of project developments, after the discussion and the adoption of the technical assignment.

As it can be seen, the activities of the MINISTRY OF THE ENVIRONMENT AND WATERS are specific and result-oriented and this is quite natural, with a view to the repeatedly declared position over this problem. With one of our letters No. G-29/15.02.2002 you are informed that the information you require from the register of the issued licenses for the use of a water objects has been prepared and you can receive it in due order. Up to the present moment you have not shown any desire for that.

The barrage project for the Djerman river has not been rejected. The project is adopted with a decision of Regional Expert Council of Regulating the Territory – Kustendil, it has been submitted by the investor and passed through the legal procedure for the issuance of a license for the usage of a water object under the Waters Act, which is a necessary condition for the approval of the project and for the issuance of a license for construction of the installations. The realization or non-realization of the project, as part of the future millpond cascade is in the competence of the investor.

Your assertion, that „deputy minister Dukov has issued the license“ does not correspond to the truth.

I think, that at the present stage we need to concentrate our efforts in a constructive direction, with a view to the actual recovery of the ecological balance in the river valley of the Djerman river.

Sincerely,

DEPUTY MINISTER

**TO: Mrs. Dolores Arsenova
Minister of Environment and
Waters**

Dear Madam Minister,

„Access to Information“ Foundation is a non-government organization established pursuant to the Persons and Family Act and re-registered pursuant to the Non-Profit Legal Persons Act. Its public objectives are to assist the exercise of the right to information, to promote the seeking of information through civic education in the field of freedom of information and to work for enhancing transparency in the work of the institution on central and local level. The foundation materializes these objectives through systematizing cases of unlawful refusal of requested information, monitoring information granting practices, giving recommendations to government and local authorities agencies for improving work on the application of the Access to Public Information Act, etc.

In 2001 we were approached by a citizen – Yordan Lazov, with a complaint that he has been refused information in the form of copies of certain documents by the Ministry of the Environment and Waters.

Mr. Lazov's request for access to information was prepared with the assistance of the „Access to Information“ Foundation's legal advisors. After the refusal received from the Minister of the Environment and Waters (Mrs. Evdokia Maneva at the time) also the complaint before the Supreme Administrative Court. With a judgment No. 9822/01 on administrative lawsuit 5736/01 the Supreme Administrative Court – Fifth Panel reversed the refusal to provide access to information enacted in a decision No. 6/ 28.03.01 of the Minister of the Environment and Waters and obliged the ministry to provide the requested information.

When Mr. Lazov went with a copy of the judgment to request to be granted the information pursuant to the enacted court judgment, he was advised to submit a new request, which he did – on 03.01.02 and another one – on 05.02.02. He met additionally Mr. Koprinov and Mr. Malchev, Director of the Waters Directorate. In the course of these conversations he was assured that no information would be granted to him.

As a result of all these efforts Mr. Lazov was given a table listing the acts for violations and the financial sanctions imposed connected with the issue he was interested in. One of the letters, containing the table in question, was signed by the Director of the Regional Environment and Waters Inspectorate – Sofia and Head of „Pernik“ Department and the other one - by the Deputy Minister Manoela Georgieva. Mr. Lazov has not received to this very day the requested copies of the acts.

The case is entered in the „Access to Information“ Foundation's database and will be published in the annual report issued by our organization (our intention to publish precedes what we have learned about this case). Our report is distributed to all government and local authorities, the media, the non-governmental organization and international organizations.

The case is published in the Web page of the „Access to Information“ Foundation, which, by the way, is well known and is visited by representatives of the Council of Europe, the European Commission, the European Parliament, NATO, Article 19 – Global Campaign for Freedom of Expression, Privacy International, etc.

The case has also been referred to at international seminars.

The reason for the wide notoriety of the case is due not to the behaviour of the civil servants of your Ministry but rather to the forward-looking judgment of the Court, moreover that this was the first enacted court judgment on the Access to Public Information Act.

The failure to grant information on the basis of an enacted court judgment is a serious violation of the law, disrespect for the authority of the judiciary and for the constitutional principle according to which any of the three powers, that state power is divided into, has its own delineated competence and cannot infringe on the competence of the other powers.

There are sufficient grounds for seeking responsibility from the culpable civil servants including imposing sanctions pursuant to Article 51 and the following of the Supreme Administrative Court Act as well as other sanctions.

We believe that it is easier to dissipate public confidence in an institution than to build a new one. Victims of this unfortunately are the citizens themselves and therefore it has always been our belief that it is necessary to exhaust all means for dialogue.

Therefore we are appealing to you to comply with your legal obligations and to grant the requested information in accordance with the court judgment and to impose sanctions on the culpable civil servants.

Gergana Jouleva,
Executive Director

Alexander Kashumov,
Attorney at law

REPUBLIC OF BULGARIA
MINISTRY OF THE ENVIRONMENT AND WATERS

TO:
Mrs. Gergana Jouleva
Executive Director of the „Access to
Information Programme“
Foundation

Dear Mrs Jouleva,

Thank you for your letter.

It is necessary to inform you that Mr. Yordan Lazov is well known at the Ministry of the Environment and Waters. The correspondence with him comprises a sizeable volume; he has attended numerous meetings and councils. As Chairman of the Initiative Committee for the Restoration the Ecological Balance in the River Djerman Valley he has contributed substantially to the solution of the problem and to its guidance in the right direction. One could say that so far there has existed cooperation both with Mr. Lazov and with the other NGO's in the region.

Against this background it is surprising that a misunderstanding could infringe upon the good reputation both of the Ministry and of the Foundation you represent. This is the described case of refusing Mr. Lazov access to information, which falls short of reality.

In response to Mr. Lazov's request of 05.02.2002 he has been duly informed (a copy of the letter is enclosed herewith) that he will receive the requested information after presenting a document for paid fees. This was explained to him also in the course of a conversation with officers of the ministry. It is unclear why Mr. Lazov has requested first to examine the prepared information and to pay the fee afterwards. It is exactly this wish of his that has not been satisfied. The requested copy of the water facility use register has been prepared; it is available since 15 February but to this very day it has not been sought by the applicant.

