

## DECISION

No. 2308  
Sofia, 06 MARCH 2006

### IN THE NAME OF THE PEOPLE

**The Supreme Administrative Court of the Republic of Bulgaria - Five-Member Panel - Collegium II**, in a court sitting on the twenty-sixth of January in year two-thousand and six, in a panel composed of:

PRESIDING JUDGE: ANDREY IKONOMOV

PANEL MEMBERS: ZHANETA PETROVA, DIANA DOBREVA, TANYA VACHEVA, VIOLETA GLAVINOVA

in the presence of court stenographer Grigorinka Lyubenova and with the participation of prosecutor Ivan Lulchev, heard the report by Judge TANYA VACHEVA on Administrative Case No. 10940 of 2005.

These proceedings were held pursuant to Art. 33 *et seq.* of the Supreme Administrative Court Act (SACA).

The case was initiated by an appeal from the minister of external affairs, through his legal representative, against Decision No. 7836 of 29 August 2005 on Administrative Case No. 7088 of 2004 by the Supreme Administrative Court, which repealed his silent refusal to provide Anton Dimitrov Gerdzhikov of Sofia with access to public information demanded in request No. 4 PR-1097 of 21 June 2004, in which return the file to the administrative body to provide the access requested by the individual. The complaints concern the incorrectness of the decision, which contradicts the substantive law, and which is unfounded due to fundamental violations of the rules of court procedures - the grounds for repeal are pursuant to Art. 218b, Para. 1, b letter "v" of the Civil Procedure Code. First, the complainant claims that the decision was made on an unlawful appeal (the silent refusal was not a valid object of court control), and that the decision is in principle incorrect, since access to the administrative public information being sought in the case is restricted on the basis of Art. 13, Para. 2, Item 1 of the Access to Public Information Act. In this sense, he wants a repeal of the appealed decision any pronouncement on the merits of the dispute that rejects the complaint by Anton Dimitrov Gerdzhikov is unfounded.

The respondent Anton Dimitrov Gerdzhikov contests the cassation appeal.

The representative of the Supreme Administrative Prosecutor's Office gave a motivated conclusion for the unfoundedness of the appeal.

The Supreme Administrative Court, Five-Member Panel, after reviewing the

correctness of the appealed decision and considering the arguments from both parties, finds the cassation appeal unjustified on merit.

There is no dispute over the facts in the proceedings. The administrative body was approached by Anton Dimitrov Gerdzhikov with the request with Reg. No. 4 PR-1097 of 21 June 2004, containing his request to be provided the information held by the Ministry of External Affairs (MEA) regarding the activities related to the installation and removal of a monument to Han Asparuh in the city of Zaporozhie, Ukraine, which in five points described the documents possessed by the MEA related to the information being sought. The request was related to previous active correspondence between the parties to the case, for which written evidence was provided which was discussed in detail by the ruling panel. Activity related to the installation and removal of a monument to Han Asparuh in Ukraine is connected to a public event by Bulgarians in Ukraine, organized as the "Meeting of Bulgarians in Ukraine." The removal of the monument and its placement in storage in the city of Zaporozhie's Historical-Ethnographic Museum by the local authorities was dictated by the absence of an established historical fact and "properly formulated documents." A written response from the head of the minister of external affairs' political cabinet in 2002 casts doubt on the legitimacy of the Association of Bulgarians in Ukraine, while giving priority to the Association of Bulgarian Societies and Organizations in Ukraine. This exchange of viewpoints preceded the submission of a request for access to public information; the latter was dictated by Anton Gerdzhikov's desire as a citizen of the Republic of Bulgaria to understand the MEA's activity related to the initiative by patriotic Bulgarians in Ukraine, as well as to the publicizing of their cultural and other displays.

