

**Key achievements of Access to Information Program (AIP)
January 2004 – December 2004
(Programmatic and Organizational)**

Following its mission – to promote the exercise of the right to information envisaged in Article 41 of the Bulgarian Constitution – Access to Information Program (AIP) Foundation is realizing its long-term objectives:

- To encourage individual and public demand for public information through civic education in the right-to-know area.
- To work for transparency of government at different levels, advocating a more open supply of information.

In 2004, AIP is working in several directions to realize those long-term objectives:

1. Monitoring the regulations of the right of public information access and its restrictions, as well as the relevant legislation.
2. Monitoring the practices of information provision.
3. Legal assistance in cases of information seeking, in cases of information refusals, including a representation in court.
4. Education and trainings on the Access to Public Information Act (AIPA), the Personal Data Protection Act, and the Protection of Classified Information Act.
5. Participation in the public debate on access to information issues and the right of freedom of expression.
6. Cooperation on national, regional and global level.

The main achievements in the above-mentioned directions are:

1. Monitoring the legislation for access to information and the practices of providing information.

1.1. Monitoring the access to information legislation, its limitations and other related legislation

The advocacy work of Access to Information Programme is based on monitoring of the regulations concerning access to information and its restrictions. The main channels of information about the changes of regulations are:

- The E-bulletin of the Parliamentary Public Relations Department;
- The monthly reports of AIP's regional coordinators and the cases of information refusals referred to the organization;
- Specialized surveys – In 2004 AIP was part of the Freedom of Information Global monitoring survey for the second year. The national team conducted a survey for the implementation of the AIPA;
- Trainings of public officials, in which AIP representatives are lecturing.

AIP has continued its advocacy work by:

- comments on the suggested amendments in the legislation;
- recommendations on changes in the texts of specific acts
- comments on the existing legislation and recommendations for amendments

All comments and recommendations are released to the media, published in the AIP information newsletter and systematically in the Regular Annual Reports *Access to Public Information in Bulgaria* issued by AIP.

In 2004, the following comments and recommendations were prepared and disseminated:

- Recommendations on amendments in the Personal Data Protection Act (PDPA);
- Recommendations on the Protection of Classified Information Act (PCIA);
- Comments and recommendations on the draft of the Code of Ethics for Public Officials;
- Comments and recommendations on the draft of an Instruction of the Minister of the State Administration for APIA implementation;
- Comments and proposals to the Code of Ethics for Journalists;
- Comments on the Public Officials Act about the conflict of interests;
- Comments on the Criminal Code concerning Article 339A – the freedom to seek information and other protected rights;
- Comments on the Judiciary Act, concerning the publicity of the meetings of the Supreme Judicial Council;
- Comments on the draft of the List of Official Secrets of the Bulgarian State Railways and the Ministry of Energy and Energy Resources.

In certain cases, members of AIP discussed proposed regulations in working groups. In the reported period (2004), members of AIP team participated in the following working groups:

- Code of Ethics for Public Officials – G. Jouleva, A. Kashumov;
- Anti Corruption Strategy, Ministry of the Interior – Gergana Jouleva, Fani Davidova;
- Personal Data Protection Act – Fany Davidova, Alexander Kashumov;
- Discussion on the Instruction for APIA implementation in the Council of Ministers.
- Discussion on the survey methodology for the preparation of the annual *State of the administration report* for 2003 by the Minister of state administration;
- Vision for the Public Administration in 2007.

