



ACCESS TO INFORMATION PROGRAMME

ACCESS TO INFORMATION IN BULGARIA

2009

SOFIA 2010

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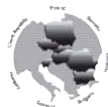
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ACCESS TO INFORMATION PROGRAMME Я



TRUST FOR CIVIL SOCIETY
IN CENTRAL AND EASTERN EUROPE

Access to Information in Bulgaria 2009 Report

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FROM THE CULTURE OF SECRECY TO THE CULTURE OF OPENNESS

In June 2010, the Access to Public Information Act (APIA) turns ten - a period long enough for recapitulation of the achievements made by the administration and by the citizens who use the procedures under the law.

Observers and advocates for freedom of information know that the adoption of an access to information law does not automatically guarantee unrestricted access by the citizens. The efficient implementation requires permanent efforts. Practices in Bulgaria only confirm this assumption.

The implementation of the law has passed different stages in Bulgaria. From complete ignorance by the administration, through unwillingness and resistance against the implementation of the provisions, to the increase of the number of paragon public bodies which *Access to Information Programme* (AIP) awards on the Right to Know Day.

The fulfillment of the obligations by the administration depends to a big extent on the internal record management systems and their orientation towards free access to the citizens; the capacity to respond to the demand for information and to actively publish it. It depends on a culture of openness which is hard to establish.

Regarding the citizens, the progress is considerable. At the time of the APIA adoption, only 3% of the citizens knew about their right. In 2010, 45% of the citizens are aware of the Access to Public Information Act. A report by the Dutch expert Roger Vleugels released in September 2009 ranks Bulgaria second in number of submitted requests per 10,000 citizens only after the USA.

The active search for information by submission of requests is not a result of AIP raising awareness campaigns only. Citizens, NGOs and journalists who use the law believe that this is the way to form their opinion about the government, to take part in the policy-making, to make their investigations. Although the percentage of these people is almost unaltered during the years (7%), their requests, the appeals against refusals in the court, have changed the status quo. Indeed, the number of those who exercise their rights under these laws around the world is not high. However, their persistence is changing practices, stimulates the administration to improve the mechanisms for the provision of information, to increase the volume of actively disclosed information, opening possibilities to those who would not submit requests.

The difficulties faced by citizens who submit requests are known: silent refusals, bureaucratism, unwillingness for prompt response, ungrounded refusals which the court repeals. A serious problem is the lack of a mechanism for efficient control on the implementation of the law.

On November 27, 2008 the first legally binding treaty of the Council of Europe for access to official documents was adopted. At the beginning of the year, twelve states signed and two ratified the treaty. However, in order to become effective and monitoring bodies to be established, the Council of Europe Convention shall be ratified by ten out of the 47 member-states.

In 2009, the Bulgarian government did not do anything to start the procedure for signing and ratification of the Convention. We hope that the 10th anniversary of the Access to Public Information Act will encourage the undertaking of this step and Bulgaria will join the states recognizing transparency and openness as fundamental values.

The Annual Reports of AIP traditionally recommend how to improve the state of access to information. Recommendations are given on the basis of analysis of the legislation and problems in the implementation practices.

The first part of the annual report analyzes the consistency of Bulgarian legislation with the minimum standards set forth by the Council of Europe Convention on Access to Official Documents. The author of the analysis is Alexander Kashumov.

The second part of the report presents the results from a survey on the online publication of mandatory categories of information by the administrative structures of the executive power. The survey was performed by the team of AIP. Darina Palova, Diana Bancheva, Fany Davidova, Katerina Kotseva, Kiril Terziiski, Nikolay Ninov, Ralitzka Katzarska, and Tereza Mandjukova evaluated 499 web sites and submitted electronic requests. The employees of *Svetlozar Online Ltd* developed the software necessary to perform the survey. Gergana Jouleva prepared the analysis of the results.

The third part of the report gives an analysis of the cases that AIP received for legal consultation from citizens, partner nongovernmental organizations, journalists and business persons in 2009. The legal analysis was performed by Darina Palova and Fany Davidova.

The fourth part presents the litigation and gives a short description of the characteristics of court practices during 2009. The review was made by Kiril Terziiski.

An important part of the report is the analysis of the results from a national representative public poll on the attitudes towards the right of access to public information. Performed by Market Links Ltd. at the demand of AIP in February 2010, it shows tendencies which shall obviously be taken into consideration.

Gergana Jouleva, PhD
Executive Director of *Access to Information Programme*
March, 2010

RECOMMENDATIONS

RECOMMENDATIONS RELATED TO THE LEGAL REGULATION

- ❑ The Council of Ministers and the Ministry of Foreign Affairs shall undertake steps for the signing and ratification of the Council of Europe Convention on Access to Official Documents.
- ❑ The Council of Ministers shall draft amendments to the Access to Public Information Act which would assign the responsibility for the implementation of the law to a specific body of the executive since the Ministry of State Administration and Administrative Reform was closed in 2009.
- ❑ The Minister of Finance shall review and amend Order No. 10 of 2001 for determining the fees for the provision of information, in consideration with the sharp decrease of the price of the information carriers. The provision of information by electronic mail, as well as to an oral request, to become free of charge.
- ❑ Council of Ministers, with the assistance of the State Commission on Information Security, shall review and introduce amendments in different laws which regulate the official secret exemption.¹ Shall take into consideration the rule that only specific categories of information explicitly defined by law with the purpose of protecting certain legal interests may be official secret.
- ❑ During the last several years, the introduction of a new type of restriction to the right of access to information has been observed - *professional secret*. The Council of Ministers shall undertake steps for complete repealing of the provisions which introduce the *professional secret* as an exemption to the right of access to public information as it is introduced in contradiction to the Bulgarian Constitution and the international standards in the area.
- ❑ The Council of Ministers shall initiate, concerted with the Ministry of Interior, the Ministry of the Defense, the Ministry of Foreign Affairs, the State Commission on Information Security, the continuation of the process of updating the *List of the Categories of Information Subject to Classification as State Secret*, Appendix No. 1 to Art. 25 of the Protection of Classified Information Act,² as it started in October 2009.

¹ In different legal systems and publications the category is also translated as „administrative secrets.“

² Protection of Classified Information Act: <http://www.aip-bg.org/library/laws/pcia.pdf>

RECOMMENDATIONS RELATED TO THE IMPLEMENTATION OF THE ACCESS TO PUBLIC INFORMATION ACT AND RELATED LEGISLATION

- ❑ The heads of the central bodies of the executive shall undertake measures to inform their regional units about their obligations under the law, including the obligations for proactive publication of information, in places where this have not been done.
- ❑ The process of implementation of the obligations for publication of mandatory information under Art. 15a of the APIA shall be continued, including:
 - Particular attention shall be paid to the lists of administrative acts³.
 - The heads of administrative structures within the system of executive power shall assign the review and description of public registers and data bases which they maintain with the purpose of publication on the Internet sites.
 - The *Access to Information* web site sections shall be created and filled in with the minimum content prescribed by the law by every administrative structure within the executive power system. This section shall contain information about the official/office responsible under the APIA to register requests under the law, contact information, internal APIA implementation rules and the procedure for access to the public registers maintained by the institution.
- ❑ An official shall be assigned within every administrative structure responsible for the fulfillment of the obligations under the APIA and this activity shall be financially covered.
- ❑ The internal rules of the institutions shall contain by all means the following:
 - Rules for processing electronic requests within the institution;
 - Clear definition of the responsibilities related to the publication and provision of access to public information, as well as to the oversight of their implementation;
 - Specified responsibilities and steps for application of the balance of interests test with regard to the disclosure or restriction of access to information;
 - Specified internal procedure for processing requests for access to information;
 - Specified officials who would be responsible for the fulfillment of the defined responsibilities;
 - Information management rules which make it clear in advance which part of the information is subject to publication, which shall be publicly available and which falls within the scope of the exemptions;

³ According to Bulgarian general administrative law there are three categories of administrative acts: administrative normative act applies to unspecified number of individuals multiple times i.e. it has the legal character of regulations; general administrative act is a decision with application to unspecified number of individuals; individual acts are administrative decisions with application to certain individual/individuals.

- Provision for the obligation for assisting the requestors in identifying the information they seek;
 - Specified categories of information under Art. 14 in terms of the functions of the respective institutions in view of their active disclosure;
 - Specified time frames within which the information in the Internet shall be updated in the internal rules of the institutions.
- Responding to the requests submitted by electronic mail shall be free of charge. Requiring requestors to submit requests signed with a universal electronic signature shall be discontinued. The procedure for processing electronic requests shall not contradict principles set forth by the APIA, i.e. it shall not be required that requests are signed with universal electronic signature.
- Permanent trainings on APIA for the officials from the administration shall be introduced;
- The obligations under the the Law on the Normative Acts shall be fulfilled by:
- publication of all drafts of legislative acts;
 - announcement of the publication date of the drafts;
 - announcement of the timeframes for the public discussion of the drafts.
- The imposition of sanctions on officials who do not apply the provisions of the APIA shall be started. Information about these sanctions shall be published in the annual report *The State of Administration*.

LEGISLATION

Unlike in 2008 the Access to Public Information Act (APIA) has not been amended in 2009. According to AIP changes are not necessary as with the December 2008 amendments (promulgated in State gazette, issue 104, as of December 5, 2008) the Bulgarian legislation was harmonized with the international standards. From this perspective, it is important to assess the consistency of the law with the Convention on Access to Official Documents (the Convention) adopted in 2008 by the Council of Europe.

What the competent Bulgarian authorities should have done in 2009 was to take steps for the signature and ratification of the Convention. Despite the declaration of the new Bulgarian government for more transparency and the explicit AIP recommendations in this regard presented in the previous annual report, the lack of activeness is a fact.

The main change of the legislation related to the access to information is necessitated by the closure of the Ministry of State Administration and Administrative Reform and the setting of a structure of the new Council of Ministers in 2009. Formerly, the minister was responsible for publishing an assessment report on the implementation of the APIA (Art. 16 of the APIA). This information was part of the Report on the State of the Administration, drafted on yearly basis under Art. 62, Para.1 of the Public Administration Act. Now, the competent body for drafting and publishing the report is Directorate „Public Administration“ within the Council of Ministers (Art. 71, Para. 1.1 of the Structural Regulations of Council of Ministers and its Administration).

THE APIA CONSISTENCY WITH THE CONVENTION ON ACCESS TO OFFICIAL DOCUMENTS

AIP in depth analysis of the APIA after its 2008 amendments shows a high degree of compliance with the Convention, which sets standards for the following key issues:

- Definitions: *official documents*; scope of obliged bodies;
- Who has the right of access to official documents;
- Standards regarding the restrictions of the right of information;
- Procedure for submitting and processing access to information requests;
- Form and fees for disclosure of information;
- Review procedure;
- Proactive publication of documents;
- Complementary measures.

It is worth considering the consistency of the APIA with the Convention. The compliance of the Bulgarian legislation on the access to information restrictions with the international standards will be dealt with separately.

Definition of Official Documents

According to the Convention *official documents* means all information recorded in any form, drawn up or received and held by public authorities. The APIA defines *public information* as any information generated or held by state bodies, which relates to the social life and gives the opportunity to citizens to form their own opinion on their activities (Art. 2, Para.1 APIA). The definition covers both acts of state or local government bodies (Art. 10 APIA), as well as information collected, stored and generated in the course of the activities of the bodies and their administrative structures (Art. 11). This means that the content of the definition of official documents and public information is the same. The Supreme Administrative Court adopted the same interpretation.⁴ The information, regardless of the kind of its physical bearer, is *public* pursuant to the APIA (Art. 2, Para. 2).

Scope of Obligated Bodies

The Convention sets forth several categories of public authorities obliged to provide information. One of them comprises bodies of the executive power at central, regional and local level. Following the 2008 APIA amendments, not only the public authorities at central level, but also their local units are compelled to provide access to information. Consequently, the Bulgarian legislation is consistent with the Convention. It requires the legislative bodies and the judicial authorities to provide information insofar as they perform administrative functions. The regulation of Art.3, Para. 1 of the APIA covers all public authorities without making any distinctions and limitations as to their functions. Therefore, Bulgaria can sign the Convention by making a declaration to the Secretary General of the Council of Europe that the definition of *public authorities* includes legislative bodies and judicial authorities as regards their other functions, not limited to administrative.⁵

Pursuant to the Convention natural or legal persons insofar as they exercise administrative authority are obliged to provide access to information. This category corresponds to the so called *bodies subject to public law* under the APIA which perform obligations provided by law (for example: The National Health Insurance Fund, The National Social Security Institute, The Central Electoral Commission, The National Bulgarian Bank etc). The 2008 APIA amendments expanded the scope also to the *public law organizations*. The latter includes entities financed for the most part by the state, municipal or other public budget or which are supervised by a public body. The definition corresponds to the one of „bodies governed by public law“ set forth by Art. 2 of Directive 2003/98 EC. As a result, Bulgaria can make a declaration broadening the definition of *public authorities* as regards natural or legal persons insofar as they perform public functions or operate with public funds.

⁴ Despite the established court practice there are still administrative refusals motivated by the fact that the requestor described specific document rather than information.

⁵ The Convention does not oblige, but allows countries with more favorable regime to broaden the ambit of the Convention by declaring this at the time of signature or when depositing its instrument of ratification.

Filing of Requests for Access to Information

The Convention prohibits any requirement to state reasons for requesting information. The formalities for the submission of a request shall not exceed what is necessary to process them. The APIA asserts the principle of equality (Art. 6, Para. 1, pt. 2) and does not require to state legal interest for requesting information. Here again, the Bulgarian legislation is in line with the Convention.

The Convention states that formalities for requests shall not exceed what is essential in order to consider it. According to Art. 25 of the APIA, the request must contain only the name of the requestor, address and description of the information sought. Statement of the preferred form of access is optional. The law provides for oral requests, moreover, electronic requests are considered as written.

Consideration of Requests for Access to Information

The Convention requires the obliged body to help the requestor, as far as reasonably possible, to identify the requested document. The APIA does not impose such obligation to the authorities. Nevertheless, it obliges the public authority to transfer the request if it does not hold the information but is aware of its location (Art.32). The law gives the possibility for the requestor to clarify the request within 30 days from notification (Art. 29) if it is not clear what information is being sought or it is too broadly defined. Full compliance with the Convention may be achieved not through amending the APIA, but through the internal procedure rules on access to information⁶.

The Convention provides that requests must be dealt with promptly and decision must be made within reasonable time. According to the APIA, requests must be considered as soon as possible but not later than 14 days and requestors must be notified of the decision. Pursuant to the Convention, refusals must be written and motivated. Article 38 of the APIA stipulates that a decision to refuse access shall state the legal and factual grounds for refusal and must be handed over to the requestor (Art. 39 of the APIA). The law is in line with the international standards.

Form of Access to Information

Under the Convention, the requestor may choose the preferred form of access - whether to consult the original or a copy, or to receive a copy of it in any available form or format. The APIA as well obliges the authorities to comply with the chosen form of access (Art. 27, Para.1). Under the Convention, an exception to this rule is possible only if the preference expressed is unreasonable. Under the national legislation the public body may not comply with the preferred form of access if it cannot be satisfied due to technical reasons, it would unreasonably increase the cost of disclosure or it is likely to lead to unlawful processing of information or infringement of intellectual property rights. It can be concluded that consideration of the requestor's preferences in these specific circumstances would be „unreasonable.“

⁶ Pursuant to Art. 15a of the APIA each public authority within the executive power is obliged to publish its internal procedure rules online.

Fees for Access to Information

Under the Convention the consultation of the document on the premises is free of charge. For other forms of access the fees must not exceed the actual cost for reproduction and providing the document. According to the APIA, the consultation of documents is free, and since the amendments adopted in 2007, the public authorities have the obligation to provide reading rooms (or other suitable places) for reviewing the documents and materials (§ 18 of Miscellaneous and Final Provisions of the APIA, promulgated in State Gazette, issue 49, 2007). As far as other forms are concerned, only the actual cost incurred for reproduction of the information shall be paid. Order № 10 of the Ministry of Finance, adopted in 2001 for determining the fees for disclosure of public information sets the maximum fees. The work cost of the employee is not taken into account for calculating the fees, practice which is consistent with the Convention. Some fees, however, need to be reassessed as the price of a CD today is significantly lower than in 2001.

Review Procedure

The Convention provides for the right of the requestor, who was explicitly or implicitly not given access to information, to appeal the refusal before a court or another independent and impartial body. The APIA establishes appeal proceedings before the administrative courts or before the Supreme Administrative Court. The right to appeal silent refusals, i.e. the omission to take a decision on the request, is confirmed by way of interpretation by the SAC.

The APIA does not make provision for an administrative appeal before a higher authority, nor for a review before an independent body (information commissioner, or ombudsman on access to information). There is no obstacle, however, to alert for failure to provide information pursuant to Art. 107, Para. 4 of the Administrative Code. Such case would fall under the hypothesis of „unlawful or inexpedient actions or omissions of administrative authorities and officials in the relevant administrations, which affect State or public interests, rights or legitimate interests of other persons.“

Complaints may be addressed to the Ombudsman as well, considering its functions according to the Ombudsman Act, which states that „the Ombudsman supports the citizens when by an act or omission to act the state or local authorities and their administrations prejudice the rights and freedoms of citizens.“ However, by using these possibilities there is a risk to miss the deadline to lodge an appeal before a court. It can be concluded that regarding the review procedure the Bulgarian legislation is in line with the Convention.

Proactive Disclosure of Documents

According to the Convention, the public bodies shall take appropriate measures to make public official documents which they hold in the interest of promoting the transparency and efficiency of public administration and to encourage informed participation by the public in matters of general interest. The APIA provides for the obligation to publish similar information - under Art. 15, Para.1 of the APIA the structures within the system of the executive power shall publish information about the organizational structure, functions

and responsibilities of the respective administration, lists of acts issued, descriptions of the data volumes and resources (public registers), contact information of the person in charge of receiving access to information requests. Since the 2008 amendments of the APIA, this information, as well as an annual report on the requests for access to public information and the internal rules on the procedure of access to information must be published on the Internet site of the respective body.

Complementary Measures

The Convention requires the member States to take some additional measures. In principle, the States shall inform the public about its right of access to official documents and how that right may be exercised and take appropriate measures to: 1) train the public authorities; 2) provide information on the activities of the body; 3) manage their documents efficiently so that they are easily accessible; 4) apply clear and established rules for the preservation and destruction of their documents. Under § 9 of the Miscellaneous and Final Provisions of the APIA as of 2008 requires the chief officers of the bodies within the system of the executive power to secure financially the trainings of the information officer in charge.⁷ According to Art. 15 and 15a of the APIA each authority must make available online information on its organizational structure and functions on its own initiative. The Protection of Classified Information Act (PCIA), the National Archives Act and other regulations set the rules on preservation and destruction of documents. In this regard as well, the APIA is consistent with the Convention.

ACCESS TO INFORMATION EXEMPTIONS

The Convention allows restrictions to the right of access to information only if disclosure would harm any of the interests mentioned in it. The review of the Bulgarian legislation confirms this principle - limitations are prescribed by law in order to protect similar legitimate interests. Thus, the exemptions related to the „national security, defence and international relations“ are protected under the category of information classified as „state secret“ according to the PCIA. Under the Convention, access to documents may be refused in order to protect the „investigation and prosecution of criminal activities.“ Article 198 of the Criminal Procedure Code provides for the same restriction, known as „secret of criminal investigation“ and so on.

The Convention requires that restriction shall be applied in accordance with the principle of proportionality and only if disclosure would or would be likely to harm protected interests. Even if it is likely to be so, the exemption should not be applied if there is an overriding public interest in disclosure.

The Bulgarian legislation is acquainted with both the harm test and the overriding public interest test. Under Art. 25 and Art. 26 of the PCIA information may be classified as *state* or *official secret* only if its disclosure might threaten or prejudice the protected interests. Furthermore, Art. 41, Para. 4 of the APIA enables the Court to consider the lawfulness of the procedure for marking the information as classified. This means that the lack of

⁷ Assessments of the implementation of this obligation see on page 18.

consideration of potential harm to the protected interests is substantial procedural breach, and the decision to classify may be declared unlawful and the refusal to grant access may be subsequently repealed by the Court.

The 2008 amendments of the APIA requires the administration to assess the overriding public interest in cases where access is restricted for the protection of personal data or trade secrets (Art. 37, Para. 1, Item 2 APIA), or for the protection of preparatory documents or statements related to on-going or prospective negotiations (Art. 13, Para.4 APIA). The opinions, consultations, and deliberations before taking a final administrative decision are subject to exemption under Art. 13, Para. 2, Item 1of the APIA. The negotiation could be exempted under Art. 13, Para. 2, Item 2.

In some cases, the legislator declared the existence of an overriding public interest in disclosure even if the information is classified as *state secret*. For instance, documents of the former State Security Services and the intelligence services were classified, but § 17 of the Miscellaneous and Final Provisions of the Access and Disclosure of Documents and Announcing Affiliation of Bulgarian Citizens to the State Security and the Intelligence Services of the Bulgarian National Armed Services Act explicitly provides that they shall not be considered as *state secret* as protected under the PCIA.

Information Classified as *Official Secret*

The concept of *official secret* is used in 42 different laws. The regulation of this restriction is scattered. According to Art. 26 of the Protection of Classified Information Act, information which falls within categories established by law and whose disclosure might adversely affect the interests of the State or prejudice another interest protected by law may be classified as *official secret*. The head officer of each public body should establish a list of specific categories of information which should be regarded as *official secret*. Legal definitions of what is *official secret* are stipulated by special laws (Art. 14, Para. 4 National Revenue Agency Act, Art. 23, Para. 1 National Bulgarian Bank Act, § 1, Item 24 from the Additional Provisions to the Customs Act, Art. 36, Para. 1 of the Blood, Blood Donation and Blood Transfusion Act, Art. 60a, Para. 4 and Art. 94, Para. 2, in relation to Para. 2 of the Maritime Space, Inland Waterways and Ports Act). Some legal definitions are quite broad. For example § 1, Item 3 from the Transitional and Final Provisions of the State Agency for National Security Act gives rather broad definition of *official secret*. According to this provision, *official secret* is such information which is not classified as state secret but is related to the fulfillment of the Agency functions, or is generated within the execution of its functions, and whose disclosure would adversely affect the interest of the State, the functioning of the Agency, the interests of its employees or third parties in performing their duties. Sometimes the law does not provide for a legal definition of *official secret* but stipulates sanctions for its disclosure (Art. 333 of the Electronic Communications Act, Art. 224 of the Energy Act). Sometimes, there is a negative definition of *official secret*, precisely it is not stated what it is, but what it is not. Thus, according to Art. 47 of the Health Act, information which became known to the practitioners and public officials in exercising their control functions shall be regarded as *official secret*, except if there is a threat to lives and health of citizens.

In general, the protection period of information which is *official secret* is six months. Sometimes special laws provide for longer period. For example - 30 years under the Blood, Blood Donation and Blood Transfusion Act (Art.36, Para. 5).

It must be noted that this embarrassing legislative approach is incompatible with Art. 41 of the Constitution, Art. 10 of the European Convention on Human Rights, and with the standards set forth by the APIA, the latter being consistent with the Council of Europe Convention on Access to Official Documents. Pursuant to Ruling No.7 as of June 4, 1996 on constitutional case No.1/96 of the Constitutional Court of the Republic of Bulgaria, limitations to the right of information shall be an exception from a principle. Consequently, the lack of legal definition of categories of information which is *official secret* or their negative definitions conflict with Art. 41 of the Constitution as interpreted by the Constitutional court.

Moreover, the existence of such general exemption itself is of questionable constitutionality. In the above-cited decision, the Constitutional court read the right of access to public information in the right of everyone to seek, receive and impart information as guaranteed by Art. 41, Para. 1 of the Constitution. Under this provision, limitations to this right are possible only for the protection of interests listed in the same Art.41, Para. 1 (namely: national security, public order, public health and morality). According to the interpretation of the Constitutional court, the right of access cannot be restricted on any other grounds. The concept official secret does not imply in itself any protected interest. The mere referral to it in some laws cannot be in any case a basis to restrictions of the right of access to information.

The analysis of legal provisions, which define quite precisely the categories of information classified as *official secret* points out that often the aim is to protect interest, which may be secured by means of other exemptions prescribed by law. For example, § 1, Item 24, „a“ and „b“ of the Customs Act protects personal data, contained in the customs declarations, which is not subject to publication in public registers, as well as commercial information and payment methods. Such information would be protected under the exemptions of personal data and trade secret. As a result, this may be considered as a „double“ restriction. For a comprehensive review of the legislation related to the *official secret* in order to define precisely the limitations to the access to public information is a pressing need.

