

## **FREEDOM OF INFORMATION LITIGATION, BULGARIA 2003**

### **1. ACCESS TO COMMUNITY CENTER EXPENSES AND VERBATIM RECORDS**

#### **Apostol Stoichev v. Director of "Hristo Botev" Chitalishte (community center) in the village of Banevo, Burgas region**

Court case № 210/2003 of the Regional Court of Burgas

On Jan. 31, 2003 Apostol Stoichev filed an information request to the Director of "Hristo Botev" community center in the village of Banevo. The citizen requested detailed information about the members of the community center council, verbatim records from the council sessions, report on the state and municipal funds spent, etc.

The director of the local community center failed to respond in the law-provided term (14 days). After consulting the lawyers of AIP the requestor filed an appeal against the tacit refusal of the director.

With decision № I - 135 from May 15, 2003 the Regional court of Burgas reversed the tacit refusal of the Community center director as unlawful and obliged him to provide the requested information.

The decision of the regional court was appealed by the respondent before the Supreme Administrative Court (SAC). The first hearing on SAC court case № 8825/2003 will be on Jan. 27, 2004.

### **2. ACCESS TO INFORMATION ABOUT THE WORK AND BUDGET OF A MUNICIPAL ANIMAL SHELTER**

#### **Lubov Guseva v. Mayor of Vidin**

Court case № 34/2003 of the Regional court of Vidin

On Jan 21.2003 Lubov Guseva, a member of the board of the Vidin Animal Protection Association filed an information request to the mayor of Vidin. Lubov Guseva requested information about the number of stray dogs caught and held in the municipal animal shelters during 2001-2002, the number of dogs put down through euthanasia, the funds of the municipal budget spend for medications, and other expences connetted with the work of the municipal animal shelter.

On Feb. 02, 2003 the requestor received a decision № 3-02-1170/14.02.2003, by which the mayor of Vidin refused to disclose the requested information, because the documents contained information concerning third parties, whose explicit consent for disclosure had not been received (The exemption of Art. 37, para.1 item 2 of the Access to Public Information Act).

After receiving the decision of the mayor and after consulting the lawyers of AIP the requestor filed an appeal against the refusal to the Regional court of Vidin.

With decision № 98 from June 06, 2003 the Regional court of Vidin reversed the decision of the mayor as contrary to the law and obliged him to disclose the requested information, without revealing facts about the third parties.

The decision of the regional court was appealed by the respondent before the Supreme Administrative Court (SAC). The first hearing on SAC court case № 8751/2003 will be on Jan. 27, 2004.

### 3. ACCESS TO A CONTRACT BETWEEN A MUNICIPALITY AND A PRIVATE COMPANY

#### **Lubov Guseva v. Mayor of Vidin**

Court case № 35/2003 of the Regional court of Vidin

Lubov Guseva filed an information request № 3-02-1139/11.04.2002 to the Mayor of Vidin, wishing to receive access to the contract between the municipality of Vidin and Chistota Ltd. The private company received funds from the municipal budget to limit the population growth of stray dogs in Vidin.

With decision № P-02-687/04.06.2002 the Mayor of Vidin refused to disclose information because it fell in the scope of the third party interest exemption (Art. 37, para.1 item 2 of the Access to Public Information Act).

Lubov Guseva prepared and filed an appeal № 187/13.06.2002 against the refusal to the Regional court of Vidin (RCV). After having paid the court fees on Aug. 23, 2002 the plaintiff failed to present the receipt in the court. Because of this the regional court decided to stop the proceedings and returned the appeal to the plaintiff. The decision to stop the court proceedings was appealed before the Supreme Administrative Court. With a decision № 1803 from 27.02.2003 SAC returned the file to the Regional court of Vidin to continue the court proceedings.

At this stage the plaintiff turned to AIP and our lawyers prepared and filed a written statement and provided representation in court. With a decision № 95 from June 06, 2003 the RCV reversed the decision of the Mayor of Vratsa to withhold information as contrary to the law.

The decision of the regional court was appealed by the respondent before the Supreme Administrative Court (SAC). The first hearing on SAC court case № 8752/2003 will be on Jan. 27.2004.

