

DECISION

No. 7836
Sofia, 29 August 2005

IN THE NAME OF THE PEOPLE

The Supreme Administrative Court of the Republic of Bulgaria - Fifth Division, in a court sitting on the thirtieth of May in the year two-thousand and five, in a panel composed of:

PRESIDING JUDGE: ALEXANDER ELENKOV
PANEL MEMBERS: VANYA ANCHEVA, IVAN RADENKOV

in the presence of court stenographer Iliana Ivanova and with the participation of prosecutor Maria Begamova, heard the report by Presiding Judge ALEXANDER ELENKOV on Administrative Case No. 7088 of 2004.

These proceedings were held pursuant to section two of the third chapter of the Supreme Administrative Court Act (SACA), concerning Art. 40, Para. 1 of the Access to Public Information Act (APIA).

The case was initiated by an appeal from Anton Dimitrov Gerdzhikov of Sofia against a silent refusal by the exterior minister to provide him with access to public information demanded in a request Reg. No. 4PR-1097 of 21 July 2004.

The complaint does not bear a date indicating when it was submitted to the Ministry of the Exterior and in the case no objection was made that it was overdue; thus, considering the date of its preparation (16 July 2004) placed by the appellant upon it, it must be held that it was submitted within the timeframe stipulated by Art. 13, Para. 2 of the SACA. Examined on its merits, the appeal is grounded.

From the data in the case it is clear that an informal organization of Bulgarians in Ukraine called the Meeting of Bulgarians in Ukraine, with President Nikolay Gaber, a former MP in the Parliament of Ukraine, organized and held the Second Meeting of Bulgarians in Ukraine during the period of 16-18 August 2002. The meeting opened on 16 August 2002 in the village of Mala Pershchepina, in the Novosandzharski Region in the Poltava District, in a place where many Bulgarians (both those living in Ukraine and those living in Bulgaria) are convinced that the grave of Han Kubrat is located and where a monument has been erected. On the third day, the participants in the meeting went as an organized group to the city of Zaporozhie to the place where it is thought (also unofficially) that the grave of Han Asparuh is located and where they also erected a monument. Alexandra Dobrev, second secretary to the Bulgarian Embassy in Ukraine, was present there and subsequently prepared a report for the Bulgarian ambassador. This report reads that "... due to the lack of agreement on the side of the organizers and the lack of permission from the local administration for the placement of such a memorial ... the Deputy Director of the Ukrainian Bureau for Nationalities, Migration and Religions suggested that the memorial to Asparuh, which consisted of a black marble plaque on a pedestal, be moved to the city historical museum until the resolution of the situation and the obtaining of permission to install the monument, but his suggestion did not satisfy the meeting organizers, who, represented by Mr. Nikolay Gaber, made the decision to erect a monument on the previously noted site in front of the regional state telecommunications company." The local authorities, however, removed the monument the very same night and placed it for storage in the

city of Zaporozhie's Ethnographic-Historical Museum "until the historical fact is clarified and the necessary documentation is formulated" (quotation from the letter No. 08-38/1546 of 20 August 2002, in which the Deputy Director of the Zaporozhie District State Administration informed the Bulgarian ambassador to Ukraine about the actions of the former MP Nikolay Gaber, which were in his opinion unlawful).

In a letter Reg. No. 94-A-5 of 16 September 2002 the appellant Anton Dimitrov Gerdzhikov expressed to the minister of external affairs critical observations regarding what he considered the apparent passivity on the part of high-ranking state bodies toward the Second Meeting of Bulgarians in Ukraine and the noted interest by the same bodies in the celebrations of the 140th anniversary of the settlement of Bulgarians (during the time of Ottoman rule) in Tavria, Ukraine. This difference in relations, according to the appellant, could have the dangerous consequence of dividing the 300,000 Bulgarians living in Ukraine. The letter ends with the suggestion "that it be proclaimed in a suitable yet categorical manner that all previous patriotic, cultural and other displays by Bulgarians in Ukraine are considered useful and timely and that in the future incorrect or unfounded attitudes toward such displays will not be allowed."

In a letter also from September 2002 (without a registration number), the head of the minister of external affairs' political cabinet informed the appellant in response to his letter that the only officially registered association of Bulgarians in Ukraine was the Association of Bulgarian Societies and Organizations in Ukraine and that the Meeting of Bulgarians in Ukraine was not officially registered. The author of the letter made the suggestion that the removal of the monument to Han Asparuh in the city of Zaporozhie was a complex result of the illegitimacy of the Meeting of Bulgarians in Ukraine organization, poor coordination between the relevant local bodies and the "fact that in academic circles the claim is not uniformly and indisputably accepted that the graves of Han Kubrat and Han Asparuh are precisely in those places." The letter also expresses the position that "the preservation of the unity of the Bulgarian movement in Ukraine demands that priority be given to the maintenance of relationships with the official representative of the Bulgarian community, which is the Association of Bulgarian Societies and Organizations in Ukraine."

More than a year and a half after that, in a procedural request for access to public information Reg. No. 4PR-1097 of 21 June 2004, the appellant, noting that "the restoration (of the monument to Han Asparuh) is desired by all Bulgarians who know about its removal and who follow the activities of state bodies with a legal basis and interest," requested that he be "provided with all the information held by the Ministry of Foreign Affairs related to the indicated installation and removal of the monument to Han Asparuh in the city of Zaporozhie in Ukraine." In particular, the appellant asked that he be provided with documents which he described in detail under five points in the request.