I believe that, had there been a preliminary contact with the Ministry, the misunderstanding would not have occurred.

I believe that you will do your best for the favorable conclusion of this case.

Enc.: In accordance with the text.

Yours sincerely:

Deputy Minister:

Manoela Georgieva

**TO: MRS. ARSENOVA
MINISTER OF THE ENVIRONMENT
AND WATERS**

**Re.: Access to information in
connection with the extraction of
mineral materials from the river
Djerman valley**

Dear Mrs. Arsenova,

In contravention to the good relations between us Deputy Minister Georgieva has once again been misled by Mr. Koprinov to sign a letter, which falls short of the truth.

From the requested xerox copies for access to information specifies in the attached request of 03.01.2002 out of a total of 14 items the specified information has so far been refused to me with the exception of only item 12 concerning water facility use.

The inventory of the specified five ordinances enacted by Mrs. Dimitrova, Director of the Regional Environment and Waters Inspectorate, that I have been provided with, are not the copies of the information requested by me.

Enc: In accordance with the text.

08.05.2002

Yours sincerely,

(Lazov, Chairman of Initiative Committee)

**REPUBLIC OF BULGARIA
MINISTRY OF THE ENVIRONMENT
AND WATERS**

**TO:
MR. YORDAN LAZOV**

**Re: The environment situation
along the river Djerman valley.**

Dear Mr. Lazov,

In your consecutive complaint we notice a positive development of the existing environmental problem. It is true that the Regional Governor's Office has received the support of the Ministry of the Environment and Waters for inclusion in the titular lists of the Ministry of Regional and Urban Development and the Ministry of Agriculture and Forestry and in financing comprehensive projects for the river Djerman valley. This is part of the implementation measures adopted at the wide public discussion held at the Kyustendil Regional Governor's Office. The next step after securing the funds is the announcement by the Kyustendil region of a competition for awarding the project development following the consideration and the adoption of the technical assignment.

It is obvious that the activities of the Ministry of the Environment and Waters are specific and targeted and this is quite natural having in mind the position that has been taken on numerous occasions.

You have been informed by our letter No. G-29/15.02.2002 that the information requested by you from the register of the permits issued for using water facilities has been prepared and you can receive it through the existing procedure. So far you have not expressed a wish to do so.

The dam project on the river Djerman has not been rejected. The project was adopted with a decision of Regional Expert Council of Regulating the Territory – Kyustendil, it has been presented by the investor and has passed the legal procedure for issuing a permit for water facility use pursuant to the Waters Act, which is a necessary condition for approving the project and issuing a construction permit for the installation. Whether the project will be implemented or not as a part of a future cascade of dams is within the competence of the investor.

Your claim that „Deputy Minister Dukov has issued the permit“ comes short of the truth.

I believe that at this stage one has to concentrate one's efforts in a constructive direction with a view of the actual restoration of the ecological balance in the river Djerman valley.

Yours sincerely,

**DEPUTY MINISTER:
MANOELA GEORGIEVA**

**SUPREME ADMINISTRATIVE
COURT OF THE REPUBLIC OF
BULGARIA - FIFTH PANEL
Re: Administrative lawsuit
No.5736/01**

CLAIM

by

Yordan Lazov plaintiff under administrative lawsuit No.5736701

through **lawyer Alexander Emilov Khashumov**

Honorable Supreme Judges,

On the grounds of Article 42, paragraph 2 of the Access to Public Information Act in relation to Article 51 of the Supreme Administrative Court Act I plead with you the request to impose on the respondent under administrative lawsuit No.5736701 – the Minister of the Environment and Waters, a fine for the failure to comply with a court judgment that has come into force.

The respondent is informed about the judgment that has come into force and has been more than once addressed to comply with it. In response to these efforts only two identical reports on issued violation acts have been received. However, as it can be seen from the judgment, the subject of the legal dispute was the request for access to copies of the acts i.e. their contents. The court has reversed the refusal of the Minister of the Environment and Waters as contrary to the law and has obliged the respondent to provide the requested information.

After several futile attempts to receive the information referred to, the applicant Mr. Lazov has turned toward the non-governmental organization Foundation „Access to Information Programme“. When this organization raised the question of the execution of the judgment in a letter, in a reply letter the Deputy Minister of the Environment and Waters Mrs. Manoela Georgieva explained, that Mr. Lazov had refused to pay the fixed fee, because he wanted to examine the information in advance (obviously because he wanted to make sure that this was exactly the requested information). His request was not granted without indicating any motives. From the contents of the letter of the Deputy Minister and from another letter enclosed to it addressed to Mr. Lazov it is obvious that the above case, besides anything else, does not have anything in common with the request for access to information that was the subject of the judgment under administrative lawsuit No. 5736/01.

I think that the displayed lack of respect for a judgment of the Supreme Administrative Court that has come into force, as well as the violation made by this inaction, apparently premeditated, should cause the implementation of the liability provided for by the law.

Having in mind the above and on its grounds I ask the Honorable Court to impose a fee on the Minister of the Environment and Waters for failure to comply with a judgment that has come into force.

Enclosure:

1. Letter ref. No.48/30.01.02 from Manoela Georgieva;
2. Letter from engineer Tzv. Dimitrova;
3. Letter ref. No.48-00-2526/09.04.02 from AIP foundation ;
4. Letter ref. No.48-00-2526/22.04.02 from Manoela Georgieva;
- 5 Letter ref. No.G-29/15.02.02;
6. Power of attorney.

Yours sincerely:

(agent)

Totev
v. Minister of Finance

**TO
THE DIRECTOR
OF THE CHIEF TAX DIRECTORATE
Mr. Anton Tonchev**

REQUEST FOR ACCESS TO PUBLIC INFORMATION

by DIMITER CHAVDAROV TOTEV

Dear Mr. Tax Director,

On the grounds of the Access to Public Information Act I request to be granted a paper copy of your letter with your reference number 930072/20.02.2000. The letter is your reply to an inquiry of a taxable subject on interpreting the tax law. I am specifying expressly that I do not wish to be provided with the data about the person that has addressed the inquiry to you. I am interested only in the contents of your reply.

