

CASES REFERRED TO AIP FOR LEGAL ADVICE AND CONSULTATION DURING 2008

General Characteristics

Provision of legal help continues to be a priority in the work of *Access to Information Programme*. Every year, a part of our annual report presents the cases in which citizens, journalists, and nongovernmental organizations that have faced obstacles in exercising their right of access to information have turned to us for legal consultation. In some of these cases, *Access to Information Programme* provides legal help at the initial phase of the search for information and the legal team gives advice and/or prepares a request for access to information. In another category of the referred cases, we provide legal help after a refusal for provision of information.

In 2008, the legal team has continued to provide free legal help in the following ways:

- **Oral consultations on access to information cases** – usually these are given on the phone or in the office. In 2008, the total number of these legal consultations is **124**.
- **Written consultations in the following two categories:**
 - written comments on the cases sent by the journalists from AIP coordinators' network – in 2008, the number of these comments was **80**;
 - written comments on cases sent by e-mail – **75**.

Statistical reports about the written consultations given during the last year show that more and more citizens, nongovernmental organizations, and journalists use the electronic mail to seek AIP legal help. While several years ago the main part of the consultations were given in the office, today the number of legal consultations given on the phone or by the e-mail is higher. Thus, a legal consultation can be provided within several hours without the necessity of visiting the office of AIP which facilitates a lot the information seekers. Besides, an increased number of cases referred for consultation come from the country, making the description of the particular problem and the provision of consultation by e-mail a preferable option.

- **Preparation/ submission of requests for access to information** when this is necessary in cases referred by citizens, journalists, and NGOs. In some cases, the re-submission of requests for access to information is necessary – when no answer has been issued on an already submitted request, for example. Sometimes, in view of receiving complete information, the so called cross-submission of requests is necessary – the information is requested from several institutions which are working jointly on a certain issue. Such is the case of the Association *WWF-World Wild Fund, Conservation in the Danube-Carpathian, Bulgaria* which was searching for information about illegal construction in the Vitosha mountain related to the ongoing construction of a ski-tourist area “Aleko,” initiated by the “Vitosha Ski” JSC. For the purposes of its search, the association submitted a number of requests to the Sofia Municipality, the Ministry of Environment and Waters (MOEW), Sofia Regional Inspectorate on Environment and Waters, State Forestry Agency, State Forestry Management – Sofia.
- An essential part of the legal assistance provided by the legal team of AIP is the **preparation of complaints to the courts** and the representation in court of requestors who have sought the assistance of AIP.

Number of Cases Referred to AIP for Legal Assistance

The total number of cases in which legal help was provided during the period January – December

2008 is 235.¹ Based on the characteristics and the type of the legal help provided, we may define the cases referred to AIP in three categories:

- cases related to different types of difficulties in or questions about exercising one's right of access to information set forth by the Access to Public Information Act (151 instances);
- cases of violation of the general Constitutional right of citizens to seek, receive, and impart information (57 instances);
- cases related to violation of the right of personal data protection set forth by the Personal Data Protection Act (23 cases).

From Which Public Institutions Do Information Seekers Mainly Request Information?

Data about the 151 cases related to the exercise of the right of access to information registered in our database indicate that in 2008 information seekers have most frequently had problems when requesting information from the following public institutions obliged under the APIA:

- bodies of the executive power – in a total of 81 cases, our clients have turned to us for different types of consultations after requesting information from these bodies. These include not only the central bodies of the executive power – ministries, agencies, commissions, but also the regional offices of these bodies;
- bodies of local self government (mayors and municipal councils) – 56 registered cases;
- bodies of the judiciary – 18 registered cases;
- natural persons or legal entities financed by the state budget – 9 cases, public-law entities – 3 cases.

What Were the Most Frequently Used Reasons by Public Authorities to Refuse Access to Information?