The minister of external affairs did not express a position on this request.

His authorized legal representative during the course of the judicial proceedings presented a folder containing certified copies of letters and other documents related to question under discussion. The written defense offered two alternative positions. According to the first of them, the complaint was procedurally invalid due to the absence of a silent refusal. In the case, the silent refusal was lacking because "the information related to the installation and removal of the monument to Han Asparuh in the city of Zaporozhie, Ukraine, is not directly related to the public life of the Republic of Bulgaria (in the sense of Art. 2, Para. 1 of the APIA) and does not concern events in the public life of the Republic of Bulgaria - conditions introduced by lawgivers for the existence of public information in the sense of Art. 2, Para. 1 of the APIA." For that reason, the minister of external affairs was not obliged to provide the information described in the request for access. The alternative position concerns the unfoundedness of the appeal and is based on the conclusion that the information that the appellant requested access to is administrative information in the sense of Art. 11 of the APIA,

consisting entirely of documents that do not have independent significance and that were created in the course the Ministry of External Affairs' activities; as of the date 21 June 2004, when the request for access was submitted, the time limit pursuant to Art. 13, Para. 3 of the APIA had not yet expired.

In a petition of 30 May 2005 the appellant clarified that the fundamental issue in the current suit was the "failure in the case to provide documents concerning measures taken by the MEA to solve a situation which is extremely unpleasant for Bulgaria" and, on the other hand, "official visits to Ukraine by the president, prime minister and speaker of parliament of the Republic of Bulgaria... without solving the problem of the reestablishment" (of the monument). In addition he further states that the lack of decision on the question of reestablishing the monument could be the result either of a general decision by high-ranking state bodies to not take measures with the Ukrainian authorities, or of a refusal of the same bodies to honor the steps taken; but regardless of the reason, information about the situation remains secret. The existence of such a secret, according to the appellant, is impermissible, as it leads to incorrect conclusions which are a prerequisite for the creation of negative public attitudes among the Bulgarians in Ukraine as well as those in Bulgaria, and which create the conditions for the adoption of unsuitable solutions and even harmful actions.

The current panel of the Supreme Administrative Court, Fifth Division, fully shares the viewpoint expressed by the appellant.

According to Art. 5, Para. 2, Items 1, 10, 11, 12 and 13 of the Organizational Regulations for the Ministry of External Affairs, the minister of external affairs guarantees the maintenance and development of cooperation with other countries in the sphere of culture; defends the rights and interests of the Bulgarian state and of Bulgarian citizens abroad; undertakes diplomatic action for the preservation of Bulgarian cultural-historical heritage and monuments abroad; assists in the activities of Bulgarian institutions abroad in the fields of science, education, culture and information; and defends the rights and freedoms of individuals belonging to Bulgarian national communities and minorities.

The information to which the appellant requested access obviously indicates his desire to form his own opinion about the activity of the minister of external affairs through the prism of a single concrete case. The minister's legal representative correctly defined the information as administrative information in the sense of Art. 11 of the APIA, since it was gathered, created and stored in the course of the minister of external affairs' activities pursuant to Art. 5, Para. 2, Items 1, 10, 11, 12 and 13 of the Organizational Regulations for the Ministry of External Affairs. According to Art. 13, Para. 1 of the APIA, access to administrative public information is free. Thus, the minister of external affairs should have provided the appellant with access to documents listed in the request, since only after familiarizing himself at their content could he find an answer to the question that is of interest to him - what is the official position of the Republic of Bulgaria regarding the desire of some Bulgarians in Ukraine to erect a monument to Han Asparuh in front of the building of the regional state telecommunications company in the city of Zaporozhie. Access to these documents cannot be refused on the grounds of Art. 13, Para. 2, Item 1 of the APIA, due to the absence of an official document by the minister, for whose preparation information was gathered and from whose content the appellant could find an answer to the question of interest to him. Therefore, the rule in Art. 13, Para. 3 of the APIA is not applicable in this case.

On the grounds of the aforementioned considerations, the Supreme Administrative Court, Fifth Division, finds that in this case there exists an unlawful silent refusal, which must be repealed, and on the basis of Art. 41, Para. 1 of the APIA the minister of external affairs must be obliged to provide the appellant with access to the documents listed in the request.

Given the aforementioned considerations, the Supreme Administrative Court, Fifth Division,

HEREBY RULES:

TO REPEAL the silent refusal by the minister of external affairs to provide Anton Dimitrov Gerdzhikov of Sofia with access to public information demanded in request Reg. No. 4PR-1097 of 21 June 2004.

TO RETURN the file to the Minister of external affairs and on the basis of Art. 41, Para. 1 of the Access to Public Information Act to oblige him to provide Anton Dimitrov Gerdzhikov of Sofia with access to the administrative public information demanded by him in the request with Reg. No. 4PR-1097 of 21 June 2004.

THE DECISION can be appealed by cassation appeal to the five-member panel of the Supreme Administrative Court within 14 days of its pronouncement.

True to the original,

PRESIDING JUDGE: (signature) Alexander Elenkov

PANEL MEMBERS: (signature) Vanya Ancheva, (signature) Ivan Radenkov