Yours sincerely,

Dimiter Totev

Sofia

21.07 2000

**MINISTRY OF FINANCE
CHIEF TAX DEPARTMENT**

**TO
MR. DIMITAR CHAVDAROV
TOTEV
Our ref. No. № ML-96-00-189/
21.07.2000**

Ref: Request to grant information

DEAR MR. TOTEV,

The information you want to receive is not public information in the meaning of Article 2, paragraph 1 of the Access to Public Information Act and constitutes official secret pursuant to § 1, item 1 of the additional provisions of the Code of Taxation Procedure (CTP).

A right to every tax subject is to protect the secret about the circumstances, which have become generally known to the tax administration under the conditions of the CTP –Article 23, paragraph 1, item 7 of the Code, and an obligation of the tax administration officials, pursuant to Article 12 and Article 242, paragraph 1, item 3 of the CTP is to keep secret and not use for other purposes, except for the direct execution of their official duties, all the facts and circumstances defined in the Code as official secret, that they have become familiar with. On the grounds of these two provisions, the secret can be revealed only on the basis of an act issued by a judicial authority, as well as on the basis of a written request from another taxation authority.

You have the opportunity – when you pose specific questions, referring to problems related to your taxation – to be informed in an appropriate form.

CHIEF TAX DIRECTOR

**THROUGH THE CHIEF TAX
DIRECTOR
TO: THE SOFIA CITY COURT
ADMINISTRATIVE DIVISION**

COMPLAINT

By: **Dimiter Chavdarov Totev,**

AGAINST:

letter No. ML-96-00-189 of 1 August 2000 r. of the Chief Tax Director

Honorable Judges,

I am appealing before you against the decision of the Chief Tax Directorate (CTD) refusing to provide me with access to public information requested by me on the grounds of Article 38, paragraph 1 of the Administrative Proceedings Act (APA) in conjunction with Article 40, paragraph 1 of the Access to Public Information Act (APIA) – State Gazette, No. 55 of 07.07.2000 - (APIA).

A. FACTS

On 21 July 2000 on the grounds of Article 24, paragraph 3 in conjunction with paragraph 1 of the Access to Public Information Act (APIA) I submitted a request to the CTD ref. No. ML-96-00-189 with which I requested a copy of the letter of the CTD No. 930072/20.02.2000. In the application I pointed out expressly that my request concerns only that part of the letter contents which would not reveal data individualizing its addressee or any other third party.

The CTD decided to refuse to me access to the requested information of which it notified me with letter No. ML-96-00-189 of 1 August 2000. This letter is a decision for refusal in the meaning of Article 40, paragraph 1 of the APIA and is the subject of appeal in this complaint.

In its decision the CTD claims that the requested information:

- a) „is not public in the meaning of Article 2, paragraph 1 of the APIA“; and
- b) „constitutes official secret in compliance with §1, item 1 of the CTP additional provisions“.

B. CONTRADICTION OF THE DECISION TO THE LAW

The refusal decision has been adopted in contradiction to the law because of the following:

1. Absence of motives for the decision

The CTD does not point to any factual grounds for its decision to refuse to me access to the requested information. In particular the CTD does not explain why the requested information is not public information in the meaning of the APIA, neither does it indicate the specific characteristics of the information which might associate it to the types of data specified as „official secret“ by §1, item 1 of the CTP additional provisions. The absence of a motive is in breach of Article 38 of the APIA and of Article 15, paragraph 2, item 3 of the APA, which in itself is grounds for reversing the decision.

2. Concerning the claim of the CTD that the information is not „public“

The information requested by me is public in the meaning of Article 2, paragraph 1 of the APIA because it is connected with public life in the Republic of Bulgaria and had it been granted to me it would have allowed me to form my own opinion concerning the activity of the CTD.

The requested information concerns the interpretation of the tax law by the tax administration that is entrusted with its implementation. The tax law establishes property obligations for a wide

circle of persons due to which its practical implementation by the tax administration is linked directly to public life in Bulgaria. It is common knowledge that letters of the CTD on the implementation of the tax law are published on a regular basis in printed and electronic publications which shows that they enjoy a high and lasting public interest.

Besides any interpretation of the tax law by the body entrusted with its implementation – the CTD – allows the formation of an independent opinion on the activity of the body in question.

3. Concerning the referral to „official secret“

The text of § 1, item 1 of the CTP additional provisions specifies in detail the data constituting official secret. All these data without exception are data which individualise a specific taxable subject which however is not the subject of my request. The subject of my request is the interpretation of the tax law by the CTD, done in its letter No. 930072/20.02.2000.

C. REQUEST

On the basis of the above I request from the Honorable Court:

I. **TO REVERSE** the decision of the CTD formulated in letter No. ML-96-00-189 of August 1, 2000 with which I am refused a copy of letter No. 930072/20.02.2000 and to decide the case in substance by:

II. **ESTABLISHING** my right of access to letter No. 930072/20.02.2000 in its part which does not reveal data on third parties; and

III. **OBLIGE** the Chief Tax Directorate to provide me with a copy of letter No. 930072/20.02.2000 in its part, which does not reveal data on third parties

Special request:

I request the Court to request officially from the Chief Tax Directorate:

1. Application from Dimiter Chavdarov Totev to the Chief Tax Directorate ref. No. ML-96-00-189; and

2. letter of the Chief Tax Directorate No. 930072/20.02.2000 for the purposes of Article 41, paragraph 3 of the APIA

I enclose:

1. A copy of the decision being appealed against;
2. Copies of published letters of the CTD;
3. A copy of the complaint and the written evidence for the respondent;
4. Power of attorney;
5. A receipt for paid state fee.

Yours respectfully:

Dimiter Totev

**SOFIA CITY COURT
ADMINISTRATIVE DIVISION
III „D“ division**

WRITTEN DEFENCE

from

Dimitar Chavdarov Totev, plaintiff under administrative lawsuit No. 2167/00 in the registration of Sofia City Court, III „D“ administrative division

through **lawyer Alexander Emilov Kashumov**, Sofia College of Barristers

Honorable Judges,

I plead with you to grant the complaint, as it is submitted. I ask you on the grounds of Article 41, paragraph 1 of the APIA in conjunction with Article 42, paragraph 2 of Administrative Proceedings Act (APA) to reverse the decision of the Chief Tax Director as contrary to the law and to oblige him to provide me with access to the requested public information.

