LITIGATION 2004

The AIP legal team continued in 2004 to provide free legal assistance to citizens and NGOs, representing their interests in court cases regarding access to information refusals.

Legal assistance was provided in 35 court cases, including representation in court, preparation of written complaints, writing opinions, etc. The AIP legal team also observed another 15 court cases. The team's legal assistance in 25 cases heard by the Supreme Administrative Court (SAC) was of particular importance. The court decisions on these cases, once they become effective, provide authoritative interpretation of the law. Final decisions had been delivered in 20 of the cases by the end of the year, three of them by five-member panels (in two of these, the court overturned the information refusals, and in one it rejected the complaint against a refusal). Refusals to provide access to information were either overturned or pronounced invalid in 15 of the above-mentioned 20 cases. Five of the complaints were rejected. Decisions ordering that the information be provided were handed down (but had not become effective by the end of the year) on three out of five pending cases; the complaint against an information refusal was rejected in one, and one was reverted to the Sofia City Court (SCC). Information has already been provided on one of the pending cases (AIP vs. Council of Ministers, regarding the Rules on the Protection of State Secret of People's Republic of Bulgaria, dating from 1980). By the end of 2004, out of the ten cases that were heard in the SCC and the District Courts during the year, the final decision had become effective in one of them: in it, the refusal of the Ministry of the Interior to provide information was pronounced null and void.

AIP lawyers prepared 11 complaints challenging government information refusals. Six of these were filed in the SAC and five in the SCC. Proceedings were initiated in the respective courts on ten of the cases, while one of the complaints was held back by the defendant, the Chief Prosecutor.[1]

The successful conclusion of court proceedings in four cases that had been initiated outside Sofia in 2003 provided a significant stimulus for citizens to seek the protection of their rights under the Access to Public Information Act (APIA).[2] In all four of these cases, the SAC upheld the District Courts' decisions, which had been in favor of the plaintiffs in three of the cases.

Increased public interest in APIA lawsuits was observed, as information refusals on issues of social debate were contested in the courts. The following cases are particularly illustrative of this tendency: the complaint of the online publication "Vseki Den" against the refusal by the Ministry of Foreign Affairs to disclose correspondence from 1970 between Bulgaria and Spain, regarding the status of the present Bulgarian Prime Minister; the case of journalists from four media companies against the Supreme Judicial Court's refusal to provide access to its sessions, which are public by law; the complaint of a journalist from *Dnevnik* newspaper against the refusal by the Interior Minister to provide access to the ministry archives, for the purpose of a journalistic investigation of the facts surrounding the murder of the

1 The proceedings initiated on two of the complaints were terminated.
2 One in Burgas, one in Veliko Turnovo and two in Vidin.

Bulgarian author Georgi Markov in London; the case of a journalist from *Monitor* newspaper against the President's refusal to disclose a security services report on trade relations between Bulgarian companies and Saddam Hussein's Iraq; and the complaint of a journalist from *24 Chassa* newspaper against the refusal by the government to provide information about the costs associated with official travel by ministers, as well as the financing of the spa centers and other residences belonging to the Council of Ministers.

The number of journalists from national and local media who have sought remedy in the court for the violation of their rights has increased. Ten of the lawsuits from 2004 discussed in this section were initiated based on complaints filed on behalf of journalists. These court proceedings stir up public response, so they are important to AIP's campaign for the increased exercise of citizens' APIA rights.

Cases from the jurisprudence of the SAC that are considered to be of particular importance are published in "Administrative Justice" magazine. Two decisions related to the interpretation of the APIA, on cases for which AIP provided court representation, have been published in it – one from 2003 and another from 2004.

In 2004, AIP published its second volume on "Access to Information Litigation in Bulgaria," containing analyses of court practices in 2003 and studies of ten cases.

The Supreme Administrative Court's decisions last year provided some important interpretations regarding the right of access to information, the limitations on it and some other contentious issues. All of these will be analyzed in detail in AIP's third volume on FOI litigation, which is to be published. Here, we will outline briefly what some of these interpretations are:

- The Supreme Administrative Court made a restrictive interpretation of the term "trade secret," in its ruling that a municipality cannot deny access to a procurement contract citing the protection of a third-party interest. Furthermore, the court held that even in cases when a trade secret is present (though that was not the particular case), partial access to the requested information should be provided.

- The Supreme Administrative Court gave guidelines as to the application of the exemption from public access to information regarding state secrets, indicating that simply citing the text of APIA or stating that a document is classified does not comply with the statutory requirement of providing the grounds for a refusal. The administrative bodies subject to the APIA are required to specify the relevant category of secret from the appendix list under Article 25 of the Protection of Classified Information Act (PCIA) and to provide factual reasons. In some cases, the SAC and SCC have requested classified documents inspection in closed chambers, in order to check whether they have been properly marked by an official authorized under the PCIA. A five-member panel of the SAC held that secret documents should be inspected in closed session with the participation of the parties in the case.

- The Supreme Administrative Court made a restrictive interpretation of the exemption related to so-called "preparatory documents" provided in Article 13, Para. 2, Item 1 of the Access to Public Information Act. In a judgment delivered in

the autumn of 2004, the Court held that requests for preparatory documents related to public procurement procedures do not fall under the law's exemption and ruled that the public institution should provide access to the information.

- Other important legal matters were considered and decided during the year. Until 2004, the Supreme Administrative Court's practice in its lawsuit decisions was to return information requests to the public administrative entities for reconsideration, without actually obliging them to provide the information requested. Last year, the Supreme Administrative Court delivered several judgments obliging the defendants to provide access to the information that had been requested. With regard to the so-called "tacit refusals" of public authorities to grant access to information (by failure to respond to a request within the prescribed time limits), the Supreme Administrative Court stood firmly behind its statement that they are "unacceptable"; i.e., they are not equal to a decision to deny access. This is important for the prevention of irresponsible behavior by some institutions, which prefer not to respond to FOI requests and only take a position on a case when it ends up in court.

