ANNEX 7

Litigation 2019 – Annotation of Cases referred to AIP for legal aid

1. Petar Nanev (bTV) v. Ministry of Youth and Sports

In October 2018, the "bTV" TV channel investigative journalist Petar Nanev requested from the Ministry of Youth and Sports (MYS) information on the financing of the Bulgarian Football Union (BFU) regarding competitions and sport camps of national teams for the period 01.01.2015 - 25.10.2018. The information requested includes copies of all decisions, ordinances, contracts and documents such as receipts, reports etc. which prove that the MYS financed the BFU - including through European Union programmes.

The Ministry's commission responsible under the Access to Information Act (APIA) decided to grant the requestor partial access to information. He was provided with information under item 4 of the application (BFU's reports certifying the spending of the funds received from the MYS and a copy of the attached documents). But even this information was incomplete, as no financial statements were provided, instead only substantive reports and minutes of the events organized (competitions and sport camps), which is not what the requestor sought in the first place.

The Ministry refused to provide the rest of the documents requested on the ground that there was an explicit non-consent by the third party - BFU.

Nanev then appealed the refusal. In the appeal and written defense, the argument was made that there has been a long-standing practice of the Supreme Administrative Court (SAC), according to which the administration's refusals to provide information on the grounds of "no third-party consent" is illegal in the cases when the third party itself is an obliged body under the APIA. In this specific case, the BFU is an obliged body as a legal entity carrying out activities financed with funds from the consolidated state budget, subsidies from the European Union funds or allocated through EU projects and programs, according to Article 3, par. 2, item 2 of the APIA.

By Decision No. 2496 of 10.04.2019 of the Administrative Court Sofia City (ACSC) the refusal was canceled and the request was returned to the Minister for a new decision with instructions on the interpretation and application of the law.

The court found that the requested information is undoubtedly to be considered as public, as it relates to the country's public life - the spending of public funds which is of social significance, as well to the purpose of that spending - the maintenance and development of sports and in particular of football. The Court held that the MYS's refusal does not have any legal grounds. The defendant set forth grounds for refusal due to the existence of circumstances under Art. 37, para. 1, item 2 of the APIA - that "the access is of a nature to affect third party's interests and the third party has expressly refused to give its consent for the disclosure of the requested public information, unless there is overriding public interest". The Court shared the requestor's arguments, holding that the BFU is an obliged body because it carries out activities financed

by the state budget and by EU funds (Art. 3, para. 2, item 2 of the APIA), and the information requested was in relation to exactly this type of activities.

In view of this, it is illegal for the public body to refer to the provision of Art. 37, para. 1, item 2 of the APIA, insofar as according to Art. 31, para. 5 of the APIA, the third-party consent is not required in cases where the third party is an obliged body, and where the information related to it is public information within the scope of this law, as well as when there is an overriding public interest in its disclosure. The decision is final.

2. Elena Hristova (Sofia) v. Ministry of Labor and Social Policy

On December 19, 2018 Elena Hristova filed a request to the Minister of Labor and Social Policy (MLSP), requesting access to the following information from the Register of received signals and identified irregularities, maintained by the Managing Authority under the Operational Program (OP) "Human Resources Development" 2014-2020, concerning all registered irregularity reports until December 18, 2018, inclusive:

Date of the report, description of the infringement, stage of the inspection, actions taken (if any) and result (if the procedure for administration of the irregularity has been completed).

The application states that the requestor wishes that personal and other information (names of individuals and legal entities, other identification information, etc.) be deleted so as not to affect any third party's interests.

By decision of 27 December 2018, the Secretary General of the MLSP denied access to the information requested on the grounds that the information in the register is intended only for administrative use, as it is related to operational preparation of the body's acts in the process of administration of irregularities and thus has no significance of its own. The refusal also states that the information from the register does not constitute public information within the meaning of Art. 2, para. 1 of the APIA, as it contains data related to the activities of other obliged bodies and not of the Minister of Labor and Social Policy. Finally, the refusal states that there is a special procedure for providing information on the administration of irregularities under the European Structural and Investment Funds Management Act (ESIFMA) and under the Ordinance on the Administration of Irregularities under the European Structural and Investment Funds, and this special procedure excludes the application of the APIA.

