

## CASE STUDIES 2005

### *Foreword. Common Characteristics*

Since the organization's founding, Access to Information Programme's team has been providing legal assistance in cases when access to information is refused. Every year, citizens, associations, and journalists turn to our organization for legal advice regarding different cases when information has been sought from institutions covered by the APIA. These cases have been systematized due to their entry into a specialized data base, which allows us to follow the developments in each particular case, as well as the consultations that we have provided.

In 2005, the assistance of AIP was sought in **408 cases in total**. All of these cases were registered and in all of them legal advice was provided in the form of oral or written consultation. Consultations were given on the phone, in the AIP office, via e-mail, through the forum on the AIP web site, or through its network of coordinators. Coordinators receive the monthly summary of access to information refusals with comments from AIP's legal team.

With respect to the type of advice they received from the AIP team, the cases may be defined as:

- Cases, related to difficulties in the exercise of the right of access to information, provided by the Access to Public Information Act—**286 cases**;<sup>1</sup>
- Cases, related to the violation of the constitutional right of the citizens to seek, receive and impart information—**63 cases**;
- Cases, related to the violation of the right of protection of personal data, provided by the Personal Data Protection Act—**56 cases**;
- Cases, related to the violation of the freedom of expression—**2 cases**.

The presented data for 2005 show that the number of cases related to difficulties in the exercise of the right of access to information had increased from the previous year. In 2004, there were 223 of these cases. The same tendency was observed with regard to the cases related to the right of protection of personal data. Their number for the previous year was 37.

The 286 cases that were registered in the AIP data base related to difficulties in the exercise of the right to information indicate that the seekers of information **had the greatest difficulties in obtaining access to information from the following obliged under the APIA institutions**:

- The bodies of the executive branch—these are the central bodies: ministries, agencies, commissions, as well as regional departments of the executive branch—our clients sought AIP assistance in 142 cases when they asked for information from these bodies;
- The local government authorities (mayors and municipality councils)—in 68 case;
- Public legal entities—in 21 cases;
- Bodies in the judicial branch—16 cases;
- Private companies—in 16 cases, etc. (See the Appendix).

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<sup>1</sup> Out of all registered cases, related to the right of information (286), the total number of refusals was 163. Most of these refusals had been received as a result of oral requests. In the remaining instances, though no access to information refusal was registered, the seekers of information had encountered problems with the formulation of the request, with the procedures under the APIA, etc.

During 2005, the number of cases of information refusals that were registered in the data base was 163. Among these, **the so called silent refusals—31 and the ungrounded refusals—24, were the most frequently used.** The other grounds on which the administration and the other obliged bodies, refused information were: the information was unavailable—in 13 cases; third party's interests and referral of the requestor—in 9 cases respectively; administrative secret and personal data—in 8 cases respectively. Less frequently, information was refused on the grounds that it was a state or commercial secret (See all the statistics in the Appendix).

It is no accident that the silent and ungrounded refusals constitute the greatest part of the refusals. Their number is mostly due to the fact that information has been requested orally. Oral requests are frequently refused on random grounds that usually do not exist under the APIA. Thus, the obliged institutions practically “deal” with the requestors, compelling them to submit written requests for access to information. The grounds for refusal explicitly stipulated by Art. 37 of the APIA were used primarily when information was requested in written form. Our experience has shown that the basic reasons for the refusal of information at an oral request is the absence of an appointed officials responsible for the access to information, as well as explicit internal rules facilitating the institution itself in the provision of information.

The statistics from last year's cases indicate that **journalists, citizens, and non-governmental organizations were the most frequent kinds of seekers of information.** Journalists turned to AIP for legal assistance in 221 cases, citizens asked for consultations in 106 cases, while NGOs—in 78 cases. Consultations and legal help on issues related to access to information were also sought by business companies and public servants, but these requests were less common. In some of the cases, the legal help was provided in the initial phase of information seeking and the legal team of AIP advised or prepared the request for access to information. In these cases, our clients had difficulties in identifying the body that was obliged to provide the information sought, in specifying the documents which contained the desired information, or simply wanted to fill in correctly the request for access to information. Legal assistance was also provided in cases when refusals had been already given as a response to an oral or written request. The total number of complaints against refusals of access to information during 2005 was 38.