APPENDIX

LITIGATION – CASE NOTES

1. Vassil Chobanov vs. Supreme Judicial Council

1st Instance Court – Administrative Case No. 7897/2004, Supreme Administrative Court (SAC)

Request:
After the adoption of the new Paragraph 3 of Article 27 of the Judicial Branch Act, which guaranteed the openness of sessions of the Supreme Judicial Council (SJC), four journalists – Vassil Chobanov (Radio *New Europe*), Bogdanka Lazarova (*Darik Radio*), Elena Encheva (*Sega* newspaper) and Petya Ilieva (*Dnevnik* newspaper) – submitted a letter to the SJC requesting full access to the Council's next ten sessions. The request suggested that access be provided by means of a video camera and microphone, due to the limited capacity of the SJC conference hall.

Refusal:
The request of the four journalists had not been discussed at the following session of the SJC.

Complaint:
The journalists considered the lack of a response to their request to be a tacit refusal, which they challenged before the Supreme Administrative Court (SAC).

Developments in the Court of the First (and only) Instance:

The Council did not send a representative to the single court hearing, and the judges adjourned for their final decision.

Judgment:
In Decision No. 9595 of November 19, 2004, the Supreme Administrative Court reversed the tacit refusal by the SJC and returned the information request to the respondent for compliance with the law and the instructions of the court. The court found the journalists' complaint to be admissible and justified, and that the SJC's tacit refusal was contrary to the law. The text of the decision stressed that the concept of *public* by definition means *accessible to members of society*. Therefore, the SJC has an obligation to ensure that their meetings are open to all members of society, including the media, who serve an important function by publishing information of public interest. The choice of the specific information technology by which access to information is provided is in the authority of the public institution. The decision of the SAC was final.

All of the journalists present during the first SJC session following the decision were invited into the conference hall to attend the meeting.

2. *Vseki Den* online publication vs. the Ministry of Foreign Affairs

1st Instance Court – Administrative Case No. 3487/2003, Sofia City Court (SCC) Administrative Division, Panel 3-g

Request:
In connection with media publications from May 2003 regarding the citizenship of the Prime Minister of Bulgaria, Mr. Simeon Saxe-Coburg Gotha, the online publication *Vseki Den* ("Every Day") submitted an access to information request addressed to the director of the International Relations Department of the Ministry of Foreign Affairs (MFA). The requestor (the publication's editor-in-chief), citing the necessity of elucidating a matter of growing public debate, requested access to the document or documents containing data about Mr. Saxe-Coburg Gotha's citizenship status during his years in Spain. According to media publications, the specific document or documents, to which access was being requested, were diplomatic notes, exchanged between Bulgaria and Spain in 1970. The application also specified that if the requested documents fell under the Protection of Classified Information Act, the applicant wanted to be given in writing the legal grounds for classifying the information, as well as a copy of the security stamp indicating the level of classification, the date of classification and the expiration date of the classification period.

Refusal:
A refusal to grant the request was received at the office of the electronic publication, signed by the director of the MFA International Relations Department. Two reasons were specified for the denial:

- In 1970, in the process of establishing consular and trade relations between Bulgaria and Spain, the ambassadors of both countries exchanged diplomatic correspondence in the form of notes. These contained references to the social identity, public and representative functions of the current Bulgarian prime minister. The refusal went on to state that other issues related to the premier's private life – his citizenship falling in that category – had not been discussed. Relying on that argument, the MFA International Relations director considered the request to be one

for access to personal data, in which case the Access to Public Information Act could not be applied;
- Second, part of the above-mentioned diplomatic negotiations stipulated the obligation of preserving the confidentiality of the correspondence between the two countries.

Complaint:
With the help of AIP, the refusal to provide access to the requested information was challenged before the Sofia City Court (SCC).

Developments in the Court of the First Instance:
The MFA's attorney did not produce in court evidence that the official who had signed the refusal had been authorized to handle APIA requests by the foreign minister, Mr. Solomon Passy.

Judgment:
The court pronounced the International Relations director's refusal void. The court ruled that the lack of authorization should not impede the initiation of court proceedings. On the contrary, issuing a refusal without authorization to do so was considered a serious violation of law. The Sofia City Court referred the court file to the minister of foreign affairs, for reconsideration of the request for information access.

The judgment was not appealed and came into effect.

In August, the MFA informed *Vseki Den* that the diplomatic correspondence had been declassified (though it had never been stated that it was secret!), after the Spanish side gave its permission. The requested information was provided to the online publication.

3. Diyana Boncheva vs. the President of the National Audit Office

1st Instance Court – Administrative Case No. 385/2003, Sofia City Court (SCC) Administrative Division, Panel 3-b
2nd Instance Court – Administrative Case No. 10889/2003, SAC, 5th Division

Request:
Ms. Diyana Boncheva, editor-in-chief of the Yambol-based newspaper *Tundzha*, submitted a request for access to public information with the chairman of the National Audit Office (NAO). She requested access to the property declarations, stored in the public register of the National Audit Office, made by the appellate prosecutor of the city of Burgas in his capacity as a member of the Supreme Judicial Council. She also requested information about any verifications made of the declarations submitted by him, as well as any penalties imposed for failures to meet deadlines for the submission of declarations.

Refusal:
The applicant received a letter from the chairman of the NAO asking her to specify her request with respect to Article 3 of the *Public Disclosure of Property Owned by High Government Officials Act (PDPOHGOA)*, which contains a list of types of

property and income that are subject to declaration under that law. Ms. Boncheva specified nature of her request in a letter. Despite this, she did not receive a response within the period prescribed by Article 6, Para. 2 of the PDPOHGOA.