The refusal was appealed to the ACSC. The appeal argues that the information from the register of irregularities is not related to the operational preparation of acts of the administration, but must be considered as information that the body is obliged to create and hold in connection with its management of European Structural and Investment Funds (ESIF). A further argument is that this management should be carried out while ensuring publicity and transparency under Art. 2 of the European Structural and Investment Funds Management Act, due to which the grounds for refusal under Art. 13, para. 2, item 1 of the APIA is not applicable. The fact that certain officials have the right to direct access to the information in the register by virtue of the regulations does not mean that the information contained in the register is restricted for access upon request under the APIA.

At first instance the ACSC annulled the refusal and the dossier was returned to MLSP's Secretary General for a fresh decision with instructions on the interpretation and application of the law.

The Court does not share the Ministry's thesis that the information in question is related to the operational preparation of acts of the administration and has no significance of its own.

The administrative body is obliged to create and hold the requested information in connection with its activity consisting in the management of ESIF funds. This information does not contain opinions, recommendations, statements and consultations, where it does not fall into the category of those specified in the provision of Art. 13, para. 2, item 1 of the APIA, due to which the access to it is free according to the applicable general rule under Art. 13, para. 1 API. The second motive of the body is not shared either. The application explicitly states that the person requests the provision of information in case of deletion of data concerning third parties, and it should be noted that there is no evidence that the authority has sought their consent. The fact that the activity of processing irregularities concerns third parties does not mean that the latter does not constitute an administrative activity granted precisely within the powers of the body referred to. Contrary to the opinion adopted by the administrative body in the provisions of Art. 9 and Art. 15 of the Ordinance on administration of irregularities under the European Structural and Investment Funds (NANESIF) does not contain regulations according to which access to information in the register is limited to certain authorities and employees, where it follows that in this case are applicable as the provision of Art. . 13, para. 1 of the APIA, as well as that of Art. 2 ZUSESIF, providing for the management of ESIF funds to be carried out while ensuring publicity and transparency. NANESIF prescribes rules for the funds of management bodies, resp. for the obligations of their employees, who are assigned relevant functions, incl. on confidentiality, etc. The latter in no way affects the right of access under the APIA, as citizens and organizations with the right of access are not the addressee of ZUSESIF and the Ordinance, therefore there is no special procedure for access. That is why in this case the prerequisites under Art. 37, para. 1, item 1 of the APIA for refusal to provide the requested information. The decision is final.

3. Alexandra Makaryan (OFFNews) v. Regional Department of Education - Sofia-City

On November 20, 2018 Alexandra Markaryan (OFFNews) filed a request to the Regional Department of Education (RDE) - Sofia-City, asking for detailed information related to the admission of students to the Sofia Mathematical High School (SMG) in the academic year 2018/2019, that number of the students being above the approved admission plan.

With a decision of December 4, 2018, the head of the RDE Sofia-City issued a refusal on the grounds that the requested information was related to the preparatory work of the body's acts. The Personal Data Protection Act (PDPA) and Regulation 2016/679 were being referred to, stating that the information requested contains a lot of personal data, health data and opinions.

The refusal was then appealed to the ACSC. The complaint's arguments pointed out that the restriction under Art. 13, para. 2 of the APIA regarding the preparatory nature of the documents is not applicable in this case, as the information requested has a significance of its own. Alternatively, an argument has been developed that even if the restriction under Art. 13, para.

2 of the APIA was indeed applicable, the refusal would again be illegal, since in this particular case there is an overriding public interest in the disclosure of this information within the meaning of Art. 13, para. 4 of the APIA. Such an interest exists in view of the importance of education as a fundamental right and value in the democratic society and the need for it to be carried out in a lawful manner. With regard to personal data, the complaint stated that it was the responsibility of the administrative body to delete the protected personal data in the document(s) and to grant partial access.