I. With regard to the preliminary questions of the case.

1. The appealed act of the Chief Tax Director is a decision refusing to grant information in the meaning of the APIA, regardless of the fact that it is not explicitly a „decision“ or an „order“. This is the so, because the act is issued in the framework of the administrative proceedings for issuing a decision to grant access to information, which began with an application submitted by myself. It is also obvious that the act affects rights that belong to me and more specifically – my right of access to public information, pronounced in Article 4, paragraph 1 of the APIA. Hence the act issued by the Chief Tax Director has the characteristics of an individual administrative act in the meaning of Article 2, paragraph 1 of APA, and in particular – of a decision in the meaning of the APIA. The act is subject to appeal under the procedure of APA on the grounds of Article 40, paragraph 1 of the APIA, because it represents a decision on refusing to grant public information.

2. The Chief Tax Director is an authority of the tax administration pursuant to Article 235, paragraph 1, item 1 of the Code of Taxation Procedure and therefore in the capacity of a public authority is an obliged subject in the meaning of Article 3, paragraph 1 of the APIA.

II. With regard to the contradiction of the appealed decision to the law. In addition to the reasons set forth in the complaint, that the decision to refuse information is issued in violation of the procedural and substantive law, I add the following:

1. The decision to refuse access to information has no motive in violation of Article 38 of the APIA, which requires explicit indication of the legal and factual grounds for refusal, as well as of Article 15, paragraph 1 of APA. The legal grounds have not been indicated precisely, because § 1, item 1 of the additional provision of the Code of Taxation Procedure has six items. The refusal would have been motivated only had a specific item been indicated and simultaneously had it been claimed that the letter contained the factual data, indicated in the same item. The decision does not indicate the factual grounds at all, and therefore it is unclear why the requested letter contains information that is official secret, as it is being claimed in the decision. On the contrary – my preliminary information is that the letter contains a standpoint of the Chief Tax Director on the application of the taxation law, expressed in executing his powers pursuant to Article 237,

paragraph 1, item 10 and Article 238, paragraph 1 of the Code of Taxation Procedure. On account of this preliminary information, I first orally asked for a copy of the letter, and later on I submitted an application for access to information. The last paragraph of the decision refusing access to information also contains an indication that the contents of the letter I requested is connected to „questions that have been posed, related to problems, connected with taxation“.

2. The assertion that the information I requested „does not represent public information in the meaning of Article 2, paragraph 1 of the APIA“ is not supported by neither legal, nor factual arguments, and therefore it is not motivated. The Chief Tax Director was obliged to motivate this assertion, so that it could be possible both for me and for the court to assess whether it is in compliance with the law i.e. whether the legal definition of „public information“ has been taken into consideration. At present, nothing indicates that the qualification has been done in compliance with the law.

3. The cited third paragraph of the appealed decision suggests the conclusion, that the requested information is public because it affects public life in the Republic of Bulgaria. This is the so, because „the problems related to taxation“ are universal for all taxable subjects due to their equality before the law and therefore the interpretations of these problems made by the competent authority are of a public nature. Moreover, these letters are responses to enquiries on the application of the law, and not to the way in which the personal or company cases are being handled. Next, the standpoint of the Chief Tax Director on such questions is important for the formation of one's own opinion about his activity and the activity of the tax administration in general. All the more so that this is the authority that gives standpoints and instructions on the application of the taxation laws and the legal acts on their application, which are grounds for the revocation of an act of the tax administration by the superior authority /Article 238, paragraph 1-2 of the Code of Taxation Procedure/. Since it is related to public life and provides an opportunity to form an opinion on subjects obliged under the APIA, the requested information falls within the scope of Article 2, paragraph 1 of the APIA and therefore is public.

4. Even if the existence of a limitation to my right of access to information – official secret – was motivated and well-grounded, this limitation could not be opposed to my request for information. This is the so, because in my application for access to public information I explicitly requested to be granted the contents of the letter, without the data that identified the third party, which is party to the correspondence. As far as I know, this content represents a standpoint on the application of the taxation law and this is what I wanted to receive. The question whether there really exists official secret over the data of this party cannot arise, because I do not require access to this data. For the Chief Tax Director the obligation arose to provide me with the so called partial access to public information – Article 7, paragraph 2, Article 37, paragraph 2 of the APIA, without giving me the correspondent's data – which is a third party.

5. Letters, similar to the one I required, are publicized widely throughout various publications and software programmes for legal information, as it is clear from the case evidence. With his refusal to grant the information I requested the Chief Tax Director has put me into an unequal position in comparison to those to whom he has granted such information, in violation of the principle, laid down in Article 6, point 2 of the APIA.

Sincerely:

(agent)

**JUDGMENT
IN THE NAME OF THE PEOPLE**

23.07.2001

THE SOFIA CITY COURT ADMINISTRATIVE DIVISION, III „D“ panel in a public hearing held on twelfth of June of the year two thousand and one and composed of:

Chairperson: GALINA SOLAKOVA

**Members: MARINKA CHERNEVA
KRISTINA ANGELOVA**

With secretary Nevenka Mihailova and in the attendance of Public Prosecutor Burneva having considered the report of **Judge Cherneva** administrative lawsuit No. 2167 of the register for the year 2000 and in order to pass judgment took into consideration the following:

The proceedings are under Article 40 of the Access to Public Information Act (APIA) in conjunction with Article 33 and the following of the Administrative Proceedings Act (APA).

It has been instituted on a complaint of **DIMITER CHAVDAROV TOTEV**, Personal reg. No. 7112106248, against letter No. ML 96-00-189/01.08.2000 of the Chief Tax Director.

