



ACCESS TO INFORMATION PROGRAMME

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MEMORANDUM OF THE PARTICIPANTS IN THE SEMINAR ACCESS TO INFORMATION - PRACTICES AND LOCAL REGIME

The seminar was organised by the 'Access to Information Program' Foundation
Gabrovo - 19. 05. 1999

This paper contains the recommendations to the makers of the Access to Public Information Bill, as commonly agreed on by the members of the Gabrovo local government, NGO representatives and journalists having worked together in the 'Access to Information - Practices and Local Regime' seminar.

1. Merits of the Bill

1. The act of submitting the Access to Public Information Bill for public debate is an



unprecedented legislative practice for Bulgaria. We welcome this initiative of Minister Tagarinsky's team and hope to see it become a regular practice accompanying the legislative process in this country.

2. Article 4 (4) of the Bill adds legal persons to the list of potential applicants, thus warranting their right of access to information.

3. Article 7 (2) of the Bill provides for partial access to documents, thus giving citizens access to the non-classified parts of documents otherwise ranked as secret. This is a tenet common to most legislative regimes operating in this domain.

4. Article 15 of the Bill enables citizens to seek specific documents and obtain the full list of the acts, issued by the relevant authority. This provision will undoubtedly facilitate the information tracking process.

5. Articles 25 and 27 convenience the applicants in enabling them to choose their preferred form of delivery of the information.

6. Another positive aspect is the duty imposed on state authorities to justify their refusal to grant access to information, as it also opens the possibility to appeal their reasons in court.

7. The ability of the courts to exercise control over refusals to access to information is yet another important guarantee for the proper enforcement of the Act.

II. General Critical Remarks

1. On the subject of the Bill



The authors of the Bill do not give a clear enough definition of what its legal regime addresses. The definition of ‘accessible information’ proposed in Article 2 gives rise to ambiguity, as it contains unclarified notions, such as ‘of public significance’ and ‘public life’. Inclusion of unclear notions in the body of an act of law gives rise to varying interpretations and potential arguments.

2. On the usage of certain notions in the Bill

The authors use a number of notions for which neither their draft nor the remaining legislation offer a definition. To name but a few: ‘information of public significance’, ‘public law subjects’, ‘public life’ ‘public services’, and others. The ambiguity of these notions which are so fundamental to the Bill, will render the latter difficult to implement. We therefore recommend that unclear notions used in the wording of this Bill be either clearly defined or eliminated.

3. The distinction between ‘official’ and ‘office’ information is unnecessary.

4. The Bill is obscure in respect of the limitations to the right of access to information.

Limitations to the right to information should be covered in a separate chapter, describing clearly and precisely the set of interests to be safeguarded through the restrictive regime.

The introduction of ‘state’ and ‘office’ secret fails to specify what the protected interests are.

5. On the style

The use of simplified and precise wording and the inclusion of definitions where necessary would facilitate the application of the Act.

6. On the procedure

The process involving access to information is given a relatively good coverage in the Bill, yet we believe that a provision should be included allowing appeal of the price set by the authorities for disclosure of information.

III. Remarks on Concrete Texts

1. Article 2 of the Bill attempts to define its subject. The authors define accessible information to be any ‘information of public significance’. However, not only does this definition fail to delimit clearly the scope of the Bill, but it also raises a plethora of questions, such as: Which information is of public significance? Which type of information is publicly significant and which is not? What does ‘related to the public life of the Republic Bulgaria’ mean? Will information that is not ‘publicly significant’ be accessible? The norm underlying the definition of accessible information should be perfectly clear.

Recommendation: To completely reword the definition of accessible information. The principle that ‘All information shall be accessible except for such, as is subject to the limitations explicitly enumerated in this Act’ should find reflection in the provisions of the Act.

2. It is of utmost importance for such legislation to clearly specify the persons, obligated to disclose information. The authors of the Bill do not define them in a clear-cut manner. Article 3 defines the categories of information covered by the Bill, but this is only an indication of who the persons obligated under the Bill are, without giving a precise definition. It remains unclear which state authorities would be subject to the provisions of the Bill. Assuming that the obligation covers the agencies of the legislature, the executive and the judiciary branch, it remains to be answered



which agency will the refusals of the Supreme Administrative Court or the Supreme Constitutional Court be appealed before.

Article 3 (4) of the Bill obligates the mass media to disclose information of public significance. The reason why we deem this inappropriate is that the Access to Information Act should be aimed at ensuring the transparency of the administration and government, not of other persons.