### 4. ACCESS TO INFORMATION ABOUT THE WORK OF THE REGIONAL HEALTH CENTER

#### **Vanya Paunova v. Director of the Regional Health Center (RHC) of Veliko Turnovo**

Court case № 18/2003 of the Regional court of Veliko Turnovo /RCVT/

Vanya Paunova, a reporter for Yantra Today newspaper filed two information requests (№ 5356/15.11.2002 and № 5367/21.11.2002) to the Director of the RHC in Veliko

Turnovo. The reporter requested information about the work of the RHC, like the funds allocated to general practitioners, regional demographic and health status data, etc.

The request resulted in a letter by the RHC director to the chief editor of Yantra Today newspaper № 5356/21.11.2002г. The RHC director made comments on some of the previous publications of the reporter and requested that the chief editor appoint another journalist to work on health-care issues. Access to information was provided only in relation to item 6 from one of the request (demographic health status data).

After receiving the letter of the RHC director the journalist contacted the lawyers of AIP, who prepared an appeal to the RCVT, submitted a written statement and provided court representation.

With decision № 299 from 20.06.2003 the RCVT reversed the refusal of the RHC director and obliged him to review them and issue a decision taking into consideration the motives of the court decision.

## 5. ACCESS TO AUDIT REPORTS

### **Yurii Ivanov v. the State Internal Financial Control Agency (SIFCA)**

Court case № 1902/2003 of Sofia City Court, Administrative panel III-A

On March 2001, Yuri Ivanov, director of a Citizen Watch organization in Sliven, filed an information request to the State Internal Financial Control Agency in Sliven. Mr. Ivanov requested copies of two audit reports of the Sliven Technical College and the Faculty of Pedagogical Engineering in Sofia Technical university. The director of SIFCA, Sliven forwarded the request to the Head of the Agency in Sofia, who issued a decision to withhold information using the administrative secret exemption. AIP assisted the requestor in preparing and filing an appeal against the refusal before the Sofia City Court. The Sofia City Court turned down the appeal, but in November 2002 the Supreme Administrative Court reversed both the decision of SCC and the refusal of the Director of SIFCA, Sofia and returned the file for a new decision.

In a letter from March 2003 the director of SIFCA again refused to disclose the requested information, because it concerned and was likely to harm the interests of the two audited institution and no consent for disclosure of the audit reports had been received by them. Access to Information Programme prepared an appeal against this subsequent refusal and as a result the Sofia City Court will review administrative court case № 1902/2003 in a hearing on March 04, 2004.

## 6. ACCESS TO PERSONAL RECORD OF A DECEASED DISSIDENT

### **Todor Yanakiev v. Director of the "Prison Governance" Department of the Ministry of Justice**

Court case № 3167/2003 of the Sofia City Court (SCC), Administrative panel III-J

In the beginning of 2002 the journalist Todor Yanakiev requested from the Director of the Prison Governance Department of the Ministry of Justice (PGDMJ) to access the personal prison record of the deceased dissident Ilia Minev. The journalist wished to

examine the records in order to publish a monograph of Iliia Minev. Access was granted and the requestor had the opportunity to examine several times the file of the dissident.

In 2003 Todor Yanakiev requested to receive copies of the records of the two personal files, but it turned out that this was impossible, because the initial request for access had been lost by the PGDMJ. The journalist had to file another request, which was turned down with a decision № 4400 from 17.06.2003 of the Director of PGDMJ.

This letter of the Director was awarded as the "Most absurd and funny decision to withhold access to information under APIA" on the International Right to Know Day Ceremony on September 28 2003, held in Sofia. The refusal was not grounded by any law provisions, but it indicated that the Director was reluctant to disclose information, which could harm the interests of a third party.

The lawyers of AIP prepared an appeal against the Director of the PGDMJ to the Sofia City Court. The court hearing was on Nov. 11, 2003 and a decision is expected.

## 7. ACCESS TO OWN PERSONAL RECORDS

### **Ivan Yonchev v. Ministry of Interior**

Court case № 2070/2003 of the Sofia City Court, Administrative panel III-Z

In February, 2003 Mr. Yonchev filed a request to access his personal data from the Human Resources Department (HRD) of the Ministry of Interior. Mr. Yonchev requested a copy of his personal file, containing all information collected about him as a former Ministry of Interior employee.