Complaint:
The tacit refusal of the NAO chairman was challenged before the SCC.

Developments in the Court of the First Instance:
The case was heard in a single session and scheduled for judgment.

Judgment:
The SCC's judgment of July 15, 2003 rejected the complaint. In interpreteing Article 6 of PDPOHGOA the judges concluded that the chairman of NAO was only obliged to provide information whether or not the persons required to file declarations had done so, and was not obliged to disclose the content of these declarations. According to the court panel, data that is declared for entry into a public register is personal data, afforded the protections of the Personal Data Protection Act.

Court Appeal:
With the support of AIP, the SCC decision was appealed before the Supreme Administrative Court (SAC), with the argument that under Article 1 of PDPOHGOA, the public character of the information is to be achieved by the establishment of a public register, in which declarations by high-level state officials of their about property, incomes and expenses are recorded. Assuming that public access to the information from public registers is limited to finding out who had submitted their declaration and who had not would mean make the PDPOHGOA pointless, obviating its purpose: that of fostering greater transparency regarding the officials in high-level state positions.

Developments in the Court of the Second Instance
Ms. Boncheva's attorney argued before the court that pursuant to Article 6, Para.1 of the PDPOHGOA, the public media, represented by their leadership staff, are permitted access to the information contained in public registers. At the present time, the plaintiff was undoubtedly such a representative in her capacity as editor-in-chief of the regional newspaper *Tundzha*. It was also a well-known fact that the property declarations of state officials had already been published in national dailies several times.

Judgment:
The Supreme Administrative Court reversed the SCC decision in its Decision No. 3508 of April 20, 2004. The SAC rejected the tacit refusal by the NAO chairman as intolerable (legally unacceptable) and referred the case file back to the respondent for an information access decision based on merit, following the interpretation of the law and the instructions of the court. In the motivations for its decision, the court pointed out that the legislator's intention expressed in the Public Disclosure of Property Owned by High Government Officials Act, which was explicit in the name of the law, was that it the property declared by these officials should be public information. It was an anticorruption measure, which should not be overridden by the Personal Data Protection Act. The justices also stated that besides information from the declarations submitted by the Burgas prosecutor, two other requests had also been articulated in

the original information request, regarding any verifications made or penalties imposed. The court ruled that this information must also be provided.

The SAC decision was final.

4. Kiril Karaivanov vs. the State National and Wartime Reserves Agency

1st Instance Court – Administrative Case No. 4408/2004, SAC, 5th Division

Request:
In connection with a year-long investigation of violations of the law related to the activities of the state-owned company Briliant Ltd., situated in the village of Krusheto, and the State National and Wartime Reserves Agency (SNWRA), Mr. Karaivanov had collected a considerable amount of information and needed three more documents, which were of particular importance to the case.

On July 22, 2003, Mr. Karaivanov submitted an application to the SNWRA requesting the following information:

1. A copy of the 1998 contract between the SNWRA and Briliant Ltd, (including log number and date of signature);
2. A copy of the document verifying that the processing of 838 tons of raw (unrefined) sunflower oil had been carried out within the timeframes stipulated in an order issued by the chairman of the SNWRA (including log number and date of the order's issuance);
3. Copies of four receiving manifests, indicating the amount of refined oil extracted (log number and dates requested as well).

Mr. Karaivanov received a denial of his request from the chairman of the SNWRA. He challenged the refusal in court, and SAC Decision No, 111 of January 9, 2004, rejected the refusal as ungrounded and referred the case back to the state agency for reconsideration.

Refusal:
Mr. Karaivanov received another written refusal of his access request. Regarding the first document requested, the agency said it did not possess it, since the time for its storage had expired in April 2002, according to the internal record keepeng rules for the agency's overt auctions. The document verifying the processing of raw (unrefined) oil, which had the nature of a receipt, was marked with a security seal, since it contained a state secret. The complainant was referred to Appendix 1 to Article 25, Para. 2, Item 10 of the Protection of Classified Information Act for the grounds upon which the document had been classified. (That provision covers "information about the allocation and expenditure of the state budget and state property related to special purposes that concern national security.") Mr. Karaivanov was informed that following payment of the access fees, he would be given the copies of the documents requested under point 3 of his application.

Appeal:

The new refusal was also challenged before the SAC, on the grounds that the chairman of the SNWRA had not provided in it the factual grounds to support the statement that the contract requested was not at his disposal. The refusal failed to explain whether the contract had been destroyed or sent to another place for storage (the National Archive, for example). The factual grounds for the refusal to provide copies of the processing receipt, other than the passing reference to Appendix 1 to Article 25 of the PCIA, were also lacking.

Developments in the Court of the First Instance:
The claimant, Mr. Karaivanov, presented as evidence at the court session, four receiving manifests related to the implementation of the same order by the agency chairman for the processing of raw sunflower oil, which, according to the plaintiff, indicated the absence of classified information in the refused documents. The SAC obligated the agency chairman to present a certified copy of the first page of the receipt verifying the amount of oil extracted, in order to check whether the document had been stamped classified, along with evidence regarding the official who affixed the seal and on what grounds. The agency's legal counsel claimed that the requested contract had been fulfilled in 1999, that the document could not be found in the agency archive, and that there was no record of its destruction or transfer to the National Archive.

The SNWRA subsequently failed to fulfill the court's order for the additional evidence mentioned above.