1.2. Monitoring the freedom of information practices

In 2004, monitoring the practices of information provision is realized through:

- The systematization of the monthly reports of the AIP coordinators about the practices of Access to Public Information Act implementation in different regions of Bulgaria. Some of these reports are published in the monthly AIP newsletter. The coordinators collected cases of information refusals and also sent them to the AIP office for comments and legal help.
- The systematization of provided legal assistance in cases of information refusals to the office of AIP in our electronic database – 717 cases for 2004. Statistic reports from electronic database were giving some useful information about the implementation of the APIA and the problems in the freedom of informatio area.
- Fot the second year AIP is an implementing partner in *Freedom of Information Global Monitoring Project* of Open Society Justice Initiative. In 2003 the survey was conducted simultaneously in five countries. In 2004 the number of countries was increased to sixteen. The developments in the methodology were discussed in the working meeting of national teams from EU countries in Sofia, March 2004. AIP organized, prepared, and assisted in filing of 140 information requests to eighteen institutions and conducted eighteen profound interviews with access to public information officials in those institutions. The national report is ready. The

findings from the global monitoring survey for Bulgaria with recommendation to authorities will be part of the annual report *Access to Information in Bulgaria, 2004*, which will be published by AIP in the end of February 2005.

The final report on the Global FOI monitoring will be available on the website of the Open Society Justice Initiative (<http://www.justiceinitiative.org>).

- Furthermore, an important source of information about the implementation of the APIA in the institutions are trainings organized by AIP or at the invitation of other institutions and organizations (such as The Institute for Public Administration and European Integration, the USAID “Open Government Initiative” project, private companies).
- *Annual report on Access to Information in Bulgaria 2003*, summarizing and analyzing the results from monitoring of freedom of information legislation practices, the results from monitoring of the implementation of this legislation, and the fulfillment of the obligations under APIA by the obliged bodies. The report also includes recommendations to the bodies of the executive and legislative power for improving the access to information situation. In the beginning of 2004 AIP has published, disseminated and presented before the media and the public *Annual report on Access to Information in Bulgaria 2003*. In these reports AIPF has made several specific recommendations, which were reflected in several freedom of information policies:
 - AIP was consulted for the survey methodology for the annual report by the Minister of state administration
 - The process of the adopting Internal Rules for APIA implementation is continuing
 - Some of the institutions, preparing the lists with the categories of professional secrets, have asked the expert opinion of AIP.
 - The information security officials, participated in the freedom of information trainings.
 - Many institutions have adopted an order for processing verbal requests from citizens following the recommendations given in the last Annual Report of AIP.

The team of AIP team currently working on the *Annual Access to Information Report for 2004*. The report will be published, promoted and disseminated in February 2005.

In 2004, AIP team and “Borrowed Nature Association” worked on a project, called The Access Initiative. AIP worked with environmentalists, experts on the capacity of civil organizations and institutions, experts on public participation to assess the situation of access information, public participation and access to justice on environmental matters. The methodology of the assessment was created by The Access Initiative Team (TAI) of the World Resources Institute. The national team was trained how to apply the methodology by a representative of the World Resources Institute. The report included analysis of the results of the environmental assessment and recommendations. It is published on the web site of AIP and was presented on a number of conferences before interested parties.

A useful resource for monitoring and assessment of the access to information situation in the institutions was nomination procedure for the International Right-to-Know Day awards. On September 28, 2004, just like in 2003, AIP organized the Right-to-Know Day award ceremony.

In May, 2004, as planned, AIP organized an international conference “Supporting the Implementation of Freedom of Information Legislation – An Independent Monitoring” with the financial support of the Stability Pact and the Council of Europe. Representatives

from the Council of Europe and a working group of experts in the access to official documents participated the conference, as well as international non-governmental organizations: Open Society Justice Initiative, Article 19, Statewatch, and non-governmental organizations working in the field of access to information from Albania, Bulgaria, Bosnia and Herzegovina, Macedonia, Serbia, Kosovo, Montenegro, Romania, Moldova, Croatia, Ukraine, diplomats and the AIP partners in MATRA Project – VVMZ (Netherlands).

2. Legal assistance in cases of information seeking , in cases of information refusals, including a legal representation

Legal assistance continued to be one of the main activities of AIP. Legal assistance is provided from the initial stages of information seeking, where the legal team gives counsels and/or prepares requests for information. Consultation is also provided in cases of information refusals following oral or written requests. Consultations are given either in the office, or by telephone, or by internet: on requests received in the internet forum or by e-mail. (See Attachment 1 – Statistics from AIP database – cases of information refusals).