By Decision № 1398 of March 5, 2019 of the ACSC, the refusal was revoked and the head of RDE Sofia-city was obliged to provide access to the requested information for all admission applications with the relevant arguments, facts and circumstances for the unscheduled admission to the SMG in the academic year 2018/2019.

In its statement of reasons, the court analyzes the documents that could possibly certify the reason for unscheduled admission of students according to the Internal Rules on the terms and conditions for transfer of students. The court concludes that in fact, most of the documents contain personal data. In the present case, however, this circumstance is not a ground for refusing to provide the documents, because the requester asked for the documents and also requested the personal data contained therein to be deleted. Therefore, the requested documents should have been provided after the deletion of the names, addresses, diseases etc. mentioned therein. The information had to be disclosed in a way that one could establish the specific reason for the transfer of a student above the approved admission, as this very information is of public interest in this case. Another hypothesis considered in the reasons of the contested act is the one settled in art. 13, para. 2 of the APIA. It refers to the official information related to the preparational work of the acts which for similar reasons could not be a ground for refusal in this case. In addition, by virtue of Art. 13, para. 4 of the APIA, the restriction on access to such information is explicitly excluded in case of overriding public interest. The overriding public interest is defined in item 6 of § 1 of the Additional Provisions of the APIA and the circumstances of the case require an unambiguous conclusion that such interest is present in the case. The decision is final.

4. National Network for Children v. Ministry of Health

On November 23, 2018, the National Network for Children Association filed a request to the Ministry of Health (MH) asking for access to the following information, related to the closure of the “Children's Treatment Fund” Center and its transfer within the structures of the National Health Insurance Fund (NHIF), both events being extensively covered by the media:

1. How, by whom and when was the decision taken to close the “Children's Treatment Fund” Center and its transfer to the NHIF?;

2. On the basis of which administrative act did this happen? Copy of the act or acts;

3. Has a working group been formed at the Ministry of Health or at another administrative structure, which would prepare a bylaw - an ordinance or another type of bylaw, in order to regulate the activities of the “Children's Treatment Fund” Center or its future successor within the structure of the NHIF?;

4. Copy of the ordinance for the establishment of the working group.

With his decision of November 28, 2019, the Secretary General of the Ministry of Health refused to provide access to the requested information on the grounds that it was "administrative public information", which has a limited access, as it is related to the preparatory work of acts of the Minister of Health and has no significance of its own.

The refusal was appealed to the ACSC. The complaint argues that the requested information has significance of its own and is of overriding public interest, therefore the access to it cannot be restricted. This is because it is related to the preparation of amendments to a normative act (Decree of the Council of Ministers № 280 of 18.10.2004 on the establishment of the "Children's Treatment Fund" Center), which according to the Law on Normative Acts is subject to mandatory public discussion. The discussion cannot be carried out in a full-fledged manner if the citizens in the discussion are deprived of information and of the opportunity to form their own opinion and to take part in ongoing discussions on the changes in the legal framework.

By Decision № 2317 of April 3, 2019 of the ACSC, the refusal was revoked and the correspondence was returned to the Secretary General of the Ministry of Health for a new adjudication on the request with mandatory instructions on the interpretation and application of the law.

The court held that, evident from the content of the letter, in which a refusal was objectified, the body had referred to the provision of Art. 13, para. 2, item 1 of the APIA, although the legal basis for the refusal is not explicitly indicated. The Chamber held that that provision was not applicable in the present case. The exception provided in Art. 13, para. 4 of the APIA for overriding public interest in providing the requested information. The requester sought information from the Ministry in connection with the closure of the Center and its transfer to the NHIF. The question of the restructuring of the body responsible for financing the treatment of children with serious illnesses is a matter of significant social importance. Issues related to the reasons that led to this decision are unquestionably of public interest. Moreover, the decision taken to close the Center and transfer it to the NHIF was made by a decree of the Council of Ministers, which is subject to mandatory public discussion. And in order for the applicant to participate, as an association with the main subject of activity being child protection and cooperation between the institutions and the interested parties, it should get acquainted with the requested information. Funding for the treatment of children is an important, socially significant and social issue, and everything related to this issue is of overriding public interest, and the information related to it should not be restricted in any way. Failure to provide the requested information creates a feeling in society of something hidden, covert and secret. This feeling contradicts the principle of transparency, which is the basis of the APIA. The decision is final.