Mr. Yonchev had previously attempted to obtain access to the results from two of his psychological examinations, performed by the Ministry of Interior, which had ultimately resulted in his retirement in 2002.

With a written decision from February 2003 the HRD director refused to disclose the requested information. The decision was based on some unpublished Instructions of the Minister of Interior, and precisely on its Art. 4, which stated that the personal files of the working and retired Ministry of Interior officials are highly confidential and should be restricted from access.

The legal team of AIP prepared an appeal, which was filed by the plaintiff in the Sofia City Court. With a decision from Nov. 17, 2003 on court case № 2070/2003 the Sofia City Court proclaimed the refusal of the HRD director void and returned the file to the obliged body - the Minister of Interior - for taking a new decision. The motives of the court were that according to the Personal Data Protection Act (PDPA) access to personal data should be provided by the Data controllers. The PDPA defines as data controllers legal entities or persons, as well as state bodies, who determine the kind of personal data processed, stored and secured by him/her or by the state body. Indeed, according to the Act for the Work of the Ministry of Interior the HRD keeps the personal files of the Ministry, but the Rules for keeping and handling the personal files are determined by the

Minister. This is why the court determined that the latter was the competent body to take a decision on this specific information request.

#### 8. ACCESS TO FINANCIAL REPORTS AND BANK DEPOSITS OF THE NATIONAL HEALTH INSURANCE FUND

##### **Institute for Market Economics (IME) v. the National Health Insurance Fund (NHIF)**

In February 2001 the Institute for Market Economics filed an information request to the NHIF, wishing to receive full activity and financial reports of the Regional Health Insurance Funds (RHIF) for 2000; the list of banks recommended by the Ministry of Finance and the Bulgarian National Banks in accordance with Art. 27 para. 3 of the Mandatory Social Insurance Act (MSIA); the decision of the NHIF board determining the banks which would dispose of the funds of the NHIF; and the list and amount of funds in deposits and securities.

The NHIF director refused to provide access to the requested information with a written refusal, because most documents fell into the scope of the administrative secret exemption, while a copy of the decision of the NHIF board to determine the list of banks had to be requested from the board, because the Director could not disclose it without their consent.

The refusal of the NHIF director was appealed before the Sofia City Court and the court proceedings started under administrative case № 2295/2001. With a decision from Aug. 02, 2002 the court reversed the refusal as contrary to the law and obliged the NHIF director to disclose the requested information. The court stated that public law entities, obliged under Art. 3 para. 2 of APIA (like the NHIF) cannot use the exemption of Art. 13, para. 2, 3 of APIA (documents related to ongoing negotiations), which relates only to the work of the central bodies and local government institutions. The court also adopted the view that no consent of the board was necessary for the disclosure of the decision determining the banks which would dispose of the funds of NHIF, because under Art. 19 para. 1 and 2 from the MHIA the NHIF director is authorized to organize and manage the work of the Fund.

The decision of the SCC was appealed by the respondent before the Supreme Administrative Court, which resulted in court case № 2471/2003 of SAC. With a decision from May 29, 2003 the Supreme Administrative Court turned down the appeal of NHIF confirming and enforcing the decision of the SCC. The decision of the SAC is extremely important, because it states explicitly that public law entities can refuse information only when it constitutes commercial secret or is likely to cause unfair competition.

#### 9. ACCESS TO AUDIT REPORTS

##### **Vanya Barbutova v. Director of the National Auditing Office**

Court case № 1365/2003 of the Sofia City Court, Administrative panel III-A.

In July 2002 Vanya Barbutova filed an information request to the Director of the National

Auditing Office wishing to obtain access to:

1. Information about all audits performed by the bodies of the National Auditing Office (NAO) in the Region of Sliven in accordance with the National Auditing Office Act adopted in 1995.
2. Information about all audits performed until the end of 2001 by the bodies of the National Auditing Office in the Region of Sliven in accordance with the National Auditing Office Act from adopted in 2000.

Mrs. Barbutova requested detailed information about the name of each audited organization and the audit reports.

The Director of the National Auditing Office failed to take a decision in the law provided term. This tacit refusal was appealed before the Sofia City Court.

The first court hearing was on Nov. 11, 2003. The SCC scheduled a second hearing for Jan. 21, 2004 demanding the NAO director to submit evidence on the case.