An important part of the legal assistance is the preparation of applications to courts and court representation of applicants who came to AIP.

The total number of cases when legal assistance has been provided since January 2004 to December 2005 is 782. As it has been already established in the previous years, most of these cases are referred to AIP through our network of coordinators in the country – 285 cases. Their number decreased recently, but the time and efforts that had been spent on them earlier were now spent more on consultations and preparation of submissions for specific cases of our permanent partners like environmental non-governmental organizations, for consultations and preparation of submissions in cases in specialized areas, for more work on preparation and support of court cases – research, preparation of written requests, applications, statements, written defenses etc. submissions to courts.

In 2004, the lawyers' team of AIP has continued to discuss and work out the strategy for handling the cases, referred to our office, as well as providing consultations and legal help.

1. Number of written consultations – 236
 2. Personal consultations – 104
 3. Assistance in preparing written requests – 204¹
 4. Telephone consultations – 143
 5. E-mail consultations – 20.
 6. Preparation of court appeals, written statements and pleadings – 75
- Total number of legal consultations – 782¹**

In 2004 again, the lawyers' team of AIP has been providing free legal assistance to citizens and non-governmental organizations and has represented their interests in court in the cases of access to information refusals.

Legal help was provided in 35 court cases in the form of preparation of appeals, statements, etc. submissions and representation in courts. Besides, AIP monitored 15 separate cases. The cases at the Supreme Administrative Court (SAC) are of particular importance (25 cases) since their judgments set a kind of precedent and are used as a pattern by the lower courts and the public administration. In 20 cases SAC delivered final decisions: three of them are given by five members panels (in two of them the administrative denial to provide information was

¹ This number includes 158 (information requests + promotional requests) applications in the frame of FOI Global Monitoring project, as well as 11 requests prepared for information collection by the *Center for Independent Living* with the purpose to write a report.

reversed, in one was upheld). In 15 out of the overall 25 cases the administrative denial was reversed or considered as a null and void; in five cases the refusal was upheld. Five of the cases are pending –in three of them the first instance court reversed the information refusal; in one case the denial was upheld and in one the case was transferred to the Sofia Civil Court for consideration. In one of the pending cases the requested information is already provided (AIP v. the Council of Ministers).

Two access to information judgments, both on cases supported by AIP, are published in the SAC magazine, which reflects the important practice of SAC.

Beyond the number of cases won which proves that AIP lawyers' arguments are often accepted by courts, two panels of SAC implicitly referred to the analysis made in the AIP *Annual Report on the Access to Information Situation in Bulgaria (2003)*.

One out of ten cases considered by the Sofia Civil Court and District Courts in 2004 was enforced. In this case a refusal of the Ministry of Foreign Affairs was declared null and void. The AIP lawyers have prepared eleven complains to the courts, six of them addressed to the Supreme Administrative Court and five of them to the Sofia Civil Court. Ten of the cases were proceeded in the relevant courts while one letter of appeal is held on by the respondent – the General Public Prosecutor.

An important stimulus for citizens to seek protection of their rights in courts is the successful end of 3 of the 4 cases brought before local courts in 2003.

In 2004, the Supreme Administrative Court delivered interpretations of the important restrictions on the right to information, connected with the so-called "state" and "trade" secrets. The Supreme Administrative Court gave restrictive interpretation of the term "trade secret" accepting that the municipality cannot deny access to a procurement contract referring to the protection of third party interest. Further, the court held that even in cases when there is a trade secret present (while that was not the case) the partial access to the requested information should be provided.

The Supreme Administrative Court gave guidelines as to the application of the restriction of state secrets saying that solely referring to a text APIA or just stating that a document is classified cannot be a lawful response to a request. An institution subject to APIA is obliged to specify the relevant category from the list under Article 25 of the Protection of Classified Information Act and to provide factual reasons. In some cases, the court requested the relevant classified document for an in-camera inspection, wishing to check whether it had been properly marked by an authorized person. A five-member panel held that secret documents should be inspected with the participation of the parties in the case.