5. Dorothea Dachkova ('Sega' Daily v. Commission for Combating Corruption and the Withdrawal of Illegally Acquired Property (KPKONPI)

In September 2017, Dorothea Dachkova (journalist from 'Sega' daily) filed a request to the Chairman of the Commission for the Withdrawal of Illegally Acquired Property (KONPI)

demanding information on the Commission's expenditure incurred in the proceedings for the revocation of the property acquired by the banker Tsvetan Vassilev.

The Chairperson of CONPI refuses to provide the requested information on the grounds that it was “official secret.” The refusal also stated that the requested information was "trade secret."

By Decision No. 1448/06.03.2018 (in Bulgarian), Administrative Court Sofia City repealed the refusal and returned the request to the Chairman of the KONPI with instructions to provide the requested information. The court accepts that it is public by definition – as it concerns expenses incurred by the commission in connection with the proceedings for revoking the property acquired by Tsvetan Vassilev. These expenditures represent public budget funds and the commission owes transparency in their spending, respectively the provision of information to citizens under the APIA, which makes it impossible to share the view that the APIA is not applicable to the activity of the commission. The requested information is not an official secret within the meaning of the Protection of Classified Information Act, since the simple reference to Art. 26, para 1 of the PCIA does not justify the existence of a ground for refusal. In the present case, it is unclear why the defendant assumes that the information on the costs incurred in the specific case is an official secret or how the provision of such information would harm the interests of the State or third parties, especially since the provision under the APIA does not constitute "unregulated access," but rather the opposite. The costs incurred cannot be classified as trade secrets either. No analysis has been made by the obliged body if there is an overriding public interest in the presence of which it owes the provision of the information, despite the existence of a ground for refusal (which is not found). The burden of the refutation of the presumption for the overriding public interest in the disclosure is entrusted by the law to the obliged authority.

The decision was appealed by KPKONPI before the Supreme Administrative Court.

By Decision No. 8457/05.06.2019, the Supreme Administrative Court upheld the decision of the first instance court which had repealed the refusal and had returned the request to the Chairman of the KONPI with instructions to provide the requested information.

Impact of the case:

The journalist had produced a series of critical publications on the lack of transparency of the Commission for Combating Corruption and the Withdrawal of Illegally Acquired Property (KPKONPI) - an authority which should promote the principles of transparency and accountability as basic means of combating corruption.

6. Svetlozar Alexiev (Sofia) v. Sofia Municipality

On October 9, 2018, the mayor of Sofia Municipality Yordanka Fandakova publicly announced that the construction supervision of the repair of the capital's Graf Ignatiev Street was fined BGN 100,000 and that the quality of the necessary construction and repair activities was low.

The next day - October 10, Svetlozar Alexiev filed a request to the Sofia Municipality, requesting the disclosure of the document that proves there was a sanction imposed by the Municipality.

By decision of 25 October 2108, the Mayor of Sofia granted access to the requested information by indicating a link to the webpage where it was published. However, only the contract with the contractor was available on the link, but no information on the imposed sanctions. The requestor therefore sent a letter to the Municipality stating that the information requested by him was missing and insisting that it be provided to him.

The Municipality proceeded with the applicant's letter as a new request for access to information and issued a new decision. This time access was refused on the grounds that the data had already been provided to the requestor with the Mayor's previous response dating back to October 25, 2018.

The refusal was appealed to the ACSC. The complaint and the written defense of the case developed arguments that after the 2015 APIA amendments regarding the subjects obliged by law, there was an opportunity to fulfill their obligation to provide information not by providing it in the form of copies sent electronically, but by indicating a link where the data was published (Art. 26, para. 1, item 4 of the APIA). However, in order for this possibility to become a legitimate reality, the information requested by the requestor must have actually been published on the link, which has not been the case with the Mayor's first answer.