#### 10. ACCESS TO MINUTES FROM COUNCIL OF MINISTERS SESSIONS

##### **Vassil Chobanov v. Government Information Center**

Court case 1822/2003 of Sofia City Court, Administrative Panel III-Z

With an access to information request from Feb. 02, 2003 Vassil Chobanov, a Radio Free Europe journalist requested a copy from the minutes of a Council of Ministers meeting held on Jan. 23, 2003.

With a letter from Feb. 06, 2003 the director of the Government Information Center Tsvetelina Uzunova refused to provide access to the requested information with the motives that Council of Ministers minutes constituted administrative secret under Art. 76, para. 4 of the Rules for the work of the Council of Ministers and access to them could be restricted under Art. 13 para. 2 item 1 of the Access to public Information Act. The same motives were used to withhold the minutes from the first meeting of the Council of Ministers, requested in 2001 by Alexei Lazarov, a journalist from Capital weekly.

The legal team of AIP prepared an appeal before the Supreme Administrative Court against the decision of the Government Information Center Director. With Ruling № 2600 from 20.03.2003 SAC stopped the court proceedings and decided that the case is under the jurisdiction of the Sofia City Court.

Ruling № 2600 was appealed before a five-member panel of the Supreme Administrative Court. The five-member panel with a Ruling 4535/13.05.2003 confirmed the decision of the three-member panel and the file was forwarded to the Sofia City Court.

The first hearing of the SCC was held on Oct. 23, 2003 and a decision is expected.

#### 11. ACCESS TO A CONTRACT BETWEEN THE MINISTER AND A PRIVATE

COMPANY

**Ivaylo Ganchev v. Minister of Education and Science**

Court case 8518/2002 in front of the Supreme Administrative Court

With the assistance of AIP, a citizen Ivaylo Ganchev has won administrative court case 8518/2002 before the Supreme Administrative Court of Bulgaria. He appealed a refusal of the Minister of Science and Education (MSE) to provide copies of documents in relation to renting a section of the lobby of the premisses of Ministry. Violating the procedures of the State Property Act and the Regulation on its Implementation, the Minister had given a section of the lobby to a private company, which had placed there advertising banners.

In August, 2002 Ivaylo Ganchev filed a request to the Minister of Education and Science wishing to obtain a copy of the contract for renting a section of the lobby of the Ministry. With a letter from Sep. 04, 2002 the Minister claimed that no information could be disclosed to the requestor, because orders of the Minister and other documents, related to this case had already been sent to the State Archives. As a legal ground for refusal he referred to the provision of art. 8 para. 2 of the Access to Public Information Act (APIA), according to which APIA cannot be applied to information kept in the State Archives. The refusal of the minister was appealed with the assistance of AIP.

The lawyers of AIP turned towards the Director of the State Archives, requesting information on the documents of the MSE kept in the archives. It turned out, that the last documents sent from the MSE to the archives were dated in 1991. After presenting this information in a court session, the lawyer of the Ministry admitted that actually no orders had been issued by the Minister and no contract had been signed for renting sections of the lobby to a private company.

Considering these factual circumstances, SAC with Decision No 2383 from 17.03.2003 reversed the refusal of the Minister and ordered him to provide an answer to the request in accordance to Art. 33 APIA. (which states that: If the body does not have the requested information and is not aware of its location, it shall notify the applicant accordingly within 14 days).

In his decision SAC notes that the requestee has misled the requestor and tried to hide his wrongdoings.

**12. ACCESS TO A LICENSING AGREEMENT AND CONTRACT TERMS BETWEEN THE BULGARIAN GOVERNMENT AND MICROSOFT**

**AIP and two MPs v. Minister of State Administration**

Court case 9502/2003 of the Supreme Administrative Court

In the summer of 2002 two oppositional MPs have requested several times all available information about the license agreement between The Minister of State Administration, Mr. Kalchev, and Microsoft. The agreement was for providing 30,000 licences for WindowsXP and OfficeXP in Bulgarian for the needs of the Bulgarian administration.

The MPs received access to parts of the requested information, without any details on the price, payment, terms, or forfeit conditions.