Judgment:
SAC Decision No. 9154 of November 9, 2004, rejected the information access refusal as unlawful and referred the file back to the agency for reconsideration of points 1 and 2 of the information request application. With regard to the first point, the court ruled that the statement that the contract could not be found was unsupported by evidence and did not give grounds for denying access to the information. The SNWRA would need to present evidence either that the contract had been destroyed after the approval of an expert committee, that it had been archived and data noted that would facilitate finding its current storage place, or that it had been lost and the required certification statement been filed to that effect. Regarding the refusal to grant access to the information in point 2 of the application, the justices presumed there was no data supporting the agency's statement that the information was classified. Nor were there any factual grounds given for the classification of the information contained in the receipt as a state secret (i.e., no criteria for classification, nor grounds for identifying the requested information as state secret were presented). This circumstance prevented verification by the court of the statement that the information was a state secret. The mere statement that the information contained in the document constituted a state secret did not conclusively identify the information as such.

The judgment was not appealed and took effect.

5. Kiril Terziiski vs. Minister of Finance (*Crown Agents* contract) 2

1st Instance Court – Administrative Case No. 4120/2004, SAC, 5th Division
2nd Instance Court – Administrative Case No. 592/2005, SAC, Five-Member Panel, 2nd Tribunal

Request:
Decision No. 2113 of March 9, 2004, on Administrative Case No. 38/2004 by a five-member panel of the Supreme Administrative Court (SAC), upheld Decision No. 11682/2003 by a three-member panel of the same court on Administrative Case No. 3080/2003. That original decision had rejected the refusal of the Ministry of Finance to provide to Kiril Terziiski a paper copy of the contract between the ministry and the British consulting company *Crown Agents*. The justices found that the lack of any grounds as to why the requested contract constituted a state secret prevented the court from reviewing the lawfulness of the refusal and exercising effective judicial control over the minister's decision to deny information access. The file was returned to the finance minister for reconsideration of the information request.

Refusal:
The court decision was followed by a new written refusal of access to information. The contract had been classified as a state secret as early as December 2001, as noted by the Information Security Department of the ministry. This classification had been based upon Item 24 of the repealed List of Facts, Subjects and Other Information Constituting State Secrets, namely: "*Records concerning the organization and technical characteristics of programs for the protection of automated information management systems for use in ministries and other institutions of power and governance*."

The minister insisted that the contract still contained information, classified as a state secret, even after the adoption of the Protection of Classified Information Act (PCIA). Information contained in the contract fell under the scope of the following categories from the list appended to Art. 25 of the PCIA:

- *"research of high importance to the interests of the national economy, prepared on behalf of a public institution;*
- *information regarding technical, technological and organizational decisions, the disclosure of which is likely to harm important economic interests of the state*."

Complaint:
The refusal was challenged before the SAC, with the main argument that the court's instructions had not been followed. The minister had not indicated what kind of information was contained in the contract, making it impossible for the court to assess whether it really fell under the scope of exemptions under the PCIA. The plaintiff requested that the court exercise its authority under Art. 41, Paras. 3 and 4 of the Access to Public Information Act (APIA) and request for inspection both the contract and the decision to classify it.

Developments in the Court of the First Instance:
At a court hearing the plaintiff's representative requested that the court demand the transcript of a Council of Ministers session held on October 25, 2001. At this session, the Cabinet discussed the relationship between the requested contract and national security. The court rejected the request, but did order the finance minister to present the contract for inspection *in camera*, and to provide information about the public official who had classified it and the justification for the classification decision. In case the contract had been classified as secret by the decision of an authorized official, the minister was to show evidence of that official's authority to assign classification

levels. In order to speed the legal proceedings, the court agreed to hear the case, but assured the parties that a judgment would be delivered only after review of the documents in accordance with Art. 41, Paras. 3 and 4 of APIA, which would be crucial to the outcome of the case.

After hearing the arguments of the two parties, the court adjourned.

Preliminary Ruling:
The court reviewed the contract between the Ministry of Finance and the British company, and afterwards issued its Ruling of November 10, 2004. The judges had determined that the first page of the contract had been stamped with a security seal reading *secret*, and that the stamp was later crossed out and the document stamped with the security seal *confidential*. An authorized official had signed below the new stamp, also indicating the grounds for classification – § 9 of the Transitional and Closing Provisions of the PCIA – and the date: September 20, 2004.

Court Decision:
In its Decision No. 9472 of October 16, 2004 the three-member panel of the SAC **rejected** Kiril Terziiski's complaint against the finance minister's refusal to disclose a copy of the contract between the ministry and the British consulting company *Crown Agents*. Basing its decision solely on the classification stamp discovered during the inspection in camera, the court adopted the view that the refusal was in compliance with Bulgarian law. The court held that the minister's affirmation, that information contained in the contract falls within one of the exempt categories of state secrets listed in Appendix 1 of the PCIA, was enough to demonstrate that the contract had been lawfully classified. The presiding judge, however, delivered a dissenting opinion. He argued that in order for the court to review the lawfulness of the classification decision – as required pursuant to Art. 41, Para. 4 of APIA – it would have to interpret the substance of the two categories of state secret quoted in the minister's information refusal. The presiding judge held the opinion that the information in the contract fell outside the scope of either of them.

Court Appeal:
The court decision upholding the lawfulness of the information refusal was challenged by the AIP legal team, before a five-member panel of the SAC. The plaintiff argued that the three-member panel had not fulfilled its obligation to review the classification decision, per Art. 41, Para. 4 of the APIA. Instead, the judges had adopted the view that just because a security stamp was present, it must have been affixed in conformity with the law. The first-instance panel had not even considered the question of whether information contained in the contract had any relation to the interests protected by Art. 25 of the PCIA, nor whether any harm could result from the contract's disclosure.

Developments in the Court of the Second Instance
The hearing of the appeal case is still being scheduled.

