



REPORT FOR COMPLIANCE OF THE ACCESS TO PUBLIC INFORMATION ACT WITH THE COUNCIL OF EUROPE CONVENTION ON ACCESS TO OFFICIAL DOCUMENTS

The Convention on Access to Official Documents (CETS No. 205) was adopted on 27 November 2008 at the 104th meeting of the Committee of Ministers of the Member States of the Council of Europe. The Convention, also known as the Tromsø Convention, entered into force on 1 December 2020. Albania, Armenia, Bosnia and Herzegovina, Estonia, Finland, Hungary, Iceland, Lithuania, Moldova, Montenegro, Norway, Slovenia, Spain, Sweden, Ukraine and¹ are so far parties to the Convention.

The Tromsø Convention is the first international normative instrument recognising the right of everyone to have access to so-called "official documents"² held by public institutions.

The Access to Public Information Act (APIA), adopted in 2000³, was substantially amended and supplemented in 2008⁴ and 2015⁵, with the most recent amendment in 2023⁶. The amendments have refined the rules on restrictions on access to information, introduced the so-called 'overriding public interest test', expanded the range of entities

¹ See more at: <https://www.coe.int/en/web/access-to-official-documents>

² The term is equivalent to the concept of "public information" within the meaning of the Law on Access to Public Information and has nothing to do with the term used in the Code of Civil Procedure to denote a type of written evidence.

³ Ann. SG 55 of 7 July 2000.

⁴ Am. SG 104 of 5 December 2008.

⁵ Amended and supplemented by SG 97 of 11 December 2015.

⁶ Amended and supplemented by SG 82 of 29 September 2023.



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obliged to provide information and created and further developed the obligation to publish information on the institutions' websites.

According to the *Access to Information Programme* (AIP), the API Act complies with the Convention and Bulgaria can ratify it.

The Convention is a minimum standard for access to official documents and does not prevent national laws from providing for wider access to official documents (Article 1(1)).

Definitions: scope of obliged entities

The subjects obliged under the APIA correspond to the "public institutions" mentioned in the Convention. According to the APIA, the obliged subjects are the bodies of the executive power, as well as their territorial subdivisions and local self-government bodies (Article 3, paragraph 1). There is full compliance with the Convention's obligation for executive authorities and their administrations at national, regional and local level to provide information (Article 1(2)(a)(i)(1)).

The Convention imposes obligations on the legislature and the judiciary insofar as they perform administrative functions (Article 1(2)(a)(i)(1)), and the parties may declare by declaration that the obligation extends to their other activities. According to Article 3(1) of the APIA, the obligation to provide access to public information is entrusted to public authorities, i.e. it applies to the authorities of all three authorities. The case-law has also brought out this wide range of obliged subjects, which also covers the legislative and judicial authorities.

The practice of the Supreme Administrative Court and the administrative courts also holds that the obligation of the courts to provide information is limited to the provision of information relating to judicial administration activities, but not to information of a judicial nature. This interpretation is based on the understanding that access to information of a judicial nature is regulated by the Law on the Judiciary (LoJ)⁷. The latter contains, for example, provisions on the publication of judicial acts. The Administrative Procedure Code (APC), on the other hand, lays down an obligation to publish the records of open hearings in administrative cases⁸. Consequently, national legislation also provides for a procedure for access to information of a judicial nature, albeit under a different law from the APIA. There is compliance with the Convention.

⁷ See Article 64 of the Law on the Judiciary.

⁸ See Article 142a of the APC.



The Convention also obliges natural and legal persons to provide access to official documents concerning the exercise of administrative authority and allows, by declaration, the Parties to include natural and legal persons concerning the exercise of public functions or the operation of public funds. In this respect, the APIA is relevant to it after the amendments promulgated by promulg. 104/ 2008, according to which the obligation to provide information also applies to the so-called public law organisations, i.e. legal entities, merchants or not:

(a) of which more than 50% (and for medical establishments more than 30%) of the revenue for the previous year is from the public budget,

(b) in which more than 50 % of the management/control body is appointed by a contracting authority,

(c) subject to management control by a procuring entity,

The definition of "public body" was further refined by the 2015 amendment. At that time, the requirement that it be only a legal entity that is "established for the purpose of satisfying public interests" was removed. Thus, the scope of the concept was broadened and the previous conflicting case law on the interpretation of "established for the purpose of satisfying public interests" was overcome and ceased to create practical problems in the application of the law.

Natural and legal persons are also obliged to comply with the APIA for their activities financed by the state budget, EU funds or EU programmes and projects.

Definitions: the term "official documents"

The concept of "public information" in the Bulgarian APIA corresponds to the concept of "official documents" set out in the Convention. According to it, this is any information recorded in any form, produced or received and held by public institutions. According to the APIA, public information is any information created or held by public institutions relating to public life and enabling an opinion to be formed on their activities (Article 2(1)). This definition covers both the acts of public authorities (Article 10) and any information collected, stored and created in connection with them or in connection with the activities of the authorities and their administrations (Article 11). The Supreme Administrative Court has interpreted that public information is "any set of data structured according to a certain criterion and with a certain purpose and destination", as well as "any information about any situation or about any activity of the obliged subjects". In practice, the definition also covers contracts, analyses, reports, transcripts of meetings, consultations, etc.