### ***Most frequently requested types of information***

The analysis of all the cases that were received and consulted by AIP show that several areas were of particular interest to the seekers of information. These were:

#### **Access to state contracts**

The contracts that the state signs with private companies have always been of particular public interest. These are contracts which the state or the municipalities sign with private companies to bypass the normal tender procedures for the public procurements. It is interesting to note that the bigger the amount of money that the state has to pay under these contracts, the more obstacles to the public access to information. Three grounds are most commonly given for refusals with regard to these contracts—state secret, administrative secret, and finally – the most frequently used exemption – protection of the third party's interests, those of the private company. For example, several advertisement clips were produced during the government run

voting campaign “Elections 2005,” with the purpose of increasing voting activity. The advertisements were commissioned by the Council of Ministers and were paid from the state budget. We submitted a request for access to information to the Director of the Government Information Services, asking about the amount of money spent for the production of the advertisements, and the name of the company or companies which had produced them. We also requested why the contracts for the productions had not been signed under the procedures of the Public Procurement Act. The information was refused on the grounds that the particular contracts had been signed under the Decree for Small Public Procurements and the interests of the companies, parties of the contracts, needed to be protected.

Similar cases were observed outside Sofia as well. The mayor of the town of Razgrad refused to disclose the names of the ten companies which were allowed by contracts to exploit the municipality forests. The municipality in the town of Burgas silently refused access to the contract between the municipality and a private company for the maintenance of the road network in the town. The mayor of the municipality in the town of Kresna refused to provide information about the advertisement area renting contracts between the municipality and private companies.

On a more positive note, the declassification of the concession contract for the construction of the Highway *Trakia* was a good start for improvements in this area. In September 2005, the new Minister of Regional Development and Public Works declassified the contract, which was signed during the term of the previous government. Unfortunately, other ministers who had inherited big state deals signed under a shroud did not take this initiative.<sup>2</sup>

### **Access to Public Registers**

Access to information contained in the public registers, proved to be problematic in a lot of cases in 2005. For example, the deputy chair of the *National Movement Ekoglasnost* submitted a request to the Minister of Environment and Waters demanding copies of the conflict of interest declarations of the experts who had prepared the environmental impact assessment for the construction of the nuclear power plant *Belene*. The information was refused on the grounds of personal data protection, despite the fact that the register of the environmental experts was public.

Very often, the municipality administrations refuse access to information related to municipality estate properties, although the register of municipality estate properties is also public.

For example, the mayor of the municipality in the town of Bansko refused to provide information to journalists about the estate properties of the municipality and their market prices. The mayor stubbornly refused to provide figures about the size of the properties and the prices offered to investors for their sale. The municipality administration in the town of Pazardzik also refused to provide information about the number of the expropriated estates and their price

### **Access to Information About Public Services**

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<sup>2</sup> e.g. the Minister of Finance's contract with the British Consultancy *Crown Agents*, and the Minister of State Administration's contract with *Microsoft*.

In the previous report, we noted that there was an active seeking of information about the activities of commercial companies that hold monopolies, and especially those that provide public utilities, such as water, heating, electricity, and postal services. However, it is still difficult for citizens and journalists to obtain information from such companies. We would like to emphasize again the negative impact of the absence of legal obligation for private companies offering public services to provide public information. It is difficult even for the clients of the above-mentioned companies to get access to simple information about their activities and the quality of their services.

Here are some examples from the cases received by AIP:

A citizen submitted a request under the APIA to companies which supplied electricity in the towns of Stara Zagora and Plovdiv demanding information about the pricing of the electricity. They did not receive a response and submitted a complaint against the silent refusal to the regional court. The latter, however, declared the case inadmissible since the company was not covered by the APIA.

Similarly, the Regional Consumers' Union in the town of Haskovo submitted a request to *Electricity Supply – Plovdiv*, a company with state participation. They asked about the legal grounds and the criteria behind the calculations of the price of the monthly reference each consumer of energy was supposed to pay. No response was given.

Traditionally, the companies supplying water also keep silent. A reporter from the newspaper *Slivenski novini* requested information from *Water and Sewage Ltd at the town of Sliven* about the pricing of the drinking water. Furthermore, the journalist requested information about the qualitative characteristics that the drinking water should possess in comparison to the ground water. The company replied that the information was available in a format that could not be provided.

The executive director of *Water Supply, Dunav Ltd* in the town of Razgrad refused to explain to reporters from local media what the reasons for the increase of the price of water in January 2005 were. The director's answer was that the issue was about economic planning.

### **Access to Environmental Information**

Environmental information was also actively sought during 2005. Specialized nongovernmental organizations working for the protection of the environment showed increasing interest in the area. The statistics of the registered cases show that environmental organizations most frequently submit requests to the Ministry of Environment and Waters. This is the institution that holds the greatest volume of environmental information. During the year, the Ministry was requested about information related to the stock-taking of the persistent organic pollutants in Bulgaria, data about the violations of the environmental impact assessment of the ski runs in the Bansko resort, copies of the issued licences for the prospect of precious metals, etc.

The cases that were registered through the coordinators' network indicated an increased interest towards the activities of the RIPCOPHs<sup>3</sup> (the former Hygienic Epidemiological

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<sup>3</sup> The Regional Inspectorates on the Protection and Control Over the People's Health

Inspectorates) and the RIEWs<sup>4</sup> in regards to the measurements they did on the quality of the drinking water and the air.