6. Lyubov Guseva vs. the Municipality of Vidin

1st Instance Court – Administrative Case No. 128/2003, Vidin Regional Court
2nd Instance Court – Administrative Case No. 3351/2004, SAC 5th Division

Request:
Ms. Lyubov Guseva, a member of the board of directors of the Animal Protection Society in Vidin, sent a written application to the mayor of Vidin in which she requested access to all available information relating to the previously announced and concluded public procurement procedure. The subject of the contract was the *reduction of the number of stray dogs in the town of Vidin*. More precisely, Ms. Guseva requested information about the total number of bidders, the number of bidders who qualified to participate in the tender and their proposals for meeting some of the compulsory conditions for participation in the tender (qualified staff, equipment and technology for the dogs' capture, transportation and isolation, and the pricing of their bids).

Refusal:
A written refusal was issued with no legal grounds specified, but rather containing the explanation that the requested information (regarding the applicants' bids) pertained to information of an economic nature, which was related to the preparation of the mayor's administrative actions and had no significance of its own.

Complaint:
The refusal was challenged on the grounds that it had indicated no legal or factual basis, pursuant to Art. 38 of APIA. The "information of economic character," as stated in the mayor's refusal, did not fall under any category of exemption to the APIA under which the public right to information was restricted. Part of the information requested – that regarding the winners of the procurement competition – was even subject to publication under the provisions of the Public Procurement Act (PPA).

Developments in the Court of the First Instance:
No representative of the municipality appeared in court, and the case was scheduled for judgment.

Judgment:
Judgment No. 188 of December 10, 2003, by the Vidin Regional Court (VRC) rejected the information refusal as unlawful and referred the case back to the mayor of Vidin, requiring him to provide access to the requested information which, according to the court, pertained to the selection of a contractor by the municipality and the conditions under which the procurement contract was to be executed.

Court Appeal
The VRC's judgment was appealed before the SAC by the Mayor of Vidin Municipality. The appeal restated the arguments that had been provided in support of the refusal – that the information was of economic character, which pertained to the preparation of the mayor's acts and had no significance of its own. The appeal also contained the statement that the refusal had been issued on the basis of protecting third-party interests; specifically, those of the participants in the PPA procedure.

Developments in the Court of the Second Instance:
The Supreme Administrative Court (SAC) heard the case in a single session and scheduled it for judgment. The municipality representative who appeared at the court hearing grounded the legality of the information refusal with the argument that the requested information fell under the category of commercial secrets, pursuant to Art. 7

of the APIA.

Judgment:
Decision No. 8459 by an SAC panel of the 5th Division overturned the VRC's judgment requiring that the mayor provide the information about the winning bidder and the terms of the public procurement contract, instead obligating the mayor to provide access to the requested information, pursuant to the prescriptions of the current court decision upholding the rest of the VRC decision. The supreme court justices' decision thus corrected the VRC's judgment, which had rightly rejected the mayors' refusal as unlawful but had wrongly specified the subject of the requested information. The deliberations of the court regarding commercial secrets and the offers of the selected contractors deserve special attention.

The judgment of the SAC was final.

7. Pavlina Trifonova vs. the Council of Ministers

1st Instance Court – Administrative Case No. 2860/2003, SCC Administrative Division, Panel 3-z
2nd Instance Court – Administrative Case No. 10635/2004, SAC 5th Division

Application:
In June 2003, Ms. Pavlina Trifonova, a journalist from the national daily newspaper *24 Chassa* ("24 Hours"), submitted two applications for access to public information with the Government Information Service (GIS) at the Council of Ministers (CM). In them she requested information about the official trips of the ministers and the conditions in the vacation centers belonging to the CM. Concerning the official trips, she requested information as to the number of days (during the period to July 2001 to the present) spent by the ministers abroad and the list of places visited, the amount of per diem and other official travel expenses, and the name of the company that provided the airplane tickets and the type of contract the government had signed with it. With regard to the vacation centers and residences belonging to the CM, she requested information about the amount of the budget funding allocated to them, the amount of revenue generated by them, the number of people who had visited the centers during the past year and a price list for the current season.

Refusal:
The MC issued a written notification of its decision to refuse access to the information indicating the following reasons for the refusal:

- the report on cabinet ministers' per diem and other travel expenses and the report on the conditions at the CM vacation centers had been completed as part of preparation of the annual report on budget spending at the end of the fiscal year;
- the annual report on budget expenditures for the previous year had been submitted to experts at the National Audit Office (NAO) for an annual audit;
- information about ministers' official trips in 2001 and 2002 had already been provided to the journalist.

Complaint:

The plaintiff's complaint listed five arguments for the unlawfulness of the refusal. In response to previous information requests submitted by the journalist, an inadequate amount of information had been provided (concerning CM official travel). Information had been provided with regard to a considerably shorter period of time than that requested, responding only to the first three points of the application. This made the subject of the current information request significantly different in terms of numbers, and thus in practice completely new information. The complaint also emphasized the fact that the provision of information in response to previous requests had not been obstructed by the development of the annual report on budget spending, nor by its submission to the NAO. Finally, there was no relationship between the statements in the written refusal and part of the requested information: regarding the company that provided the airplane tickets, its contract with the government, and the price lists of the vacation centers.

Developments in the Court of the First Instance:
After two court sessions held to gather evidence regarding the GIS' previous responses to the reporter's information requests, the court panel scheduled the case for judgment.

Judgment:
The Sofia City Court rejected the GIS' refusal to provide access to the requested information as unlawful, in its Decision of August 23, 2004. The court acknowledged the right of the plaintiff to access the information, pursuant to the Access to Public Information Act (APIA), and obligated the GIS to provide the information. The justices asserted that in her request, the plaintiff had made several different requests for information, which should have been considered separately in the refusal. The determination of the refusal's lack of conformity with the law was grounded in its lack of any factual or legal grounds pursuant to the APIA. The mere statement that the report on the per diem and travel expenses and the report on the conditions at the rest centers had been prepared as part of the annual report on budget expenditures, without any explanation as to how this made the requested information restricted from public access under the exemptions of the law, made the refusal unlawful. The court panel concluded that the director of the GIS, who had frequently been approached for information, had an emergent obligation to provide access to the requested information, since it was official public information per Article 11 of the APIA and did not fall into any of the legal exempt categories.