By Decision № 1186 of 25 February 2019 of the ACSC, the Mayor's refusal was revoked and his dossier was returned for ruling with instructions on the interpretation and application of the law.

The Court held that the information requested by the requestor undoubtedly fell into the category of public information, insofar as it was generated and stored by a body obliged under the APIA in connection with the reported implementation of contracts for EU-funded project activities, which determines its connection with public life in the Republic of Bulgaria - and not only that, as such activity generally falls within the scope of public interest and public life of the European Union. The very fact that the claimed information is related and / or is on the occasion of the absorption of EU funds predetermines the transparency and accessibility of the information, as is the main purpose of the APIA. The requested information is not available on the link provided in the decision. Separately, the judge noted that there was a presumption of the existence of an overriding public interest under § 1, item 5, b. "E" of APIA's Additional Provisions, as the requested information is related to sanctions under a contract concluded by an obligated body. This presumption excludes the refusal of access to the requested information and has not been refuted by the mayor.

Sofia Municipality filed a cassation appeal against ACSC's decision, again arguingargued that the requested information was provided to the requestor when he was provided with a link where the repair contract was published.

On April 15, 2019 the SAC left the cassation appeal of the Mayor of Sofia Municipality without consideration and the case was terminated. The court accepted that the decision of the first instance was not subject to cassation appeal, as the cassation appeal was filed after January 1, 2019. The ruling of the termination of the case was attacked by the Municipality with a private appeal to a five-member panel of the SAC.

On second instance, in June 2019 the decision of the SAC was upheld, which terminated the proceedings on the Mayor's cassation appeal against the decision of the ACSC to revoke the

refusal. The judges accepted that after 01.01.2019 the decisions of the administrative courts on appeals against acts for providing or refusing to provide public information are not subject to cassation appeal. The case terminated by the challenged ruling was instituted in the Supreme Administrative Court on April 9, 2019, and at that moment the decision of the administrative court is no longer subject to cassation review. The definition is final.

7. Bulgarian Institute for Legal Initiatives against the Social Assistance Agency

On September 13, 2017, the Bulgarian Institute for Legal Initiatives Foundation (BIPI) filed a request to the Social Assistance Agency (SAA) requesting a copy of the declaration of conflict of interest of the former employee of the agency Ivan Ivanov, who at the time of filing the request was nominated and participated as the only candidate in a selection procedure for the manager of the National Social Security Institute (NSSI).

With a decision of September 27, 2017, the Executive Director of the SAA refused the information on the grounds that it is not public under the APIA, but is only of internal administrative nature. The refusal also states that the application does not contain a description of the requested information, as it requires a copy of a document.

The refusal was appealed to the ACSC. The complaint argues that the declaration of conflict of interest of a public official not only constitutes public information within the meaning of the APIA, but is also subject to publication under the Conflict of Interest Prevention and Ascertainment Act (CIPAA).

On the first instance, by Decision № 302 of 4 May 2018 of the ACSC, the refusal was revoked and the dossier was returned to the Executive Director of the SAA for a new ruling with instructions on the interpretation and application of the law.

The court considered for unfounded the argument of the SAA that the requested information is not public within the meaning of the APIA. According to the court, the information is indisputably administrative public information within the meaning of Art. 11 of the APIA - as it is collected, created and kept in connection with official information, as well as in the course of the activities of the bodies and their administrative structures. The court finds for groundless the other argument of the SAA that when access to a document is requested, but information is not claimed as a description of information or knowledge about someone or something, then the information requested is not due. According to the court, the provision of access to information in the form of a copy of an electronic document is a legal form of access, which is explicitly regulated in the APIA.

A cassation appeal was filed against the decision of the ACSC by the SAA. The complaint sets out the following arguments; the letter notifying the requestor that he cannot be granted access to the requested information does not have the character of an individual administrative act; the letter does not have the details of a decision under the APIA.; the letter does not affect the legal rights or interests of the applicant, therefore there is no legal interest in appealing. Separate arguments are presented that the requested information is not public; that it is protected personal data; and that under the APIA information may be requested, but not copies of specific documents.