At the same time an AIP employee filed a similar request, wishing to obtain information, whether a public procurement - a prerequisite under the Public Procurements Act - had preceded the decision to sign the license agreement. In response, Mr. Kalchev explained, that because the vast majority of officials had been using Microsoft products, and Microsoft was the only software company offering WindowsXp and OfficeXP, there had been no need to initiate a procurement procedure. The Minister did not indicate whether possible advantages or disadvantages of using open source software were considered.

On February 19, 2003 the two MPs and AIP filed yet another request, wishing to obtain all available contract information, including the initial offer, annexes, and contracts with the Bulgarian vendor in the form of copies of the original documents.

The Minister failed to reply in the law-provided term, and the tacit refusal was appealed before the Supreme Administrative Court of Bulgaria on March 19, 2003. In a subsequent reply from the next day, Mr. Kalchev reproduced some of the requested information, without providing access to copies of the requested documents. Mr. Kalchev considered that his reply had settled the case and failed to forward the appeal to the Supreme Administrative Court.

On Sept. 09, 2003 we filed a request to the court to demand the case from the Minister. As a result the court has scheduled the first hearing on case 9502/2003 to be on Feb. 18, 2004.

### 13. ACCESS TO A CONTRACT BETWEEN THE BULGARIAN GOVERNMENT AND A FOREIGN COMPANY

#### **Kiril Dimitrov Terziisky v. Minister of Finance**

#### **Relevant legal issues under APIA:**

- Art.37, para.1 item 1 - denial grounded on state secret;
- Art.41, para 3 - in camera inspection of the classified document by the court

#### **Background facts:**

1. In 2002 one of the most influential newspapers *Trud* published piece of a Cabinet meeting minutes related to the question how to use the ground of national security in order to avoid procurement proceedings for consultancy of the Bulgarian customs reform. It became clear this was undertaken to ensure that the favorite, a British company named Crown Agents (CA) would take the job. Later there was a debate in the Parliament on the issue where the Minister of Finance said that the already signed contract was classified.
2. In autumn 2002 Mr. Kiril Terzijsky, an AIP lawyer requested a copy of the contract between MF and CA. Within the time limit it received a denial referring to state secrets. He complained of the denial before the court.

### **Procedural history:**

3. The Supreme Administrative Court appointed a hearing on 3<sup>rd</sup> of June 2003. At the hearing the plaintiff requested the court to do in camera inspection. On 20<sup>th</sup> of June 2003 the court did the inspection and found that the document consisting of 110 pages was stamped as “secret”. On 15<sup>th</sup> of October 2003 the parties presented their positions. On 15<sup>th</sup> of December 2003 the court decided that the denial was unlawful as the legal ground on which the requested document was classified was not specified and the case had to be turned back to the MF for new decision under APIA. In December 2003 MF appealed the decision.

### **14. ACCESS TO FORMER STATE SECURITY FILES Hristo Stanev Hristov v. Minister of Internal Affairs**

#### **Relevant legal issues under APIA:**

- Art.33 - Proof of the possession of the requested documents by the relevant public body;
- Art.25 - The requirement that seeker shows the issue of research

#### **Background facts:**

1. As active researcher of the facts surrounding the journalist Markov’s assassination in London in the 70s of the 20<sup>th</sup> century Mr. Hristov requested under APIA access to MIA archival documents containing security services’ information about the Bulgarian units of BBC, Free Europe and Deutsche Welle radiocasts. He had researched volumes of different files in the MIA archives before and published a number of articles on the matter. At the time of filing the above request Hristov was bound to comply with regulations named “instructions” of MIA adopted in 2002, which required that everyone seeking information in the ministry archives had to disclose in his/her request form information about the issue of research. The instructions were put on the website of MIA. He filled in the matter of his research and separately described the requested documents (so called literni dela) which he wanted to inspect and subsequently to copy selected papers.

2. Within the 14-days prescribed under the law there was no response to the request. Hristov had already appealed the tacit refusal when he received a short letter from the Minister telling him that he cannot have access to the requested information as related to his scope of research since there is not such information in the MIA archives.