The plaintiff claims in his complaint that on 21.07.2000 on the grounds of Article 24, paragraph 3 in conjunction with paragraph 1 of the APIA submitted an application to the Chief Tax Director with ref. No. ML-96-00-189/01.08.2000, with which he requested a copy of a letter of the Chief Tax Director No. 930072/20.02.2000. He indicated in his application that his request concerned only that part of the letter's contents, which would not reveal data, individualising its addressee or any third party. He sets forth detailed considerations. His claim consists in a request that the Court should reverse the decision of the Chief Tax Director formulated in a letter No. ML 96-00-189/01.08.2000 refusing him a copy of letter No. 930072/20.02.2000 and should judge the case in substance by confirming his right of access to letter No. 930072/20.02.2000 in its part which does not reveal data on third parties and by sentencing the Chief Tax Directorate to grant him a copy of letter No. 930072/20.02.2000 in its part which does not reveal data on third parties.

At the court hearing the plaintiff supports his complaint in person and through his procedural agent and request the court to grant it. He sets forth detailed considerations and a written defense. He does not claim expenses.

The respondent challenges the complaint and requests the Court to reject it as unjustified. He sets forth considerations in detailed written comments. He claims payment of remuneration to his legal counsel.

The representative of the Sofia City Public Prosecutor's Office deems the complaint unjustified and requests the Court to reject it.

THE SOFIA CITY COURT having assessed the evidence collected on the case and the positions of the parties finds the following as factually and legally established:

A written refusal is being appealed against of the Chief Tax Director, enacted in letter No. ML-96-00-189/01.08.2000 with which the plaintiff is refused a copy of letter of the Chief Tax Director No. 930072/20.02.2000. The administrative proceedings started with an application to the Chief Tax Director with ref. No. ML-96-00-189/01.08.2000 with which the plaintiff requested a copy of letter of the Chief Tax Director No. 930072/20.02.2000 concerning the tax treatment of the

interest in the ZUNK bonds. He stated that it was not necessary to reveal personal data on the persons to which it had been addressed. A pronouncement followed in the legally prescribed 14-day time limit which is the subject of appeal before this Court. The administrative agency decided that the information requested by Totev was not public in the meaning of Article 2, paragraph 1 of the APIA and is official secret pursuant to § 1., item 1 of the additional provisions of the Code of Taxation Procedure. The Chief Tax Director motivated his refusal with the right of any taxable subject to protect the secret concerning the circumstances that have become known to the tax administration under the terms of Article 23, paragraph 1, item 7 of the Code of Taxation Procedure and with the obligation of the tax administration staff in compliance with Article 2 and Article 242, paragraph 1, item 3 of the Code of Taxation Procedure to keep secret and not to use for any purposes except for the direct fulfillment of their official duties all facts and circumstance that have become known to them and that have been defined as official secret.

In view of the factual circumstances so established the Court finds the following as legally established:

The letter of the Chief Tax Director No. ML-96-00-189/01.08.2000 that is being appealed against refusing the plaintiff a copy of letter of the Chief Tax Director No. 930072/20.02.2000 is undoubtedly an individual administrative act in the meaning of Article 2 of the Administrative Proceedings Act and is subject to judiciary control since it concerns the rights of the plaintiff.

Pursuant to Article 41, paragraph 2 of the Constitution citizens have the right to information from a government authority on issues which constitute for them lawful interest. To this subjective right of citizens corresponds the obligation of the respective authorities of the state to grant the requested information provided it, pursuant to the Constitutional provision, is not a government secret or other secret protected by law and does not concern other persons' rights. Consequently the right pronounced by the Constitution is not unrestricted. It is determined within a strict framework provided by the Constitution and the respective laws. The application of this provision is connected with the existence of several conditions, namely: that the person seeking information should be a Bulgarian citizen, he should have lawful interest in the information, it should not be a state secret and should not affect other person's right

The right of access to information is regulated except in the Constitution also in the special Access to Public Information Act. It provides citizens and legal persons with a wider opportunity to be informed and also provides an opportunity for exercising more effective control over government. The APIA widens the circle of persons, which have right to information, i.e. information may be requested by any natural or legal person. The plaintiff Dimiter Totev is an actively legitimated person in the meaning of the APIA to request access to information. The respondent – the Chief Tax Director on the other hand is a passively legitimated person to grant or refuse the requested access to information since all government authorities and all authorities of local government and subject of public law are obliged to provide information.

The application to the Chief Tax Director with ref. No. ML-96-00-189/01.08.2000 with which the plaintiff has requested a copy of letter of the Chief Tax Director with ref. No. 930072/20.02.2000 concerning the tax treatment of the interest on ZUNK bonds complies with the requirements of Article 25, paragraph 1 of the APIA.

The respondent has made a pronouncement within the 14-day time limit prescribed by Article 28 of the APIA with a letter No. ML-96-00-189/01.08.2000.

The Court accepts that the complaint has been duly submitted but considered in substance it is unjustified.

The right of access to information is not absolute but is subject to certain restriction. They are defined in Article 37, paragraph 1 of the APIA and are state secret, official secret, the information under Article 13, paragraph 2 of the same act, when access affects the interests of a third party and there is no express consent by it, the requested public information has been granted to the

applicant in the preceding six months and when the information is connected with the operational preparation of the acts of the authorities and has no significance of its own (opinions, recommendations, positions, consultations) and when it contains positions in connection with current or forthcoming negotiations (Article 13, paragraph 2 of the APIA).

The administrative authority has accepted in the refusal that is being appealed against that the information requested by Totev is not public in the meaning of Article 2, paragraph 1 of the APIA and is official secret pursuant to § 1., item 1 of the Code of Taxation Procedure additional provisions.

The legislator has provided a legal definition of the term public information in Article 2 of the act. He has accepted that public is any information connected with public life in the Republic of Bulgaria and allowing citizens to form an independent opinion concerning the activities of the subjects that are obliged by the act.

The plaintiff has requested in his application from the Chief Tax Directorate to familiarize himself with the latter's position on treating the interest on ZUNK bonds. Because of this the Court deems that the information requested by Totev is public in the meaning of the law since it concerns the activity of the tax administration on a specific problem and allows citizens to form an independent opinion concerning the activities of the Chief Tax Directorate.