The total number of refusals by public authorities to provide access to information registered in our database for 2008 is 88. For a third successive year, the number of refusals grounded in the third party exemption is the highest. For example, in 25 of the registered cases, the refusal was explicitly grounded in the provision of Art. 37, Para. 1, Item 2 of the APIA – disclosure of requested information may harm the interests of a third party and their consent for the disclosure has not been obtained. In 12 of the cases, information was refused on the ground of personal data protection. In 2 of the cases, the trade secret exemption was used as grounds for refusal. In a comparatively small number of cases during the year, information was refused on the ground of the administrative (6) and state (4) secret exemption. Only in three of the registered cases, information was refused on the ground of Art. 13, Para. 2 of the APIA².

The number of the silent refusals still remains high – their number is 24 for the 2008. At the same time, our statistics show a decrease in the number of cases of explicit refusals with no specification of the grounds for the refusal to provide requested information – in 2008, only nine of the refusals were of that type.

Who Requested the Assistance of AIP during 2008?

In 2008, citizens, journalists, and nongovernmental organizations have most frequently turned to

¹ The total number of referred cases is 235, but the number of consultations provided was 283 since in some cases consultations have been provided more than once.

² The article provides that access to administrative public information may be restricted if it: 1. relates to the preparatory work of an act by the bodies, and has no significance in itself (opinions and recommendations prepared by or for the body, reports and consultations); 2. contains opinions and statements related to on-going or prospective negotiations to be led by the body or on its behalf, as well as any data relating thereto, and was prepared by the respective bodies' administrations.

AIP for consultations. In 71 of the cases, citizens sought the assistance of the legal team. In 76 cases, the coordinators of AIP in the country, all of them journalists, have sent cases for legal comments. We have registered an increased number of cases from journalists from central and local media – 38. As a comparison, their number in 2007 was 22. The number of cases referred by nongovernmental organizations has also increased considerably – while their number for 2007 was 18, in 2008, they reached 43. Legal help on access to information related issues was also sought by public officials and private companies during the year.

Most Frequently Sought Information by Search Categories

The review of the cases registered for legal consultation by the AIP team shows that there are several important categories of information that has been sought and which has been of great public interest to the information seekers during 2008.

Access to Information about Events of Public Interest

In 2008, we may say that the Access to Public Information Act has been frequently used as a tool for revealing the truth about pressing public events by not only journalists working on the particular topic, but also by citizens who are interested in what is going on and do not trust completely the official information released by the institutions. Here are some examples illustrating that tendency:

During the summer of 2008, there was a case that had caused discussions for a long time – on July 3, explosions shook Sofia. As a result of the explosions, the window-glasses of a lot of buildings in the suburb neighborhoods were broken. Weaker detonations followed that were heard in the whole city. People were wondering what was happening while the telephones of the state institutions were constantly busy. It turned out that ammunitions in a big military warehouse in a military establishment based in the *Chelopechene* neighborhood had exploded. The accident raised a lot of questions about the management of military equipment and ammunitions warehouses, who was responsible for keeping them in a safe condition, what was the condition of the old military equipment. With regard to that case, requests for access to information were submitted with the legal help of AIP by both journalists and citizens.

A journalist from the *Capital* weekly, Rosen Bosev, requested access to information about the tenders for old ammunitions organized by the state company “Supplies and Trade – Ministry of Defense.” The journalist Ilia Valkov submitted a request to the Minister of Defense demanding information in 7 points about the utilization of outdated military equipment. Partial access to the requested information was granted, excluding the sale price. The journalist received information about the technical characteristics of the military equipment, ground for decommissions, relevant procedure, basic value of each part of the equipment and grounds for particular sale. Information about the real price was refused on the ground of the trade secret exemption – there were confidentiality clauses in the contracts with the purchasing companies. The citizen William Popov requested information about the military equipment and ammunitions warehouses in the town of Pavlikeni, as well as information about the measures undertaken for safeguarding those warehouses. In that case, the information was refused.