On second instance, by Decision № 4479 of March 26, 2019 of the SAC, the decision of the first instance to revoke the refusal was upheld. The Supreme Judges share the statement of the ACSC that the declaration requested by BIPI Foundation contains administrative public information which, given its nature, aims to increase the transparency of the body obliged under the APIA. Therefore, there is no restriction on providing the public information contained in the declaration, and the obliged body did not fulfill its legal obligation to publish the information on its website. The decision is final.

8. Krasen Nikolov (Mediapool) v. Ministry of Justice

On April 21, 2017 Krasen Nikolov ('Mediapool' online newspaper) filed a request to the Ministry of Justice (MJ), requesting information related to the draft Law on Bulgarian Citizenship Act (BCA), which (on the idea of President Radev) introduced an amendment in the Electoral Code, introducing a 3-month residency for voting in parliamentary and presidential elections. In practice, this eliminates most Bulgarians living abroad from the elections. Specifically, the following information was requested:

1. Copies of all documents related to the decision / decisions for publication for public discussion and submission for approval to the Council of Ministers (including for the preparation of the impact assessment) of the draft law amending the BCA, published on the website of the Ministry of Justice in early April 2017;

2. The impact assessment of the introduction of settlement in the Electoral Code through this bill;

3. The official correspondence with the presidency on this bill, if any.

By decision of 9 May 2017, the Director of the Legal Affairs Directorate in the Ministry of Justice provided 13 pages of information and refused the rest (without explicitly indicating which exactly are the documents he is granting access to) on the grounds that the information has no significance of its own and is related to preparatory work of the body's acts (grounds for refusal under Art. 13, para 2, item 1 of the APIA).

The refusal was appealed to the ACSC. The complaint argues that the requested information has significance of its own in its entirety, because there is no final act from which the requestor can be informed on the issue of interest to him. Therefore, the information regarding the preparation of the bill has acquired a significance of its own and Art. 13, para. 2, item 1 of the APIA is not applicable.

On first instance, by Decision № 6109 of 27 October 2017 of the ACSC, the refusal was revoked and the dossier was returned to the Director of the Legal Activities Directorate in the Ministry of Justice with instructions on the interpretation and application of the law.

The Court considers that in this case, the high degree of public importance of the preparation of normative acts should be considered. The procedure for drafting normative acts is regulated in the Law on Normative Acts (LNA), in which the legislator has laid down the principles of soundness, stability, openness and coherence at the initial stage of the normative process. According to the panel of the court, it should be assumed in the present case that since the

requested information may form an opinion on whether the draft law complies with the provisions of the LNA, there is an overriding public interest that overcomes the restriction of access to preparatory information which has no significance of its own.

ACSC's decision was attacked by Legal the director of the Legal Activities Directorate in the Ministry of Justice with a cassation appeal to the SAC. The cassation appeal contains arguments that the information falls within the scope of the restriction for preparatory documents under Art. 13 of the APIA and there is no overriding public interest in its provision.

By decision on second instance of 14 June 2019 of the SAC, the decision of the first instance for revocation of the refusal was upheld.

The Supreme Judges accepted that the restriction for preparatory documents without significance of their own under Art. 13, para. 2, item 1 of the APIA is inapplicable in this case, as information related to a change in a normative act has been denied. Within the legislative process, in the conciliation procedure, each opinion, justification, impact assessment, financial justification has its own significance, insofar as they contain a final conclusion / ruling of the relevant authority on the issue, regardless of whether they are part of the conciliation or discussion procedure.