Information Classified as *Professional Secret*

In recent years, instead of improvement of the legislation related to the access to information exemptions and especially related to the *official secret*, new restriction and exactly as vague as this one arose - the so called *professional secret*. According to § 13, Item 18 of the Additional Provisions to the Consumer Protection Act „*professional secret* is any information which became known to the public officials in exercising oversight functions over the safety of products and whose disclosure may threaten commercial interests or reputation of the manufacturer, the distributor, the service provider or a third party.“ For even greater confusion the next sentence of this provision expressly states that „*professional secret* does not have the meaning of official secret as stipulated by the Protection of Classified

Information Act.“ Different, although somehow comparable definition is given by § 1, Item 10 of the Additional Provisions to the Fair Competition Act (promulgated in State Gazette, issue 102, 2008, as amended in 2009, State Gazette, issue 42, 2009). The last sentence of this provision, allegedly for more clarity, affirms that „shall not be *professional secret* the information which is publically accessible,“ whatever this means. In addition, it must be noted that § 1, Item 9 of the Additional Provisions to the Fair Competition Act gives definition of *trade secret*. From both texts it is clear that the *professional secret* overlaps with the *trade secret* exemption.

Unlike the *official secret* which is generally regulated by Art. 26 of the PCIA, which has a short term of protection, the *professional secret* is protected for indefinite period of time. As a consequence, this exemption does not satisfy the requirement of the harm test. This exemption is of very questionable constitutionality, even more because the Constitution does not provide for such limitation and does not use this terminology. We recommend full withdrawal of this exemption.

Information Classified as *State Secret*

On September 23, 2009 the Council of Ministers referred to the National Assembly a draft bill No. 902-01-20 for amending the Ministry of Interior Act. Paragraph 69 of the Transitional and Final Provisions of the bill envisaged amendments of the Protection of Classified Information Act, namely to Appendix No. 1 to Art. 25, the *List of the Categories of Information Subject to Classification as State Secret*.⁸ Since the amendment came into force, the organizational structure and the number of civil servants employed in the Ministry of Interior (MoI) is no longer a secret. As a consequence, the organizational structure of the MoI became publically available,⁹ unlike the Ministry of Defense and the security services. According to the statistical report of Eurostat published in 2008, Bulgaria was the only member of the European Union which did not provide such information as it was classified.¹⁰

During the discussion of the draft bill in the National Assembly in October 2009, AIP presented its Statement, recommending the repeal of other categories of information stipulated by Appendix No. 1 to the PCIA. Among them are: information regarding the type of special intelligence intercepts used; information collected through the special intelligence intercepts; reports, newsletters, statistical and other data related to the operational work of the security services and the services for public order; summarized data on the functioning of the system for protection of the classified information. The existence of the first category was the reason for not publishing official statistical information on the number of court warrants to use special intelligence intercepts. This is an important obstacle to the civil control over the interference with the fundamental right to privacy. The protection of information collected by special intelligence intercepts is the reason to

⁸ Protection of Classified Information Act: <http://www.aip-bg.org/library/laws/pcia.pdf>

⁹ Published by the Ministry of Interior itself on its website: http://www.mvr.bg/About_Us/struktura.htm

¹⁰ More information in Bulgarian in AIP monthly Newsletter for December at: <http://www.aip-bg.org/bulletin/72/08.htm>

classify court cases of high public interest only because evidence were collected by intercept devices.

One can expect that the third category is subject to publication rather than to secrecy, as it is about newsletters and statistics. From this wording it is not clear at all (at least for citizens) what is the aim of the restriction and what interests may be harmed. The latter category of information included in Appendix No. 1 is the reason for failing to provide summarized data on the state of the protection of classified information. This creates a serious obstacle for the civil oversight over the institution with regard to the classification of documents, hence - for the respect of the constitutional principle according to which the right of access is the principle and every limitation must be exceptional. Till now, the legislator remains deaf to the AIP recommendations, except regarding the adopted amendment.

PERSONAL DATA PROTECTION LEGISLATION

Draft Bill to the Electronic Communications Act (ECA)

Even after the Supreme Administrative Court repealed in December 2008 Art. 5 of Regulation No. 40,¹¹ which provided for unauthorized direct access of a Directorate within the Ministry of Interior (MoI) to communication data (without access to the content) held by mobile operators and internet providers, the attempts to introduce such access persisted in 2009. Almost immediately after the court decision, similar texts were presented to the National Assembly for adoption. They were rejected and in March 2009 and amendments to the ECA were promulgated. Pursuant to them, the competent authorities may access communication data only after court warrant pursuant to the Special Intelligence Intercepts Act or the Criminal Procedure Code. In April 2009 once again negative amendments of the ECA were rejected by the National Assembly at first reading.

On October 29 the MoI published on its website new draft bill to the ECA. Substantially, it included the same proposal for direct access of a MoI Directorate to the retained communication data. After two public discussions organized by the MoI and thanks to AIP critical statements, the texts were changed in a positive way.

The debate continued in the working groups within the National Assembly and through the media in December 2009 and January 2010. As a result of the public pressure, the AIP and other NGOs arguments, the position of different political parties, especially to the Blue Coalition of opposition parties, the final amendment provisions were substantially improved. The Blue Coalition brought to voting at second reading the AIP proposed texts, which have all been adopted. Access to data may be given only after a court warrant, periods for the retention of data are set forth, after their expiration the data shall be destroyed,

¹¹ Decision No. 13627 as of December 11, 2008 of the SAC, Five member panel, on adm. case No. 11799/2008, promulgated in State Gazette, issue 108, 2008, on complaint submitted by Access to Information Programme.

parliamentary oversight is previewed. Mechanisms for notifying the citizens subject to unlawful access are set forth as well. The discussion of the amendments was a precedent of an active advocacy - different positions of the interested parties were presented and discussed, but they all agreed that respect of basic principles and standards of personal data protection must be secured.

ONLINE DISCLOSURE AND ELECTRONIC REQUESTS

GENERAL BACKGROUND

In 2010, AIP evaluated the implementation of the obligations for active disclosure of information on the Internet sites of the executive power bodies. We made the same assessments in 2006, 2007 and 2008. The adoption of the Access to Public Information Act (APIA) in 2000 established an obligation for publication of certain categories of information, listed in Art. 15 of the APIA. The previous surveys attempted to assess the publication of these categories on the web sites of the public authorities. Till 2008, publication in the Internet was evaluated as a possibility for a cheaper and more democratic way of disclosing the information mandatory for publication. Amendments to the APIA as of December 5, 2008 introduced the obligation for online publication of categories listed in Art. 15. The heads of the administrative structures within the system of the executive power had a year since the enactment of the APIA amendments to prepare the process and fulfill their obligations for online publication. The transition period ended in December 2009. In the beginning of 2009, AIP had assessed the existence of some of these categories on the web sites of the institutions - *Access to Information* section, APIA responsible official, rules for submission of electronic requests.

This year's survey, performed by the team of AIP in February 2010, assessed the implementation of the new obligations by the executive power bodies. The level of implementation can be compared to the results of previous surveys in order to delineate the dynamics of changes and the impact of the legislation.

2008 amendments to the APIA are important with regard to another aspect as well. They established obligations for the regional units of the executive power bodies. Till then they did not have explicit obligations under the APIA, unless the special laws regulating their functions and responsibilities did not provide them.

That condition obstructed the requestors in their search for information generated and held by the regional units of the executive bodies. The requests used to be transferred to the central authorities. Thus one of the aims of the survey was to observe how the regional units of the central government bodies fulfill their obligations under the APIA.

Parallel to the assessment of the websites, an electronic request was sent to the surveyed institutions. The aim was to outline the problems in handling electronic requests, considering the fact that their number has been increasing during the last years. According to the data in the reports *The State of the Administration in Bulgaria*, which have been published till last year by the Minister of State Administration and Administrative Reform, the number of electronic requests since 2007 have exceeded the number of written requests received by the institutions (2007: written requests- 5521, electronic requests - 7522; 2008: written requests - 5363, electronic requests - 9124).

The transition period of one year for preparation and fulfillment of the obligations for publication was long enough. Public authorities had the possibility to use additional resources

due to the fact that one of the priority areas of the Operational Program of the European Union for Administrative Capacity was exactly the transparency of institutions.

Two of the categories under Art.15 required more attention and time for preparation. The list of the acts and the review of public registers depend on the efficient information management within an institution. Part of that information shall be submitted to the National Register of Administrative Structures and Acts of the Executive Power Bodies,¹² maintained by the Council of Ministers. No doubt the bodies of power have record management systems. However, the fulfillment of the obligations under Art. 15a suggested their assessment from the point of view of active disclosure on the institutional web sites.

METHODOLOGY

In the period 10.02.2010 - 02.03.2010, AIP has reviewed the web sites of 511 institutions (central, regional and local bodies of power). The list of administrative structures within the system of the executive power is accessible through the register of these structures, created after the adoption of the Administration Act in 1998 and a Regulation by the Council of Ministers as of May 2000. Changes made by the new government after the 2009 summer elections were also taken into account.

The researchers who were doing the survey had to find the institutional web site of the public body from the list and evaluate it from the point of the obligations for active disclosure under the APIA and other laws. We were looking for an answer to the question if a certain obligation had been fulfilled or not.

The assessment indicators were organized in three groups.

The first group of questions aimed at the assessment of the publication of categories of information under Art. 15 of the APIA, namely:

1. Description of the powers, data on the organizational structure, the functions, and the responsibilities of the administration;
2. List of the administrative acts issued by the respective institution- normative, general and individual;¹³
3. Description of the data bases and information resources, maintained by the respective institution;
4. The name, the address, the telephone number and the working hours of the office responsible for contact with citizens.

¹² National Register of Administrative Structures and Acts of the Executive Power Bodies was established by the Regulation on the Conditions and the Procedure for Maintaining the Register of the Administrative Structures and Acts of the Executive Power Bodies, May 2000: <http://www1.government.bg/ras/>.

¹³ According to Bulgarian general administrative law there are three categories of administrative acts: administrative normative act applies to unspecified number of individuals multiple times i.e. it has the legal character of regulations; general administrative act is a decision with application to unspecified number of individuals; individual acts are administrative decisions with application to certain individual/ individuals.

The second group of indicators assessed the existence and the content of an *Access to Information* section. According to the 2008 amendments to the APIA, the section shall contain the following information:

1. The name, the address, the telephone number and the working hours of the respective administration's office in charge to receive information requests.
2. The internal rules for processing the access to information requests;
3. Short description of the procedure for access to the public registers maintained by the respective institution;
4. The annual report on the requests for access to public information, „which shall contain among others data on the refusals made and the reasons therefor“ (Art. 15, Para.2 of APIA).

The third group of indicators was related to information subject to publication under other laws or related to the transparency policy of the public authorities such as:

1. Budget;
2. Financial reports;
3. Activity reports;
4. Concession contracts;
5. Public procurement contracts;
6. Programs and development strategies;
7. Declassified documents;
8. Asset and conflict of interest declarations;
9. Draft normative acts.

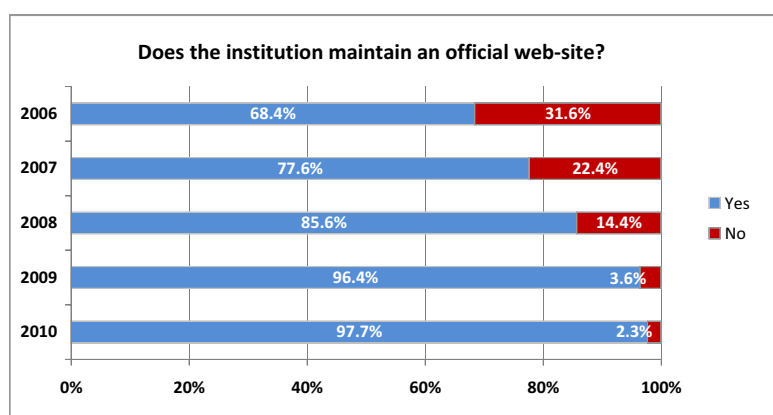
The team of AIP had the task to evaluate whether the published information was up-to-date.

Within the survey, electronic requests were submitted. The question was: what is the budget for the implementation of the obligations under Art, 15a, i.e. for online publication of information and for the training of officials to fulfill that obligation, if such funds were envisaged as part in the 2010 budget of the institution. We had expected that the question would not have posed any difficulties to the heads of the administrative structures or to the officials responsible for the provision of information due to the fact that we asked about an item from the budget which should be public anyway.

RESULTS

The survey shows that out of 511 institutions from the executive power, 499 have their official web sites, i.e. 97.65%. To observe the dynamics in the development of implementation practiced of the obligations, we show the 2010 survey results in comparison to the previous years.

Chart 1. Presence in the Internet



Information Mandatory for Online Publication

1. The description of the powers, the organizational structure, the functions and the responsibilities of the administrative structure which are subject to publication find a practical expression in the publication of the statutes regulating the functions of the institution, the internal rules, the organizational structure, and the functions of the institutions. Here are the results from the survey, compared with the results from three preceding years.

Chart 2. Description of the powers

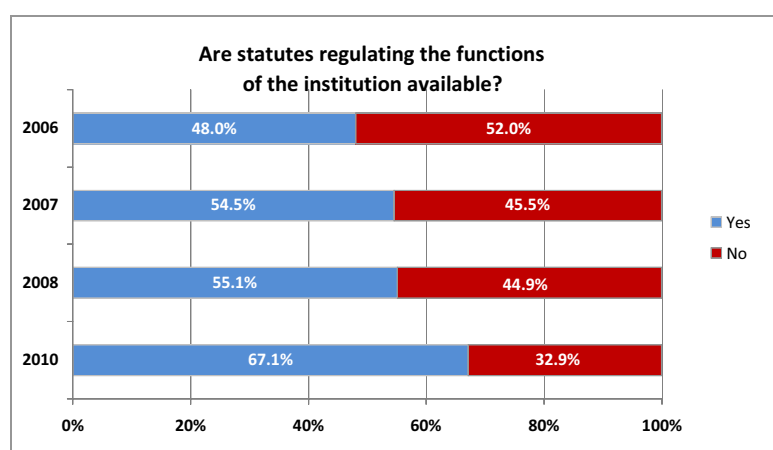
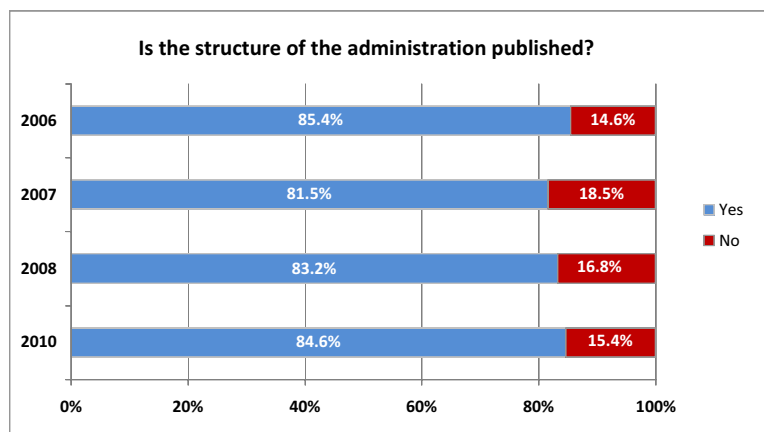
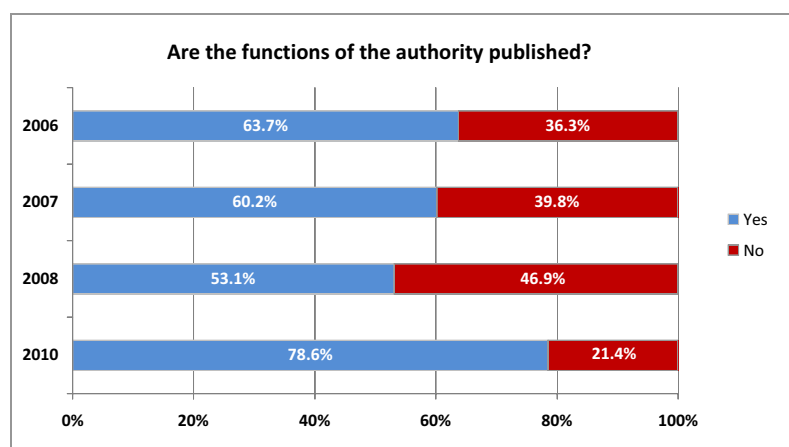


Chart 3. Description of the organizational structure



Charts 4. Description of the functions



2. The lists/registers of the acts issued by the public authorities are a particularly important category of information subject to active disclosure.

This category is undoubtedly subject to active disclosure under the laws for access to information which comply with the international standards in the area. Some administrative systems with a long history of implementation of the access law (Sweden) and newer free access to information laws introduce the obligation for maintaining a register of the documents of the public authorities. Such requirements are stipulated by Regulation (EC) No. 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents. Article 11 of the Regulation introduces the obligation for maintaining of such a register and the provision of electronic access to it.¹⁴ Besides the obligation for the maintaining of the lists/registers of the documents, many laws, including Regulation 1049/2001, provide for the requirements for the record of the documents in the register.¹⁵ Each document in the register shall have

¹⁴ http://www.europarl.europa.eu/RegData/PDF/r1049_en.pdf

¹⁵ Idem, Art. 11, Item 2

a reference number, the subject matter and/or a short description of the content of the document and the date on which it was received or drawn up and recorded in the register. References have to be made in a manner which does not undermine protection of the interests listed in Article 4 of the Regulation. Pay attention to the fact that even documents which under the Bulgarian terminology shall be classified, have to be listed in the register, unless their reference would undermine the protection of the interests in Article 4 of the Regulation which regulate the measures and exhaustively lists the categories of protected interests and rights.

Till the adoption of the amendments to the APIA as of December 2008, executive power bodies were not very certain about the meaning of the *list of the acts issued within the scope of its powers* and therefore they among all used to publish normative acts. The amendments introduced a definition of the *list of issued acts as a structured aggregation of all normative, general, and individual administrative acts, issued by the respective administrative body* (Additional provision §1, Item 3 of the APIA, amended - State Gazette, issue 104, 2008). The law does not provide for details how this aggregation shall be structured, nor introduces the obligation for the reference of the acts by dates or subject. There shall be noted, however, that according to the amendments to the *Regulation on the Conditions and Procedure for Maintaining a Register of the Administrative Structures and the Acts of the Executive Power Bodies* as of 2002, there are requirements about the data that shall be recorded with regard to individual administrative acts which are in the lots of the Register and relate to the regulatory regimes.

How is this obligation fulfilled? In order to take into consideration the characteristics of the Bulgarian administrative system for the publication of normative administrative acts, but not for publication of individual administrative acts, we evaluated both.

Traditionally, normative acts are being published. That is why the difference between the online publication of the normative acts and other administrative acts is considerable.

Chart 5. List of issued normative acts

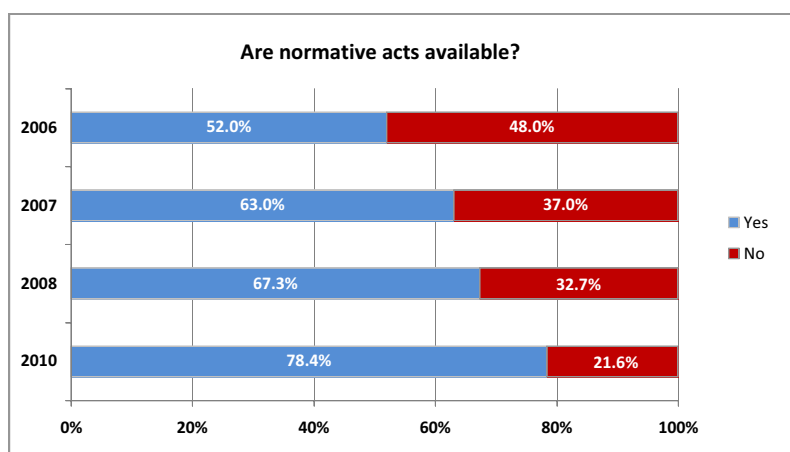
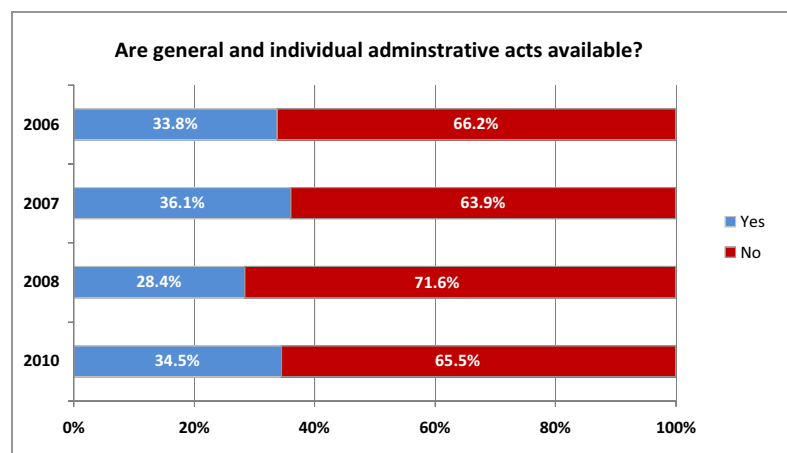
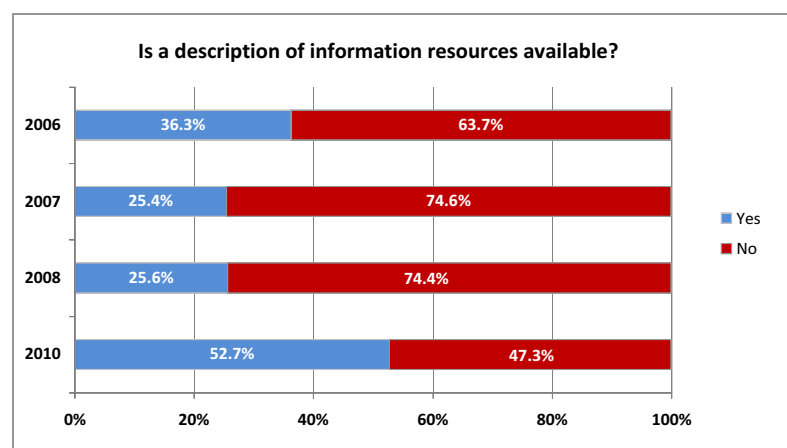


Chart 6. List of issued general and individual administrative acts



3. The description of the information resources and the data bases, maintained by the respective public body is an important condition for the exercise of the right of access to information. That is why the legislator has provided for the active publication of that information ever since the adoption of the APIA. The implementation of that obligation had been poor during the years. Results from this year's survey show a considerable improvement in the implementation.

Chart 7. Description of information resources and data bases



4. Another important element of the active publication of information and a condition for the exercise of the right of access to information is the contact information of the institution - address, telephone and working hours of the office. Evaluating this type of information, we assessed the availability of all types of contact information of the institution. The comparison we make is again with the results from preceding years. That category of information is easier to publish though the implementation is far from 100%. In some cases it was difficult to find the name of the mayor of the municipality or an e-mail address for contact even though the web site had been recently launched and containing a lot of information, including tourist.