#### **Procedural history:**

3. The Supreme Administrative Court appointed a hearing on 8<sup>th</sup> of April 2003. The plaintiff appeared with his lawyer Kashumov and presented as evidence several

documents already obtained from MIA implying that not only the requested documents exist, but also they expectedly contain also information within the scope of research. The plaintiff's position was that his request was misinterpreted by the respondent, that he was required unlawfully to specify the issue of his research in order to disclose the purpose of the information request. According to him the disputed letter was a sophisticated manner to deny access to information using the showing of the matter of research in the request form improperly. Hristov said that to fulfill APIA obligations, it was enough for the Minister to check the existence of the requested documents and afterwards to let him in the archive library to select the ones he need. The lawyer for the respondent raised some procedural questions and repeated the requested documents are not in MIA possession.

4. On 16<sup>th</sup> of July the court delivered its decision. It decided that the response of the Minister was lawful and it was not proven MIA possesses the requested information. It refused to rule on the merits on the plaintiff's argument that MIA "instructions" contradict PIA introducing additional and unnecessary data to be disclosed in information requests, saying such a matter was beyond the judicial competence of that panel. Furthermore it concluded that people did not have right to inspect freely institutions' archives with the purpose to check whether an official lied to them or the documents they seek were really not there.

5. The court decision was appealed before a five-member panel. It appointed a hearing on 21st of November 2003. The parties held the same positions. Public prosecutor however strongly supported the plaintiff criticizing the appealed court decision. The final decision is expected.

#### EXPECTED OUTCOMES

6. Decision on the question is it admissible to supplement the request form prescribed by APIA

7. Decision on the question where is the burden of proof that any information is in someone's possession

8. A good decision against a denial of the institution jealously keeping the "culture of secrecy" (it introduced the draft amendments in the criminal code in 2003 provisioning heavier penalties for communication of state and administrative secrets) would push it to more openness.

#### 15. ACCESS TO A GOVERNMENT REGULATION FROM 1980 REGULATING THE PROCEEDINGS FOR KEEPING STATE SECRETS

##### **Access to Information Programme v. Council of Ministers**

##### **Relevant legal issues under APIA:**

- Art.37, para.1 item 1 - denial grounded on state secret;
- Art.41, para 3 - in camera inspection of the classified document by the court

##### **Background facts:**

1. During its legal consultancy of FOI cases coming from around the country AIP became knowing of the existence of a government regulation from 1980 regulating the

proceedings for keeping state secrets (the regulation). Once it was used as a legal ground for information denial by some major. The regulation was not found to had been publicized anywhere, but its name was met twice in the text of other legal instruments. In 1994 CM obliged by a decree the Minister of Internal Affairs to prepare and adopt a new regulation on the same matter and to publicize it in State gazette. Evidently this did not happen until 2002 when the Parliament adopted the Protection of Classified Information Act (PCIA) that gave a new regulation on the mater.

2. In 2002 AIP requested a copy of the regulation from the CM. Within the time limit it received a denial referring to state secrets. AIP complained of the denial before the court.

#### **Procedural history:**

3. The Supreme Administrative Court appointed a hearing on 28<sup>th</sup> of January 2003. At the hearing the Public Prosecutor said that the 1-year period for re-consideration of documents classified before PCIA and their possible declassification under Para.9 of the Miscellaneous provisions of PCIA had not expired at the moment of the information request. The AIP representative objected that at the time of the hearing the period had expired and also MC did not say they were considering the requested document under Para.9. On 11<sup>th</sup> of April 2003 the court did in camera inspection of the requested secret regulation and found it was stamped as “confidential”. On 20<sup>th</sup> of October 2003 the parties presented their positions. On 25<sup>th</sup> of November 2003 the court decided that the denial was unlawful and the case had to be turned back to the CM for new decision under APIA. In December 2003 MC appealed the decision.

#### **16. ACCESS TO THE REPORT ON THE USE OF INTERCEPTS**

#### **Bulgarian Helsinki Committee (BHC) v. Supreme Prosecution of Cassation Office (SPCO)**

#### **Relevant legal issues under APIA:**

- Art.37, para.1 item 1 - denial grounded on state and administrative secret;
- Art.41, para 3 - in camera inspection of the classified document by the court

#### **Background facts:**

1. In its 2000-2001 reports on the human rights in Bulgaria BHC announces high number of wiretaps of which only 2-3% were ever used in criminal proceedings. In the end of 2001 BHC requested access to the SPCO report from the Supreme Judicial Council (SJC), who advised the NGO to address SPCO itself. Subsequently BHC filed a request to SPCO. The latter denied access on the ground of official secrecy.