In the summer of 2008, it was officially announced that the funding of 10 projects under the PHARE program with a beneficiary Republican Road Infrastructure Fund was frozen. The grounds for the decision as they said were the results from the KPMG audit report on the work of the road fund. Certainly, that audit report became an object of interest for the media. The journalist Ivan Bedrov turned for AIP for consultation. The report was demanded with a request under the procedure provided by the APIA. The issue about the right of the society to know the content of the report and what was being hidden behind its possible classification as secret was raised publicly.

After the official refusal of the Minister of Finance to provide the report, re:tv started court proceedings with the help of AIP.

At the end of September 2008, public debate about the consecutive increase in the price of the natural gas in Bulgaria was triggered. In that regard, *Capital* weekly submitted a request for access to information demanding a copy of the contract between the companies *Bulgargaz* and *Gazprom*. The request was submitted to the Minister of Economy and Energy, to the Chairperson of the State Energy and Water Regulatory Commission, and to the executive director of *Bulgargaz* EAD. The request was published on the front page of the newspaper. The journalist from bTV, Valeria Chankova, requested access to the financial reports of *Bulgargaz* EAD. In all these cases, access to information was refused.

As it is apparent, when access to information related to trade companies is requested, the administration predominantly protects the trade secret rather than respects the citizens' right of information. This is the practice even if behind the interests of the company stand unfairness and corruption. We hope that the last year amendments to the APIA would provide for the solution to that question by introducing the principle of overriding public interest in the provision of access to information. The amendments oblige the institutions to assess in every particular case if there is overriding public interest in the disclosure of the requested information and to provide information unconditionally if there is such.

Access to Environmental Information

Traditionally, a considerable part of the registered for consultation cases are about seeking environmental information. The interest in the topic is strong, especially of specialized nongovernmental organizations which work for the protection of the environment. During the last year, the team of AIP provided legal consultation in a number of cases referred by active environmental organization like the Association of the Parks in Bulgaria, Environmental Association *For the Earth*, Association *WWF-World Wild Fund*, *Conservation in the Danube-Carpathian, Bulgaria*, etc.

The interest of the environmentalist towards particular information is often provoked by a decision issued by the competent institutions about construction or reconstruction which would cause unfavorable impact on the components of the environment. For instance, in the spring of 2008, the Association of the Parks in Bulgaria submitted a request for access to information to the Regional Governor of Blagoevgrad about the construction of a ski and golf complex "Kulino" in the National Park Pirin. With the request, information about the reference number and date of registration in the Regional Governor's Administration of an investment proposal for a Detailed Development Plan (DDP) of the project "Ski and Golf Complex – Kulino" with a contractor *Balkanstroi* JSC, as well as information about the DDP approval procedure, was demanded.

With his decision, the Regional Governor refused to provide access to the requested information on the ground of the exemption stipulated by Art. 37, Para, 1, item 2 of the APIA because the information would affect the interests of a third party (*Balkanstroi* JSC – Razlog) and its consent for the disclosure had not been obtained. The refusal was appealed before the Administrative Court – Blagoevgrad which delivered a decision in a short term repealing the refusal. According to the court, no legal rights and interests of the company – the third party – may be affected in the cases since the requested information did not contain data that constituted trade secret of the company. The court found that although after the deadline, *Balkanstroi* JSC had deposited an explicit consent for the disclosure of the requested information removing any obstacle from the Regional Governor to reconsider the refusal and respectively to provide access.