Chart 8. Contact information-public communication office

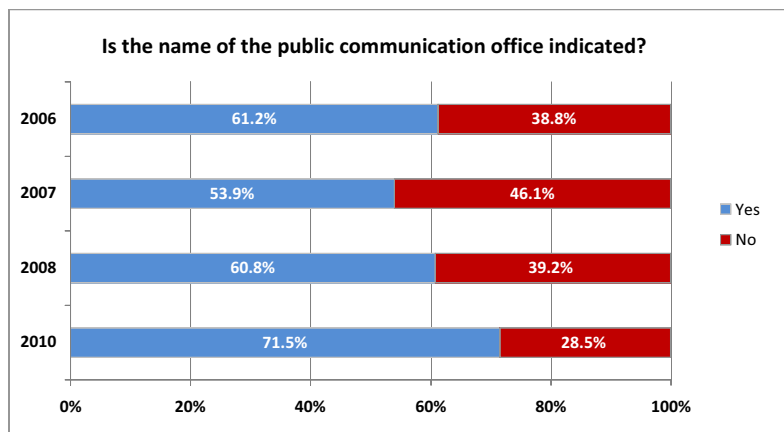


Chart 9. Contact information- address of the public communication office

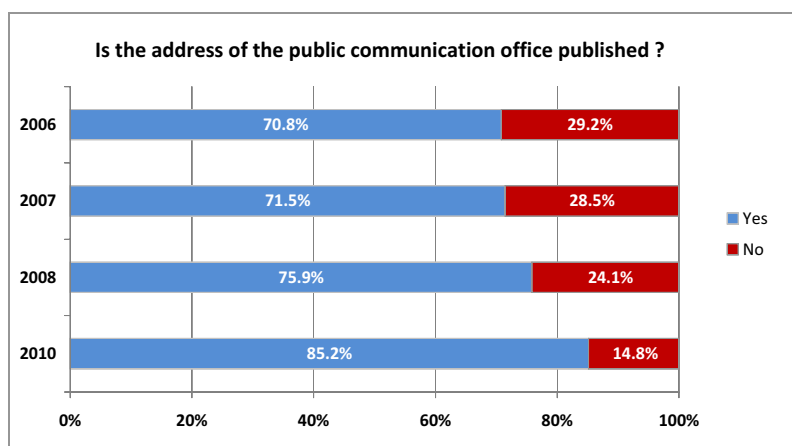


Chart 10. Contact information - phone number of the public communication office

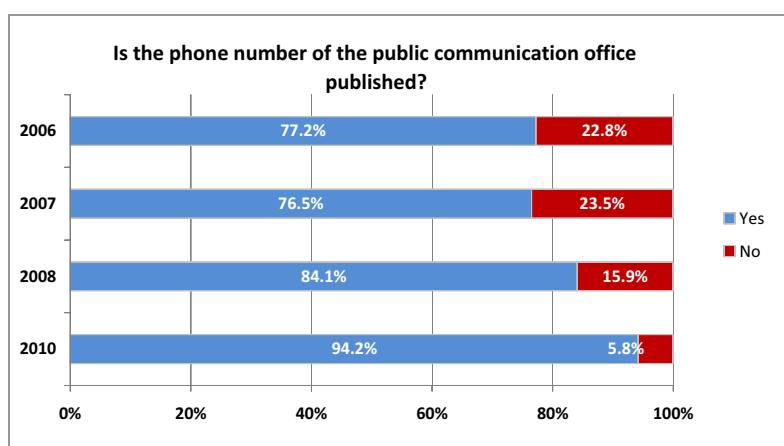
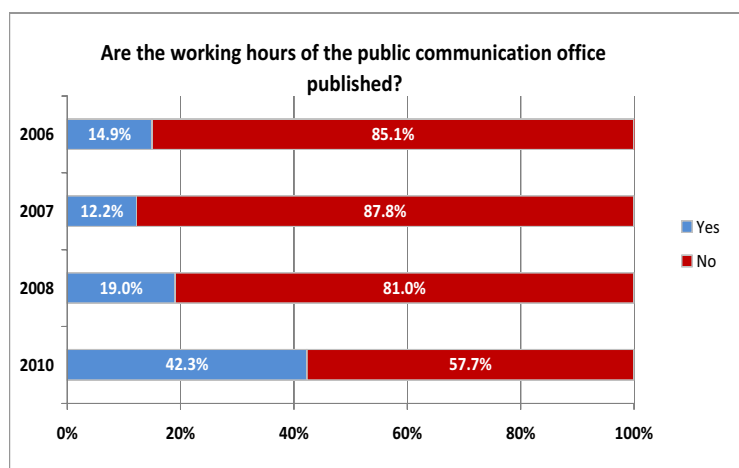


Chart 11. Contact information - working hours of the public communication office



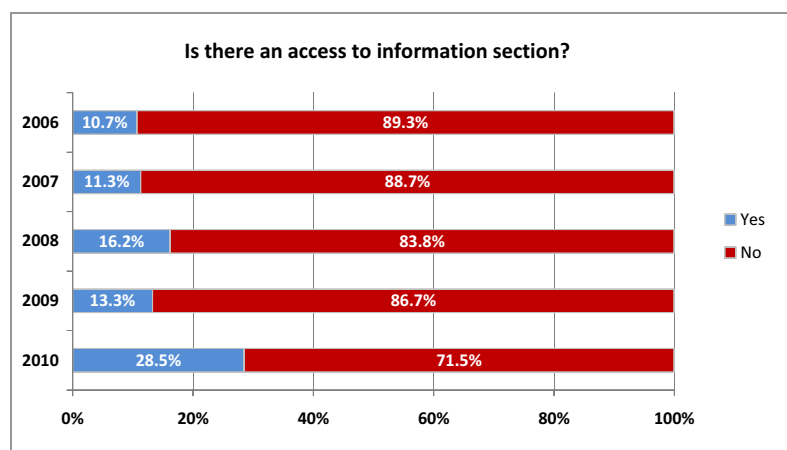
Access to Information Section

An essential new obligation introduced with the 2008 amendments to the law is the creation of an *Access to Information* section on the web sites of the institutions. As it has been already mentioned, the content of this section is clearly defined in Paragraph 2 of Article 15a in 2008. The list of the required information is the following:

1. The name, the address, the telephone number and the working hours of the respective administration's office or official who is authorized to receive requests for access to public information;
2. Internal rules for working with access to information requests;
3. Short description of the procedure for access to the public registers maintained by the respective institution;
4. The annual report on the number of requests for access to information, „which shall contain among others data on the refusals made and the reasons therefor.“ (Art. 15, Para. 2 of the APIA).

How is this obligation fulfilled and is such a section available? Compared to 2009, the number of the public authorities which have fulfilled the already legal, and not advisable, obligation has increase with only 15%. 142 out of 499 institutions have *Access to Information* section.

Chart 12. Access to Information section on the Internet sites



Among all, this section shall indicate the contact information of the official or the office responsible for the access to public information. This is the first condition for effective exercise of the right. An official should have been assigned - as required by the amendments to the APIA as of June 19, 2007, State Gazette, Issue 49 - within six months period, i.e. till the end of 2007.

Chart 13. Official/office, assigned under the APIA

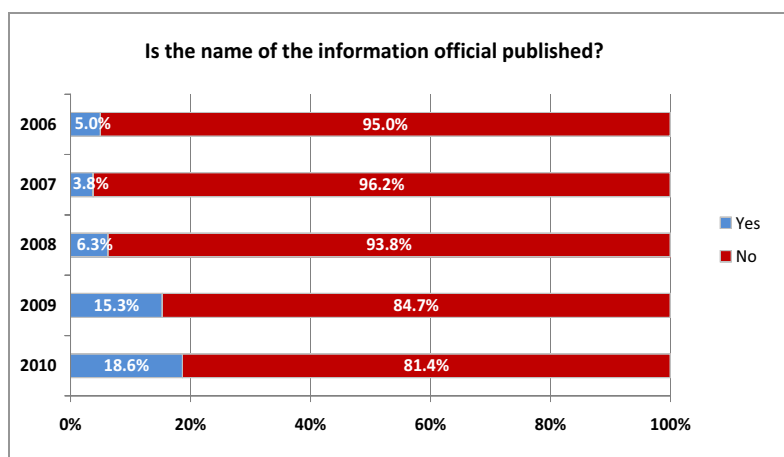


Chart 14. Contact telephone number of the official/office under the APIA

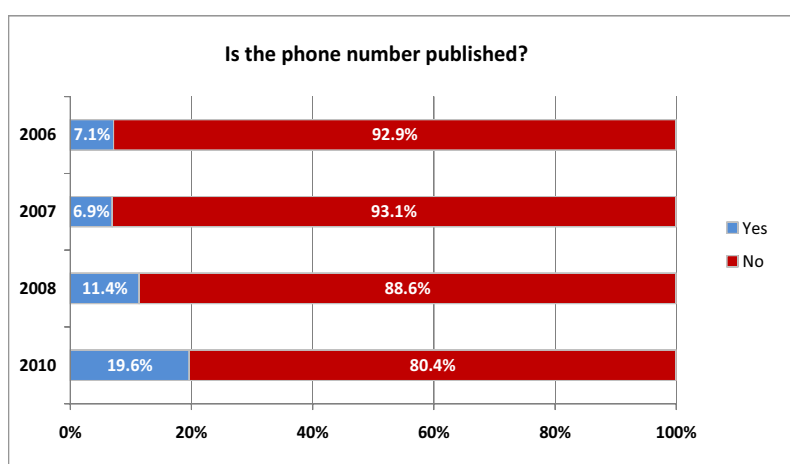


Chart 15. E-mail address of the official/office under the APIA

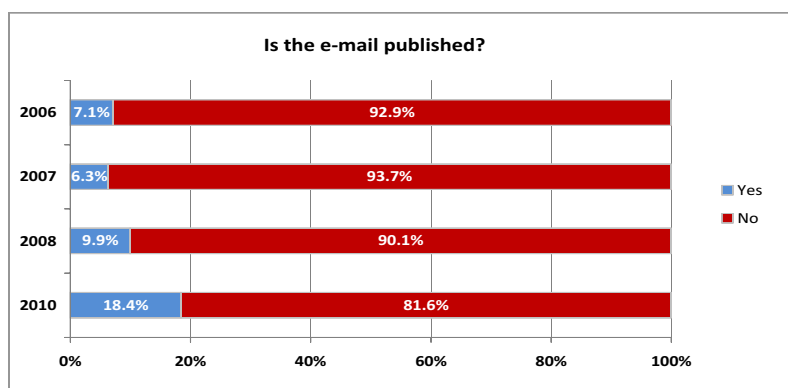


Chart 16. Address of the official/office under the APIA

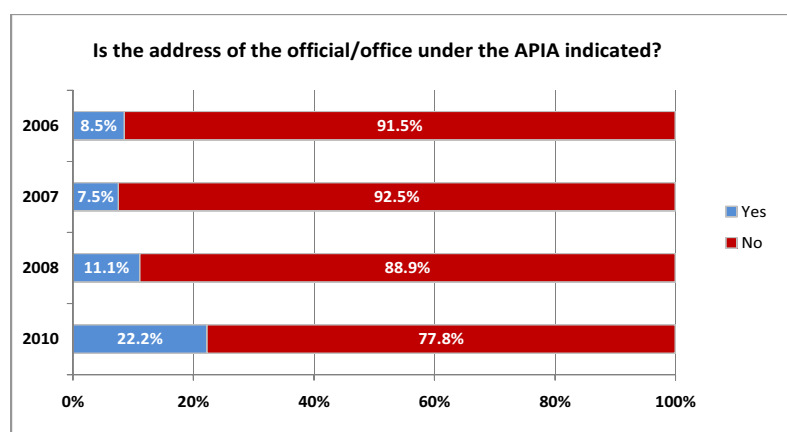
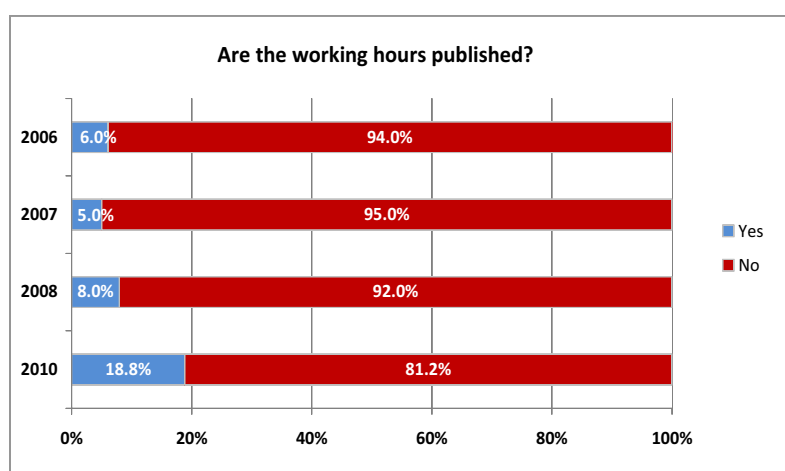


Chart 17. Working hours of the official/office under the APIA



How can we explain such a poor fulfillment of a legal obligation? The reasons can be different - an official has not been assigned, she/he does not have an address or a telephone number, or the head of the administrative structure has simply not paid attention to this obligation.

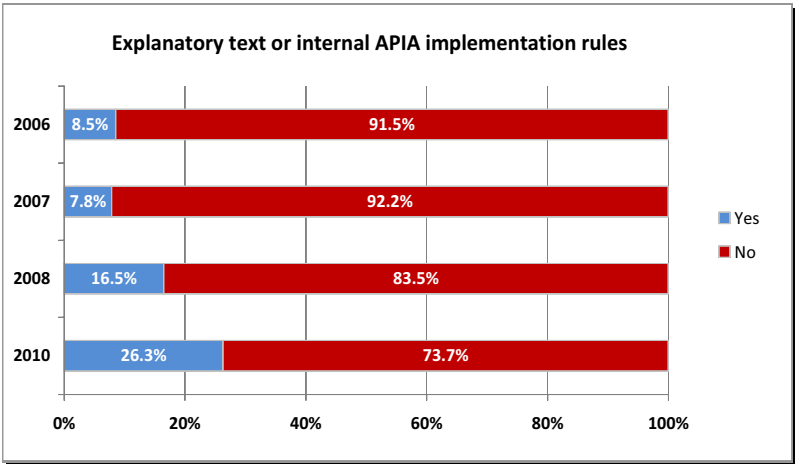
In this case, the information is simple, but extremely necessary for the exercise of the right of access to information by the citizens.

The next element in the content of the *Access to Information* section is the internal rules regarding the access to public information and the procedure for access to the public registers, maintained by the public authorities.

The survey shows that only 131 out of 499 institutions have their internal rules. Some of these do not have *Access to Information* section on their web sites, but has issued and published these internal rules. In other cases, no internal APIA implementation rules can be found in the *Access to Information* section. The characteristics of the internal rules are also different. In some cases, they are a repetition of the law itself, without consideration of the specifics of the institution. In other cases, it is in the internal rules where the contact information with the assigned officials is available.

The purpose of these internal rules is to facilitate both the work of the officials in the respective institution and the information seekers by establishing a straightforward procedure and responsibilities for the provision of information. The internal rules should have regulated the information management within the institution, including the responsibilities for the officials for update of the information on the Internet site, as well as the rules and responsibilities for the information provision at oral, written and electronic requests. The internal control on the implementation of the obligations under the law shall also be part of the internal rules.

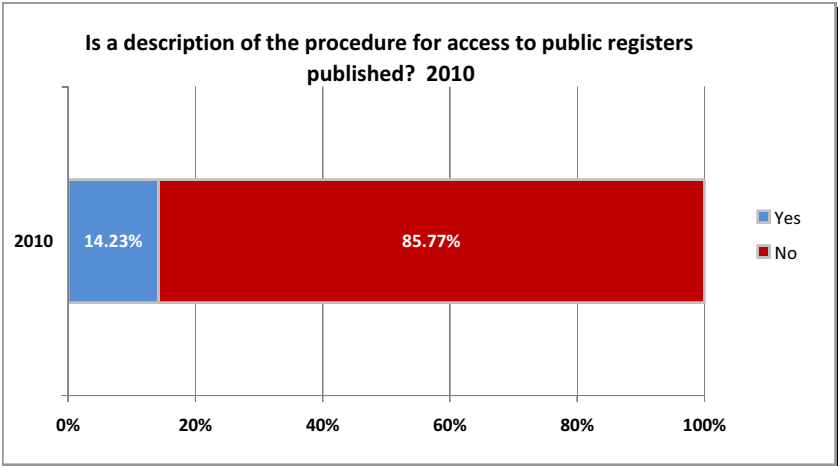
Chart 18. Internal APIA implementation rules



The Access to Information section shall contain an explanatory text with regard to the access to public registers maintained by the respective institution. Since the majority of the public registers are still not available in the Internet, a short description of the procedure of accessing them would have helped a lot those who seek information from them.

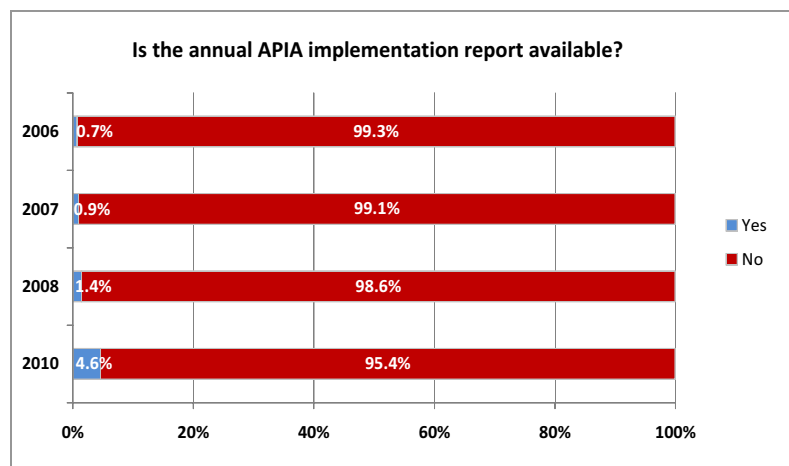
The survey shows that only 71 institutions out of the 499 have done it. In most of the web sites where this information is available, it constitutes the registers themselves but not a description of all registers maintained by the institution.

Chart 19. Description of the public registers maintained by the institution



Regarding the annual report on the number of submitted access to information requests, „which shall contain among others data on the refusals made and the reasons therefor“¹⁶, which shall also be published in the *Access to Information* section, the implementation of this obligation is extremely unsatisfactory. Only 23 out of 499 executive power institutions have fulfilled it.

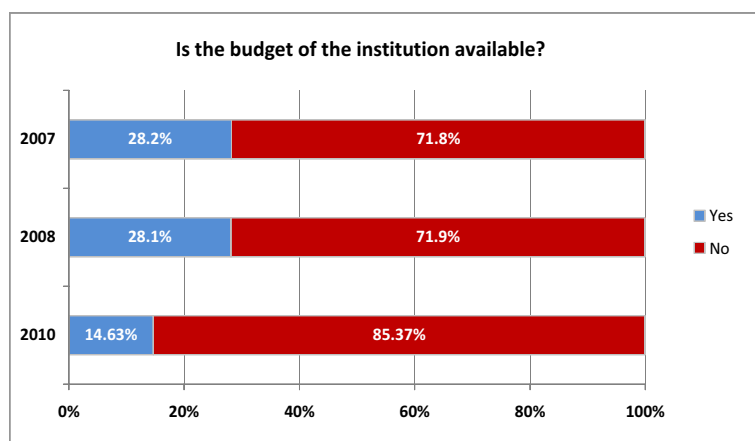
Chart 20. Annual report on APIA implementation



Other Obligations for Publication

AIP assessed the implementation of other obligations for online publication of information of significance to the requestors. We were interested if the budget and the reports - financial and activity, of the public authorities were published. Also, contracts - concession and public procurement, asset declarations and conflict of interest declarations, draft normative acts and lists of declassified documents within the institution. With regard to the publication of that information there was even a decrease in the indicators, especially with regard to the budgets and the reports of the public authorities, as well as the contracts signed with third parties.

Chart 21. Budget of the institution



¹⁶ Art. 15, Para. 2 of the APIA.

Chart 22. Financial report of the institution

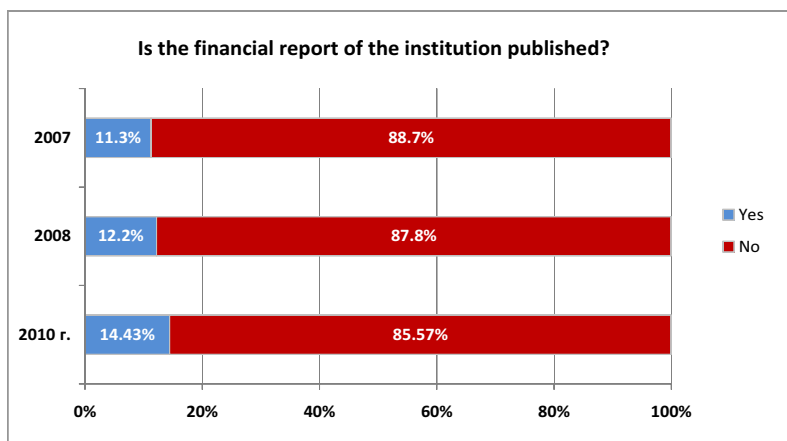


Chart 23. Activity report of the institution

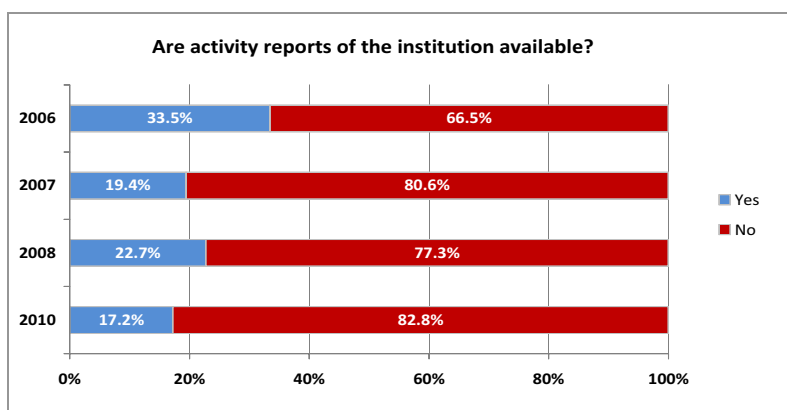


Chart 24. Contracts with third parties

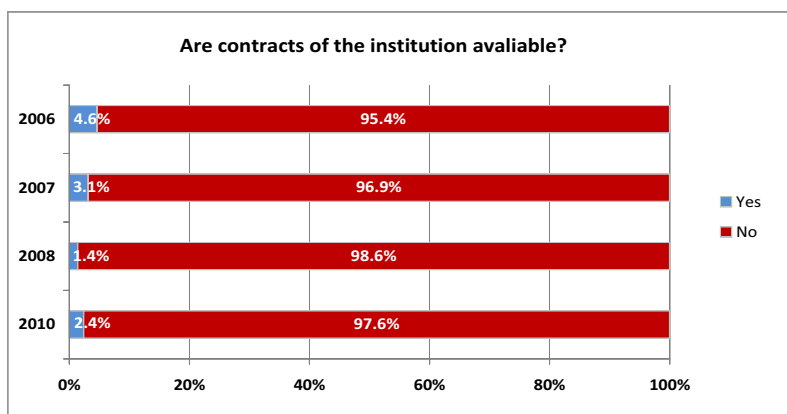
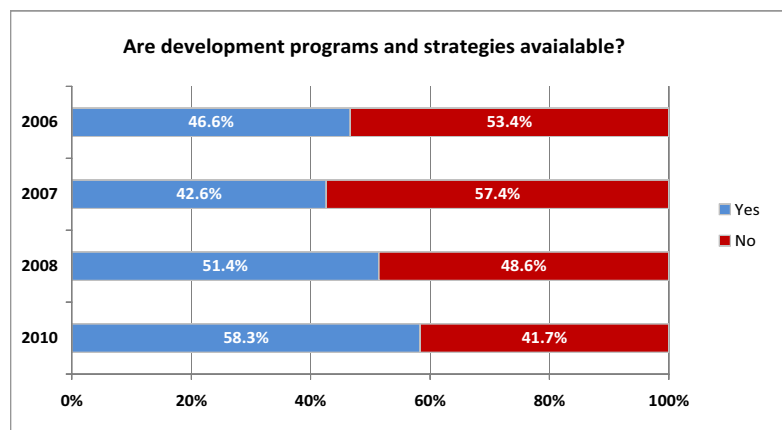


Chart 25. Development programs and strategies



Like in previous years, the online disclosure of development programs and strategies is comparatively good, but not publishing budgets and reports impedes the forming of own opinion about the efficiency and the consistency of these development programs and strategies.

Electronic Requests

For a second successive year, Access to Information Programme submits electronic requests for access to information to the institutions.

In 2009, requests were submitted to 399 institutions. The results were the following:

137 institutions (34,3%) responded within the legally prescribed timeframe, i.e. within 14 days. Twenty-eight (7%) responded after the deadline. 234 (58,65%) did not respond at all to the requests for access to information which is subject to mandatory publication.

In 2010, we submitted 500 requests to the executive power bodies at central, regional and local level.

Within the legally prescribed timeframe (14 days), 212 (42.4%) institutions responded. After the deadline, we received responses from 82 (16.4 %), i.e. 58.8 % of the public authorities answered the submitted request, out of them 48% did it electronically. No response at all given by 206 (41.2%) institutions.

Besides the statistics of the results, the responses to the requests indicated other interesting developments as well.

31 of the institutions which have established procedure for handling electronic requests required electronic signature - a rule that contradicts the law. This contradiction has obviously been comprehended by the officials since, regardless of the requirement, the requested information was sent.

Others, disregarding the spirit of the law and its purpose, focused on the procedure but not to facilitate the requestor and themselves but to impede the provision of the requested information. Prominent in this regard was the Municipality of Razgrad which invited the

requestor to visit the Front Office and present the payment receipt for 2.16 BGN (1.10 EUR), VAT included. The decision of the mayor was written in three pages and was sent via regular mail, regardless of the well maintained web site of the municipality. The decision explains in detail why the answer to the request could not be sent to the signified electronic address since that was the place signified by the requestor, while the law required that *place* to be signified by the body. Furthermore, „no part of this administrative service shall be provided electronically“ as the Municipality of Razgrad „have no technical capacity“ to provide electronic administrative services.