Also, the Supreme Administrative Court made a restrictive interpretation of the exemption related to the so called "preparatory documents" - Article 13, paragraph 2, subpara. 1 of the Access to Public Information Act. In a judgment delivered in the autumn 2004 the Court held that the requested preparatory documents related to a public procurement procedure do not fall under any right to access information exemptions once the procedure is finalized.

Another important matters under APIA were also considered and decided on over the reported period. Until 2004 the Supreme Administrative Court had the practice to refer back the decided case to the public body for a new consideration without obliging it strictly to provide the information in question. Last year the Supreme Administrative Court started to decide cases on the merit by obligating the respondent to provide the requested information. Continuing its practice not to tolerate the so-called "mute refusal" of public authorities (failure to respond to a request within the prescribed time limits) the Supreme Administrative Court declared it "unacceptable", i.e. not equal to a decision of denial. This is important for the prevention of irresponsible behaviour of some institutions, which prefer not to respond information requests waiting for the court hearing to communicate their position.

The interest of the public to bring actions under APIA increased. The following cases are clear examples: the case of the electronic media “Vseki Den” against the refusal of the Ministry of Foreign Affairs to disclose the correspondence between Bulgaria and Spain from 1970 concerning the status of the current Bulgarian Prime Minister; the case of journalists from four media against the refusal of Supreme Judicial Council to provide access to its sessions, which are public under the law; the case of a journalist from “Dnevnik” newspaper against the refusal of the Minister of the Interior to provide access to archives, concerning the writer’s George Markov assassination in London; the case of a journalist from “Monitor” newspaper challenging the refusal of the President to provide a report by the security services on deals of Bulgarian companies with Iraq at the time of the UN embargo; the case of a journalist from “24 hours” newspaper against the refusal of the government to provide information about the funding and expenses of ministers’ trans-border trips.

The number of journalists and national and local media, seeking protection of their rights of information in the court, has increased—their appeals have initiated ten of the all cases heard in 2004.

On 15 – 16 April 2004 AIP organized a conference on the Problems of access to information litigation with 66 participants – lawyers and judges from all the country.

In 2004 AIP published its second book Access to information Litigation in Bulgaria containing analysis of the court practice and selection of cases. The book was officially presented on 17 July 2004 with speeches of the SAC judge Alexander Elenkov and the radio “New Europe” journalist Chobanov.

3. Education and trainings on the Access to Public Information Act (AIPA), the Personal Data Protection Act, the Protection of Classified Information Act.

In 2004, the members of AIP team had participated with lectures or presentations on 77 trainings, discussions, seminars, conferences and international events. (See Annex N.2) The total number of trainings in 2004 is 22 with 681 participants. The total number of participants in trainings, discussions, seminars and conferences in 2004 is 1744.

Trainings

In 2004, in the framework of the project “Implementation of Freedom of Information Act in Bulgaria” AIP conducted the following trainings:

Training of public servants from the central administration bodies of the Executive Authorities together with the Institute for Public Administration and European Integration (IPAEL). The selection of the trained public servants was made by IPAEL. The AIP team prepared the training materials and the program of the training. In one of the trainings, financed by MATRA Program, experts from our partner organizations on the project presented the Netherlands and Slovak experience in the implementation of freedom to information legislation.

In cooperation with IPAEL, AIP organized some more trainings for representatives from the central bodies of the Executive Authorities as well as for the general secretaries of the Ministries and the Local Administration (See Attachment 4).

In October 2004 AIP organized a training for the public officials from the local administration responsible for the Access to Information Act Implementation. In the training, the Slovak experience was presented by an expert from the partner organization. All of the invited municipalities sent their representatives. The two-day training was attended by 55 public

officials, administrative secretaries, lawyers from Sofia Municipality and the local administrations in Sofia, from the municipalities of Montana, Lom, Straldzha, Kostenets, and Ihtiman.