In the autumn of 2008, a coalition of over 30 nongovernmental organizations “Let Nature Remain in Bulgaria,” among which is the Association *WWF-World Wild Fund, Conservation in the Danube-Carpathian, Bulgaria*, initiated a campaign against the illegal extension of the ski zone in the Natural Park Vitosha. With the help of AIP, the association submitted a number of requests for access to information to the institutions which had any responsibility with regard to the Specialized Detailed Development Plan (SDDP) for the construction of a ski-tourist area “Aleko” drafted by the “Vitosha Ski” JSC and any specific activities undertaken by the latter company for the extension of the ski and tourist zone. Requests were submitted to the Ministry of Environment and Waters, to the Sofia Regional Inspectorate for Environment and Waters, to the State Forestry Agency (SFA), to the State Forestry Management – Sofia, to the Natural Park Vitosha Directorate, to the Sofia Municipality (SM), etc. Mainly, the requested information was about the Terms of Reference (TOR) for the preparation of the SDDP submitted by the company and approved by the mayor of Sofia and consulted by the SFA. The respective institutions were also requested to provide information about any violations found and measures undertaken after a field inspection carried out on October 10, 2008, with regard to alleged digging activities, removal of moraines, and entering of heavy-freight equipment in the area between the so called *Blue Ski-slope* and *Vitosha Tulip* ski-slope, etc.

After that submission of those requests, a considerable amount of refusals followed, both silent and explicit. With the help of AIP, a considerable part of those refusals was appealed. In some cases, consistent with the practices so far, filing a complaint was enough for the respective institution to provide access to the initially refused information. For instance, after the submission of complaints against silent refusals, the Sofia Municipality provided information about the TOR for the preparation of the SDDP submitted by the company, as well as information about the requested and subsequent approval by the municipality under the procedure provided by the Territory Planning Act. In other cases, litigation proceedings were initiated. Currently, with the support of AIP, the association has 6 access to information court cases, and on two of them court decision have already been delivered. (refer to the *Litigation* part of the report).

Access to Judicial Information

In 2008, the work of the bodies of the judiciary was again of particular interest to journalists and nongovernmental organizations. The information which is traditionally sought from the courts is related to the number of cases initiated and completed within a certain period of time, copies of court session protocols, copies of decisions, etc. Due to the creation of Internet sites of a lot of the courts in the country during the past several years, the process of information seeking has been considerably facilitated by the publication of more and more information about the court cases – data about their development, protocols from the sessions held, decisions and rulings of the court. The publication of the schedule for the sessions, activity reports of the respective court, as well as statistics about the completed cases is not a rare practice either. There are still instances, however, of lack of transparency and difficulties in receiving information from some courts provided that others have already published the same type of information in the Internet. For example, although the court decisions are official public information by the meaning of Art. 10 of the APIA and as such shall be accessible to the public, the Regional Court – Shumen refused to provide a copy of a court decision and a protocol from a session at the request of a nongovernmental organization from the town. The ground used for the refusal was lack of legal interest.

The practices of the courts with regard to the permission of journalists to film a particular court session are contradicting. The problem in such cases is the lack of clear rules under which shooting and recording equipment to be allowed in a court hall. As a result, often the journalists are forced to leave court sessions without statement of any grounds for that.

In 2008, the information seekers were interested not only in the work of the courts, but also in the

work of the bodies of the prosecution. In one such case, a citizen submitted a written request to the Sofia Regional Prosecutor's Office (SRPO) demanding information about the stamps which the prosecutor's office is possessing and which are being used by the officials at the time of the request submission. In a written decision, the SRPO refused to provide the requested information on the ground that it constituted state secret under the provisions of the Protection of Classified Information Act. The refusal was appealed before the court. The latter repealed the refusal as unlawful and turned the request back to the prosecutor's office for reconsideration.

Access to the Archives of the Former State Security Services

In 2008, documents from the archives of the former State Security Services remained in the focus of already traditional interest of the investigative journalists. The difference during the last year is that the requests targeted the documents subject to provision by the Commission for Disclosure of Documents and for Revealing Affiliation of Bulgarian Citizens with the State Security Services and Intelligence Services of the Bulgarian Army.³ These are the cases of Hristo Hristov (*Dnevnik* daily) who published the book *The Double Life of Agent Piccadilly* in 2008 after he has been granted access to the archives; of Bogdana Lazarova (*Darik Radio*) who sought and received access to documents related to the secret services investigations about the Bulgarian involvement in the assassination attempt against Pope John Paul II; of Alexenia Dimitrova (*24 Hours* daily) regarding access to materials about the activities of a State Security Services official who had worked aboard; and of Rosen Bosev (*Capital* weekly) who sought for the dossier of Agent Gotse.