Let us remind that the time spent for the preparation of that one or any other decision also costs money - to the taxpayers. Following the procedure under the law cannot be an end in itself. It serves for more efficient achievement of the purpose of the law. Formalities for requests shall not exceed what is essential in order to process the request.¹⁷

It is a common practice in a lot of countries with effective access to information laws that the requested information is sent electronically free of charge (especially when it is small in size), as well as the provision of paper copies. The rational administration takes into consideration the revenues and the expenses in providing the service. For instance the procedure for obtaining access from the institutions of the European Union stipulated by Art. 10, Item 1 and Item 2 of the Regulation 1049/2001. The requestor may have access to documents either by consulting them on the spot or by receiving an electronic copy, according to the requestor's preference. „Consultation on the spot, copies of less than 20 A4 pages and direct access in electronic form or through the register shall be **free of charge**.“¹⁸

Bulgaria is a member of the Council of Europe and the European Union and supposedly should follow open government standards and values.

Information was provided in the manner signified in the request, i.e. electronically, by 241 institutions. This makes 48% out of all institutions to which we submitted requests. If we compare the result with the 35% which had responded in 2009, we believe that there are grounds for optimism.

¹⁷ Refer to Council of Europe Convention on Access to Official Documents, Art. 4
<https://wcd.coe.int/ViewDoc.jsp?id=1377737&Site=CM>

¹⁸ http://www.europarl.europa.eu/RegData/PDF/r1049_en.pdf

CASES REFERRED TO AIP FOR LEGAL ADVICE AND CONSULTATION

GENERAL CHARACTERISTICS

Provision of legal help is among the priorities in *Access to Information Programme* activities. Part of this annual report focuses on cases referred to us for legal consultation by citizens, journalists, and nongovernmental organizations who have had difficulties exercising their right of access to information. In some of these cases, AIP has provided legal help at the initial phase of the search for information and the legal team has given advice and/or has prepared a request for access to information. In other cases, we have helped after a refusal for provision of information.

Type of Legal Help Provided

In 2009, AIP legal team has provided legal help in the following ways:

- Oral consultations on referred cases - by phone or at the office.
- Written consultations in two ways:
 - written comments on the cases sent by the journalists from AIP coordinators' network - 114;
 - consultation on the cases received via the electronic mail - 122.
- Significant part of the legal help provided by AIP is the preparation of appeals to the court and court representation in cases of complainants requesting the help of the organization.

Number of Cases

The total number of cases in which legal help was provided in 2009 is 327¹⁹. Based on their nature and legal qualification we classify them in three groups:

- Most cases relate to practices of non-fulfillment of APIA obligations by the institutions (237 instances);
- Next largest group of cases is related to violations of the right of personal data protection granted by the Personal Data Protection Act (53 instances);
- In few cases, we have given legal advice with regard to interference with the right to seek, receive and impart information (25 instances) and etc.

¹⁹The number of legal consultations given on these cases is 471 since more than one consultation was necessary in some of the cases.

From Which Public Institutions Do Information Seekers Mainly Request Information?

The largest number belongs to the central executive power bodies - in 143 cases. In 58 cases, information has been requested from the local self-government bodies; in 25 - from legislative power bodies. In a few cases, information was sought from public-law organizations (21), from the judicial power bodies (15), from the regional units of the executive power bodies (16), etc.

Most Frequently Used Grounds for Refusal

The highest number of registered refusals is that of the silent refusals - 39. Out of the grounded refusals, the most are related to the personal data protection - 19, trade secret exemption - 8, while in 11 cases the motivation is just a referral to „protection of third party“ without further specification. The number of the latter has decreased in comparison to the previous year when information was refused in 25 cases. The official secret exemption was used in eight cases; the same is the number of refusals based on the provision of Art. 13, Para. 2 of the APIA.²⁰

Who Requested the Assistance of AIP in 2009?

In 2009, the legal help of AIP was sought by citizens, journalists and nongovernmental organization. Journalists from national and local media and AIP coordinators in the country, also journalists, have most frequently turned to AIP for legal consultations - in 126 cases. In 137 cases, consultations have been provided to citizens. 44 cases were referred by nongovernmental organizations. Also, officers from the state administrations have addressed AIP in cases when they had difficulties implementing the APIA.

Specific Characteristics

The number of cases referred to AIP for legal help has increased. From 235 in 2008, their number has reached 327 in 2009. The number of cases related to the right of access to information has also increased - from 151 in 2008 to 237 in 2009. The number of journalists who turn to AIP for legal help and consultation has increased. In 2008, they were 38, while on 2009, they were 126. The number of cases referred by citizens has also increased - from 71 (2008) to 137 (2009).

More and more citizens, nongovernmental organizations and journalists refer their cases to AIP through the electronic mail. The number of written consultations provided by e-mail in 2009 was 122, while in 2008 they were 75.

²⁰ The article provides that access to administrative public information may be restricted if it:

1. relates to the preparatory work of an act by the bodies, and has no significance in itself (opinions and recommendations prepared by or for the body, reports and consultations);
2. contains opinions and statements related to on-going or prospective negotiations to be led by the body or on its behalf, as well as any data relating thereto, and was prepared by the respective bodies' administrations.

The number of silent refusals has been increasing recently. This was typical for 2009 as well. The cases in which information is being provided after the submission of an appeal against the silent refusal have been increasing.

The number of refusals under Art. 37, Para. 1, Item 2 of the APIA, stating that access may be restricted for the protection of the third party interests if there is no explicit consent for the disclosure has decreased. The two times decrease in the number of these refusals in 2009 could be explained as a result of the December 2008 amendments to the APIA due to which the practices of ungrounded using of the third party exemption were impeded.

SPECIFIC EXAMPLES

Information About Events of Public Interest

Citizens' Protests in front of the Parliament

In the beginning of 2009, in front of the building of the National Assembly there were demonstrations. With the help of the social networks, citizens organized protests against the government. The dates of the protests, as well as all the planning were public, as the communication between the participants took place online. The authorities responsible for the security and public order were also informed. During the days of protesting, however, the participants were thoroughly checked and were let to enter the protest area after registration of their personal data which triggered public debate. Days after the protest, citizen William Popov submitted a written request for access to several categories of information related to the measures taken by the Ministry of Interior (MoI) in front of the National Assembly on January 14, 15, and 16, 2009. Among requested data was the number of citizens who had participated in the protests per day (based on information and evaluation done by the MoI); number of MoI officials who took part - policemen, gendarmerie, police dogs and other special units if there were any; expenses made for the organization of the security measures taken by the MoI - total amount and data per item; preliminary risk assessment prepared by experts with regard to provision of security and safeguarding public order for the forthcoming protests in front of the National Assembly, etc. Mr. Popov's desire to receive that information was ignited while watching the direct coverage of the protests and after comparing the picture with the statements of the Commissioner General of the MoI Pavlin Dimitrov that the ministry had analyzed in advance the risk and based on those analyses, the police had organized their activities. Partial access was provided on the base of which the citizens draw some conclusions. The main conclusion was that due to wrong preliminary assessment of the expected situation in front of the National Assembly, the MoI had spent unnecessarily and unduly big resources for safeguarding the protests.

National Assembly and European Parliament Elections

During the summer of 2009 general parliamentary elections and elections for the European Parliament took place. Questions related to the accessibility of information about the candidates for members of parliament and questions with regard to the election day itself

were referred to AIP. The main group who addressed AIP was journalists of national and local media. The most frequent questions were:

- what type of information related to the funding of the political parties is accessible and where is it available;
- how, to whom, and within what time frames political parties submit their financial reports;
- how and where one can obtain access to information about the income and property of the candidates for members of parliament;
- how and where one can obtain information about the conflict of interest declarations of the candidates for members of parliament.

There are relatively easily accessible sources of the data of particular interest to citizens and journalists in the elections. These are the Internet sites of the National Audit Office, the National Assembly, The Central Election Commission and the public registers held by different institutions. The cases referred to AIP with regard to the elections raised other important questions like is there a minimum European standard guaranteeing freedom of information during elections. The issue was raised on the occasion of not allowing journalists in the election premises by the section election commissions in the region of Montana. Issue was raised by the coordinator of AIP in the region Liubomir Yordanov who was concerned that amidst the growing signals for illegal trading of votes such restrictions of the freedom of information would facilitate the violations. The legal consultation was published in the AIP monthly electronic newsletter.²¹ We pointed out that the Art. 3 of Protocol No. 1 to the European Convention on Human Rights contains a specific provision guaranteeing the freedom of expression during elections. It explicitly states that the contracting parties shall undertake to hold free elections at reasonable intervals by secret ballot, under conditions which will ensure the free expression of the opinion of the people in the choice of the legislature. The transparency of the elections is to be guaranteed namely by the presence of advocates, observers, and media during the elections and during the counting of votes.

The A/H1N1 Flu Epidemic

During the autumn of 2009, an A/H1N1 flu epidemic outbreak was announced. The team of AIP was asked what are the responsibilities of the institutions to actively provide information in such cases and if the measures undertaken for informing the citizens are sufficient. We have to note that the majority of the regional inspections for control and oversight of public health took sufficient measures for disseminating important information related to the restriction of the spreading of the new type of A/H1N1 flu. In some regions, letters were prepared and sent to the schools and companies with information about the epidemic outreach and recommendations for actions; educational materials for the citizens with regard to the flu; an exchange of information related to the registration of flu cases was organized.

²¹ <http://www.aip-bg.org/bulletin/66/02.htm>

Environmental Information

A considerable part of the cases referred to AIP for legal help were related to difficulties with obtaining environmental information. We were most frequently addressed by nongovernmental organizations and citizens, working in the field of environment protection. Contrary to the expected greater transparency of the institutions which generate and hold such kind of information, they either did not respond to access to information requests, or refused information which should be public. In one of the cases referred, the nongovernmental organization *Green Balkans* submitted a request to the Director of the Regional Inspection on Environment and Waters (RIEW)- Haskovo demanding access to his decision related to an evaluation of the necessity for Environmental Impact Assessment (EIA). The evaluation was related to an investment proposal for the construction of a wind generators park *Svilengrad* in the territory between the villages of Mihalich and Shtit in the Municipality of Svilengrad. The investment offer was submitted to the RIEW by *Kableschkovo Energy Ltd.* Despite the requirements under the Environmental Protection Act that the decisions for evaluation of the necessity for EIA shall be publicly announced, no response was given. That is why with the help of AIP, the silent refusal of the RIEW was appealed as illegal.

In the summer of 2009, Hristomir Ivanov submitted a request to the mayor of the village of Vetrino demanding access to information related to investment (which included digging work and pipe laying) for the digging of a canal along the village which goes to the dam. Ivanov had suspicions that there was no approved investment plan, that the investor did not have permits for water use and water-taking, etc. With an order issued by the mayor the requested information was refused on the ground that it constituted administrative public information with limited access because it contained opinions and statements related to prospective negotiations to be led by the Municipality of Vetrino, as well as any data relating to it, and was prepared by the administration of the municipality (Art. 13, Para. 2 of the APIA). The applicant appealed the refusal with the help of AIP. Mr. Ivanov's argument was that the provision of Art. 13 of the APIA is inapplicable in that case as the information in its most part related to the environment, consequently the Environment Protection Act was applicable where such exemption to the access to information was not provided for.

Among the referred cases for access to information, the request submitted by Nikolai Veselinov to the Minister of Environment and Waters is distinguishable. He requested detailed information related to a publication in the Internet site titled *The Inspectorate of the Ministry of Environment and Waters found serious wrongdoings in the record management and signing of documents in the RIEW - Sofia*. With a decision of the Head of Administration of the Ministry of Environment and Waters (MEW), the information was refused on the ground that it constituted an official secret under the stipulation of Art. 11 of the APIA and related to the preparatory work before final decision of the body and had no significance in itself, thus justifying an exemption under the stipulation of Art. 13, Para. 2, Item 1 of the APIA. With the help of AIP an appeal against the refusal was submitted. After the parliamentary elections, the new government of the MEW reconsidered the decision and released the information. The proceedings at the Administrative Court - Sofia City were stopped and the ministry was ordered to pay the expenses of the citizen.

PROTECTION OF PERSONAL DATA

Personal Data and Police Registration

The people protests in the beginning of 2009 raised questions related to the protection of personal data as it turned out that the policemen photoed and registered the identification of the participants in the protests. Affected citizens asked AIP if the police forces had the right to register the data of the participants in the protests; was there the so called *police registration* and what exactly was it; was the processing of personal data by the Ministry of Interior legal in cases of police registration. Our consultations were based on the provisions of the Regulations for Police Registration issued by the Ministry of Interior on 29.01.2004 . According to it, the police forces have the right to register only individuals at the presence of suspicions for intentional crime. In that case there was a violation of the Personal Data Protection Act by the police forces.

Personal Data in Social Networks

AIP was addressed for consultation in one of the first cases in Bulgaria of personal identity theft in a social network. In September, a 21 years old mother from the town of Plovdiv signals the police that cheaters had used the picture of her one-year old son in the Internet by announcing that he was ill and needs funds for the treatment. The questions to AIP, mainly from journalists, were related to the right of protection of personal data and privacy of citizens in social networks like Facebook, LinkedIn, Netlog, etc. In the provided consultation, we pointed out that the Personal Data Protection Act does not protect individuals who have published themselves information about their personal life (Art. 5, Para. 1, Item 5). Citizens should know that the responsibility for the protection of their own personal data in the social networks is theirs. The development of the information society requires a new type of culture and habits and everybody should be careful with where and what type of information do they publish on the Internet. Once uploaded or published, a material or a picture stops to be personal and everybody can use them. The publication of personal information may have serious consequences for the personal and professional life.

Personal Data in the Conflict of Interests Declarations

In the beginning of 2009, the Prevention and Disclosure of Conflict of Interests Act became effective (PDCIA, promulgated in State Gazette, issue 94, 31. 10.2008) which introduced rules for the prevention and disclosure of conflict of interests of persons holding public positions. Pursuant to Art. 12 of the law, these persons shall submit several explicitly listed declarations: declaration for inconsistency, declaration for private interests, declarations for change of conditions, and declaration for private interest in a particular case. Declarations are accessible to everyone who request information under the provision of Art. 17, Para. 2 PDCIA. Pursuant to that provision, the declarations shall be published on the web site of competent bodies in compliance with the requirements of the Personal Data Protection Act. That provision raised a lot of questions with regard to the implementation of the law. Questions were referred to AIP, especially by public officials. Among the most frequent questions were: which information stated in the declarations

under Art. 12 of the PDCIA is protected under the Personal Data Protection Act; which part of the declared information shall be published so that the provisions of the Personal Data Protection Act are complied with; are copies of the declarations subject to disclosure after a request for access to information considering the provisions of the PDPA, etc.

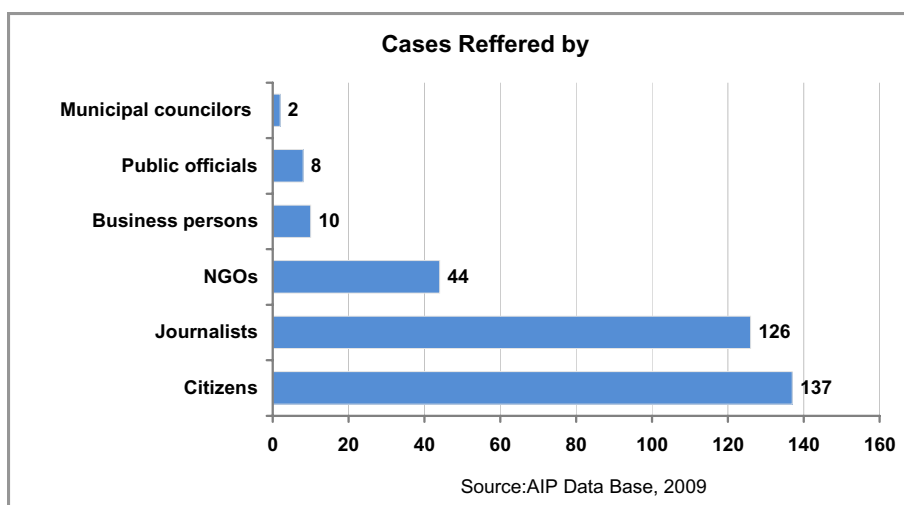
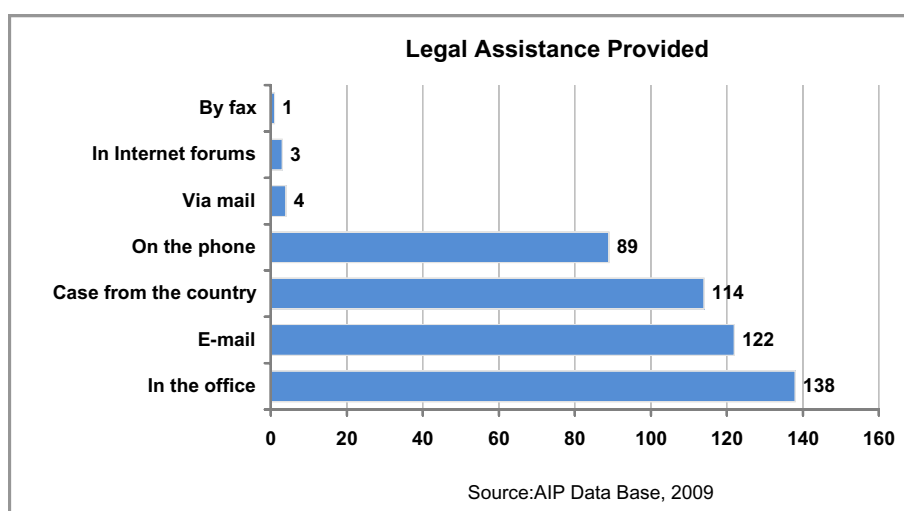
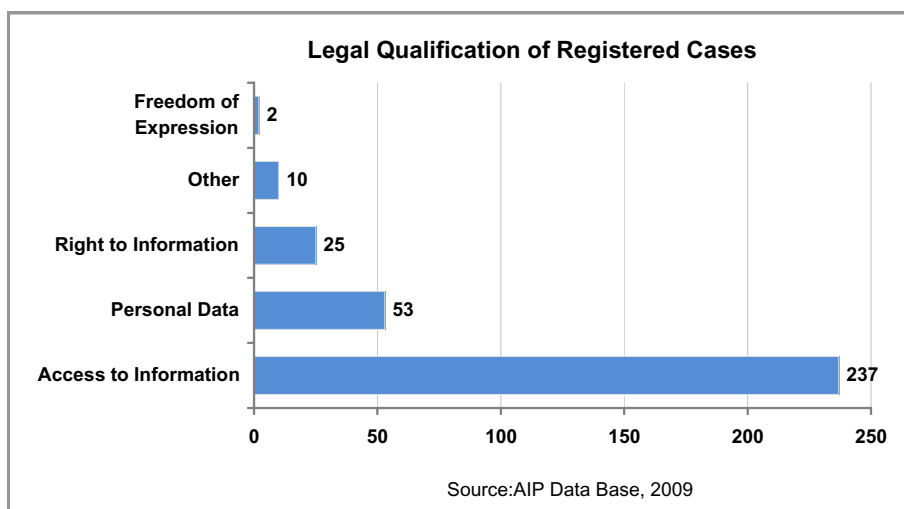
At the same time, the Personal Data Protection Commission for issued two identical opinions on the matter after being addressed several times with questions. The opinions stated that any information in the declarations under Art. 12 , Para. 1 may constitute personal data under the Personal Data Protection Act. That was why, the disclosure of personal data from the declarations shall be done after an explicit written consent of the declaring person, attached to the same declaration. Thus, having the consent of the natural person for the processing of their personal data by publication in the Internet, their rights would be protected to the greatest extent, the Commission stated.

AIP does not accept this interpretation as it contradicts the spirit of the law. The obligation established by Art. 17, Para. 2 of the PDCIA for disclosure of the declarations means nothing but the publication of declared data. An exception from the duty to publish would be applied only to additional personal data in the declarations, e. g. Personal Identification Number.

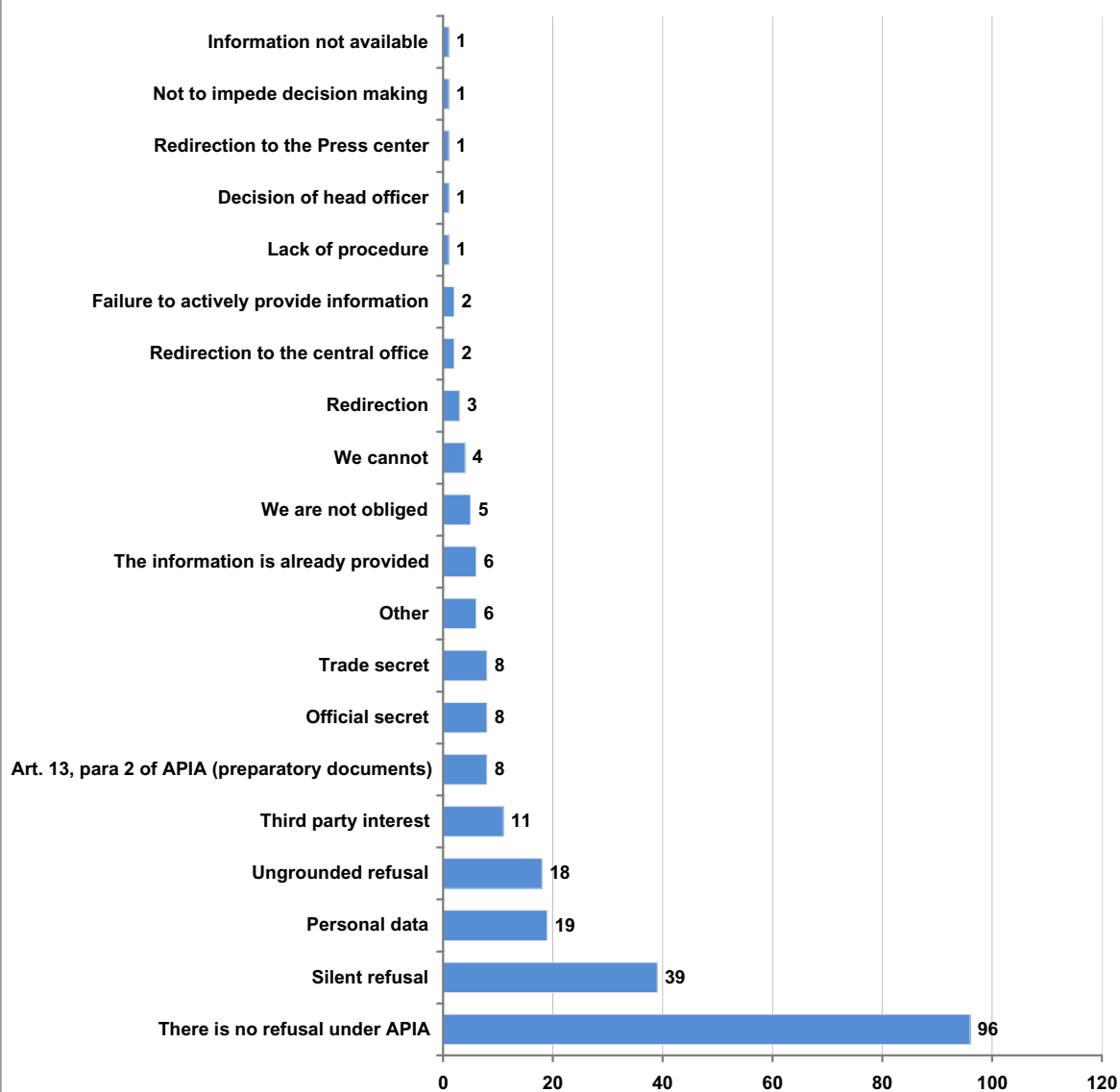
APPENDIX

STATISTICS FROM THE ELECTRONIC DATABASE

ACCESS TO INFORMATION PROGRAMME



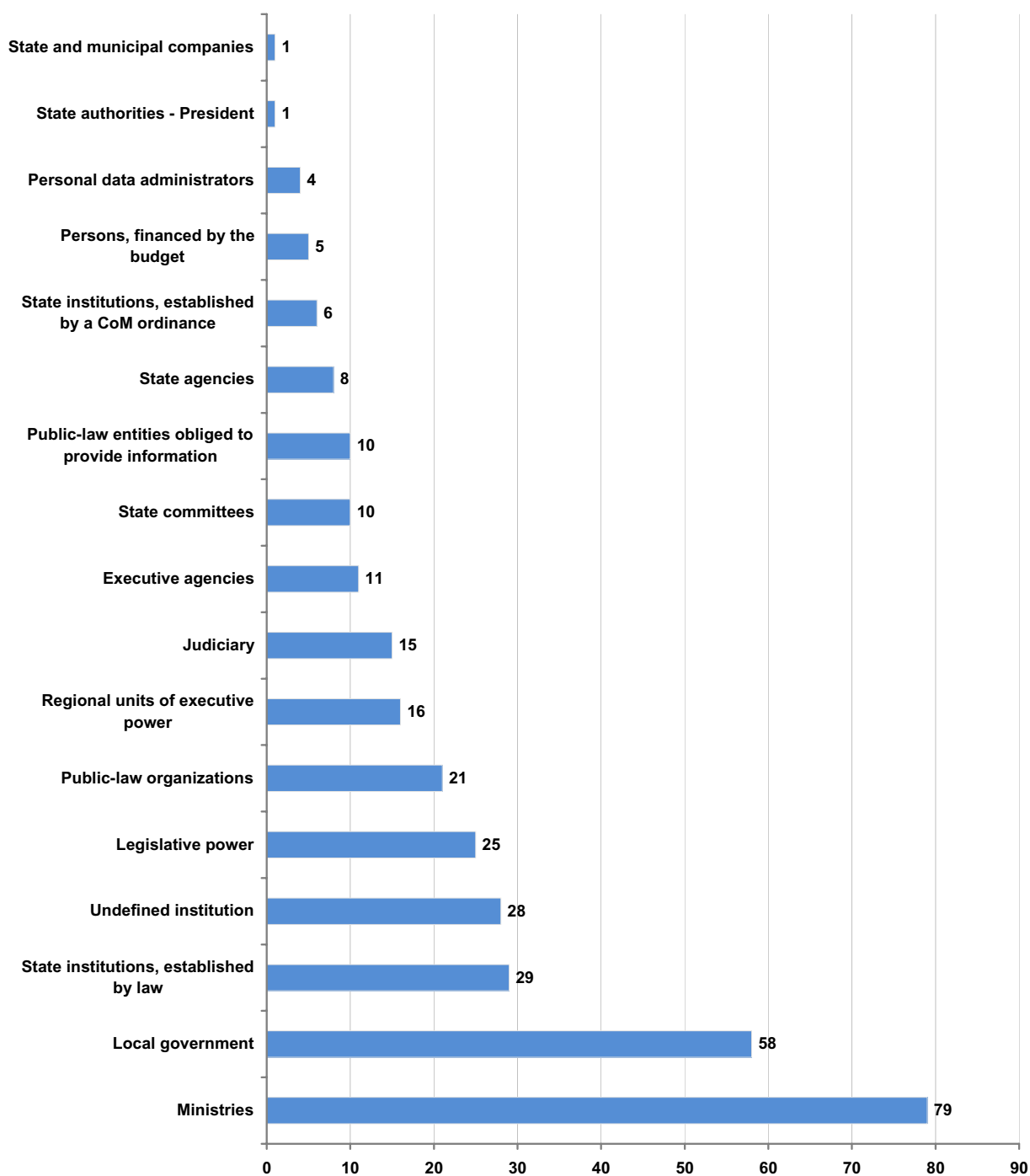
Grounds for refusal



Source: AIP Data Base, 2009

Data refer to total number of cases related to access to information

Institutions, where information is sought



Source: AIP Data Base, 2009

LITIGATION

In 2008, an essential part of the legal help that the AIP team has provided was preparation of complaints to the court and representation of requestors who had sought the help of AIP. During the year, AIP legal team prepared a total of forty-five complaints, assisting citizens and organizations. Out of this number, the complaints to the first instance court are thirty-four (Supreme Administrative Court - eight, Sofia City Court - one, Administrative Court-Sofia City - sixteen, Administrative Courts in the country - nine). The court appeals are four and the appeals against acts terminating judicial proceedings are seven. Out of thirty-four complaint to the courts of first instance, seventeen are against explicit refusals to provide information. The same number of complaints are against silent refusals.