Court Appeal:
The Council of Ministers appealed the SCC judgment before the Supreme Administrative Court. The judgment was appealed on the grounds that the GIS *refusal* was actually an informational letter, informing the journalist that the requested information did not yet exist, and should not have been assumed to be an official refusal under the APIA.

Developments in the Court of the Second Instance:
Court sessions for the appeal are being scheduled.

8. Access to Information Programme, Stoicho Katsarov and Ivan Ivanov vs. the Minister of Public Administration

1st Instance – Administrative Case No. 9502/2003, SAC 5th Division
2nd Instance – Administrative Case No. 1286/2005, SAC Five-Member Panel, 2nd Tribunal

Request:
In March 2003, AIP, along with two members of Parliament - Ivan Ivanov and Stoicho Katsarov - submitted a written application to the Minister of Public Administration, in which we requested access to the following information: the entire contents of the contract between the ministry and Microsoft Corporation for supplying 30,000 software packages for the needs of the Bulgarian public administration, and all related documents, such as the offer, any additional agreements, and any contract with an intermediary.

Refusal:
No response to the request was received within the deadline stipulated by law.

Complaint:
The tacit refusal was challenged on the grounds that it was a substantive violation of the law, since the requested information was public and did not fall within the scope of any restrictions provided for in the APIA and that failure to comply with the requirement that the refusal be given in writing was a material breach of the procedural rules. The complaint was sent to the minister of state administration, who was required by Bulgarian law to forward it to the Supreme Administrative Court (SAC).

On the following day, the minister sent a letter to the complainants, in which he provided a summary in writing of only part of the content of the contract, as well as presenting arguments to support the selection of software supplier. The letter indicated that a copy of the contract could not be disclosed, because no consent had been obtained from the relevant third party – Microsoft. The minister also argued, that the software company did not constitute an entity subject to APIA disclosure in the sense of Art. 3, Para. 2, Item 2 of the APIA, because payments under contractual agreements do not constitute "financing from the state budget" in the sense of APIA.

However, the minister failed to send the complaint and the full packet of relevant documentation to the SAC.

Finding their right of access to information to have been infringed, the claimants filed a request with the court together with a copy of the complaint, and the court initiated proceedings by demanding the documentation from the minister *ex officio*.

Developments in the Court of the First Instance:
The minister sent no representative to the first court hearing. It turned out that the minister had failed to fulfill his statutory obligation under Art. 16, Para. 2 of the Supreme Administrative Court Act (SACA) to submit the complaint and all of the relevant documentation to the court. The court panel considered the minister's request that the complaint be dismissed. The legal counsel for the minister argued that since the requested information had already been provided to the applicants, proceedings should be discontinued, due to a lack of any legal interest served by challenging the refusal in court. The respondent produced a copy of the response letter it had sent, but

did not submit any of the other documentation to the court, including the original information request.

The plaintiffs' representative requested that the court demand the full packet of documentation from the minister, because his response had not provided the requested information.

The court postponed the case and instructed the Minister of state administration to compile and submit the full documentation.

At the second court hearing in May 2004, it turned out that the Minister of state administration had not been duly summoned. He had neither sent a representative to the court, nor had he followed the court's instructions of the previous month that he submit the full documentation.

The court postponed proceedings yet again and scheduled a new hearing for October 2004, advising in its summons to the Minister of State Administration that he was obliged to submit the full documentation in compliance with the court's ruling from February.

Although the minister had not been duly summoned to the third court hearing, he was represented at it by two members of his legal counsel. They testified that the ministry possessed no further documents, other than those already presented to the court in February. They did not have a copy of the original information request. The plaintiffs' representative argued that the refusal contained in the minister's letter had been unlawful. They believed that under the hypothesis of Art. 31, Para. 5 of the APIA, Microsoft's consent was not required for access to the agreement, because the company falls under Art. 3, Para. 2, Item 2 of the APIA. The plaintiffs also argued that the term "financing" does cover payment to a contractor, as used in the new Public Procurement Act. After hearing the arguments of both parties, the judges adjourned and announced that a decision would be delivered within in the period provided by the law.

Judgment:
With Decision No. 10168 of December 07, 2004 the three-member panel of SAC **rejected** the minister's tacit refusal and **returned** the file to the minister for reconsideration of the information request based on merit. The judges held the view that disclosure of the contract would present the public with an opportunity to form its own critical opinion about the actions of the minister. The court concluded that the requested contract was a document of significance in its own right, and could not be withheld on the grounds of Art. 13, Para. 2 of the APIA.[3]

Court Appeal:
The minister, who argued that no tacit refusal had existed, challenged the three-member panel's decision. He insisted that a detailed response to the information request had been provided in his letter.

Developments in the Court of the Second Instance:
Hearing of the appeal case is pending.

[3] **Quote the law here**

9. Rossen Alexov vs. the National Forestry Service at Simitli

1st Instance Court – Administrative Case No. 189/2004, Blagoevgrad Regional Court
2nd Instance Court – Administrative Case No. 11019/2004, SAC 5th Division

Request:
In March 2004, Mr. Rossen Alexov submitted a written application to the director of the National Forestry Service office in the town of Simitli, requesting access to information about the number of licenses for individual hunting of waterfowl issued February 11, 14 and 15, 2004. Mr. Alexov also requested a copy of a such license, issued on one of the above-mentioned dates.