Access to Personal Data

In 2008, the team of AIP provided legal consultation in 23 cases related to violations of the right of personal data protection.

The general overview of the personal data protection practices proves that the old habits can hardly be overcome – as a rule, the data administrators disproportionately process personal data as regards to the aims of the activity they perform. They collect big volumes of data which once collected are held almost forever. In many cases, official IDs are requested and held without specific reasons. For example, in order to be able to shop in the Metro Cash and Carry (“Metro”) Stores, citizens are supposed to obtain a customer card. Such a card is issued after the submission of a big volume of personal data, as well as a personal picture. Another extreme example of an administrator who exceeds its authority in the processing of personal data is the company “Cez Distribution – Bulgaria” JSC. In order to provide its services (distribution of electricity), the company requires that except for a filled blank request form, its customers also submit a copy of the title for possession of the respective real estate. If the property is given for rent, the company requires that the rent contract is presented.

Personal data related cases referred to AIP for legal help have raised some new and interesting questions.

1. Access to personal data of deceased persons

Peculiar is the case of the team of the TV series *Otechestven Front* who turned to AIP for legal help. The journalists were shooting a documentary about the execution of death penalty in Bulgaria before 1989. In this regard, they wanted to receive a copy of the prisoner's file of the last sentenced

³ Research and writing activities of investigative journalists in the particular area shall be done under the procedures stipulated by the Access to Public Information Act pursuant to the provision of Art. 31, Para. 1, Item 3 of the Act for Access and Disclosure of Documents and for Revealing Affiliation of Bulgarian Citizens with the State Security and Intelligence Services of the Bulgarian Army.

to death whose sentence was executed in Bulgaria. The story tells that the relatives of the deceased received neither the certificate of death, nor the belongings of the prisoner, nor any evidence about when and how the death sentence had been executed. With the help of AIP, and on behalf of the mother of the prisoner, a request was submitted to the Minister of Justice for access to the data. Although the request was submitted by the mother, access was refused and the refusal was appealed before the court.

2. Access to Data about Biological Origin

In 2008, the team of AIP was addressed by citizens who were seeking data about their biological origin. These are adopted persons who do not have information about their biological families. The question regarding the right of information about the biological origin has found different solutions in the European legislation. There is also a court practice by the European Court on Human Rights on the issue. In Bulgaria, there is no legally provided explicit and clear procedure under which adopted children to be able to access data about their biological origin after coming of age. Pursuant to the 2003 amendments to the Family Code (Art. 67b), the adopters or the adopted child of legal age can ask the regional court which have delivered the decision permitting the adoption to provide information about the origin of the adopted person when important circumstances demand it. At this stage, the legal advice which the team of AIP provides in such cases is to apply the provisions of the Personal Data Protection Act which grants the right of everybody of access to their personal data. A possible refusal can be appealed before the Commission for Personal Data Protection.

Positive Practices for Information Provision

Even before the introduction of the principle of overriding public interest with the amendments promulgated at the end of the year, several administrative structures have already applied that principle in practice.

For instance, the administration of the Ministry of State Administration and Administrative Reform published on their Internet site the declarations submitted by its servants under the requirement of Art. 12 of the Act on Prevention and Exposure of Conflict of Interests. The “Architecture and Urban Development” Directorate at the Sofia Municipality published online a register of all construction permits issued by the directorate.

Although there is no explicit obligation for the publication of such information, the above mentioned institutions considered that the public interest requires that citizens receive this information.