AIP legal team provided legal representation in forty-three cases challenging refusals to provide access to information. During the year, the legal team of AIP prepared nineteen written defenses in cases in which AIP provided legal help. During the year, the courts delivered a number of decisions and rulings on AIP assisted litigation. A considerable part of them was again related to interpretation of different exemptions to the right of access to information, and precisely the introduced by the 2008 APIA amendments principle of *overriding public interest*.

SILENT REFUSALS

The seventeen complaints against silent refusals filed in 2009 show that the situation has deteriorated - in 2008 the complaints were eight. However, the court practice repealing such refusals has sustained. According to the court, the only consistent way to proceed with access to information requests is to either decide to grant access to information or to refuse it with motivated decision. The competent authority must notify the applicant for its decision in writing. Several times the Administrative Court Sofia City (ACSC) and the Supreme Administrative Court (SAC) rescinded silent refusals based on this ground.

This is the case of Ivailo Hlebarov²² against the mayor of Sofia Municipality. The applicant requested a copy of the contract for *Prefeasibility Study* and accompanying documents for the project *Waste Management of Sofia Municipality* financed by EU funds, signed on October 24, 2007 between Sofia municipality and a consortium of three companies (Fichtner GmbH & CO.KG, VT-Engineering Ltd., Aqua consult Ltd.)

Silent refusal was repealed²³ in the instance brought by the Association *WWF - World Wild Fund, conservation in the Danube-Carpathian, Bulgaria* against the silent refusal of the State Forestry - Sofia of an access to information request. The applicant wanted to know whether Vitosha Ski JSC was charged for using and exploiting land near the tourist center *Aleko* in the national park *Vitosha* and if positive for what period and months the fees were paid during 2008.

²² Decision as of June 8, 2009 of the ACSC, 2nd Division, 31st Panel, on adm. case No. 1003/2008.

²³ Decision No. 40 as of May 26, 2009, of the ACSC, 2nd Division, 37 Panel, on adm. case No. 179/2009.

Similar was the development of the case brought by the WWF against the chairperson of the former State Agency for Youth and Sports.²⁴ The requestor sought information regarding the list of entities (including sport federations) which have been funded by the Agency during the period January 1, 2007 - January 1, 2009.

On the ground that the failure of an obliged under the APIA body to issue a decision on an access to information request is unlawful, the ACSC repealed the silent refusal of the Regional Governor of Sofia on a request filed by the citizen Nikolay Veselinov. He had requested information regarding the assignment of development schemes, general and detailed development plans of the territory of Sofia Municipality for the period 2005-2009. The court²⁵ found that the information sought is, undoubtedly, public as it allows the citizens to form their own opinion on the activities of the Regional Governor in exercising his functions and powers in issuing decisions under the Territory Planning Act and in implementing the government policy on territory development.

The ASCS also revoked the silent refusal of the President of the National Assembly.²⁶ The journalist Rosen Bosev from *Capital weekly* requested the list of consultants who provided advice for drafting two draft bills (of the Ministry of Interior Act and for drafting a new law - the Reserve Forces within the National Security System of the Republic of Bulgaria Act). He was also interested what their remuneration was.

A Three-member panel of the SAC once more construed that silent refusals are always unlawful under the APIA. The court rescinded the refusal of the Minister of Health. The action²⁷ was brought by the Chairman of the Foundation *Hope against AIDS* Milen Chavrov. He requested information related to an independent external assessment of the work of NGOs financed by the program *Prevention and monitoring of HIV/AIDS*.

Similar are the reasons of the Five-member panel of the SAC in the case of Plamen Borisov²⁸ from Montana against a silent refusal of the Minister of Interior. He had requested a paper copy of specific documents, which were the basis of police actions against him as a teacher and chairman of the Municipal Coordination Committee of the Bulgarian Teachers Syndicate in the Municipality of Yakimovo.

The SAC adopted the same reasoning as a court of second instance in the case²⁹ against silent refusal of the Sofia Municipality to provide information on the leaves and official trips of the Chairperson of the Sofia Municipal Council.

²⁴ Decision as of May 25, 2009 of the ACSC, 1st Division, 2nd Panel, on adm. case No. 1778/2009.

²⁵ Decision No. 74 as of Nov. 2, 2009 of the ACSC, 2nd Division, 26 Panel, on adm. case No. 4852/2009.

²⁶ Decision as of Jan. 8, 2010 of the ACSC, 2nd Division, 36 Panel, on adm. case No. 1584/2009.

²⁷ Decision No. 15581 as of December 17, 2009 of the SAC, Third Division, on adm. case No. 6496/2009.

²⁸ Decision No. 11326 as of Oct. 5, 2009 of the SAC, Five-member panel, on adm. case No. 7060/2009.

²⁹ Decision No. 3532 as of March 17, 2009 of the SAC, Third Division, on adm. case No. 5863/2008.

PREPARATORY DOCUMENTS

Positive case law with regard to access to environmental information has been accumulated. Twice the court had to consider refusals of access to environmental information on the ground of Art.13, Para. 2 of the APIA since the information allegedly constituted a „preparatory document with no significance in itself.“ In both cases, the court repealed the refusals. The court held that the restriction under Art. 13 of the APIA is not applicable to access to environmental information as the Environmental Protection Act (EPA) is special law as to the APIA and does not contain such ground for refusal.

This is the case of Ivailo Hlebarov, member of the Environmental Association *For the Earth*, against the mayor of Sofia Municipality. The applicant requested a copy of the contract for *Prefeasibility Study* and accompanying documents for the project *Waste Management of Sofia Municipality* financed by Operational Programme *Environment 2007-2013*, signed on October 24, 2007 between Sofia Municipality and a consortium of three companies (Fichtner GmbH & CO.KG, VT-Engineering Ltd., Aqua consult Ltd.). The Municipality refused access to documents as they are part of public procurement documentation and have no significance in themselves. The Administrative Court Sofia City rescinded the silent refusal.³⁰ In its reasoning the court points out that there is no doubt that the requested information relates to the environment, and therefore the authority should have applied the procedure for granting access to information set forth under the EPA rather than to rely on the general provision of the APIA, which, indeed, is inapplicable when it comes to environmental information.

The SAC adopted the same reasoning as a court of second instance in the case of the National Movement *Ekoglasnost* against the refusal of the Ministry of Environment and Water (MOEW) to provide access to the Minutes from the session of the National Council on Biodiversity held on

November 25, 2007, when the buffer zone of Rila mountain was not included in the network for protected environmental areas NATURA 2000 because of two votes short. In their judgment,

justices assumed that the requested protocol was „information related to the environment,“ therefore access cannot be denied on the ground of the provision of Art.13, Para. 2 of the APIA. The first instance correctly assumed that the special law is applicable, namely the EPA, which considers the high public interest in environmental matters and which excludes the restricted access to preparatory documents.

PROTECTION OF THIRD PARTY INTERESTS

A considerable part of the court decisions delivered in 2009 was against refusals of obliged bodies to provide information on the ground of the protection of third party interests. Most often, behind that ground stood trade *secret* or *personal data* and once even *duty of confidentiality ought by lawyers and counselors*. Not seldom, however, the refusals were justified with the mere statement of the fact that the requested information would harm

³⁰ Decision as of August 10, 2009, of the ASCS, 2nd Division, 23 Panel, on adm. case No 1648/2009.

the interests of a third party and that no consent was given for the disclosure (Art. 31 of the APIA).

The SAC ruled that information regarding the exact amounts paid by the Municipal Council to central and local media to publish regulations and announcements did not constitute trade secret. AIP assisted Tsvetan Todorov, editor in chief of *Naroden glas daily*, who brought the action against the refusal of the chairperson of the Municipal Council of Lovech. The justices point out³¹ that the information relates to third parties (the respective media), but did not affect their interests in a way that their explicit consent for disclosure was needed. This would have been the case if the information constituted trade secret, industrial secret or other interest protected by law.

By adopting similar reasoning the SAC repealed the refusal of the Government Information Service (GIS) to provide information regarding the repair works in the office of the former Prime Minister - Sergei Stanishev done in 2007. The action was brought by the journalist Pavlina Trifonova from *24 Hours daily*. The GIS refused information on the overall expenses for the repairs, the bids of the competing companies, as well as the price of each item purchased for the repairs. The refusal was grounded on the protection of third party interests, lack of an explicit consent to disclose the information, and trade secret. The refusal was upheld by three-member panel of the SAC³². The decision was appealed and with its decision³³ as of March 2009 a Five-member panel repealed the decision of the first instance and turned the request back for reconsideration according to the court instructions on the interpretation and application of the law.

Once again the refusal of the government to provide information regarding the contracts with Microsoft Co for the procurement of software licenses necessary for the public administration was repealed. The action was brought by the journalist Rosen Bosev from *Capital weekly*. The complaint was against the refusal of the GIS, grounded on the protection of third party interests, namely of the CAD Research and Development Center „Progress“ Ltd, which explicitly had refused its consent for disclosure. The ACSC overruled the refusal as unlawful³⁴ and returned the case to GIS for reconsideration in compliance with the instructions given by the court. In its judgment, the justices stressed out that the Director of the GIS should have requested the consent for the disclosure of the requested information from the contracting party, namely Microsoft Corporation and not the reseller CAD Research and Development Center „Progress.“ The presented during the hearings Open License Agreement had been signed by Dimitar Kalchev- former Minister of State Administration, and Mr. Bill Gates for Microsoft Co.

In another case the SAC as a second instance upheld the decision of the ACSC that a contract between the State Tourism Agency (STA) and a private company for the provision and exploitation of an exhibition stand at the global exhibition of travel agencies World Travel Market 2007 held in London, is public. In their judgment³⁵ the justices noted that no evidence was deposited in the course of the court proceedings that would substantiate the

³¹ Decision No. 5121, as of April 16, 2009 of the SAC, Third Division, on adm.case No. 7588/2008.

³² Decision No. 13417, as of December 8 2008 of the SAC, Third Division, on adm. case No. 10498/2007.

³³ Decision No. 4273, as of March 31, 2009 of the SAC, Five-member panel, adm. case No. 1205/2009.

³⁴ Decision as of March 20, 2009 of the ACSC, First Division, Seventh panel, adm. case No. 3971/2008.

³⁵ Decision No. 7095 as of June 1 2009, of the SAC, Third Division, adm. case No. 9503/2008.

conclusion that the disclosure of the requested information related to a third party would have affected its interests. Therefore its explicit consent for the disclosure was not needed and in addition no proof that the third party had ever refused to disclose the requested contract was presented before the court.

In another case, the ACSC ruled that a refusal of the Sofia Municipality grounded on the lawyer-client privilege of confidentiality was unlawful. Gancho Hitrov, chairman of the *National Committee for Improvement of Water Supply in Bulgaria* requested a copy of the legal analysis of the performance of the concession contract between the Sofia Municipality and Sofia Water JSC. The subject of the contract was the management of the water system and sanitation in Sofia for the period 2000 - 2007. The mayor's refusal stated that since the legal analysis was drafted by a law firm it falls under the duty of confidentiality ought by lawyers and counselors. In its reasoning, the court³⁶ stressed out that the subject of the *privilege of confidentiality* as defined by the law is only a person having legal capacity and quality as *counselor*. Whatever profession the mayor may have, as an obliged body under the APIA he is not a *lawyer*. Therefore he is not bound to keep the privilege of confidentiality and he cannot rely on this ground to refuse access to information.

Even if the requested information affects third party's interest, but this third party is obliged body under the APIA, his/her consent for disclosure is not required. On this ground, the SAC³⁷ upheld a decision of the Administrative Court of Varna, repealing the refusal of the Mayor to provide a copy of the contract between the municipality and the Regional Police Directorate for the protection of public order within the municipality.

In another case, the SAC ruled that tax and insurance information are not outside the scope of the APIA. According to the court,³⁸ if the tax authority receives a request for such information, it is required to assess whether the affected party is not an obliged body under the APIA or whether there is overriding public interest in disclosing the information. If none of these circumstances are present, the tax authority shall seek the consent of the person to whom the information relates, pursuant to Art. 31 of the APIA. Only after receiving an answer from that party the authority may take a decision.

OVERRIDING PUBLIC INTEREST

In one case, supported by the AIP legal team, the ACSC explicitly motivated its repeal decision with the existence of overriding public interest. The complaint was against refusal grounded on the lack of third party's consent for disclosure. The information sought related to documents held by the director of the National Institute for Preservation of Immovable Cultural Values. The precise document was the authorization of the Director of the Institute given to NGOs to plant on April 29, 2009 a Maple tree in the garden of the National Art Gallery. The requestor also sought all relevant documentation regarding authorizations or refusals of intervention in historic gardens in Sofia, classified as cultural heritage for the period June 1, 2008 - June 1, 2009. The court³⁹ noted that considering the nature of the

³⁶ Decision No. 31 as of June 16 2009 of the ACSC, Second Division, 33 panel adm. case No. 1884/2009.

³⁷ Decision No. 15919 as of Dec. 22, 2009 of the SAC, Third Division, adm. case No. 5460/2009.

³⁸ Decision No. 2045 as of Feb. 16, 2010 of the SAC, Fifth Division, adm. case No. 9995/2009.

³¹ Decision as of Feb. 22 2010, of the ACSC, Second Division, 23 panel, on adm. case No. 5139/2009.

information and the principle of openness and transparency of the management of cultural heritage, set forth in Art. 3 of the Cultural Heritage Act, there is clearly overriding public interest, which requires the body to release the information, even if this would harm interests of third parties. The refusal had been repealed, and the director of the National Institute for Immovable Cultural Heritage (as it was renamed recently) was required to provide the information.

CLASSIFIED INFORMATION

The court repealed two refusals of access to information based on the *official secret* exemption. The first one was the case brought by Peter Penchev, deputy chairman of the National Movement *Ekoglasnost* against the refusal of the chairman of the Nuclear Regulatory Agency (NRA). Information regarding the first and the second reports prepared by the Nuclear Power Plant „Kozlodui,“ as well as all the annexes, regarding the March 1, 2006 incident on the fifth block of the nuclear plant was sought. Access to the annexes was refused on the basis of the *official secret* exemption. The SAC⁴⁰ upheld the first instance ruling,⁴¹ repealing the refusal. The chairman of the NRA was required to provide the information. The first instance had grounded its decision on the lack of motivation of the refusal why the requested information would have been classified and what interests were to be protected.

In another case, the ACSC found that the chairperson of the State Energy and Water Regulatory Commission has unlawfully denied access to the approved business plan of the Water Supply and Sanitation Ltd - Sliven to the citizen Yuri Ivanov. The refusal was grounded on the *official secret* exemption. The court⁴² stressed out that the mere statement that the information was classified is not sufficient for the lawfulness of the classification procedure. To meet the legal requirements the information should be marked with the appropriate level of classification. The evidences brought during the proceedings clearly show that the document lacked the marking *for official use only*.

EXECUTION OF COURT DECISIONS

In 2009, an improvement with regard to the execution of court decisions was observed. For instance, the chairman of the Municipal Council of Lovech executed the judicial decision of the SAC.⁴³ The decision had repealed his refusal to provide information regarding the exact amounts paid by the Municipal Council to central and local media for publishing regulations and announcements for the period 2004 - 2006. In a letter as of May 12, 2009, the chairman handed the information to the editor in chief of *Naroden glas daily*.

Similar was the development of the case of the national movement *Ekoglasnost* against the refusal of the MOEW to grant access to the Minutes from the session of the National Council on Biodiversity held on November 25, 2007, when the buffer zone of Rila mountain

⁴⁰ Decision No.12942 as of Nov.3, 2009 of the SAC, Third Division, on adm. case No. 15672/2008.

⁴¹ Decision No. 777 as of Oct. 17, 2008 of the ACSC, First Division, 15 panel, on adm. case No. 2898/2008.

⁴² Decision No. 71 as of Jan. 18, 2010 of the ACSC, Second Division, 30 panel, on adm. case No. 5399/2009.

⁴³ Decision No. 5121 as of April 16, 2009 of the SAC, Third Division, on adm. case No. 7588/2008.

was not included in the network for protected environmental areas NATURA 2000 because of two votes short. After the final ruling of July 2009 of a Five-member panel of the SAC,⁴⁴ which upheld the first instance decision and repealed the refusal, in August 2009 the MOEW handed the Minutes to the requestor.

The journalist from *24 Hours daily* Pavlina Trifonova also was granted access to information which had been refused by the Government Information Service in 2007 on the overall expenses for the repair works in the former Prime Minister office. The refusal was upheld by a Three-member panel of the SAC.⁴⁵ The decision was appealed and with its decision⁴⁶ as of March 2009, a Five-member panel repealed the decision of the first instance and turned the request back for reconsideration according to the court instructions on the interpretation and application of the law. The GIS did not comply with the instructions of the court. The journalist filed another request in June 2009. In July, the GIS summarized the information and gave it to the requestor.

In another case, after the repeal of the refusal to an access to information request, the institution published all relevant information on its website. The decision as of May 2009 of the ACSC⁴⁷ rescinded the silent refusal of the State Agency for Youth and Sports to provide access to the list of entities, including sports federations, which have received financial assistance from the State Agency for the period January 1, 2007 - January 1, 2009. The action was brought by *WWF - World Wild Fund, conservation in the Danube-Carpathian, Bulgaria*. After the final ruling the State Agency for Youth and Sports uploaded the requested information on its website.

⁴⁴ Decision No.8921 as of July 6, 2009 of the SAC, Third Division, on adm. case No. 15062/2008.

⁴⁵ Decision No. 13417, as of December 8 2008 of the SAC, Third Division, on adm. case No. 10498/2007.

⁴⁶ Decision No. 4273, as of March 31, 2009 of the SAC, Five-member panel, adm. case No. 1205/2009.

⁴⁷ Decision as of May 25, 2009 of the ACSC, First Division, 2 panel, on adm. case No. 1778/2009.

APPENDIX

LITIGATION CASE NOTES

1. *Naroden Glas* newspaper vs. the Municipal Council of Lovech

First Instance Court - administrative case No. 23/2007, Regional Court of Lovech

Second Instance Court - administrative case No. 7588/2008, SAC, Third Division

Request:

On May 18, 2007, Tsvetan Todorov, editor in chief of *Naroden Glas* newspaper, Lovech, submitted a request to the Chairperson of the Municipal Council of Lovech to obtain access to the following information:

- Information on the amount of funds spent for publication of regulations and announcement in local and central newspapers for the period 2004 - 2006 out of the municipal budget (Pursuant to the Local Self-Government and Local Administration Act those shall be promulgated in a local newspaper);
- Information on how the funds were allocated among the respective newspapers - numerically;
- Information on who and how identified which newspaper shall print the announcements. What were the selection criteria?

Refusal:

With a decision as of June 1, 2007, the Chairperson of the Municipal Council provided to the requestor information that the total amount of money spent out of the Municipal Council's budget for publications in central and local newspapers covering the period 2004-2006 was 853, 00 BGN. The Chairperson refused to provide information about the allocation of the funds among the respective newspapers since that was information that would affect the interests of third parties and may not be disclosed without their explicit consent (Art. 37, Para. 1, Item 2 of the APIA). The Chairperson further informed the requestor that the municipal administration published announcements in different media whose selection was guided by the prices they offered and the audience they covered.

Complaint:

The partial refusal was appealed before the Regional Court of Lovech (RCL). The complaint stated that it was not in the interest of the administration to keep the information on how public funds were spent from the society. The budget and the way it was allocated, including the municipal budget, was a public matter. The law itself provided for a balance in favor of the citizens' right to know how public funds were spent. It was also stated that according to the Supreme Administrative Court (SAC) practice, the mere allegation that certain information affected the interests of a third party was not sufficient ground for refusal. A particular exemption, for example, trade secret, should be present.

Developments in the Court of First Instance:

After the start of the proceedings in the RCL, two of the media (*Duma* daily and *Lovech Press*) which had received funds from the municipality for the publication of regulations and announcements were constituted as interested parties. The case was heard in an open court session in March 2008 and was scheduled for judgment.

Court Decision:

With a Decision No. 2 as of March 21, 2008, a panel of the Regional Court of Lovech dismissed the complaint. In their judgment, the justices noted that it had been evidenced that the Municipal Council had requested the consent of *Duma* daily and *Lovech Press* and they had explicitly, in a written form, dissented the disclosure of the requested information. It was also pointed out that in such cases, Art. 31, Para. 4 of the APIA provided that the administrative body had the discretion to refuse or to provide access in a manner that did not reveal information about those third parties. That discretion, however, was within the scope of the operational independence of the respective body and provided for a legal opportunity, rather than an obligation, thus was not subject to court oversight. The court judgment ended with the conclusion that the information about the amount of money received by each newspaper for publications constituted trade secret.

Court Appeal:

The decision of the Regional Court of Lovech was appealed by Tsvetan Todorov with the help of AIP before the SAC. The appeal stated that in the particular case no information that would affect the interests of a third party as under the stipulations of the law had been requested. No information that might have harmed a trade secret as defined by the procedure and pursuant to the provisions of the Fair Competition Act had been requested. The requested information was about the amount of money allocated by the Municipal Council for the publication of regulations and announcements. Spending of public money should be transparent to the highest extent. For that purpose, the least possible to be done was to provide information about the amount of money spent on particular activities. The written dissent of the third parties in the current case was irrelevant. The fact of receiving payments from a public institution could not be a subject of secrecy by itself. That was why the current case was not about the legally protected right of a third party to express dissent which might serve as a ground for refusal. The obliged body under the APIA should have decided by itself that no ground for restriction of the right of access to information had existed and that access should have been provided. Lastly, arguments were set forth that it had not been proven that the requested information constituted trade secret and its disclosure might have resulted in unfair competition.

