

## **Bulgaria: Appealing to the Authorities**

*Since the enactment of a Bulgarian law on access to information in July 2000, thousands of requests for information have been filed by the public, a number of which have led to court cases. **Gergana Jouleva**<sup>1</sup> gives some examples of the new law in action.*

A critical mass of factors led to the adoption of the Bulgarian Access to Public Information Act (APIA)<sup>2</sup> in July 2000. Among these two stand out: first, the government elected in 1997 had promised an act on freedom of information (FOI) as part of a package of administrative reform. Second, the non-profit Access to Information Programme launched a campaign in early 1997 contributing to public discussion on the shape the law should take. The coincidence of political will and pressure from below resulted in a law within three years. Since then the focus has been on making the law work.

At AIP, we decided on a number of complementary strategies to activate the law once it was on the books. These included: educating both government officials and the general public on the APIA; publishing handbooks on the law's provisions and how to apply them; training officials in responding to requests for information; supporting those who request information through legal advice and representation in court where necessary; and continuous advocacy for legal amendment and refinement.<sup>3</sup> AIP has presented the law to almost 3,000 individuals at events around the country since its adoption.<sup>4</sup>

### *Litigating in the public interest*

One thing remains as central to activating the law now as to advocating it in 1997: real demands for information by real people—be they NGOs, journalists or ordinary citizens. The law is put to the test when such requests are refused, resulting in administrative appeals that can in turn generate public interest litigation. Specific cases, although different in kind, have exposed an official culture of non-information and reflexive concealment of wrongdoing on the part of the public authorities. It was always clear that passing a law would only be a first step to eradicating entrenched official resistance to the active publication of information.

The passage of the APIA had an immediate visible impact on the behavior of government bodies towards the public. A first case concerned an artist who had been refused access to information—on the grounds that no procedure existed to provide it—about documentation relating to a tender for a state contract to design a national coat of arms. Within three days of the passage of the law he reapplied—whereupon the ministry provided the information promptly within ten days.

The courts too have demonstrated a willingness to ensure implementation of the act through effective oversight. In one early case, a lawyer set out to test the act by filing, in July 2000, a request for partial access to a letter from the General Tax Director (GTD) to

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<sup>1</sup> Gergana Jouleva is director of the Bulgarian Access to Information Programme.

<sup>2</sup> The full text of APIA (translation by the Bulgarian Access to Information Programme) is available at <http://www.aip-bg.org/api.htm>.

<sup>3</sup> All of these tasks are supported by numerous Bulgarian actors, including the Foundation for Local Government Reform, the Bulgarian Media Coalition, Associations of Municipalities, and the Center for the Education of Judges. Suggested legislative amendments are listed in the AIP -2002 report, online at [http://www.aip-bg.org/pdf/report02\\_eng.pdf](http://www.aip-bg.org/pdf/report02_eng.pdf).

<sup>4</sup> AIP publishes annual reports on its website: [http://www.aip-bg.org/l\\_reports.htm](http://www.aip-bg.org/l_reports.htm).

a taxpayer containing interpretations of the Tax Procedure Code. Under Bulgarian law every taxpayer is entitled to ask the GTD about the application of the law. And since GTD interpretations potentially affect thousands of taxpayers, the lawyer's aim was to establish in the public interest whether the same interpretation is provided to different requests. He requested partial access only in order to preserve the confidentiality of the individual taxpayer.

The GTD refused access on the grounds that the requested information is not public information and constitutes an official secret. A subsequent complaint lodged with the administrative department of Sofia City Court was rejected—leading to an appeal to the first Panel of the Supreme Administrative Court. On 21 June 2002, this higher court ruled in favor of the information request, referring the file back to the GTD and obliging it to grant public access to those sections of the letter that involve interpretations of taxation law (the taxpayer's personal information remaining undisclosed). In effect, the court ruled that GTD decisions on taxation are public information.

### *Publishing the facts*

Journalists were at first skeptical about the value of the APIA for their everyday work, have also started to file information requests. One regional daily, *Tundja*, conducted an investigation into plans to resell a privatized company of utilities “Power” in the city of Yambol. On 18 January 2001, the chief editor submitted a request on the privatization contract to the Ministry of Economics. The editor was referred to the Privatization Agency, who decided on 12 February 2001 to grant partial access to the relevant information, on the basis of which Diana Boncheva - a *Tundja* reporter and AIP coordinator published an article on 8 March 2001, showing that the resale plans were in breach of the privatization contract. The article led to a review of the contract's implementation, which effectively halted the resale.

The same newspaper has since filed numerous requests to government bodies, and has appealed two refusals of information to the courts.

Statistics on the use of the APIA—released by the Minister of State Administration in April 2003—show that people are queuing up to exercise their newfound right. In 2002 a total of 21,649 requests for public information were filed with administrative bodies (central, regional and local). This represents an increase of 39% over the previous year. The primary users of the law have been citizens (11,897 requests), followed by journalists (2,227) and NGOs (395). Access was refused in 395 cases, 22 of which have been appealed.

Court reviews of refusals by government agencies to provide information helps develop useful jurisprudence, even in civil legal systems like Bulgaria's. They can also give people an incentive to their basic democratic rights. Ultimately the habit of releasing information serves to strengthen the establishment in Bulgaria of a transparent, accountable and citizen-centered administration. The implementation of the APIA—like its adoption—requires a critical mass of factors: real requests of information from government bodies, advocacy by civil society actors, the determination to appeal when information is refused, and knowledgeable judges capable of enforcing the law.<sup>5</sup>

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<sup>5</sup> From the adoption of the APIA to the present, AIP has helped to appeal in 52 cases of refusal of information, 22 of which are now closed. See AIP's book *Access to Information Litigation in Bulgaria. Selected Cases*, AIP, Sofia, 2002. The complete text is online in Bulgarian on [http://www.aip-bg.org/books\\_bg.htm](http://www.aip-bg.org/books_bg.htm).