The minister of external affairs did not provide a written answer to the submitted request. In the course of the court proceedings, the minister, through his legal representative, maintain the position that the request was inadmissible, since the information requested was not directly related to the public life of the Republic of Bulgaria, but instead concerned relations with another country. Alternatively, he also maintained that the information was administrative information in the sense of Art. 11 of the APIA and consisted of documents that do not have independent significance and which were created in the course of the ministry's activities.

In repealing the silent refusal by the minister of external affairs, the three-member panel of SAC held that the information requested by the seeker indicated his desire to form his own opinion about the activities of the minister of external affairs regarding the development of cooperation with other countries in this year of culture; the defense of the rights and interests of Bulgarian citizens and the Bulgarian state abroad; but the undertaking of diplomatic actions for the preservation of the Bulgarian cultural-historical heritage and monuments abroad; the defense of the rights and freedoms of individuals belonging to Bulgarian national communities and minorities, based on a single concrete case. In this respect it is held that access to administrative public information is free. Thus, the judgment passed is correct.

According to Decision No. 7 of 1996 on Constitutional Case No. 1 of 1996 by the Constitutional Court, every citizen's right under Art. 41, Para. 1 of the Constitution to seek and receive information "is guaranteed by the obligation of state bodies to provide it." The Constitutional Court explicitly emphasized that from the content of the right under Art. 41, Para. 1 of every citizen to seek and receive information follows the obligation to guaranteed access to information; the content of that

obligation subject definition via the legislative route.

The public relations related to the right of access to public information are established in the Access to Public Information Act (promulgated in the *State Gazette*, vol. 55 of 2000). Public information in the sense of this law is all information connected with D. public life of the Republic of Bulgaria and which offers citizens the possibility of forming their own opinion about the activities of subjects obliged under the law - Art. 2, Para. 1 of the APIA. The subjects in Art. 3, Para. 1 of the APIA are pledged provide information that is created in the sphere of their competency and which is available.

Public information that fits the first criterion is categorized into two groups: official and administrative public information. Official public information is information contained in official documents of the state bodies and local government bodies in the fulfillment of their authorized duties. The legal acts of state bodies, which by definition are held to contain official information, are normative, general and individual acts. For the first type, access to them is guaranteed by their promulgation in the *State Gazette*. For the remaining acts, access is realized under the APIA, unless it is explicitly stipulated that it should be granted in a different way. The second category of information according to the definition in Art. 11 of the APIA is administrative, which is information that is collected, created and stored in connection with official information, as well as in the course of the activities of the bodies and their administrations. According to the contents of the request under Art. 25 of the APIA and given the legally distinctive characteristics, the information described in a request by Anton Gerdzhikov possesses the characteristics of administrative public information. As was rightly pointed out in the appeal decision, the information requested is administrative as it was collected, created and stored in connection with the activities of the minister of external affairs, as referred to in Art. 5, Para. 2 of the Organizational Regulations of the Ministry of External Affairs. Access to the documents described in the request is not limited in the sense of Art. 13, Para. 2, Item 1 of the APIA, since the public information contained in them is not directly related with the preparation of the publication of the final act by the administrative body, from which the seeker could receive the information of interest to him.

Given the aforementioned considerations, the present panel finds the cassation appeal a justified due to the complaints raised there and. The decision by the three-member panel was made in accordance with the substantive law, while no fundamental violations of the rules of court procedure were made in its pronouncement; the pronouncement is well-founded and thus must remain in force.

Led by the above-mentioned considerations and on the grounds of Art. 40, Para. 1 of the SACA, the Supreme Administrative Court, Five-Member Panel

**HEREBY RULES:**

TO UPHOLD Decision No. 7836 of 29 August 2005, pronounced in Administrative Case No. 7088 of 2004 by the Supreme Administrative Court.

The decision is final and not subject to appeal.

True to the original,

PRESIDING JUDGE: (signature) Andrey Ikonov

PANEL MEMBERS: (signature) Zhaneta Petrova, (signature) Diana Dobreva,  
(signature) Tanya Vacheva, (signature) Violeta Glavinov