### **Access to Personal Data**

In 2005, fifty-six citizens turned to AIP for legal assistance in cases when the right of personal data protection was violated. Most of these cases were related to the refusal of the administrators of personal data to provide citizens access to their own personal data.

Access to documents containing health information was frequently denied. The AIP team was addressed by a citizen who had been treated in two different hospitals. After the end of her treatment, she was given only the treatment history and not the results of diagnostic tests. The citizen requested copies of the results of all medical examinations she had gone through during her stay in the hospital. However, they refused the information, saying that it was not their policy to provide these documents and that they would keep the results to be presented before the National Health Insurance as proof that they had really done the examinations. After the submission of a special request for access to personal data to the managers of the two hospitals, the results were obtained from one of them. The other did not respond. The silent refusal was appealed before the Commission for the Protection of Personal Data and a decision is pending. Unfortunately, this case is not unique. Frequently, hospitals refuse to give to their patients the original examination results since they fear that they will not be reimbursed by the National Health Insurance Fund.

The Ministry of Interior also regularly refuses to provide access to citizens to their own personal data. There was a particularly interesting case, with which AIP was asked to help. Legal proceedings had been started against a minor under the Act for the Prevention of Criminal Offences or Other Misbehaviour by Minors. The father requested the Sofia Regional Prosecutor's Office to read the file of his minor son. It is obvious that such information was necessary in terms of the future upbringing of the child and the protection of his rights. The deputy Prosecutor refused to provide access to the requested information. The refusal was appealed before the Commission for the Protection of Personal Data. The Commission issued a decision obligating that the Regional Prosecutor's Office give the father access to the personal data of his son, while protecting the personal data of third parties.

### ***Practices of Information Provision***

#### **Positive Practices**

The goal of the AIP report is to present and analyze not only problematic areas in the practices of the obliged bodies to provide public information, but also to encourage public positive practices that have been brought to our knowledge. We have to note the improvement that one of the institutions has made, namely the Public Internal Financial Control Agency (PIFCA).

During the previous years, there were often problems obtaining information related to the audits made by the internal financial control bodies.

Information contained in the requested audits was refused by the PIFCA more than once on the grounds of „administrative secret.“ In response to these practices, several court cases were

<sup>4</sup>Regional Inspectorates on Environment and Waters

started by citizens, with AIP providing the court representation. For example, after an unsuccessful attempt to obtain access to the copies of two audit reports issued after PIFCA inspections in two higher education schools in Sliven, branches of the Technical University of Sofia, the chairman of the *Civil Association Public Barometer* started FOI litigation against the PIFCA.<sup>5</sup>

As a result of the advocacy of AIP and the FOI litigation, the PIFCA acquired an attitude of greater openness in its work in 2005. The cases we receive indicate that the practices have been changing and the Agency has started to provide detailed summaries of the audit reports, at the requestors' demand.

An example that illustrates this development is the case of a client who submitted an information request demanding a number of audit reports after the PIFCA financial inspections in Sofia and the regional directorates of the agency in other parts of the country. The requested audit reports concerned the inspections of the holiday centres kept by the Council of Ministers for the period 1998 - 2002. In response to the request for access to information and within the legally prescribed time frames, the citizen received the complete information she had asked for.

Furthermore, AIP was invited to participate in and consult on the process of drawing the internal rules for the provision of access to public information within the PIFCA. The implementation of these rules would facilitate both the servants of the agency, as well as the citizens who search for information about its activities.

### **Negative Practices**

A permanent negative practice that AIP observed during 2005 was the lack of good organization and a system of active disclosure of information on the part of the legally obliged subjects. During the past year, the fulfilment of the obligation stipulated by Art. 14 and Art. 15 of the APIA was understood as the publication of information simply about the structure and the functions of the respective administration, and in some cases, the publication of a newsletter. Five years after the adoption of the law, there is not an established and working system for the dissemination of information in times of disasters, crises, and accidents.

The lack of such a system for dissemination of important information was strongly felt during the flood period during the summer of 2005. On August 9, 2005, water wave overran the village of Kapitan Andreevo and the Border-control check point „Kapitan Andreevo.“ The flood may have been predicted since it was a result of the overflowing of the Maritsa river after the discharge of water from the Topolnica dam. The local population in the region of Plovdiv had not been informed about the situation neither at the time, nor after the floods. People could have taken some measures to save at least part of their property and stock.

This case was not an isolated one. The emergency services, the mayors, and the environmental inspectorates were, in most of the cases, busy with the restriction of the floods and the prevention of further damages. The dissemination of information was put aside. No officials were assigned to provide updated information all the time. As a result, incorrect and misleading information was disseminated.

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<sup>5</sup>The case is described in the recently published by AIP third volume of the book *Access to Information Litigation in Bulgaria*.