In 2004, AIP team started a training program for NGOs. The project aims to educate 4 Bulgarian NGOs so they to be able to conduct trainings by themselves. Three trainings for trainers were conducted in 2004. The analysis of the participants' assessments shows that most of the them conducted their own trainings, the trainers stay in connection and cooperate on future trainings, seminars, etc. The main difficulties is the lack of means for such kind of trainings.

AIP representatives were invited to lecture on trainings for public officials, journalists, or in certain institutions.

In October 2004, a group of representatives from central administration, NGOs and one journalist participated a study trip to Netherlands. The training presented the Netherlands experience in Access to Public Information Act implementation, the practices in the local and central authorities in the Netherlands, monitoring the legislation implementation, etc.

AIP organized and conducted a second annual Award Ceremony on the International Right-to-Know Day on 28th of September 2004. The ceremony was presented in the media; a press conference was given for presenting the awards to the institutions, NGOs, citizens, and media.

AIP continued to publish and disseminate reports, books, handbooks concerning the access to information.

In 2004, The annual report on access to information in Bulgaria in 2003 was published, presented and disseminated.

4. Participation in the Public Debate on access to information and freedom of expression issues

Public discussions on the operative Freedom of Information legislation

The total numbers of the discussions, where members of the AIP team have taken part in 2004 is twenty. Only some of these public discussions were organized by AIP.

AIP staff members have participated in the discussions on the Public Officials Ethics Code, on the amendments to the Personal Data Protection Act, on the amendments to the Protection of Classified Information Act, on the amendments to the Criminal Code, on internal rules of the implementation Access to Public Information Act in several public institutions.

Publications in the media and participation in radio and TV shows is another widely used means of communicating Freedom of Information standards to the public.

The total number of own publications and publications prepared with the help of AIP staff members or coordinators is 193 in central, regional and local printed media for 2004. (See Attachment 2)

From the beginning of 2004 AIP started to produce and disseminate electronically a Freedom of Information Newsletter.

Twelve monthly electronic newsletters including legislation analyses, comments, recommendations, presentation of AIP events, and other domestic and international news.

All newsletters are being published on the web site of AIP in Adobe PDF and HTML format (See http://www.aip-bg.org/bulletin_bg.htm). In the end of January 2004 the printable PDF

version of the newsletter was sent to about 400 recipients from the media, NGOs, the central and public administration AIP clients and coordinators throughout Bulgaria.

We have received more than one hundred requests from people wishing to subscribe to the newsletter, thirty-one of them coming from electronically from the web site of AIP, while only one person has requested to be unsubscribed. Currently, the recipient list of the newsletter includes 761 e-mails of NGOs, media, citizens, public officials, and journalists.

In the twelve electronic newsletters we have published one hundred and three articles by thirty-six authors. In all issues we presented some the article covered international good practices. In every issue we present positive and negative practices of the implementation of APIA in the regional towns of Bulgaria. The September issue of the Newsletter was dedicated to the International Right to Know Day (September 28) and how it was celebrated in Bulgaria. The October issue was mainly focused on the study trip for public officials in the Netherlands. The issue included interviews with some of the officials, who visited the Netherlands and presentation of the good practices and lessons learned.

AIP coordinators and other journalists use information published in the newsletter to prepare publications in central and local media.

From the April issue of the newsletter we have started a “case of the month” section. In it we publish the most characteristic cases referred to us including our analyses and recommendations

Web page

The web page of AIP is being updated regularly, sometimes a few times a day, if necessary. We regularly publish news about important court cases, protocols, rulings and judgments of the courts, comments and recommendations, AIP events, etc. All AIP publications are made available at the web site as soon as they are prepared in English and Bulgarian.

The number of distinct web page requests for www.aip-bg.org is between 6,000 and 7,000 per week coming from around 1000 different hosts, the majority of which from Bulgarian Internet service providers.

We have created a subsection of the web site dedicated to the right of personal data protection, which will include our analyses and recommendations of the Personal Data Protection Act, information materials for citizens, international and domestic legislation, and information about the work of the Personal Data Protection Committee in Bulgaria.