There is no legal definition of the term „official secret“. In any case however, official secret is a means of protecting certain interests which the legislator has deemed necessary to regulate. The administrative authority in its decision refers to § 1., item 1 of the Code of Taxation Procedure additional provisions. In the meaning of this provision „official secret“ includes specific individualized data on taxable subject including the data on the tax registration, and excluding the data included in the public registers; the nature, source and volume of the income and/or expenditures; the sum of the calculated, established taxes, the tax exemptions, waivers and disposals used, the amount of the tax credit and the tax at the source; the data on commercial contracts and the size of the payments to third parties; the value and type if the individual assets and liabilities or possessions; any other data received, certified, prepared or collected by the tax authority in the course of the taxation proceedings and while performing the activities provided for in this act.

In view of this express provision of the law the Court deems that the Chief Tax Director has motivated his refusal correctly with the right of protecting the secret of any taxable subject concerning the circumstances that have become known to the tax administration under the terms of Article 23, paragraph 1, item 7 of the Code of Taxation Procedure and with the duty of the tax administration officers pursuant to Article 12 and Article 242, paragraph 1, item 3 of the Code of Taxation Procedure to keep the secret and not to use for any other purposes except for the direct fulfillment of their official duties all facts and circumstances that have become known to them and which have been defined by the Code of Taxation Procedure as official secret.

The Court believes that with the provision to the plaintiff of the reply by the Chief Tax Directorate to the third party concerning the request made by him on the manner in which the Code of Taxation Procedure is applied in this particular premise the administrative authority would breach the express prohibition provided for in § 1., item 1 of the Code of Taxation Procedure additional provisions. Data would be revealed concerning the third party which is not participating in the administrative proceeding without its consent in spite of the fact that in the complaint it is pointed out that it is not necessary to reveal its personal data. Opening the requested information would reveal other data received, certified, prepared or collected by the tax authority in the course of the taxation proceedings concerning the third party which is not participating in the proceedings.

In order to gain access to the requested information the plaintiff should have requested the consent of the third party – an opportunity provided for in Article 37, paragraph 2 of the APIA. There is no such consent in the administrative correspondence.

In view of the factual circumstances so established the Court deems the administrative act that is being appealed against correct and lawful; it has been issued in compliance with the legal requirements that the authority which is competent should make a pronouncement within its powers, due to which it should be confirmed and the complaint should be rejected as unfounded.

In view of the express claim of the respondent's agent found in the written comments and in view of the outcome of the dispute on the grounds of Article 64 of the Code of Civil Procedure in conjunction with Article 5 of the APA the Court awards remuneration to the legal counsel constituting court expenses in the sum of BGN 200 to be paid by the plaintiff.

Led by the above on the grounds of Article 42 of the APA the **SOFIA CITY COURT**

RULES:

REJECTS the complaint of **DIMITER CHAVDAROV TOTEV**, personal reg. No. 7112106248 against letter No. ML-96-00-189/01.08.2000 of the Chief Tax Director with which he has been refused access to public information specified in letter of the Chief Tax Director No. 930072/20.02.2000 as totally unfounded.

SENTENCES DIMITER CHAVDAROV TOTEV, personal reg. No. 7112106248 to pay the Chief Tax Director court expenses on the grounds of Article 64 of the Code of Civil Procedure in conjunction with Article 5 of the APA constituting remuneration to the legal counsel in the sum of BGN 200.

This judgment is subject to cassation appeal before the Supreme Administrative Court within 14 days from the date of notification to the parties that it has been issued.

CHAIRPERSON:

MEMBERS:

THROUGH THE SOFIA CITY
COURT
ADMINISTRATIVE DIVISION
TO THE SUPREME
ADMINISTRATIVE COURT
OF THE REPUBLIC OF BULGARIA

CASSATION COMPLAINT

by **Dimitër Chavdarov Totev**

plaintiff under administrative lawsuit.2167/00 of the Sofia City Court
through **lawyer Alexander Emilov Kashumov**

AGAINST

Judgment of the Sofia City Court of 23.07.01
on the grounds of Article 33 of the Supreme Administrative Court Act

Honorable Supreme Judges,

I am appealing - on time - judgment on administrative lawsuit No. 2167/00. The judgement has been passed in contravention to substantive law.

After having established partially correctly the factual circumstances on the basis of the written evidence submitted in the case, the Court has judged correctly that the requested information is public information and that the applicant has a right of access to it. However it was accepted contrary to the law that the refusal of the Chief Tax Inspector was motivated correctly and that the granting of the requested information would reveal personal data.

The arguments set forth in the decision refusing access to information point at the contravention to the law of the refusal. It cannot be accepted that the subjective belief of the one or the other subject obliged by the APIA that certain information is secret and the right of access to it should be limited may be grounds for refusal. On the contrary, the requested public information should fall objectively within the scope of the limitation provided in the law, i.e. should be a secret. It is precisely because of this that according to Article 38 of the APIA the motives of the refusal should contain not only the legal but also the factual grounds for the refusal. In this particular case no factual grounds whatsoever have been referred to □ it is not indicated which exactly categories of information within the scope of paragraph 1, item 1 of the additional provision of the Code of Taxation Procedure are contained in the requested document.

The legal grounds have not been precisely indicated in the decision on refusal either. The specified provision of the Code of Taxation Procedure lists six points of data categories, which are secret. The decision sites neither of the points specified in paragraph 1, item 1 of the Code of Taxation Procedure. Because of the indicated shortcomings the motives of the refusal decision do not substantiate the refusal. Moreover, the total absence of factual motives and the lack of precisely specified legal grounds for refusal indicate that the will of the obliged subject had not been to fulfill his obligations under the APIA and the Code of Taxation Procedure but rather not to honor

the access to information request due to subjective consideration of his own. This is obvious from the fact that the Chief Tax Inspector had not even deemed it necessary to entitle his act „a decision“ and to mention expressly that it is subject to appeal before the court. This successive breach of the APIA points to disrespect for the citizens' right to public information access and shows that the decision has been enacted at variance with the purpose of the law.