Refusal:
A written refusal was sent to the information requestor. The license in question is issued by the hunting specialists of the hunting associations, so the information should therefore be requested from the appropriate hunting association.

Complaint:
The refusal was challenged before the regional court, on the grounds that it was of no importance who had generated the information – if the Simitli NFS director had it at his disposal (since the licenses, which are indeed issued by the hunting associations, are registered at the NFS office), he had the obligation to provide access to it.

One month after the complaint was filed with the court, the NFS provided information to Mr. Alexov with regard to the first part of the request, concerning the number of the licenses issued.

Developments in the Court of the First Instance:
At the court hearing, the NFS representative justified the refusal on the second part of the information request – for a copy of an issued hunting license – with the statement that such a request was unacceptable because it was related to official information subject to the Personal Data Protection Act (PDPA). A copy of the application form for an individual hunting license was provided as evidence.

Judgment:
The Blagoevgrad Regional Court's Decision of October 21, 2004, rejected the complaint. The court grounded its judgment in the fact that information had been provided with regard to the first part of the request, making a complaint on that part of the application groundless. The complaint was also ruled ungrounded with respect to the second part of the request, since the information contained in a specific license was not publicly accessible under the APIA since it contains the personal data (names and personal identification number) of the hunter to whom it was issued, and therefore constitutes protected information under the PDPA.

Court Appeal:
The regional court's decision was appealed before the SAC, on the grounds that the requested information did not fall under the category of personal data and should not have been excluded from the right to public access. Pursuant to Article 35, Para. 1, Item 2 of the PDPA, personal data may be disclosed to third parties without the

consent of the individual concerned, when the data is recorded in a public register. A hunting license contains the same data as a hunting permit. According to Article 25, Para. 5 of the Hunting and Game Preservation Act, the register of permits issued and renewed is public. Furthermore, in this particular case, personal data had not been requested, since the requester had not inquired as to the identity of any individual hunter, but had rather requested the information contained on a license (e.g., a copy of any license at random, issued on the specified date).

Developments in the Court of the Second Instance:
Court hearing of this case is pending.

10. Svetlana Ganevska vs. the Italian Academy at Gorna Banya

1st Instance Court – Administrative Case No. 2379/2002, SCC Administrative Division, Panel 3-g
2nd Instance Court – Administrative Case No. 3371/2004, SAC 5th Division

Application:
In June 2002, Ms. Svetlana Ganevska submitted a written application for access to public information to the principal of the *National Cultural School Complex with Italian-Language Instruction* at Gorna Banya, requesting information about the school's admissions process for first graders for the 2002/2003 academic year. The requested information was detailed in five points in the application: copies of all methodology plans for implementation of the admissions process; information about the procedure for keeping the methodology secret; information regarding the individuals responsible for the admissions campaign; the number of children admitted to the first grade who had also attended the school's kindergarten; and copies of rental agreements for the property of the complex.

Refusal:
The school's principal did not respond to the information request within the 14-day period prescribed by law.

Complaint:
With the support of AIP, the tacit refusal was challenged before the SCC.

Developments in the Court of the First Instance:
At the first court hearing, it turned out that an explicit refusal had been issued by the school's principal on the basis of Article 37, Item 2 of APIA (regarding the protection of information related to a third party's interests). However, no evidence that the written refusal had been delivered to the requester was presented. The counsel for the school requested a postponement, in order to collect and present orders pertaining to the interests of third parties, and also requested that two witnesses be summoned, who represent the third parties mentioned. The court postponed the hearing, ordered the defendant to complete the file by appending all of the relevant evidence and instructed the plaintiff to submit the grounds for her challenge of the explicit refusal as unlawful.

At the second hearing, the plaintiff presented her grounds for the unlawfulness of the explicit refusal. The defendant's representative submitted in evidence the order

designating two experts from Sofia University to develop, independently of one another, the tests and other methodology for use in the admissions process. After its deliberations, the court did not question the two witnesses. The case was scheduled for judgment.

Judgment:
The SCC Decision of May 30, 2003 rejected the complaint against the initial tacit refusal and subsequent explicit refusal to refuse access to the information requested. The court panel presumed that the requested information was related to the work of the individuals who had developed the plans and methodologies for the admissions procedure. The court also assumed that these third parties had withheld their consent for the disclosure of that information orally, since their refusal to allow disclosure had not been appended to the case as evidence. On the basis of their lack of consent, the defendant was determined to have refused access to the information lawfully. The justices also stated that in order to receive such a large quantity of information, the claimant should have given the reasons for her request.

Court Appeal:
AIP appealed the SCC judgment before the SAC, on the grounds that the lower court had not specified which of the information, requested under the five points, would harm the interests of the third parties. The SCC panel had wrongly rejected the lawfulness of the complaint with its argument that in order to receive such a large quantity of information, the claimant should have given the reasons for her request.

Developments in the Court of the Second Instance:
The case was heard in a single hearing and scheduled for judgment.

Judgment:
SAC Judgment No. 8969, of March 3, 2004, reversed the SCC judgment, rejecting the initial tacit refusal and subsequent explicit refusal of the school principle and referring the file back to him for reconsideration in compliance with the court's instructions. The justices pointed out in their motivations for this judgment that a refusal on the grounds of Article 37, Para. 1, Item 2 of the APIA should contain the assessment that disclosure of the requested information would harm the interests of a third party, as well as documents proving that the consent of said third party had been requested in accordance with Article 31 of APIA. That requirement had not been fulfilled. Furthermore, no data regarding any possible harm to the third party's interests existed and such a motivation did not provide grounds for refusing access to the information under all of the points raised in the application.

The judgment was final.