The provisions of Articles 18 and 19 relating to Article 3 are inappropriate too. Article 18 lists categories of information for which there is already a requirement in the current legislation towards the mass media to produce: as traders under the Commercial Act they have to submit their data for the needs of the Public Register. Recommendation: The Access to Public Information Act should draw an exhaustive list of the obligated persons and exclude from it the persons subject to private law and the mass media. In consistence with this we recommend that Articles 18 and 19 be eliminated from the future Act.

3. The Access to Public Information Act should set the overall frame and procedure for data disclosure. Reference to other future special acts of law, as is made in Article 4 of the Bill, is a poor idea.

4. Article 5 of the Bill is an unnecessary repetition of the Constitution's text. We propose that Article 5 be eliminated.

5. Article 7 makes use of notions such as 'state' and 'office' secret without specifying their meaning clearly. Reference to these two institutes further down in the Bill does not make them any clearer. It is inadmissible for this Bill to set limitations to the right of access to information without defining them. In addition, Article 13 (3) sets a 20 year time limit for restricted access to office information. The time frames for restricted access should be clear in regard of information protected by the state



secret too.

Recommendation: Limitations to the right of access to information should be described clearly and precisely in a separate chapter, also specifying the interests such limitations safeguard.

6. Article 12 is an unnecessary reiteration of the provisions relating to the promulgation of laws and regulations in the State Gazette, as such provisions already exist in other acts of law. Therefore we propose to eliminate Article 12.

7. Article 38 (2) says that partial access ‘may’ be granted, implying that it may also be denied. In practical terms this means that the individual employee is given discretion to decide whether or not to grant access, a situation we need to avoid by all means.

Our criticism towards Article 13 is in several respects. First, (2) allows for limitations to be imposed on access to information which is outside the scope of the limitations. Second, this provision enables the administration to single-handedly decide whether or not to disclose particular information.

Third, the door is open to classifying information such as opinions, stand-points and reports that are valuable illustrations of the decision-making process applied by the relevant authority.

A tenet underlying this type of legislation is that every limitation imposed on the access to information should safeguard a particular interest which supersedes the right to information at the given moment. It is not clear what interest is safeguarded by the limitation of Article 13 (1) and (2), and that is a potential troublemaker in the event a refusal is appealed.

Recommendation: To eliminate the entire Article 13.

9. The authors should consider carefully the provision of Article 14 (2) 2, as it

means in effect that should the press publish false information concerning data, constituting a state secret, the state authority would have the duty to publish the correct data. Yet this would be impossible since publicising of data constituting a state secret is a crime. The cited example makes it clear that there exist situations to which this provision would fail to apply. We therefore recommend that Article 14 (2) 2 be eliminated.

10. Article 32 (1) 2 requires that third parties be notified in the event the applicant requests information conducive to ‘substantial financial harm to the the third party’. This provision lacks in precision. Bulgarian legislation (Article 45 of the Obligations and Contracts Act) categorically precludes the infliction of harm, no matter whether it is significant or insignificant. Furthermore, the Bill neither defines the authority responsible for measuring the proportions of the harm, nor the time to do this.

A list of the participants in the seminar:

1. MD Maria Tomova- ‘Zakrila’ Association
2. Evelina Penkova- Press-attache for the Gabrovo municipality
3. Tsvetan Nanov - secretary for the Gabrovo municipality
4. Peter Simeonov- coordinator for the AIPF - journalist
5. Emilia Marinova - executive director for the cultural and information center of the youth
6. Anelia Atanassova - LGI
7. Damyan Hristov - Gabrovo cable TV
8. Rouzha Lyubenova - ‘100 News’ newspaper - Gabrovo
9. Pavlina Zheleva - ‘Rossitsa’ newspaper, Sevlievo
10. Roumyana Boycheva ‘100 News’ newspaper

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11. Sylvia Hinkova - executive director for 'Stara Planina' Association
 12. Dochka Zlateva - senior IT expert in the Gabrovo municipality
 13. Adelina Simeonova - Gabrovo municipality
 14. Daniela Kouzeva - Gabrovo municipality
 15. Diana Terzieva - expert in 'Central Balkan'
 16. Valentina Nikolova
 17. Ivan Nenov - Gabrovo municipal council
 18. Dimitar Totev - AIPF
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 20. Nikolay Ninov - AIPF
 21. Gergana Zhuleva - AIPF
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