Because of the above violations of substantive law the court should have drawn conclusions that should have been different from the ones drawn in the judgment that is being appealed against. The factual and legal unfoundedness of the refusal to provide access to public information and the broad and unclear referral to paragraph 1, item 1 of the Code of Taxation Procedure should have been discussed and it should have been established that substantive law had been applied incorrectly. Instead of this the Sofia City Court found that in the meaning of the Code of Taxation Procedure „official secret' included specific individualized data on the taxable subjects“ without considering the issue that the decision that was being appealed before it specified no such concrete data.

The first instance court was obliged, in conformity with its obligations under Article 41, paragraph 2, not only to consider fully, comprehensively and objectively all submitted evidence but also, should it deem this necessary, collect additional evidence. This is so because the court is committed not only by the assertions of the claiming party - the applicant, but also by the task to exercise comprehensive control over the compatibility with the law of the administrative act that is being appealed against. In this respect Article 41, paragraphs 3 and 4 give the court guidelines to request the respective document, which is claimed to be falling within the scope of limitations of information access, and to pass judgment on the lawfulness of making it secret. This power of the court indicated once more that the law requires specific factual motives for the refusal under APIA and the exact implementation of this obligation is subject to judicial control. The court however has not collected this evidence.

Although the requested letter has not been submitted as evidence, the Sofia City Court draws conclusions concerning whether its granting, in full or in part, would have been compliant with the law or not. It is not clear however in what way „data would be revealed about a third non-participating party without its consent although it is pointed out in the complaint that it was not necessary to reveal its personal data“, had the requested information been granted. The court neither had the opportunity to judge this in person nor is there anything pointing in this direction in the refusal of the Chief Tax Directorate, on which to base its conclusion. Precisely because of this conclusion of the court is just words without indication of where it stems from.

In this way the court actually supplements the refusal decision and steps outside the framework of the control over compliance with the law.

With the conclusion that eventually the rights of others could be infringed upon, made on an entirely abstract basis, the right of partial access provided for in the APIA is rendered absolutely senseless. The objective of this partial access is exactly to guarantee precisely both the rights of the access to information seeker and the ones of the third parties.

The conclusion of the court that the applicant has to request the consent of the third party concerned has nothing to do with the provision of the APIA. On the contrary, according to the

APIA the procedure is exactly the opposite – the obliged authority is required to ask the consent in the interested third party and this has its factual justification – there is no way that the seeker of the information could ask for consent a person whose identity is unknown to him.

The conclusion of the court that no information should be granted in spite of the fact that in the application the contents of the letter was requested without the personal data, is unfounded. If the obliged subject does not contest the citizen's right to obtain the information he has requested and thinks that only one additional category of information should not be granted the question arises why did the court reject the complaint. The right of access to public information is not defined as access to a document but as access to information. Consequently the applicant has the right to receive any information requested by him, regardless of the fact part of what carrier it is on, provided the requested information does not fall within the legal limitations.

In view and on the grounds of the above I ask the Honorable Court to reverse the judgment that is being appealed against and to decide the case in substance.

Special request: I ask the Court to make an official request for the letter to which access was refused and to consider it at a closed hearing in compliance with Article 41 of the APIA.

Enclosure: copy of the complaint for the respondent

Yours respectfully

(agent)

JUDGMENT**No. 6017**

Sofia, 21.06.2002

IN THE NAME OF THE PEOPLE

The Supreme Administrative Court – First Panel in a hearing held on eleventh of April of the year two thousand and two composed of:

CHAIRMAN: IVAN TRENDABILOV**MEMBERS: VIOLETA KOVACHEVA****MINA ATANASOVA**

with Secretary Tsvetanka Grozdanova and in the attendance of Public Prosecutor Maria Kamenska heard the report of **Judge VIOLETA KOVACHEVA** on administrative lawsuit No. 10496/2001.

The proceedings are under Article 33 – 40 of the Supreme administrative Court Act. It has been instituted on a cassation complaint served by Dimitar Chavdarov Totev through his agent Alexander Khashumov against judgment of the Sofia City Court of 23 July 2001 passed on administrative lawsuit No. 2167 of the year 2000 with which his complaint against letter No. MA-96-00-189 of 01.08.2000 of the Chief Tax Inspector has been rejected and he is refused access to public information.

The cassation complaint relates to arguments on violating substantive law – grounds for cassation in the meaning of Article 218b, letter „c“ of the Code of Civil Procedure in conjunction with Article 11 of the Supreme administrative Court Act. The plaintiff claims that the City Court has accepted in contravention to the law that the refusal of the Chief Tax Inspector is correctly motivated and that granting of the requested information would reveal personal data. The letter specifies no factual grounds for the refusal since there is no indication exactly which categories of information falling within the scope of paragraph 1, item 1 of the Code of Taxation Procedure additional provisions are contained in the requested document, as well as the fact that the legal grounds have not been specified correctly since no item of the ones foreseen in paragraph 1, item 1 of the Code of Taxation Procedure additional provisions is referred to. The total absence of factual motives and the absence of exactly specified legal grounds indicate that the will of the obliged subject has not been to comply with its obligations under the Access to Public Information Act and the Code of Taxation Procedure but rather to ignore the request for access to information due to its own subjective considerations which makes the refusal incompatible with the law. What is requested is a reverse of the decision that is being appealed against and granting the request for providing access to the requested information.

The party that is a respondent to the complaint challenges in a court hearing through its procedural agent the cassation complaint as being groundless since the information requested represents official secret in the meaning of paragraph 1, item 1, letter „e“ of the Code of Taxation Procedure.

The representative of the Chief Cassation Prosecutor's Office is expressing an opinion that the cassation complaint is justified. The judgment of the Sofia City Court has been passed in contravention to substantive law and should be reversed, reversing also the refusal of the administrative agency.

The Supreme Administrative Court, having considered the admissibility of the complaint and the cassation arguments specified in it and pursuant to the provision of Article 39 of the Supreme Administrative Court Act deems the following as established facts:

The cassation complaint has been served by the due party within the time frame under Article 33 of the Supreme Administrative Court Act and is procedurally admissible. Reviewed in substance it is justified.