11. Tanya Petrova vs. the Ministry of Education and Science

1st Instance Court – Administrative Case No. 4544/2004, SAC 5th Division

Request:
In March 2004, Ms. Tanya Petrova, a journalist from *Sega* newspaper, submitted a written application to the Minister of Education and Science (MES), in which she

requested copies of all letters from the period of January 1, 2002 through December 31, 2003, containing the minister's approval for the registration of extra students, above the planned limits, in schools requiring entrance exams for entry after the seventh grade. The journalist also requested the written requests on the basis of which the letters of approval had been issued. She specified that she would accept copies of the letters with the names excised from them. (The reason for the submission of such an application was to review the minister's practice of allowing children with low exam scores to study at the prestigious schools of their choice, in exchange for donations.)

Refusal:
The minister provided no response within the deadline stipulated by law**.**

Complaint:
With the support of AIP, the tacit refusal was challenged before the SAC.

Developments in the Court of the First Instance:
The MES did not send a representative to the court hearing. The claimant's attorney presented evidence (the minutes from a session of the Commission on Appeals and Petitions and three letters issued by the MES) that proved that the requested information was in the possession of the MES, in which it could be seen clearly that according to the minister himself, the letters had been issued as exceptions. The lawyer also pointed out that the lawfulness of the letters was beyond the purpose of the current proceedings, since the claimant did not contest the legality of the particular method of accepting students, but only wanted access to the information. The court accepted the evidence and the case was scheduled for judgment.

Judgment:
SAC Decision No. 9130 of November 8, 2004, rejected the minister's tacit refusal to provide the information and referred the file back to him for an information access decision based on merit, in compliance with the instructions given by the court. In its motivation for the decision, the court pointed out that the requested information was public, per the APIA. The evidence presented proved that the information existed at the defendant's disposal. Consequently, the minister was obliged to provide access to it.

The Judgment was not appealed by the MES and came into effect.

12. Hristo Hristov vs. the Ministry of Interior

1st Instance Court – Administrative Case No. 1524/2003, SAC 5th Division
2nd Instance Court – Administrative Case No. 8355/2003, SAC Five-Member Panel

Request:
Hristo Hristov, a journalist from *Dnevnik* newspaper, submitted an application in writing to the interior minister, for access to public information kept at in archives of the Ministry of Internal Affairs (MIA). Mr. Hristov wanted to study the *letter* case files on the BBC, Deutsche Welle and Radio Free Europe during the period from 1970 to 1978, when the Bulgarian writer Georgi Markov, who had been assassinated in

London, worked for the three Western radio networks.

Refusal:
No response was received from the minister within the legally stipulated deadline.

Complaint:
The tacit refusal was attacked on grounds that it constituted a substantive violation of the law, since the requested information was public and failure to fulfill the requirement that the refusal be issued in writing constituted a material breach of the procedural rules.

Having received the complaint, the minister did not forward it to the court along with the full relevant documentation, instead sending the applicant a written decision refusing access, stating that an inquiry conducted had led to the conclusion that the MIA archives did not contain any information on the topic specified by the applicant.

The claimant filed an application with the SAC, along with a copy of the complaint, and the court demanded that the MIA remand the full documentation to it *ex officio*.

Developments at the 1st Instance Court:
In the courtroom, the claimant's representative requested that the court proceed in accordance with Art. 14 of the Administrative Procedures Act, and rule on both the minister's initial tacit refusal and the subsequent explicit refusal. The arguments were that the minister had not complied with the Instructions on the Procedure for Providing Access to Information Contained in the MIA Archives, Reg. No. I-113/24 of June 2002, which the minister himself had signed in order to provide access to the archive for the purposes of studies and research. The minister should have provided access to the letter files on the three radio stations, in order to enable the applicant to do his research and determine for himself whether or not they contained information of interest to him.

Judgment:
SAC Decision No. 7476 of July 16, 2003 rejected the complaint as unjustified. In its motivations of the court held that, in fact, the claimant wanted uncontrolled access to the MIA archive, while neither the APIA nor the MIA Instructions provide for such unrestricted access to information.

Developments in the Court of the Second Instance:
With the support of AIP, Mr. Hristov appealed the judgment of the three-member panel. His arguments were that the court was wrong in its assessment and thus it had violated the substance of the law, because Art. 26 of the APIA explicitly provides for the in-house review of information as a possible form of access.

The case was heard in a single hearing and scheduled for judgment.

Judgment:
A five-member panel of the SAC issued Decision No. 4046 of May 4, 2004, which overturned the judgment of the first-instance court rejecting Mr. Hristov's complaint.

The second-instance court found that the tacit refusal, as well as the subsequent

explicit refusal conveyed in a letter dated December 4, 2002, by the interior minister to provide access to public information from the MIA archives to Mr. Hristov was unjustified. The journalist had the right to to review the letter files on BBC, Deutsche Welle and Radio Free Europe over the period from 1970 to 1978 for information contained therein on the activities at those radio stations of Georgi Markov, who was being surveilled by the State Security Services, was unjustified. The SAC referred the case back to the interior minister, instructing him to provide the access to the MIA archives.

In its judgment, the court ascertained that Mr. Hristov's application was in compliance with the requirements under Art. 25, Para. 1 and Art. 7, Para. 1 of the Instructions on the Procedure for Providing Access to Information Contained in the MIA Archives, Reg. No. I-113/24 of June 2002, and contained all of the requisite components, including a sufficient description of the nature of the information being requested and the subject and purpose of his journalistic research. In this regard, the court presumed that the evidence in the case had already proven that the requested information existed in the MIA archive and that the journalist had already read documents of the former State Security Services on the same topic. The Ministry of Internal Affairs was obliged, pursuant to the Access to Public Information Act, to indicate to the requestor the location where the information was stored, even though part of the files had not been available. (The court judgment set a precedent, by obliging an administrative body to provide unconditional access to the requested publicly-held information.)

The decision of the SAC was final.