Radio show

Since December 2004 Access to Information Programme is running its own weekly radio show on RadioNET. RadioNET is available in Sofia and is also broadcasted on the Internet (<http://www.radionetbg.com>). The radio show of AIP is broadcasted live every Monday between 7 p.m. and 8 p.m. The introductory show was focused on the work of AIP and freedom of information in general. In the second one Alexander Kashumov, AIP, journalists, MPS and citizens discussed access to personal data of public officials and other public figures.

We have developed a subsection of the site of AIP (<http://www.aip-bg.org/radionet/>) dedicated to the radio show. Some of its features are: weekly polls, FOI news, information about future topics, guests in the studio, Q&A section.

Discussion Board

In February a discussion forum was set up as part of the AIP web site on <http://www.aip-bg.org/forum/>. The forum has been effectively working from March.

A total of 49 posts were made in the forum on ten topics. The staff of AIP have used the forum to give recommendations to some of the cases, referred to our office, and to publish comments and news.

We consider the participation of AIP staff members or local coordinators in radio and TV shows extremely important for the permanent education campaign. Their total number is 163 (See Attachment 3).

In 2004 the team of AIP prepared and published an Annual report on Access to Information in Bulgaria (1000 copies in Bulgarian - disseminated through government officials, all members of parliament, NGOs and media and 500 copies in English – disseminated through FOI Advocates network organizations, Democracy Institutes Network, and partners organization of AIP).

In 2004 the team of AIP prepared and published the third edition of the handbook *How to Get Access to Information?* (printed in 10,000 copies)

5. Cooperation on the Regional and Global Level

Access to Information Programme has organized an international conference Advocacy for Freedom of Information - Independent Monitoring on May 14-15, 2004, where we presented all our monitoring activities. The conference was supported by Council of Europe (Stability Pact). All EU organizations, members of Freedom of Information Advocates Network were presented on the conference.

The Executive Director of AIP – Gergana Jouleva was elected as a member of the Steering Committee of the Network in the elections in 2004. The web designer of AIP has been maintaining the web site of FOIANet (<http://www.foiadvocates.net>).

There has been an increasing interest in the experience of AIP in campaigning for the adoption and better implementation of the Access to Public Information Act.

In November AIP hosted a research visit of two experts from the Danish Institute of Human Rights. One of the purposes of the visit was to study the NGOs role in the adoption and implementation of FOI Acts in the countries in transition from the experience of AIP and the Bulgarian experience.

AIP team members have taken part in twenty regional or international meetings in Denmark (Copenhagen), Serbia (Belgrade), Montenegro(Budva), UK (London), Hungary (Budapest), Poland (Wroclaw) .

Members of the AIP team have taken part the discussions of the FOI draft act in Macedonia. Members of the AIP team have taken part as trainers on FOI legislation implementation in Ukraine, Romania, Serbia, Moldova, and Montenegro.

Institutional achievements

In 2004 the board of AIP has held one regularly summoned meeting.

On the February 17, 2004 meeting the Board accepted the annual report for the work of AIP and approved the budget of the organization for 2004.

At the moment ten people work in the office of AIP:

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Executive director, office coordinator, accountant, four lawyers, coordinator of the local network, projects coordinator and a computer specialist, who maintains the database and the Internet page of AIP.

Each Monday the team plans their activities based on the operational monthly plan and based on the current implemented projects.

In 2004 we have held two team building meetings to strengthen the organizational capacity and to discuss the strategies of the organization with team and coordinators.

The control over the legal help provided by AIP is accomplished through regular statistical reports from the database.

AIP continues to sustain and develop its network of coordinators in all twenty-six regional towns of Bulgaria. In 2004 we have held three meetings with our local coordinators.

The AIP shall be managed by the Board, the Chairperson, and the Executive Director. The Board annually determines AIP priorities and at least twice a year supervises the work of the organization.

Every year, an audit company, AFA, performs an audit on organization and submits a report to the Board of Access to Information Programme (AIP).

Gergana Jouleva, Executive Director of AIP
January 31, 2005