In that sense, the Court of First Instance correctly held that the information sought was administrative public information, but not without significance of its own. Furthermore, the requestor's objections were correctly accepted - that the information can be considered without significance of its own only when there is a final act from which citizens can be informed. In all other cases, if such a final act has not been issued, the information has a significance of its own, even when it has preparatory nature. There are no motives on the basis of which the requestor can be informed and can form his own opinion, as is in the present case. The magistrates consider it to be correctly accepted by the court of first instance that in this case the administrative body is also obliged to do an assessment whether an overriding public interest exists. In the presence of such, access to information cannot be restricted. Finally, the judges noted that through the requested information, the requestor could form an opinion on whether the draft law had complied with the provisions of the LNA, and the establishment of these facts aimed at increasing the transparency and accountability of the body. The decision is final.

9. Mila Cherneva ("Capital" newspaper) v. Road Infrastructure Agency

On March 5, 2019, Mila Cherneva ("Capital" newspaper) filed a request to the Road Infrastructure Agency (RIA) requesting access to the following information.

1. The number of electronic vignettes sold through the site www.bgtoll.bg until March 5, 2019 and their value;

2. The number of electronic vignettes sold through the site www.vinetki.bg until March 5, 2019 and their value;

3. The number of sold electronic vignettes through the site www.a1.bg until March 5, 2019 and their value.

The Chairman of the Management Board of RIA provided access to the information under item 1 of the request, regarding the number and value of vignettes sold through the state website www.bgtoll.bg but refused to disclose information under items 2 and 3 on the grounds of an existing explicit disagreement expressed by a third party - "Intelligent Traffic Systems" AD, which is registered as a National provider of services for electronic collection of tolls and respectively manages the sites www.vinetki.bg and www.a1.bg.

The refusal was appealed to the ACSC. The complaint argues that in this case there is an overriding public interest in providing the requested information, which overcomes the disagreement expressed by the third party, as the funds accumulated from the sale of vignettes must be invested back in the construction and repair of the national road infrastructure network.

By Decision of 20 November 2019 of the ACSC, the partial refusal of the RIA was revoked and the application was returned to the RIA for a new ruling in compliance with the court's instructions on the interpretation and application of the law. The court held that in this case there was an inconsistency with the substantive legal provisions of the law. The refusal under item 2 and item 3 of the request is motivated by the third party's refusal to provide the information on the grounds that it is confidential. A further argument is that it falls within the scope of the General Terms and Conditions of the contract concluded between Intelligent Traffic Systems AD and RIA for provision of additional services for the operation of points of sale by a service provider for electronic toll collection. However, the refusal of the third party to provide the requested information can be overcome by the existence of an "overriding public interest".

The information requested undoubtedly falls into the category of public information, insofar as it has been generated and kept by an obliged body under the APIA in connection with the reported performance of a contract for providing additional services for operating points of sale by a service provider for electronic toll collection. The very fact that the requested information is related to the amount of income (funds) from the sale of vignettes (which should be invested in the construction and repair of the national road network) predetermines the need of transparency and accessibility of the same, which is the main goal of the APIA. The information under items 2 and 3 of the request is inevitably of public interest, and as far as the citizens are part of society, the latter have the right of access to information that excites the public and them in particular.

The court concludes that there are no grounds for refusal to provide the requested information under items 2 and 3 of the request. This conclusion is also substantiated by § 1, item 5 of the Additional Provisions of the APIA, which introduces a rebuttable presumption that until proven otherwise, the public interest in disclosure is present in the listed hypotheses under b. "a" to "e", as the present case falls under the hypothesis of b. "e" / except b. "b" /. Namely, it is related to the parties, subcontractors, the subject, the price, the rights and obligations, the conditions, the terms, the sanctions, which were determined in contracts, under which one party is an obliged body under art. 3 of the APIA. If the authority considers that there is no overriding public interest, it should determine this. That is, the presumption provided in the APIA accepts the existence of an overriding public interest in all cases where the conditions of § 1, item 5, b. "e" from the Additional Provisions of the APIA are present.