With the judgment that is being appealed against the Sofia City Court in the proceedings under Article 40 of the Access to Public Information Act and Article 33 of the Administrative Procedure Act has rejected the complaint served by Dimiter Chavdarov Totev of the city of Sofia against the refusal of the Chief Tax Inspector of access to public information enacted in a letter No. 930072 of 20.02.2000 of the Chief Tax Directorate. In order to pass such a result the Court has accepted that the Chief Tax Inspector has enacted this refusal correctly since to grant the requested information representing a reply of the Chief Tax Directorate to a third party concerning an inquiry on the way the Code of Taxation Procedure is applied would violate the express prohibition provided for in paragraph 1, item 1 of the Code of Taxation Procedure additional provisions. It has deemed that in this way data would be revealed concerning a third party, which is not participating in the administrative proceedings without its consent while the applicant requesting this information, has not obtained its agreement.

These conclusions of the regional court are incorrect and are in contravention of substantive law and contradict the evidence of the case. It has been established beyond any doubt in this case that with his request of 11.07.2000 to the Chief Tax Directorate the applicant Dimiter Totev has requested on the grounds of Article 24, paragraph 3 in conjunction with paragraph 1 of the Access to Public Information Act to be granted a copy of letter No. 930072 of 20.02.2000 of the Chief Tax Directorate in the part concerning the tax treatment of the interest on the ZUNK bonds. The letter specifies expressly that in order to grant his request there is no need to reveal personal data on the person, which is the addressee of this letter. With the letter that is being appealed against, which has the nature of a decision in the meaning of Article 39 of the APIA, the granting of such information is refused. The grounds of the administrative agency for this are that the requested information is not „public“ in the meaning of Article 2, paragraph 1 and represents „official secret“ pursuant to paragraph 1, item 1 of the Code of Taxation Procedure additional provisions. The administrative agency has referred to the provisions of Article 12 and Article 242, paragraph 1, item 3 of the Code of Taxation Procedure.

Under the established factual circumstances, the conclusion of the Sofia City Court that the refusal was lawful, since had the requested information been granted the administrative agency would have violated the express prohibition provided for in paragraph 1, item 1 of the Code of Taxation Procedure additional provisions, is incorrect and has been passed in contravention of the provisions of the APIA. One of the principle constitutional rights of citizens is the right to information, pronounced by the provision of Article 41, paragraph 2 of the Republic of Bulgaria Constitution. This constitutionally recognized right to information, it's guaranteeing and exercising have been regulated by the newly adopted in the year 2000 Access to Public Information Act (Official Gazette, No. 55 of 7.07.2000). Article 2, paragraph 1 of the above mentioned act specifies a definition of the notion of „public information“ and it is indicated that in the meaning of this act this is „any information connected with public life in the Republic of Bulgaria allowing citizens to form an independent opinion on the activities of the subjects obliged by the law“. In this case the Chief Tax Inspector, who is an authority of the tax administration pursuant to Article 235, paragraph 1, item 1 of the Code of Taxation Procedure is an obliged subject in the meaning of Article 3, paragraph 1 of the APIA. The requested information concerning the interpretation by the Chief Tax Directorate in the said letter given to the tax treatment of the interest on ZUNK bonds is public information in the meaning of the definition provided in Article 2 of the APIA, since pursuant to Article 238 of the Code of Taxation Procedure the Chief Tax Inspector gives opinions and directions on the uniform application of the tax laws and the normative act on

their application. Therefore in this case this information is of a public nature since the issues connected with taxation are common for all taxable subjects, which are equal before the law and by what interpretation is given to a certain tax subject on a certain tax issue allows the person seeking the respective information to form an opinion on the activities of the tax administration. The requested information as it is specified in the application to the Chief Tax Directorate on interpreting a certain tax issue falls in no case under any of the premises of paragraph 1, item 1 of the Code of Taxation Procedure specifying the data considered „official secret“. The refusal is not motivated by the absence of such information in the quoted letter in order to deem this the reason for the refusal. Besides, we must bear in mind that as a rule the Chief Tax Directorate's letters on applying the tax laws are published on a regular basis in a number of printed and electronic publications due to the significance and the interest of the issues dealt with in them. Besides, the administrative agency could have granted the requested information in such a scope and in such a way that personal data about third parties not participating in the administrative proceedings would not be referred to, moreover that this is expressly specified in the request. In this sense it is totally unjustified for the Sofia City Court to presume that there are grounds for refusal referring to the provision of Article 37, paragraph 1, item 2 of the APIA, which is inapplicable to this case.

In view of the above the judgment of the Sofia City Court should be reversed as incorrect and, since the case is clear from a factual point of view, a different one should be passed on the substance of the dispute which reverses the refusal that is being appealed against as contrary to the law. The file should be referred back to the administrative agency, which should be obliged to grant the applicant access to the requested information concerning the tax treatment of the interest on the ZUNK bonds given as a reply in a letter of the Chief Tax Directorate No. 930072 of 20.02.2000.

Led by the above and on the grounds of Article 40, paragraph 1 and 2 of the Supreme Administrative Court Act and Article 41, paragraph 1 of the APIA the **SUPREME ADMINISTRATIVE COURT - First Panel**

RULES:

REVERSES the judgment of 23.07.2001 enacted on administrative lawsuit No. 2167 of the register for the year 2000 of the Sofia City Court, which rejects the complaint of Dimiter Chavdarov Totev against letter No. ML-96-00-189 of 01.08.2000 of the Chief Tax Inspector and instead of it **RULES:**

REVERSES the decision of the Chief Tax Inspector – the city of Sofia, enacted in the letter No. ML-96-00-189 of 01.08.2000, with which access to public information is refused to his application No. ML-96-00-189 of 11.07.2000

REFERS the file back to the agency and obliges it to grant the required information taking into consideration the substantiation of this judgment.

THIS JUDGMENT is not subject to appeal.

True to the original,

Secretary:

CHAIRMAN: (signed) **IVAN TRENDAFILOV**

MEMBERS: (signed) **Violeta Kovacheva**

(signed) **Mina Atanassova**