#### **Procedural history:**

2. After some proceedings to find out which is the competent court and postponing the proceedings on a respondent lawyer ‘s request the Sofia City Court appointed a hearing

on 29<sup>th</sup> of May 2003. The court required evidence that the requested report was in the possession of the respondent. After such proofs were presented (the SJC letter to BHC noted above) and the respondent's lawyer said that part of the report on question was stamped as official and part as state secret, the plaintiff requested the court to do in camera inspection of the report. The latter was presented before the court hardly one week before the last hearing held on 15<sup>th</sup> of December 2003. The court ruling on the lawfulness of the classification is expected.

**17. ACCESS TO INFORMATION ABOUT PLANNED HIGHWAY CONSTRUCTION  
Green Balkans association v. Executive director of the Roads Executive Agency**  
Court case 882/2001 of the Sofia City Court, Administrative panel, III-B

**Background facts:**

In connection with the planned construction of the Struma highway, financed by the Phare Programme of the European Union, the Green Balkans Association requested in the beginning of 2001 access to documentation related to a sealed contract between the Roads Executive Agency and the Italian company SPEA Ingegneria Europea, which has been entrusted with planning the highway construction.

The preparation of plans and assessments has been funded by over 3,000,000 Euro, while the work of the Italian company has been criticized not only by NGOs, but also by the Ministry of Environment and Water. The ministry itself declared that the work done by the Italian company is insufficient, no alternatives have been offered, although additional funds have been paid to SPEA to include the assessment of possible alternatives.

No decision for disclosure of the requested information has been issued in the law-provided term.

**Procedural history:**

In March 2001 an appeal was filed in the Sofia town court against the mute refusal to take a decision on the information request. In a court hearing the respondent presented a letter with which the Italian company disagreed with disclosing the requested information.

With a Ruling from Oct. 30, 2001 the Sofia City Court terminated the court proceedings, determining that the appeal against the tacit refusal was prematurely filed. The ruling of the SCC was appealed before the Supreme Administrative Court and with Ruling № 7501 from 25.07.2002r. The SAC reversed the ruling of SCC and referred the file back to the first instance court.

With a decision from Jan. 28, 2003 the Sofia Town Court reversed the refusal of the Roads Executive Agency to disclose the assessment of the impact of the environment, but turned down the appeal in its other parts. This case is now pending before the Supreme Administrative Court of Bulgaria, after an appeal was filed by the Roads Executive Agency.

**Outcome:**

Although the case is still pending, the court will inevitably have to decide whether the refusal to disclose information was lawful. We are expecting the court to interpret the limits of trade secret and its relation to the overriding public interest from information disclosure.

**18. ACCESS TO INFORMATION ABOUT DESTROYING THE OBSOLETE MISSILES OF THE BULGARIAN ARMY****Petar Penchev v. Minister of Defense**

Court case 8969/2003 of the Supreme Administrative Court

**Background facts:**

administrative secret was the reason for withholding information requested by Petar Penchev, director of the regional Montana section of "Ecoglasnost" National Movement in 2003. With a request from May 25, 2003 Petar Penchev requested information related to destroying obsolete missiles from the equipment of the Bulgarian Army near the village of Gabrovnica. Access to information was refused with a decision dated Aug. 06, 2003 based on Order № OH-420/ 08.07.2003 by the Minister of Defense, with which the Minister adopted a list of information about the Bulgarian army, classified as administrative secret. This list has not been promulgated or published in any way. According to information coming from other institutions, when burning the engines of the SS-23 missiles, harmful emissions of gases are released into the atmosphere, causing serious risks for the public health.

**Court proceedings:**

The decision to withhold information has been appealed. The plaintiff received the information he requested from the Bulgarian Academy of Sciences. The court proceedings had been terminated.

**Outcome:**

It is important that the applicability of the administrative secret exemption has been challenged, specifically in a case related to the defense of the state. This case is also significant because it shows the importance of the precise usage of the exemptions and the implementation of the test of the Aarhus convention, according to which the exemptions from the right to information access cannot be applied, if there is a prevailing public interest from disclosure.

January 9, 2004