This is the reason why the person basing their arguments on that text (i.e. the requestor) is not obliged to prove the existence of an overriding public interest. If the RIA considers otherwise, then the RIA is obliged to prove it. In this case there is a lack of analysis and justification of whether there is an overriding public interest within the meaning of § 1, items 5 and 6 of the Additional Provisions of the APIA. The Chairman of the Management Board of RIA was obliged to provide the information or to establish the lack of overriding public interest. It is inadmissible for the body to exclude the effect of the rebuttable legal presumption without proper justification, as is the case here. It is on the authority to motivate its refusal with specific considerations. The disagreement of the third party in this case is overcome by the presence of an overriding public interest. By virtue of the uncontested legal presumption of § 1, item 5, b. "f" and "b" of the Additional Provisions of the APIA, it should be assumed that there is an overriding public interest, excluding the refusal of access to the requested public information. The decision is final.

10. Environmental Association “Za Zemiata - access to justice” v. the Executive Environment Agency

In December 2018 Greenpeace - Bulgaria, partners of the Association "Za Zemiata (“For the Earth”) - Access to Justice", addressed a letter to the Executive Director of the Executive Environment Agency (EEA) with a request to place an "AQMesh" device (belonging to "Greenpeace" - Bulgaria) near the automatic measuring station (AMS) for air quality monitoring "Hipodruma" (owned by the EEA), with the aim to calibrate the measurements recorded by AMS “Hipodruma”.

By a letter from January 2019, the Executive Director of the EEA agreed that the “AQMesh” device be placed near the AIS “Hipodruma” in order to calibrate the “AQMesh”.

For the purpose of the calibration of the device, its data must be compared with the data from AIS "Hipodruma". In an oral conversation with the team of Greenpeace - Bulgaria, the EEA gave instructions that in order to get access to these data, a request under the APIA should be filed.

Greenpeace - Bulgaria has no legal personality, which is why by the end of January 2019 the Association "Za Zemiata - Access to Justice" filed a request for access to information to the EEA, requesting information for the period from 4 P.M. on January 18 to 4 P.M. on January 28, 2019 from the “Hipodruma” station regarding the average hourly data for the levels of Nitrogen oxide, ozone, cobalt and other specific chemical elements and air pollution fine particles.

By decision of February 2019, the Secretary General of the EEA granted partial access. He refused to provide the average hourly values for fine particles PM10 and PM2.5 of the AIS “Hipodruma”. The refusal states that the norm for air pollution with fine particulate matter PM is average daily, due to which the requested data for average hourly values are incomplete, are in the process of preparation and represent information that is not final. The partial refusal is grounded on the provision of art. 20, para. 1, item 6 of the Environmental Protection Act (EPA), according to which access to environmental information may be denied in cases where

the disclosure of the requested information will have an adverse effect on the environmental components.

The refusal was appealed to the ACSC. The complaint developed arguments for illegality of the refusal, as by virtue of Art. 20, para. 6 of the EPA, the restriction of the right of access to information does not refer to the emissions of harmful substances into the environment as a value according to the indicators determined by the normative acts.

In July 2019 the ACSC decided to revoke the refusal and to return the dossier to the Director of the EEA in order for him to provide the requested information.

The Court points out that the issue in question is whether the primary information can be provided in the form of hourly measurements, which have not yet been processed and are not reduced below the average daily rate indicator. APIA's general provision regulates the hypotheses when a refusal is allowed - if the information is classified or represents a protected secret in the cases provided by law. There is no provision prohibiting or restricting access to primary information in order to protect the public interest by avoiding the possibility of misinterpretation of data. The arguments presented by the EEA in this regard are not supported by the legislation. On the other hand, these arguments contradict EEA's statement that the requested primary information is provided to the public in real time and is available on the agency's website. The disclosure of primary information by electronic means indicates that it is available and stored by the EEA, and therefore there is no obstacle to its provision to the complainant in the requested format. The fact that the information is available on the official website of the Agency does not release the defendant from his obligation to provide the requested information in the machine-readable format specified in the request, a format corresponding to the official open data standards (.xls or .xlsx, .csv spreadsheets) or in another readable format. The judge also considered for unfounded the other argument for the refusal of the EEA, stating that it is illogical to claim that the provision of data from hourly measurements could harm the environment's components. The court's decision is final.