Developments in the Court of Second Instance:

The case was heard in an open court session on February 16, 2009. Written notes were presented on behalf of the complainant, stating the recently established practices by the SAC on an identical case against the refusal of the mayor of the Municipality of Razgrad. According to that judgment of the SAC, information about money allocated by the municipality to local media for the publication of decisions, orders, announcements, invitations, protocols and other documents of the municipality, were public information under the stipulations of the APIA and should be provided at a request.

Court Decision:

With a Decision No. 5121 as of April 16, 2009, a panel of the SAC, Third Division, repealed the decision of the Regional Court of Lovech, repealed the refusal of the Chairperson of the Municipal Council and obligated the latter to provide access to the information requested under point 2 of the request within a 14-days period after the decision came into effect. In its judgment, the court found that no evidence had been presented during the proceedings to prove the conclusion that the provision of the requested public information related to third parties would have harmed their interests in a way that would have conditioned the necessity of their explicit consent for the disclosure - trade secret, production secret or other circumstance legally protected from public access. It also found ungrounded the conclusions of the regional court that the information requested under point 2 of the request for access constituted trade secret. Such an argument had not been set forth neither by the administrative body, nor by the interested parties. It was apparent from the explicit dissents of the third parties that they did not contain any statements that might have grounded them in the trade secret exemption. Quite the contrary, blanket statements like "our interests would be harmed" were used which did not correspond in any way to the conclusion that the dissents would protect the trade secrets of third parties. The judgment of the court panel ended with the conclusion that all bodies obliged under the APIA which used the trade secret exemption should state the circumstances relevant for the respective case which conditioned the requested information as protected. The obliged body should state which characteristics of the requested information defined it as a trade secret whose disclosure might harm the interests of the person they concerned. That was why the quotation of a legal text was not enough as a ground, making the refusal ungrounded.

2. Ivailo Hlebarov vs. Sofia Municipality

First Instance Court - administrative case No. 1648/2009, ACSC, Second Division, 23 panel
Second Instance Court - administrative case No. 13928/2009, SAC, Fifth Division

Request:

In early December 2008 Ivailo Hlebarov (member of the Environmental Association *For the Earth*) filed an access to information request to the mayor of Sofia Municipality. He requested information relating to the project *Waste Management of Sofia Municipality* financed by the Operational Programme „Environment“ 2007-2013, precisely copies of activities No. 6 and No. 7 under the project and annexes to them.

Refusal:

With a letter as of January 2009, Julia Nenkova, Deputy Mayor of Sofia Municipality, refused to provide access to the requested information on the ground of Art. 13, Para. 2, as it related to the preparatory work of an act and had no significance in itself. The grounds for the refusal also stated that disclosure of the information would harm the interests of third parties, who would eventually participate in public procurement tender procedures.

Complaint:

The refusal was challenged before the ACSC. The complaint stressed out that the requested information is environmental information within the meaning of Art. 19 of the Environmental Protection Act (EPA). Therefore, refusal grounded on Art. 13, Para. 2 of the APIA is unlawful as the only applicable grounds for refusal of access to information, related to the environment are listed under Art. 20, Para. 1 of the EPA, among which there is no ground for refusal, similar to the one under Art. 13, Para. 2 of the APIA. As to the argument of the Municipality, that disclosure of requested information would harm interests of third parties-potential beneficiaries of European funds, the complaint stated that the latter is unfounded and irrelevant to the case. This is so, because the requested information itself is part of application forms (i.e. application form for EU funds and projects). Access to specific filled-in forms was not sought; therefore, interests of potential participants in public procurement tender procedures could not have been harmed.

Developments in the Court of First Instance

The case was heard in an open court session and was scheduled for judgment.

Court Decision:

With a decision as of August 10, 2009 a panel of the ACSC repealed the refusal and returned the case for reconsideration. The court stressed out that undoubtedly the requested information related to the environment, therefore the authority should have applied the procedure for granting access to information set forth under the EPA rather than to rely on the general provision of the APIA, which, indeed, is inapplicable when it comes to environmental information. According to the court the fact that the requested documents are part of an application form for public procurement tender procedure is not in itself a ground for refusal. The protection of hypothetical future interest of third parties, who would eventually participate in the tendering, is even less legitimate restriction of the right of access to information.

Court appeal:

The Sofia Municipality appealed the decision of the ACSC to the SAC. The appeal stated that disclosure of the information would undoubtedly affect interests of third parties despite the fact that tender procedures have not been held yet.

Developments in the Court of Second instance:

A hearing of the case at an open court session is scheduled for June 16, 2010.

3. Krum Blagov (*Standard daily*) v. Regional Court Sofia

First Instance Court - administrative case No. 4111/2009, ACSC, First Division, 2 panel

Second Instance Court - administrative case No. 3879/2010, SAC, Fifth Division

Request:

On April 30, 2009 Krum Blagov, journalist from *Standard daily*, filed a request for access to information to the chairperson of the Regional Court Sofia (RCS) to obtain access to the following information, related to jurors sitting in RCS:

- How many days during 2008 each of them has sat as juror in public hearings;
- What is the remuneration due for sitting as juror;
- Has a juror sat in more than one open court session the same day. If positive how many are these cases;
- How many and who are the jurors members to the Committee of Jurors within the RCS;
- How many meetings this Committee had held;
- Have internal rules on the work of jurors been adopted? Have rules of conduct of the jurors been adopted?

Refusal:

With a letter as of May 13, 2009 the Chair refused access on grounds that the requested information was statistical in its nature, and did not fall under the definition of public information stipulated by Art. 2, Para. 1 of the APIA.

Complaint:

The refusal was challenged before the ACSC. The complaint stresses out that the refusal is unlawful as it conflicts with Art. 2, Para. 1 of the APIA. The statistical information is not outside the scope of the law. Furthermore, it is obvious that significant part of the requested information is not statistical information.

Developments in the Court of First Instance:

The case was heard in an open court session in October 2009 and was scheduled for judgment.

Court Decision:

With a decision as of November 6, 2009 an ACSC panel upheld the chairman's decision in its part refusing access to information sought under the first three items of the request and repealed it in the part refusing access to information sought under items 4-6. According to the court the information sought under the first three items related to activities of rendering justice, therefore could not be accessed pursuant to the APIA. Only the Inspectorate within the Supreme Judicial Council and the Minister of Justice can require such information and only pursuant to the Judiciary Act. With regard to the information under items 4-6 the court considered that access to it would enable the requestor to make his own opinion on the administrative activities of the court and that this kind of information falls under the scope of the APIA.

Court appeal:

The first instance decision was appealed to the SAC by both parties. By the requestor - in its part which dismissed the complaint with regard to items 1-3, and by the chairman of the RCS in the part repealing its refusal with regard to items 4-6. An open hearing of the case is to be scheduled.

4. National Committee for Improvement of Water Supply in Bulgaria vs. Sofia Municipality

Court of First Instance - administrative case No. 1884/2009, ACSC, Second Division, 33 panel

Court of Second Instance - administrative case No. 10514/2009, SAC, Fifth Division

Request:

On December 23, 2008 Gancho Hitrov, chairperson of the *National Committee for improvement of water supply in Bulgaria*, filed a request of access to information for a copy of the legal analysis of the performance of the concession contract between the Sofia Municipality and Sofia Water JSC for the period 2000-2007, drafted by a law firm in late 2008 on the Municipality request.

Refusal:

With a decision as of February 2, 2009 the mayor refused access because the legal analysis was drafted by a law firm and it fails under the duty of confidentiality of lawyers and counselors.

Complaint:

The refusal was challenged before the ACSC. The complaint stresses out that the duty of confidentiality is not an exemption under the APIA, nor under any special law regulating access to information and its restrictions. Pursuant to Art. 7, Para. 1 the free access of information may be limited only if exemption is provided for by law. Second of all, subject to the duty of confidentiality is the attorney at law - he is not entitled to disclose information related to his/her client. It would be unreasonable the obligation of confidentiality to be a burden to the client.

Developments in the Court of First Instance:

The case was heard in an open court session and scheduled for judgment.

Court Decision:

With a decision No. 31 as of June 16, 2009 a panel of the ACSC repealed the mayor's refusal and returned the case for reconsideration. The court emphasized that the subject of the *duty of confidentiality* as defined by the law is only a person having legal capacity and quality as *counselor*. Whatever profession the mayor may have, as an obliged body under the APIA he is not a *lawyer*. Therefore, there is no legal requirement for the mayor to protect the information on grounds of *duty of confidentiality of lawyers* and cannot rely on it this ground to refuse access to public information.

Court appeal:

The ACSC decision was appealed by the mayor before the SAC. The appeal stated that the requested information was not public as defined under the APIA.

Developments in the Court of Second Instance:

The case was heard in an open court session on February 24, 2010 and was scheduled for judgment.

Court Decision:

With its decision No. 4195 as of March 30, 2010 the SAC upheld the first instance decision. The court did not consider the argument that the information was not public as defined by the APIA because the refusal was not based on that ground and such objection was not raised before the first instance.

5. Nikolay Tsvetkov vs. the Municipality of Varna

Court of First Instance - administrative case No. 2917/2008, Administrative court - Varna

Court of Second Instance - administrative case No. 5460/2009, SAC, Third Division

Request:

On September 24, 2008 Nikolay Tsvetkov filed a request to the mayor of Varna. He sought access to the contract between the municipality and the Regional Police Directorate (RPD) for the protection of public order within the municipality, signed in 2000.

Refusal:

With a decision as of September 29, 2008 the secretary general of municipality of Varna refused access to information on ground of Art. 37, Para. 1, item 2 of the APIA. According to the decision, the information affects the interest of a third party (the RDP - Varna) which did not consent to the release of information. It is pointed out that disclosure would jeopardize the well established and effective system of order protection and would create possibilities of abuse with the information contained in the contract.

Complaint:

The refusal was challenged before the Administrative Court - Varna. The complaint stated that Art. 31, para. 5 APIA does not require the explicit consent of the affected third party, when it is obliged body under the APIA itself and when the requested information is public information as defined by the law. In our case both conditions were met. On one hand the RDP-Varna is obliged to provide information body (Art. 3, para 1 APIA). On the other hand, the information sought is undoubtedly public within the meaning of Art. 2, para. 1 as it relates to the public life and gives the requestor an opportunity to make his own opinion on the activities of the municipality and the RDP-Varna in performing their duties to maintain the public order.

Developments in the Court of First Instance:

The case was heard in an open court session and scheduled for judgment.

Court Decision:

With decision No. 111 of February 2, 2009 the Administrative Court-Varna repealed the decision and gave binding instructions to the mayor to grant access to the contract. The Court ruled that both parties - the municipality and the RPD-Varna are obliged bodies within the meaning of Art. 3, Para. 1 of APIA. The case falls under Art. 31, Para. 5 of the APIA, therefore the consent of the third party was not compulsory. Furthermore, even if the information affects third party's interest the information shall be released if there is overriding public interest in disclosure. In addition, the court states that providing a copy of the contract would not undermine public order, nor would jeopardize the effectiveness of its protection, which depends only on the specific operational activities of the Police in performing the terms of the contract.

Court Appeal:

The decision of the lower court was appealed by the mayor to the SAC. The appeal stated that the first instance court did not consider at all whether the requestor had legal interest to seek the information, consequently to appeal the refusal of access to it.

Development in the Court of Second Instance:

The case was heard in an open court session in December 2009 and scheduled for judgment.

Court Decision:

With decision No. 15919 as of December 22, 2009 the SAC upheld the first instance decision. The Justices stated that the exercise of the right to information in this case cannot harm third party's interests, nor can be a danger to the public order within the municipality. The decision is final.

6. Pavlina Trifonova (*24 Hours daily*) vs. the Government Information Service

First Instance Court - administrative case No. 2977/2007, Administrative Court Sofia City, II Division, 37th Panel

First Instance Court - administrative case No. 10498/2007, SAC, Third Division

Second Instance Court - administrative case No. 1205/2009, SAC, Five-member Panel - First Panel

Request:

On June 14, 2007, Pavlina Trifonova, a journalist in *24 Hours weekly*, submitted a request under the procedure stipulated by the Access to Public Information Act (APIA) to the Government Information Service (GIS). The journalist requested access to information about repair works in the office of the Prime Minister - Sergei Stanishev. More specifically:

- What was repaired and what was the total cost of the repair works?
- What had conditioned the repair works?

- Which were the contracted companies, which were the other bidders in the public procurement tender and why the contractors were selected among others?
- What were the bids of the other competing companies?
- What was the price of the new furniture, by listing the price of every item?
- Who selected the new furniture?
- What would be done with the old furniture?
- When was the last time the office of the Prime Minister had been repaired?

Refusal:

On June 28, 2007, the journalist received a letter from the Director of the GIS - Ms. Tania Dzhadzheva. The information provided with the letter was scarce and gave answers to some of the questions that had been set forth. With regard to the rest of the questions, an explicit refusal had been issued. The letter informed that the reparation works had been planned as an activity and included replacement of the floor cover, replacement of the electrical system and internal wiring, wall painting, replacement of furniture in the office, etc. The reparation works were done by „Radina Gesheva“ Architecture Atelier which had subcontracted the services of four companies. The answer went that the last reparation works of the cabinet had been done 9 years ago, that the new furniture had been selected by a five-member commission, and that the old furniture would be used in other rooms and offices of the building of the Council of Ministers (CoM) after a respective reparation (lacquering, reupholstering). With regard to the rest of the questions related to the other bidders in the public procurement, the price they had offered, as well as the price of every item, a refusal was issued on the ground of the provision of Art. 37, Para. 2 of the APIA since the information regarded third parties' interests and their written consent for the disclosure had not been obtained. Besides, according to the Director of the GIS, the bidders in the tender for that special public procurement had signified that part of the information was confidential.

Complaint:

With the assistance of AIP, the answer of the GIS was appealed in its part which had refused information before the Administrative Court - Sofia City (ACSC). Since the answer had been too broad, while the questions set forth in the request were very specific, a comparison was made in the complaint between the questions and the respective parts of the answer of the GIS. It was apparent from the comparison drawn that a partial refusal had been issued. There was a silent refusal with regard to the information about the overall cost of the reparation works, the grounds for selecting the contracting company, the names of the four subcontracting companies, and the names of the five-member commission which had chosen the furniture. There was an explicit refusal on the ground of the provision of Art. 37, Para. 1, Item 2 of the APIA (information regarding third party's interests and their written consent for the disclosure had not been obtained) with regard to the information about the names of the bidders in the public procurement tender procedure, the price they had offered, and the price of the furniture (by items).

Developments in the Court of First Instance:

The case was heard and twice postponed by the ACSC for the collection of evidence. At the third session, it was scheduled for judgment. Subsequently, the court withdrew its ruling for starting the court proceedings and sent the case to the jurisdiction of the Supreme Administrative Court (SAC). The SAC heard the case in two court sessions, in May and October 2008, and scheduled it for judgment.

Court Decision:

With a Decision No. 13417 as of December 8, 2008, a panel of the SAC, Third Division, dismissed the complaint. The court panel assumed that the refusal of the Director of the GIS had been issued in compliance with the provision of Art. 37, Para. 1, Item 2 of the APIA since the information about the overall costs of the prime minister's office planned reparation works, the price of the new furniture, and the names of the bidders in the tender for a public procurement for the reparation works affected third party's interests as under the provision of Art. 31, Para. 1 of the APIA.

Court Appeal:

The decision of the three-member panel of the SAC was appealed before a five-member panel of the same court. It was argued that the appealed administrative decision clearly showed that the Director of the GIS had used the APIA provided exemption, which gave grounds for a refusal of information when it affected the interests of a third party and its consent for the disclosure had not been obtained, without following the procedure of seeking for the third party's consent. It was also noted that according to the SAC practices, pursuant to the APIA, an assessment should be made in every particular case if any third party rights or legal interests might be affected by a request for access to information. No evidence that the administrative body had made such an assessment in the particular case was traceable in the grounds of the appealed decision. It was not clear why it had been decided that the request for access might affect rights or legal interests of a third party.

Developments in the Court of Second Instance:

The case was heard in an open court session in March 2009 and scheduled for judgment.

Court Decision:

With a Decision No. 4273 as of March 31, 2009, a Five-member Panel - Panel I of the SAC repealed the decision of the three-member panel which had dismissed the complaint, repealed the partial refusal of the Director of the GIS, and turned the request back for reconsideration after the court instructions about the interpretation and application of the law. According to the court, no evidence was found during the proceedings for requesting the written consent of the third party whose interests would have been affected by the provision of information about it. If the obliged body had quoted the legal exemption, it should have sought the explicit written consent of the third party or parties and if such had been refused, then it should have grounded the refusal in the lack of consent. The court panel also found that the Director of the GIS quoted the provision of Art. 17, Para. 2 of the APIA as a ground for the refusal, without specifying the conditions which would have resulted in unfair competition for the companies. The lack of grounds conditioning

the application of the quoted provision determined that part of the refusal as unlawful and necessitated its repealing. The court decision is final.

7. Rosen Bosev vs. the National Assembly

First Instance Court - administrative case No. 584/2009, ACSC, Second Division, 36 panel

Request:

On January 12, 2009 Rosen Bosev, journalist from Capital weekly filed a request to the Chair of the National Assembly seeking the list of consultants who provided advice for drafting two draft bills (of the Ministry of Interior Act and for drafting a new Act - the Reserve Forces within the National Security System of the Republic of Bulgaria Act. He was also interested what their remuneration was.

Refusal:

With a letter as of January 19, 2009 the Secretary General of the National Assembly informed the requestor that the information may be received from the Council of Ministers, as it had introduced the draft bills.

Complaint:

Despite the letter, the journalist brought a complaint before the ACSC against silent refusal of the Chair of the National Assembly.

Developments in the Court of First Instance:

The case was heard in an open court session and was scheduled for judgment.

Court Decision:

With decision as of January 8, 2010 an ACSC panel repealed the silent refusal of the Chair of the National Assembly and sent back the case for reconsideration according to the binding instructions of the court. The justices pointed out that during the proceedings documents from the Registrar Office of the Parliament were presented evidencing that the draft bills were introduced by certain MPs and not by the Council of Ministers as the Secretary General firstly has asserted. In this regard the ACSC panel noted that according to the Rules of procedure of the National Assembly, additional expenses of MPs for assistance, consultations, expert opinions incurred in connection with their work are covered by the budget of the Parliament. Consequently, information related to the legislative initiative of MPs and all financial documents associated with it are kept in the Registrar Office of the National Assembly. Following this conclusion, the court ruled that an obliged body shall always issue an explicit motivated written decision on the access to information request. The decision has not entered into force yet.

8. Non-Governmental Organizations Center Razgrad vs. the National Revenue Agency - Razgrad

First Instance Court - administrative case No. 55/2009, Administrative court - Razgrad

Second Instance Court - administrative case No. 9995/2009, SAC, Fifth Division

Request:

On April 7, 2009 Georgi Milkov, chairman of the association *Non-Governmental Orgaznizations Center Razgrad*, submitted a request to the National Revenue Agency (NRA) - Razgrad. He demanded access to the first page of tax returns submitted to the NRA by the association *Center for Economic Development - Razgrad* for the period 2000-2008. The information available on the first page of each tax return relates to received funds and donations. The requestor was interested whether the association declared incomes from commercial activities and if positive - what were these activities; whether the association declared any profit and if positive - what was the exact amount.

Refusal:

With a decision as of April 16, 2009 the Director of the NRA Regional Directorate - Varna, Razgrad office, refused access on the ground that such information shall be sought under the Tax-Insurance Procedure Code as it falls outside the scope of the APIA.

Complaint:

The refusal was challenged before the Administrative Court - Razgrad. The complaint stressed out the overriding public interest in disclosing the information as it would increase transparency and accountability of the Razgrad Municipality. Supporting argument is the fact that the former mayor of Razgrad is a chairman of the Board of *Center for Economic Development - Razgrad*, and the current mayor is a member. In addition, the Municipal Council bestowed to the association two buildings in Razgrad.

Developments in the Court of First Instance:

The case was heard in an open court session and was scheduled for judgment.

Court Decision:

With a Decision No. 37 as of June 9, 2009 a panel of the Administrative Court - Razgrad dismissed the complaint. According to the court the information consisted tax and insurance information as defined by Art. 72 of the Tax-Insurance Procedure Code and access to it cannot be sought under the APIA.

Court appeal:

The first instance decision was appealed to the SAC.

Developments in the Court of Second Instance:

The case was heard in an open court session on February 10, 2010 and was scheduled for judgment.

Court Decision:

With decision as of February 16, 2010 a panel of the SAC rescinded the first instance decision, the refusal of the NRA and returned the case for reconsideration according to the binding instructions as to the application of the law. The justices found that the requested information did not fall outside the scope of the APIA. According to the court if the tax authority receives a request for such information, it is required to assess whether the affected party is not an obliged body under the APIA or whether there is overriding public interest in disclosing the information. If none of these circumstances are present, the tax authority shall seek the consent of the person to whom the information relates, pursuant to Art.31 of the APIA. Only after receiving an answer from that party the authority may take a decision.

9. Foundation *Hope Against AIDS* vs. the Ministry of Health

First Instance Court - administrative case No. 6496/2009, SAC, Third Division

Second Instance Court - administrative case No. 761/2010, SAC, Five Member Panel

Request:

On February 8, 2009 the Chairman of the foundation „*Hope Against AIDS*“ Milen Chavrov submitted a request to the Ministry of Health. He demanded information related to an independent external assessment of the work of NGOs financed by the Program *Prevention and monitoring of HIV/AIDS*. It is curious to know that the organizations funded by the Ministry through the above-mentioned program are the foundation-requestor and two more NGOs.

Refusal:

On March 16, 2009 the requestor received copy of a letter from the Ministry of Health, dated March 9, 2009 addressed to foundation *Kasper Houser* and foundation I, seeking their consent for disclosure as the requested information related to them as well in their capacity as recipients of funds under the Program. The letter was considered by the requestor as notification for prolongation of the time period for consideration of the request for the protection of third parties' interests within the meaning of Art. 31 of the APIA. Afterwards, the requestor was never given any notice by the Ministry of Health.

Complaint:

The silent refusal of the Minister of Health was challenged before the SAC. The complaint set out several arguments for the unlawfulness of the tacit refusal. It was pointed out that the requestor was aware of the explicit consent of the chairperson of foundation I for the provision of information in his/her answer to the letter of the Ministry.

Development in the Court of First Instance:

The case was heard in an open court session on November 23, 2009 and was scheduled for judgment.

Court Decision:

With a Decision No. 15581 as of December 17, 2009 a panel of the SAC, Third Division repealed the silent refusal and returned the case for reconsideration with instruction for an explicit decision on the access to information request. The court noted that the obliged body shall consider every regular request and assess whether the information is public within the meaning of the APIA. Depending on the assertion, the obliged body shall grant or refuse access by motivated written decision.

Court Appeal:

The first instance decision was appealed by the Ministry of Health to a Five-member panel of the SAC. The appellant argued that the complaint of Milen Chavrov was not filed within the one month period to appeal silent refusals under the Administrative Procedure Code.

Developments in the Court of Second Instance:

The case was heard in an open court session on February 11, 2010 and was scheduled for judgment. Written notes, prepared by AIP were presented on behalf of the foundation-requestor. It was argued that the assessment whether the complaint was filed within time depends solely on whether the letter received by the requestor on March 16 has the nature of notification pursuant to Ar . 31 of the APIA or not. Arguments are set forth that it undoubtedly constitutes such notification, therefore, after its receipt a new time period for consideration of the request, respectively for appealing the decision has commenced.

10. Yuri Ivanov vs. the State Energy and Water Regulatory Commission (SEWRC)

First Instance Court - administrative case No. 5399/2009, ACSC, Second Division 30 panel

Request:

On June 25, 2009 Yuri Ivanov submitted an access to information request to the State Energy and Water Regulatory Commission (SEWRC) for a copy of the approved and applicable business plan of the „Water Supply and Sanitation“ Ltd Sliven.

Refusal:

With a decision as of July 8, 2009 the chairperson of the SEWRC refused to grant access on the grounds that it constitutes official secret.

Complaint:

The refusal was challenged before the ACSC. The complaint stated that Art. 18, Para. 3 of the Energy Act has not been applied. According to this provision, information may be classified as „official secret“ only if it is categorized as „trade secret“ and, cumulatively, if unfair competition would result from its disclosure. Since the „Water Supply and Sanitation“ Ltd Sliven enjoys monopoly and in practice has no other competitor, the „official secret“ exemption is not applicable to this case and refusal grounded on it is unlawful.

Development in the Court of First Instance:

The case was heard in an open court session in October and December 2009 and was scheduled for judgment.

