

## **ACCESS TO INFORMATION PROGRAMME**

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### **ACCESS TO INFORMATION LEGISLATION AND THE MINISTRY OF INTERIOR BULGARIA**

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There is a guarantee of the right to freedom of information under Art.41 of the Bulgarian Constitution. The general legal definition of the right is given in Art.41 (1) of The Constitution; particularly, the access to get information held by the state authorities is provisioned in Art.41 (2). As a result of a bitter battle on the public radio and television draft legislation, the President of the Republic submitted a request to the Constitutional Court in the early 1996 and requested the Court to issue a binding interpretation of the Constitutional guarantees of freedom of expression and information<sup>1</sup>. Thus the Court had to consider, inter alia, whether Art.41 (2), creates a duty for the government agencies, enforceable in court, to provide information requested. Art.41 (2) reads:

"Citizens shall be entitled to obtain information from state bodies and agencies on any matter of legitimate interest to them which is not a state or official secret and does not affect the rights of others."

In its Decision No 7 of 1996, the Constitutional Court did not read into this guarantee a directly enforceable obligation for the Government to provide access to public information to anyone interested in it. According to the Constitutional Court, the Constitutional provision should be detailed by further legislation adopted by the Parliament. Perhaps some case-law under Art.10 of the ECHR, according to which access to information held by the state authorities should be guaranteed through separate legislation, inspired such interpretation. Secondly one should not underestimate the risk, the twelve justices were certainly aware of, to introduce such a substantial change in the administrative law, without any prior public discussion and agreement. And there was absolutely no public discussion and pressure on the Court for that matter to find an enforceable right in the Constitution.

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<sup>1</sup> The President is among the few institutions that could address the Constitutional Court

There is not legislation in Bulgaria providing for a general right to obtain information from state bodies<sup>2</sup> yet. Some laws give such access to documents in particular cases and provide for a judicial review over a of denial to grant information.

As regards the activities of the Ministry of Interior (MI), there is not a clear duty on the relevant authorities to provide for information. According to Art.131 p.1 –2 of the Law for the Ministry of Interior the Press Centre and Public Relations Service “organises the Ministry’s work with the civil society units” and “explains and informs about the Ministry functions’ implementation”. It is not said expressively that every citizen is entitled to the information from the Ministry and therefore it is under question whether such a right could be enforced before courts. On the other hand, the interpretation of the expression “Ministry functions’ implementation” clearly means that all the Ministry information is available except when it falls under the restrictions of the law.

The law introduces exemptions of the right to information on the ground of personal data protection, national security and secrecy of the investigation proceedings. These are treated more as prohibitions to communicate information than as legal grounds to uphold information, immanently incorporated in a general right to access information.

There are not general regulations in Bulgaria concerning personal data protection. There is not even a general determination of what does “personal data” mean. The term is used in some regulations in their particular meaning<sup>3</sup>. So it is a question of interpretation in every case if there is a “personal data” exemption or not. There is a “chilling” effect here for the Ministry spokesmen because the right to protect the human dignity (e.g. “personal data protection” in the case) is quite enforceable in comparison with the right to get information. That’s why in many cases the spokesmen prefer to be more silent than they feel, even when they worked as journalists before.

A specific restriction to the right to information falling under the more general restriction of “personal data protection” is provided in a regulation of the Minister of Interior. It says that the names of the victims of crimes should remain in secrecy. Practically some cases appear

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<sup>2</sup> In 1999 the Parliament voted on 1<sup>st</sup> reading a Bill of Access to Public Information, which seems to give a general right of the public to access information held by state bodies

<sup>3</sup> Law for the Access to the Documents of the Former State Security Service; Law for the Bulgarian IDs; the term “personal life” appears in the Law for Radio and Television in a similar meaning.

when any information about these persons remain in secrecy and the media receive just general information of the case, which is boring and senseless to communicate to the public.

As concerns the ground of national security protection, there is a service in the Ministry, which is in charge particularly of providing this protection all over the country in relation to all the State authorities. That's the National Service "Security". The way of making documents secret and the regulations about secrecy are provisioned in the Regulation on the Application of the Law for MI. Another two regulations regarding this matter are:

1. The List of the state organs and organizations, in which are created units of security and protection of the facts, the records, and the matters, which constitute state secret of Republic of Bulgaria, adopted by the Council of Ministers, and
2. The List of facts, records and matters, constituting state secret, adopted by The Parliament.

The first regulation enlists many non-governmental institutions, which are not state-owned companies and even such owned by foreign companies. That is why a legal definition is needed of the kind of documents and enterprises liable to protection. Unless we are very attentive, that tradition of uncontrolled involvement of objects in secrecy will develop.

The changes in the Penal Proceedings Code, enforced on 1<sup>st</sup> of January 2000 imposed on the Police the duty to conduct police investigation in cases when the so called "preliminary investigation" is not obligatory. Thus the Police is first time entitled to investigate. Under Art.179 of the Code the materials of the preliminary investigation cannot be communicated without Prosecutor's permission. It is true the police investigation is considered separately from the preliminary one and formally this provision should not relate to the Police activities, but in fact both the forms of investigation are subdued to the Prosecutors. So the question of how to apply the investigation proceedings restriction of the right to access information remains open.

In the second half of 1997 the Parliament enacted the Law for Access to Documents of the Former State Security Service (LADFSSS), which regulated the right of information in a specific area.. It disclosed and entitled the citizens to access the documents of the former State Security Service affecting them. The obligation of the disclosure was imposed on the

Ministry of Interior authorities. Such legislation could be found in other former socialist countries as well. Some members of the Parliament addressed the Constitutional Court with questions of contradiction of LADFSSS with the Constitution. They argued on the principle of division of power (ADFSSSA shall be implemented by the Government), the right of privacy (<sup>4</sup>) and the right of access to justice. The Constitutional Court judged that the provisions, which provide checking the documents with respect to the question whether the President, the Vice-president and the Constitutional Court justices have ever belonged to the Former State Security Service, are in contradiction with the Constitution.

The need to provide for a general right and the respective obligation to access information in the hands of the state authorities called for drafting a Bill for Access to Public Information by the Government. The Bill was passed on first reading by the Parliament and is now considered by the Commission for Legal Issues and Anti- corruption Legislation. The latter has sent the Bill to the new structure for Euro-integration combined of MPs ten days ago.

The change with regard to the MI authorities is that they will be definitely obliged to give information contained in documents except in cases provided by law. The right to information will be generally enforceable in court so this will be the case with MI information as well. We expect that the exemptions of the right will be precisely determined and one and the same determination will be used regardless the scope of the respective authorities' activities. It is expected that the definition of the information available will not suggest a "public interest" shown before asking information. On the contrary, it is a right of everyone who is entitled to request information without any legitimacy of his/her aim.

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<sup>4</sup> In the Bulgarian Constitution there is not explicit mentioning of a personal data protection right as in other European countries' Constitutions. The scope of Art. 32 of the Bulgarian Constitution covers protection against any illegal interference in one's private or family affairs, against encroachments on one's honour, dignity and reputation, and prohibition of spying on, photographing, filming, recording somebody or doing any other similar activity without his/her knowledge or despite his/her express disapproval.