

## ACCESS TO INFORMATION PROGRAMME

A registered non-profit organization in Sofia, Bulgaria,  
Reg. #13 849/97, Sofia City Court  
9 Slavianska St. 3 Floor, 1000 Sofia  
tel./fax 980 54 84; tel. 989 49 44; E-mail: aip@omega.bg;

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State Gazette, Issue No. 62, pg. 19  
Decree No. 175

# **BY VIRTUE OF ARTICLE 101(1) OF THE CONSTITUTION OF THE REPUBLIC OF BULGARIA**

I HEREBY DECREE:

I recommit the State Employees Act, adopted by the XXXVIII National Assembly on June 16th 1999, to the National Assembly

Issued in Sofia, June 30th 1999

President of the Republic: Petar Stoyanov

## GROUNDS

For the recommitment of the State Employees Act to the National Assembly

Dear Ladies and Gentlemen, Members of Parliament,

By virtue of Article 101 (1) of the Constitution of the Republic of Bulgaria I recommit the State Employees Act to the National Assembly, by challenging the following provisions:

### 1. Article 24 (4)

Article 116 (1) of the Constitution provides that in execution of their office state employees shall be guided solely by the law and shall have no political allegiance.

The constitutional duty of state employees to observe and apply the principle of legality in the state service is also upheld by Article 24 (1) of the State Employees Act. The latter binds state employees to observe the legitimate acts and orders of their higher-standing authorities and state employees. The exemptions laid out in Article (2) and (3) align with this principle and empower state employees to refuse to fulfil a written or verbal order, should the latter contain a breach of law, apparent to them.

However, Article 24 (4) empowers state employees to disobey an order directed against themselves, their spouse, their relatives of direct descent without exception,



of collateral descent by the fourth degree inclusive or by marriage up to the second line inclusive. The hypothesis of Article 24 (4) apparently covers the cases of such orders to the state employees as rest on legal grounds, even though this is not specified explicitly.

I clearly understand the grounds of the Members of Parliament, shaped by their moral considerations in regard of the above-described relationships of kinship. Such relationships are always prone to provoke suspicion about the degree to which state employees are objective and impartial while fulfilling an order that affects their interests. That is why I find the idea of the legislator enshrined in (4) as principally appropriate. What is more, this text gives state employees discretion to independently decide whether to carry out or not an order concerning their closest kin. Knowing how increasingly sensitive the public is towards the actions of the state employees, and being aware of the unquestionable need of the law to protect their rights and also their prestige, I believe that in respect of the cases under Article 24 (4) state employees should be exempted from the duty to fulfil an order against themselves, their spouse or close relatives altogether.

Yet, I am sure that the Members of Parliament did not have in mind a scenario where occurrence of the circumstances under Article 24 (4) could result in non-performance of the orders of the superior authority. Performance of the orders would be assigned to another state employee whose relationships of kinship are not affected and who is capable of applying the law objectively and impartially. However, the legislator does not provide for any such procedure.

For that reason I recommit to the National Assembly the provision of 24 (4) not because I challenge its underlying principle, but because its legislative incompleteness may result in outcomes that I believe the law does not desire, namely: the exe-



cution of legitimate orders in respect of the closest set of relatives of the state employee. That would constitute a breach of the principle of equality of all citizens before the law, upheld by the Constitution.

As the President is not entitled to legislative initiative, I will only take the liberty to state the opinion, that the provision would accomplish the legislator's goal if supplemented by one more sentence, stipulating explicitly that in the existence of the enumerated relationships of kinship, the state employee should notify the higher-standing authority within a fixed time-frame, and the latter should assign the execution to another state employee or personally execute it, in a timely fashion.

## 2. Article 25 (2)

Article 25 (1) obligates state employees to keep the office secret and not publicize facts and information they became knowledgeable of in the course of or in relation to the discharge of the duties, arising from their office. Article 25 (2) specifies the types of information that constitute office secret to be those facts and information, as were defined by the appointing authority: 'the appointing authority shall delimit the scope of the facts and information that constitute an office secret and establish the procedure for their handling.'

Beyond doubt, the provision under (1) is justified in as far as it safeguards the state and public interests. Yet in democratic societies the facts and information that constitute a state or another type of secret are an exception to the principle of publicity of information, one that is also upheld by Article 41 of the Bulgarian Constitution. The Constitution entitles everybody to seek, obtain and impart information. It also entitles individuals to obtain information from a state authority or agency on issues that are of their legitimate concern, where such information is not a state or any other secret



protected by the law and does not affect the rights of others. Therefore the limitation to the right to information would only be admissible if the information constituted a state secret or another, including an office secret. However, a piece of information could be treated as a state secret and another as an office secret, if this were explicitly stated in a law, adopted by the National Assembly. In its grounds accompanying Ruling No. 7 of 1996 the Constitutional Court assumes that the right to seek and obtain information gives rise to the obligation to disclose information. The specific content of such an obligation could be defined in no other way than by law. It is the legislator who, in abidance by the constitutional tenets, should identify the diversity of hypotheses that call for an explicit formulation of the obligation. Apparently, the constitutional legislator requires that a law should delimit the scope of facts and information that constitute information to be made unavailable for the public. Information which constitutes an office secret, excluding the one which constitutes a state secret, is no doubt a part of the above category. However, as the Constitution excludes from the scope of public information nothing but the secret protected by the law, the scope of facts and information constituting an office secret may only be determined by a law, but not by the appointing authority, as foreseen under Article 25 (2) of the State Employees Act.

It is inadmissible from the standpoint of the Constitution to give discretion to every appointing authority to independently delimit the scope of facts and information that constitute an office secret, because this power could be exercised to restrict access to information of public significance on purely subjective grounds.

For this reason I believe that Article 25 (2) is in breach of Article 41 of the Constitution and I dare state the opinion that it ought to be amended to read that the scope of facts and information that constitute an office secret shall be specified in a law.



Dear Ladies and Gentlemen, Members of Parliament,

These are my grounds for recommitting the State Employees Act, by challenging the provisions of Article 24 (4) and Article 25 (2).

President of the Republic: Petar Stoyanov