Court Decision:

With decision No. 71 as of January 18, 2010 an ACSC panel repealed the refusal and sent the case back to the chairperson of the SEWRC for reconsideration. The court stressed out that mere declaration by the obliged body that given information is classified is not sufficient ground for refusal. It must be classified according to the procedures set forth under the PCIA. The business plan in question was presented to the court for assessment and it was pointed out that the document was not marked „For official use only,“ therefore the procedure was not respected. The decision has not come into force yet.

PUBLIC ATTITUDES TOWARDS THE RIGHT OF ACCESS TO INFORMATION

ACCESS TO INFORMATION



MAIN RESULTS

National representative public opinion poll on attitudes regarding the right of access to information among adult Bulgarian population

February 2010

Aims and tasks

Aiming at better efficiency of its mission to assist the exercise of the right of access to information, *Access to Information Programme* assigned to *Market LINKS*, a research and consulting agency, to perform a public opinion poll among adult Bulgarian population. The first wave of the public opinion poll was performed in September-October 2008, while the second - in February 2010. The public opinion poll had the following aims:

1. To study the level of awareness about the right of access to public information among Bulgarian citizens.
2. To outline public attitude towards the guarantee and respect of the right of access to public information.
3. To outline practices and problems with obtaining access to public information.
4. To outline public attitudes after the enforcement of the December 2008 amendments to the Access to Public Information Act (APIA) and the ensuing practices.

Right after the first wave of the public opinion poll performed in October 2008, amendments to the APIA as of December 2008 (unrelated to the opinion poll) introduced number of measures to ensure greater transparency in the work of the administration, including proactive disclosure of up-to-date public information on the Internet sites of the public authorities. This information comprise list of the acts issued within the scope of the powers of the respective authority; description of the data bases and resources, used by the respective administration; annual reports on the number of requests for access to public

information, which shall contain data on the refusals made and the reasons therefor. By that time these materials had not been publicly accessible through the Internet.

Citizens who presumably have used information published on the Internet and did not have to submit a request for access to information, explicably do not identify themselves as *having exercised their right of access to public information*. That fact explains why in comparison to the first wave of the public opinion poll, the percentage of those who have exercised their right of access to information remains the same (7% like in October 2008), as well as the percentage of those who are likely to do so if they had particular reasons (64% in 2010 and 63% in 2008).

According to 38% of the respondents the right of access to information is guaranteed in Bulgaria. Their portion has increased with 6% in comparison to the previous wave of the public opinion poll. After the last amendments to the APIA, the percentage of those who believe that the right of access to public information is not guaranteed by the Bulgarian legislation has considerably decreased - now they are 39%, while in 2008 they were 51% of the respondents. 22% of the citizens cannot define their opinion about the legislative guarantees with regard to the right of access to information.

The percentage of adult citizens who are not aware of their right of access to public information has decreased to 52%. For comparison, in 2008 it was over 60%.

The portion of citizens, who know about the *Access to Information Programme*, regardless of their direct or indirect impressions, has increased. The percentage is 41% in comparison to 34% in 2008. An increase is registered among those who are aware of the Access to Public Information Act. They are 45% of all respondents. In 2008, the fraction was 40%.

Almost half of the respondents hold the opinion that the citizens' right of access to public information is not respected in Bulgaria - 46% of all respondents believe that. The fraction, however, has decreased in comparison to the results from the first wave of the public opinion poll when 62% of the respondents hold that opinion. The pessimistic attitude towards the respect of the right of access to information dominates among citizens living in the capital of Sofia - 65%.

In comparison to the previous wave of the public opinion poll and after the media campaign accompanying the APIA amendments in the end of 2008, the portion of adult Bulgarian citizens who are aware of the procedure for obtaining access to public information has considerably increased - 36% of the respondents know (well or considerably well) what they shall do in order to obtain the information they need from state and municipal authorities. In 2008, their portion was 28%. The percentage of those aware of the procedure is higher among respondents from smaller towns in comparison to the respondents from Sofia and other big towns. Nevertheless, the percentage of citizens who are not aware of the procedure is still high.

An increase is registered among those citizens who know (well or considerably well) whom to address to obtain public information. Their percentage is 38% in comparison to 28% in 2008.

Like in the previous wave of the public opinion poll, the question of which institution to address in case of refusal of provision of information remains the most unclear with regard to the procedure for access to public information - 34% do not have a very clear idea, while 39% are definite that they do not know whom to address. The portion of the latter, however, has decreased as compared to the 65% in 2008.

The biggest percentage of those who have exercised their right of access to information is that of citizens who make their request for public information in the institutions themselves - in a written form (39%). Other 37% request information via the Internet - email or electronic contact form on the web site of the institution. Their portion has increased from 28% in 2008, at the account of those who make their request for access to public information at the institution orally - 31% in comparison to 44% in 2008.

The percentage of citizens who state that they need assistance in the process of obtaining public information has decreased to 38% in comparison to 49% in 2008. Other 22% from the respondents, however, stated that they need assistance/consultation in cases when they have been refused access to public information. The portion of those who have declared that they do not need assistance/consultation has increased to 21% in comparison to 13% in 2008.

Out of the citizens who have exercised their right of access to public information, more than two-thirds (68%) state that they have received all of the requested information. In 2008, the percentage was 51%. Another one fourth of the respondents state that they have received information, but not all of it. In 2008, their percentage was 31%. In 2010, the percentage of citizens who have exercised their right of access to public information and received refusals is lower (7%) in comparison with 2008 (12%). The fraction of those who have not received an answer to their request is negligible - 1% in comparison to 6% in 2008.

The decreased number of refusals partly explains why the majority of respondent citizens are not aware of cases in which access to public information has been refused. In 2010, 81% do not know of such a case. Their portion has increased from 73% in 2008. The portion of those who are aware of one or more cases of refusal is only 9% and has decreased from 14% in 2008.

Only one in six respondent citizens who were refused access to information has appealed the refusal. One respondent has not appealed because he/she did not know whom to address, and four respondents did not appeal due to other reasons.

The results from the public opinion poll show that the respondents are mostly interested in decisions of the public authorities which would affect all citizens (60%). Second ranks the declared interest towards public information related to activity reports of local authorities (52% in 2010), which however has decreased from 60% in 2008. The interest towards public information about programs and development strategies has slightly decreased (50% in 2010 and 57% in 2008). The interest towards public registers, however, has increased to 41% in 2010, in comparison to 35% in 2008.

The interest towards access to information related publications and broadcasts in the media registers a downfall during the years of economic crisis. The majority of citizens (60%) state with absolute certainty that they do not follow publications and broadcasts on the topic. Their percentage has increased, in comparison to the first wave of the public opinion poll - 54% in 2008.

Main recommendations:

Regardless of the positive results in comparison to the first wave of the public opinion poll, there is a continuing necessity for:

- Raising awareness campaign on citizens' right of access to public information;
- Training and assistance in cases when institutions refuse to provide public information;
- Publication of information in the media about specific cases of refusal of access to information, measures taken and successful assistance provided by Access to Information Programme.

ACCESS TO INFORMATION

RESULTS



Access to Information Programme



National Representative Public Opinion Poll
February 2010

Methodological Framework – Representative Public Opinion Poll

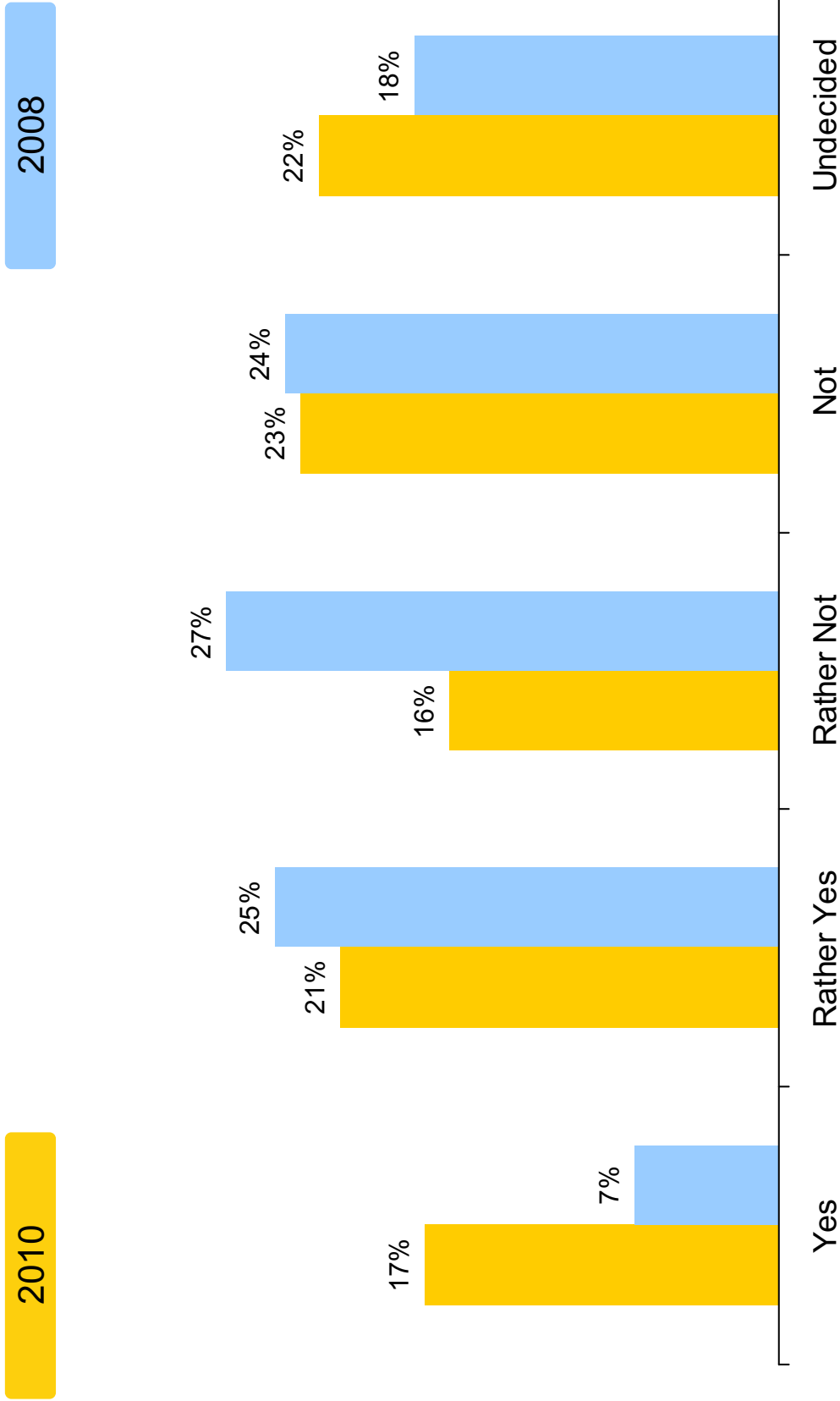


TYPE OF OPINION POLL:	Qualitative
METHOD OF REGISTRATION:	Direct personal interview
POLLED SAMPLE:	Population, 18+
SIZE OF THE SAMPLE:	1143
REPRESENTATION:	National
TIME FRAME:	February 2010

Right of access to public information guaranteed by Bulgarian legislation



Q. Do Bulgarian laws guarantee citizens' right of access to public information?



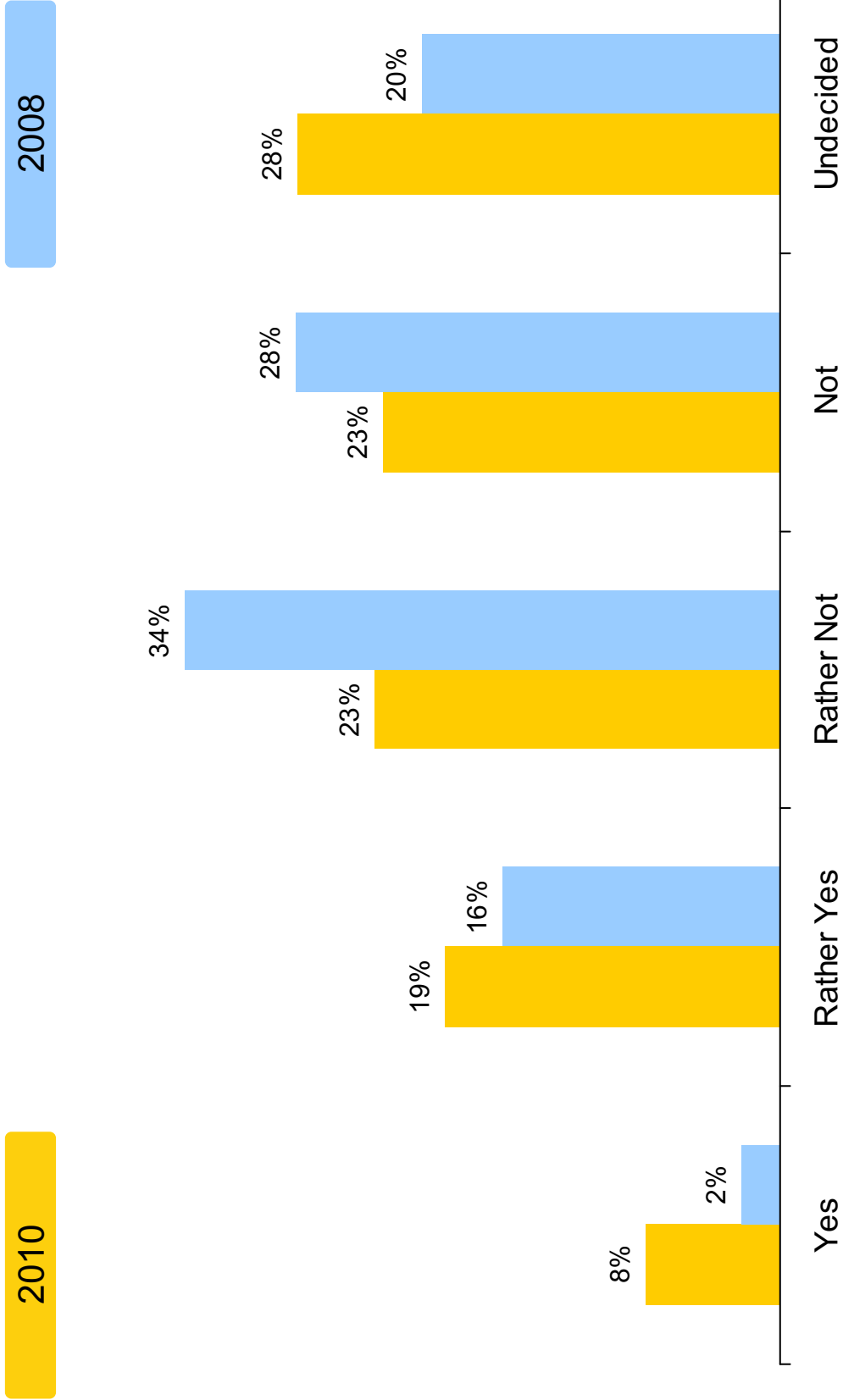
Base: All respondents (1143), 18+

Base: All respondents (1210), 18+

Respect to the right of access to public information in Bulgaria



Q. Is the right of access to public information respected in Bulgaria?



Base: All respondents (1143), 18+

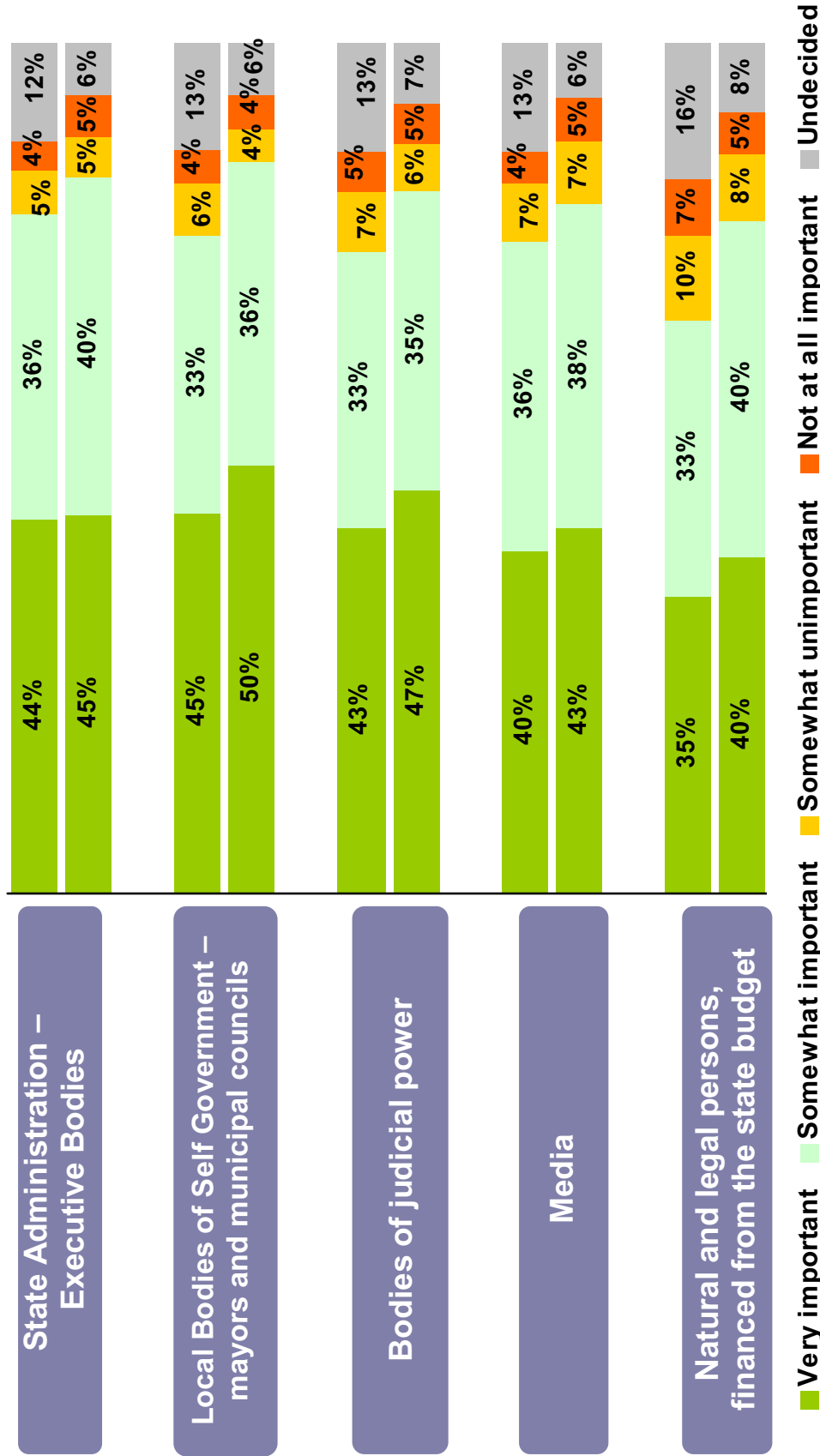
Base: All respondents (1210), 18+

Guarantee and respect to the right of access to public information by the institutions



Q. How important is it that the citizens' right of access to public information is guaranteed and respected by the following institutions:

2010

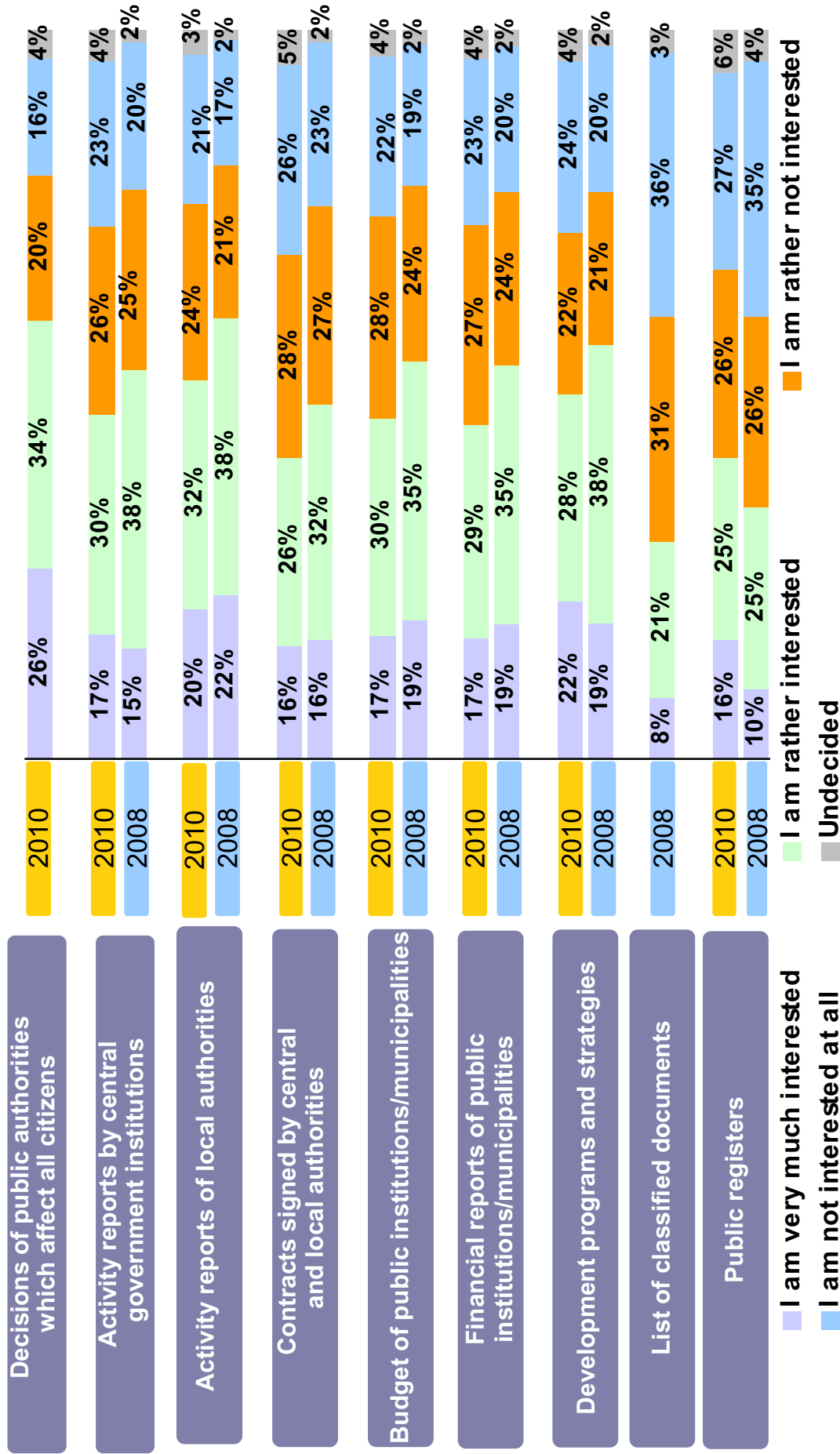


Base: All respondents (1143), 18+

Interest towards public information



Q. To what extent is the following public information interesting to you as a citizen?



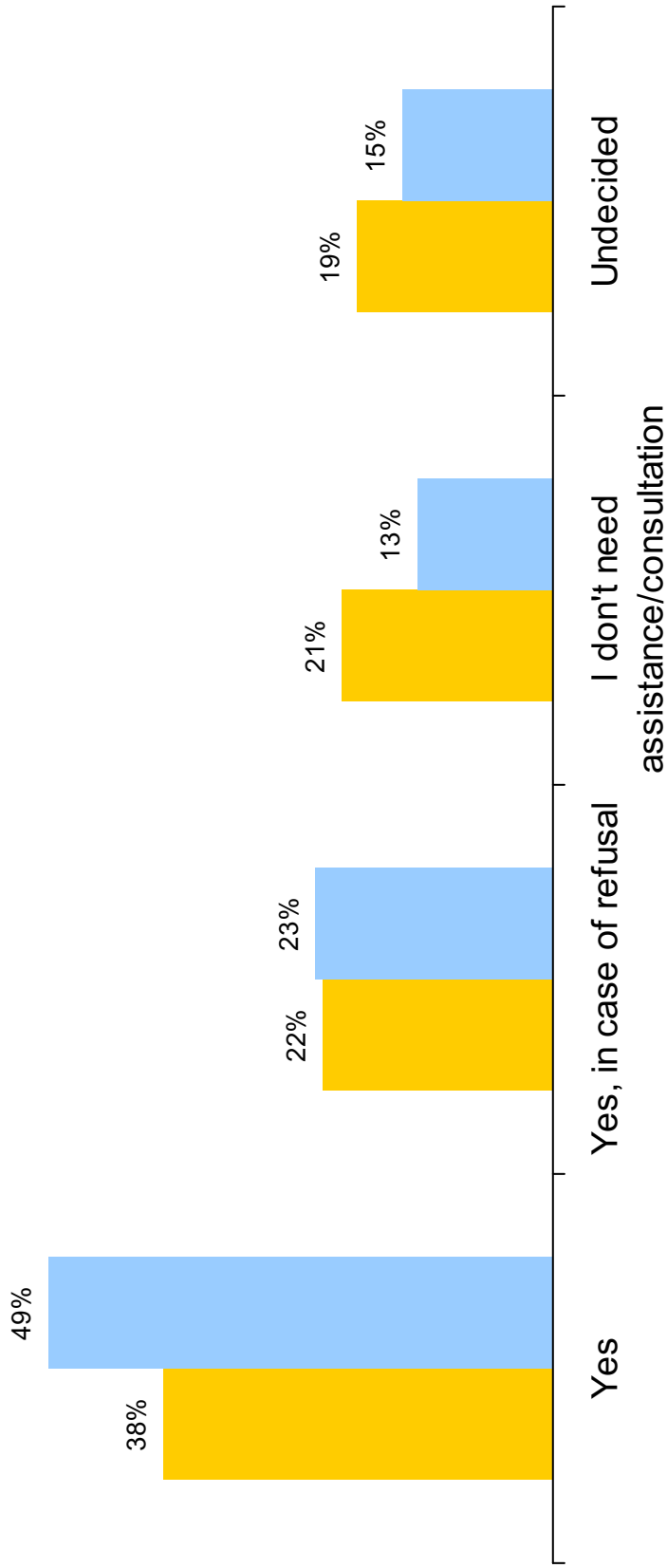


Assistance in obtaining access to public information

Q. Do you need assistance/consultation in cases when you want to obtain access to public information?

2008

2010



Base: All respondents (1210), 18+

Base: All respondents (1143), 18+

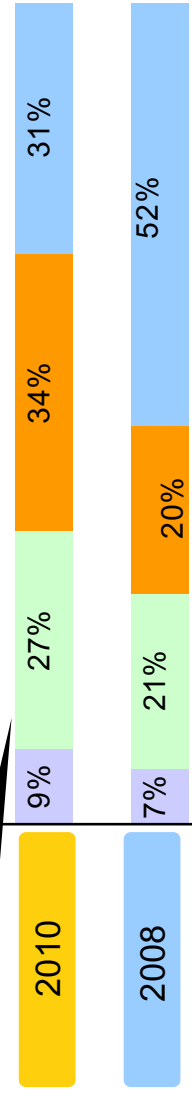
Procedure of obtaining public information



Q. Do you know:

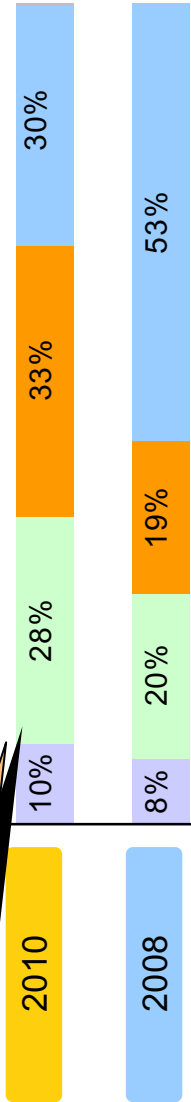
36% of the respondent citizens know what to do in order to obtain public information from a central or municipal administration

What to do to obtain information from central and municipal administration?



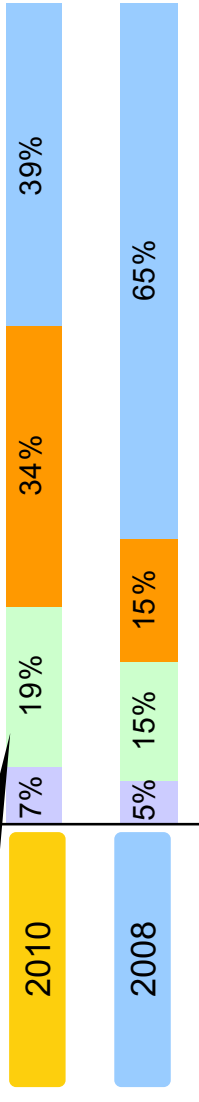
38% of respondent citizens know whom to address in order to obtain public information

Whom to address in order to obtain public information?



26% of respondent citizens know which institution to address in case of public information refusal

Which institution to address in case of refusal of public information ?



■ Yes, I know well
 ■ Yes, I know in general terms
 ■ Rather not
 ■ No, I don't know at all
 ■ No answer

Base: All respondents (1143), 18+

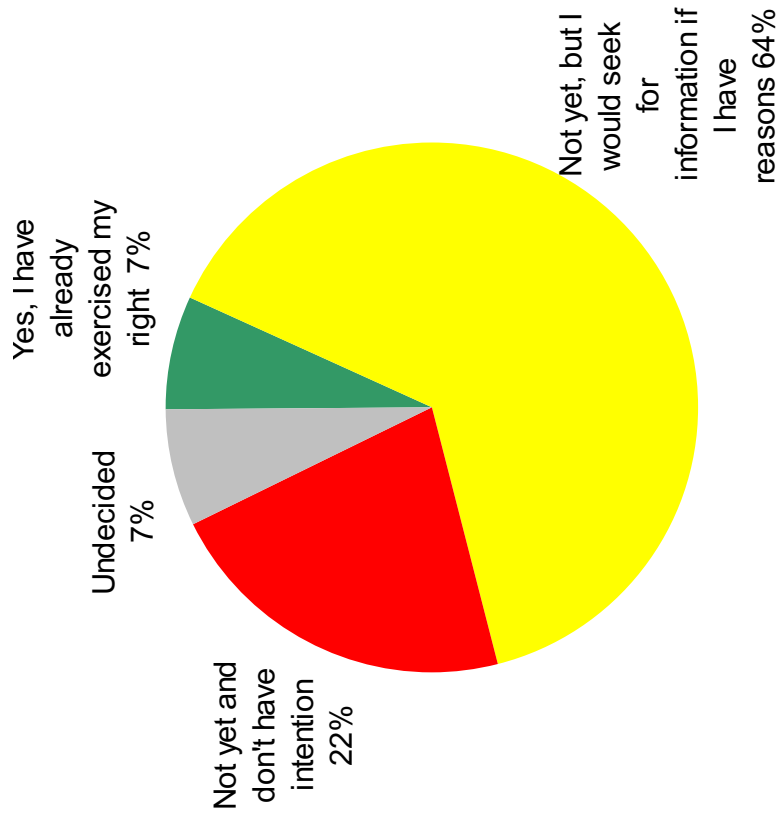
Base: All respondents (1210), 18+

Intention to exercise the right of access to information



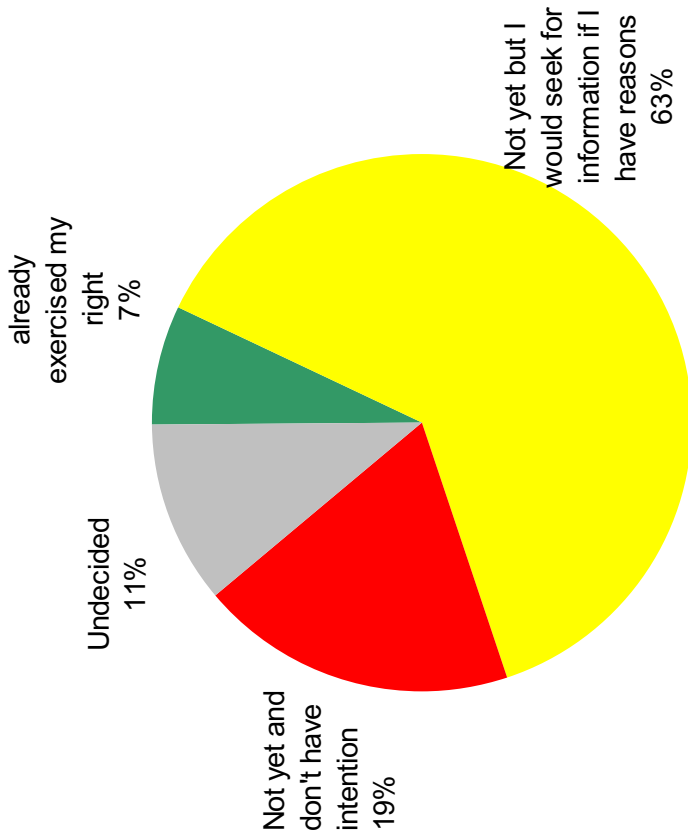
Q: Have you ever exercised the right of access to public information? Do you have intentions to exercise it if you have not done it yet?

2010



Base: All respondents (1143), 18+

2008



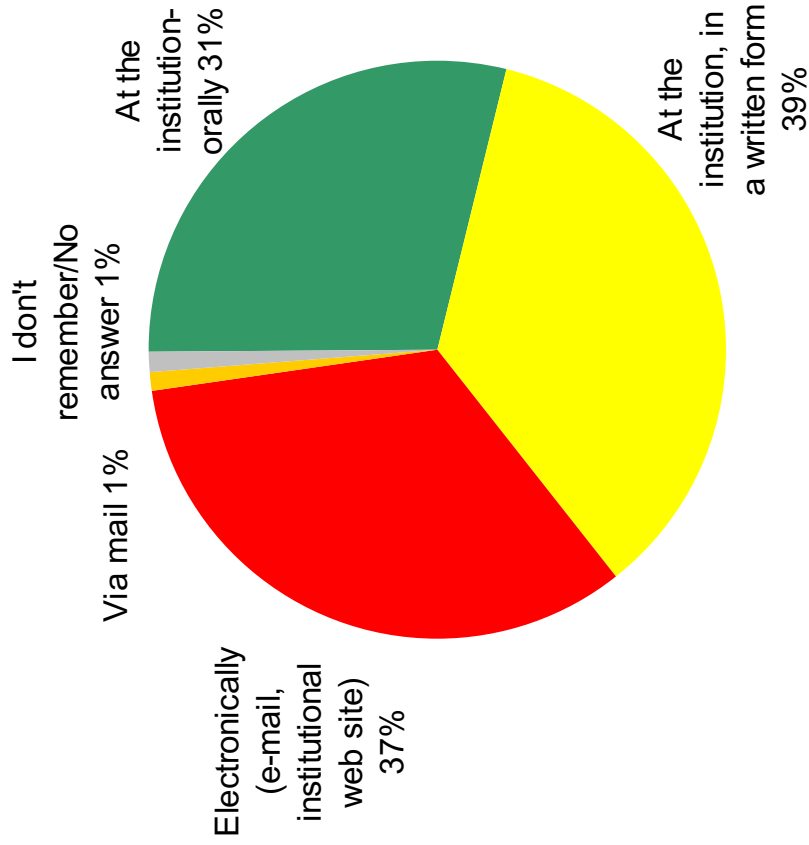
Base: All respondents (1210), 18+

Ways of requesting access to public information



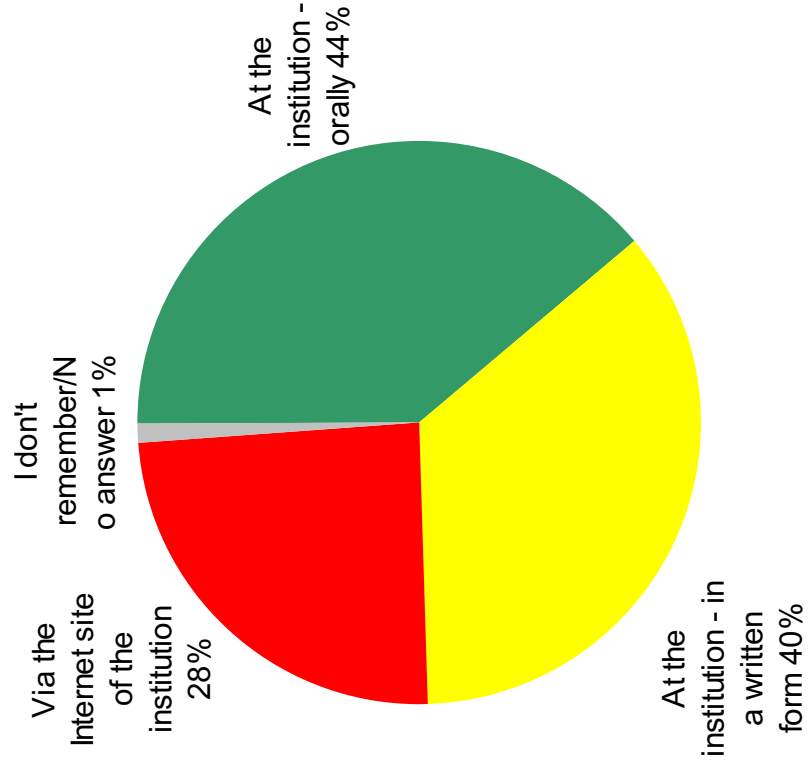
Q: How did you request access to public information?

2010



Base: All respondents who have exercised their right of access to information (80)

2008



Base: All respondents who have exercised their right of access to information (86)

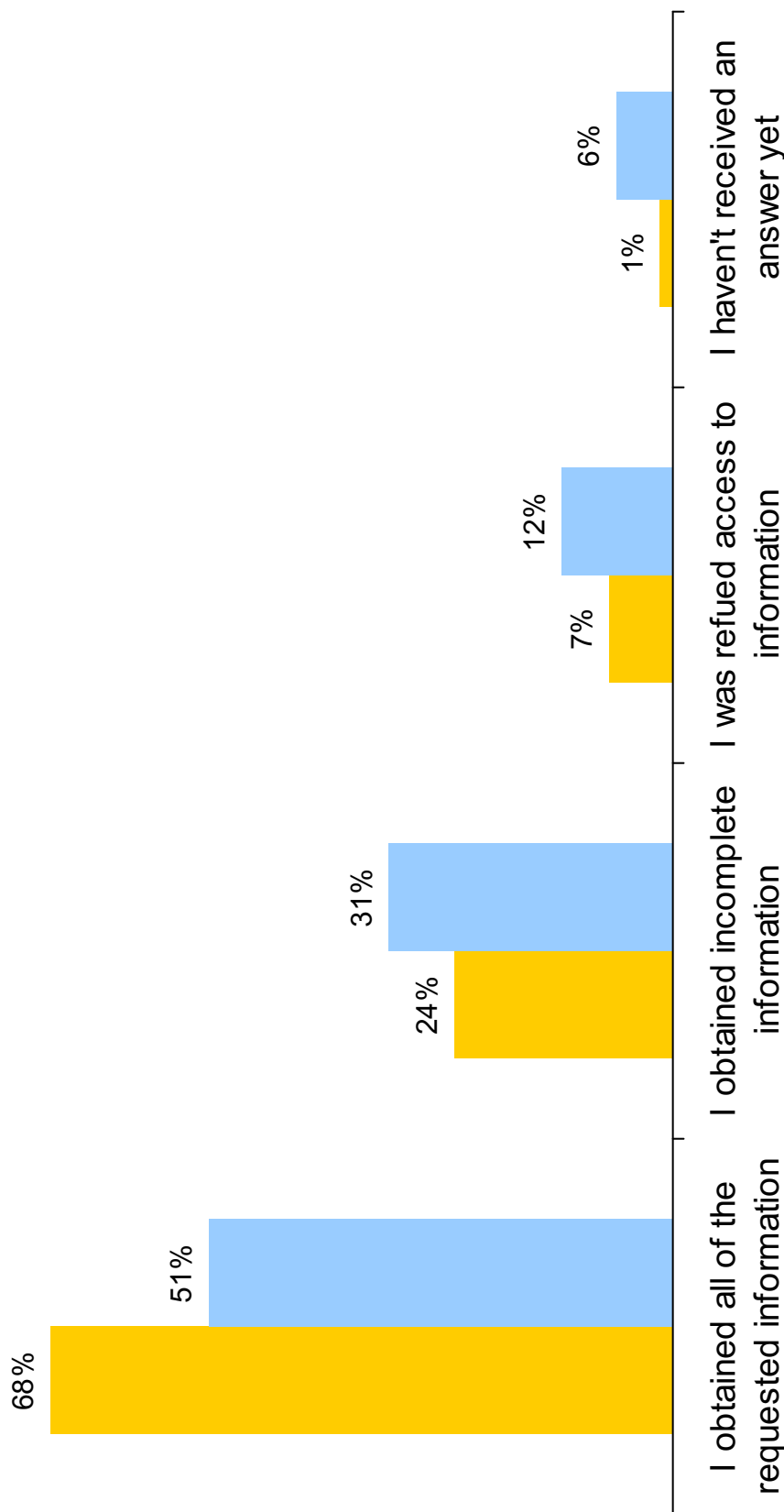


Results after attempts to obtain access to information

Q. What was the result after your attempt to obtain access to public information?

2008

2010



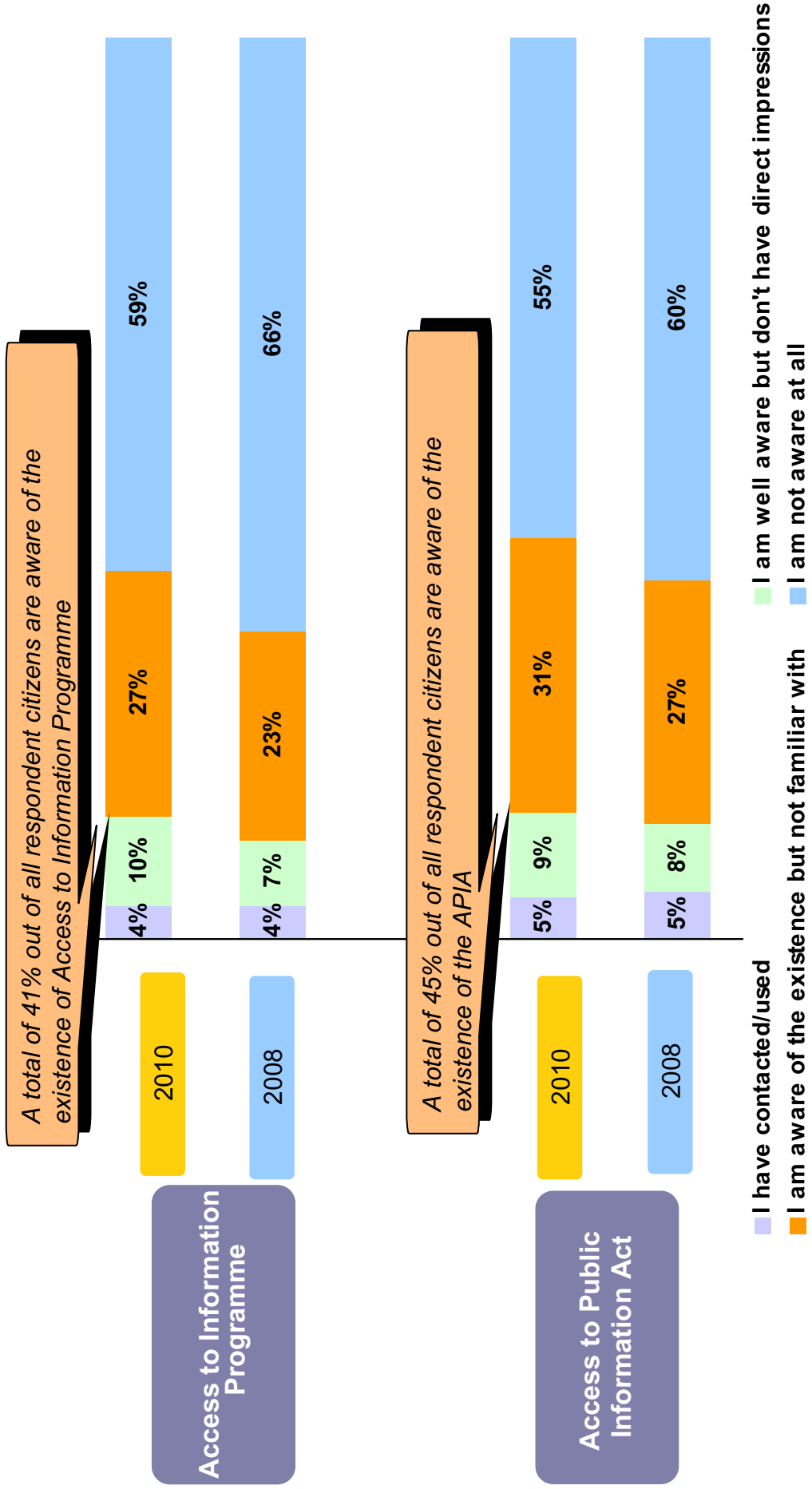
Base: All respondents who have exercised their right of access to information (80)

Base: All respondents who have exercised their right of access to information (86)

Access to Information Programme and the Access to Public Information Act - awareness



Q. Are you aware of the existence of:



Base: All respondents (1143), 18+

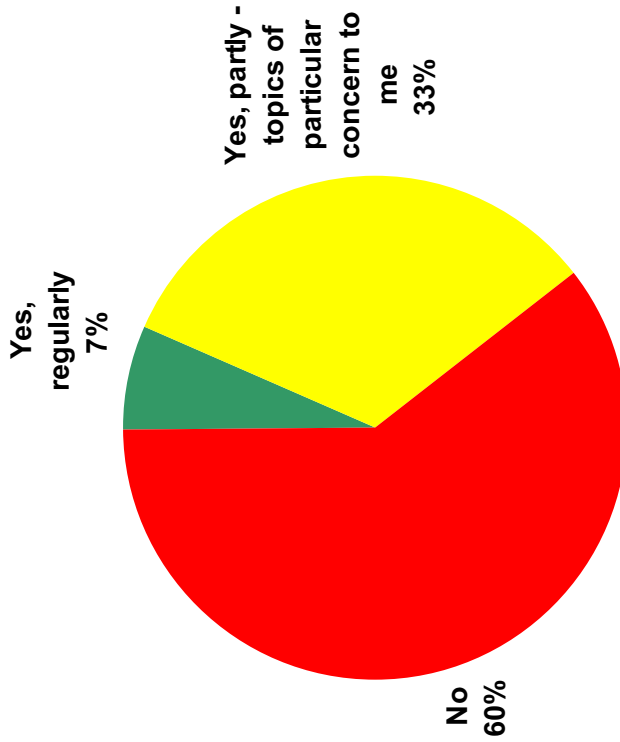
Base: All respondents (1210), 18+

Public interest towards access to information related problems covered by the media

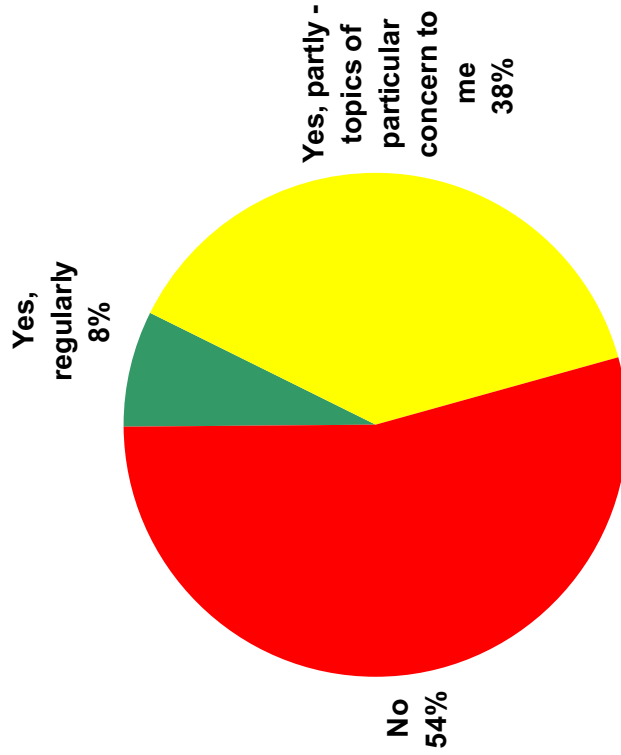


Q. Do you follow media publications/broadcasts related to access to information problems?

2010



2008



Base: All respondents (1143), 18+

Base: All respondents (1210), 18+

ACCESS TO INFORMATION IN BULGARIA 2009

Report

English First Edition

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ACCESS TO INFORMATION PROGRAMME



Access to Information Programme was founded on October 23, 1996 in Sofia by journalists, lawyers, sociologists and economists determined to contribute to the establishment of informed public opinion.

Access to Information Programme Foundation is a member of the International Freedom of Information Advocates Network (FOIA Net)

In 2005, the Atlas Economic Research Foundation recognized Access to Information Programme with two of the most prestigious awards for establishing and promoting the principles of democracy and market economy: *The Templeton Freedom Prize for Ethics and Values* and *The Templeton Freedom Award for Institute Excellence*.

Goals:

AIP facilitates the exercise of the right of access to information.

AIP encourages individual and public demand for government held information through civic education in the freedom of information area.

AIP works for the increase of transparency in the work of public institutions at central and local level.

Activities:

Monitoring of legislation and practices related to access to information.

Provision of legal help in cases of information seeking.

Trainings in the access to information area.

Public awareness campaign on access to information.

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