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According to the Convention, documents are official regardless of the form in which the information is recorded. According to the APIA, information is also "public" irrespective of the type of its material medium (Article 2(2)), which may be of various kinds (§ 1(1) of the Additional Provision).

The Convention puts an equal sign between information and documents. The ATI Act provides for access to information in the form of inspection or copies of documents - original or copy (Article 26(1)). The vacillation on this issue, which arose in isolated adjudication in the first decade of implementation of the EIRA, has been decisively overcome by a series of decisions of five-member panels of the SAC over the last 10-15 years. The case law has uniformly held that a request for access to a document constitutes a valid request under the ATI Act.

Under the Convention, the right to information applies to existing documents. The situation is the same under the RTI Act, and in some cases, for convenience, applicants may request access in the form of a reference, i.e. in practice in these cases a new document containing existing information is created. Thus, on this issue, the FOIA under its application is of a higher standard than the Convention.

The official documents transmitted to the archives are within the scope of the Convention. In contrast, the APIA explicitly excludes archives from its scope. However, public access to documents held in archives is provided by the National Archives Act. There is therefore compliance of national legislation with the Convention.

Right of access to official documents

Under the Convention, everyone has the right of access to official documents. The same right is provided for in the APIA, according to which Bulgarian citizens, foreigners, stateless persons and legal entities have the right of access to information on an equal basis (Article 4). The case law has developed the opinion that even non-legal organisations of citizens have the right of access to information. There is no requirement to prove the legal personality of legal persons, precisely because everyone has the right to access information, and the organization is composed of members.

Restrictions on the right of access to official documents

According to the Convention, restriction of the right of access to official documents is permissible only when it is simultaneous:

- provided by law;



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- proportionate to the protection of the interests set out therein;
- necessary in a democratic society.

The Convention is exhaustive on the interests relating to the protection of national security, defence and international relations, public safety, the prevention, investigation and prosecution of criminal offences, disciplinary investigations, inspections or audits, the protection of privacy and other legitimate private interests, "trade secrets", the protection of financial and other economic policies, the equality of arms in judicial proceedings, the protection of the environment, the political decision-making process, etc. Bulgarian law provides for the protection of most of the interests listed, with the exception of the protection of equality of arms and the protection of royal correspondence.

Requirements for the application of the restrictions

Under the Convention, restrictions can only apply if harm to a protected interest would result from disclosure of the information and there is no overriding interest in disclosure. Establishing these circumstances requires an inspection:

- whether harm is likely to occur /"harm test"/;
- if such is likely, which prevails in the case: the interest in protecting the right to information or the interest in protecting a competing right or interest /"overriding public interest test"/.

These inspections or tests may be carried out by the legislature or the executive, according to the Explanatory Report to the Convention. Under Bulgarian law, the "harm test" is applied by the relevant competent official under the Classified Information Protection Act (CIPA) in the case of a restriction related to the protection of national security, defence and international relations (so-called "state secret" - Article 25 of the Classified Information Protection Act), public safety (so-called "official secret" - Article 26 of the Classified Information Protection Act), "commercial secret" (Article 17(2) of the APIA in conjunction with Article 29 of the Competition Protection Act), decision-making and negotiation (Article 13(2) of the APIA). By pre-classification, a 'presumption of harm' is in fact applied.

The relevant laws provide for a period of protection, which in some cases is fixed and in others is left to the discretion of the administration within certain maximum limits. For example, fixed time limits for the protection of information classified as state or official secrets are provided for in Article 34 of the Law on the Protection of Classified Information, while Article 13(3) of the APIA provides for a maximum time limit for the protection of



information related to the decision-making process and negotiations. Bulgarian legislation is thus in line with the Convention.

Requests for access to official documents/information

The Convention prohibits requiring the applicant to give reasons for the access requested and requires that the formalities relating to applications be limited to what is necessary for their examination. Bulgarian law provides that information is to be provided in compliance with the principle of equal treatment (Article 6(2)) and does not require applicants to indicate an interest, which means an equal right of access without regard to the specific purposes of the applicant. Under the APIA, requests for information may be oral or written, with written requests requiring only the name/name, address and description of the information requested. The law does not provide for the possibility for the applicant to remain anonymous given in the Convention. However, this is not a peremptory norm of the Convention. At the same time, it should be noted that under the APIA, applications may be submitted by e-mail and there is no obligation for the administration to verify the identity of the applicant. Consequently, the law and the practice of its implementation ensure compliance with the principle that applicants are not required to state the reasons for the access requested, while at the same time the formalities for the processing of applications are kept to a minimum.

Examination of applications

According to the Convention, the public institution must help the applicant, within reasonable limits, to identify the document. In this respect, the APIA does not expressly provide for particular assistance to be given. It is limited to forwarding the application to the competent authority when the addressee of the application does not have the information but has knowledge of its whereabouts (Article 32) and to giving the applicant the opportunity to clarify his application within 30 days (Article 29) when it is not clear exactly what information is requested or when it is formulated very generally.

As provided for in the Convention, under the APIA, the application must be examined by any institution that holds the requested information. The application shall be dealt with as soon as possible, but not more than 14 days, and shall be served on the applicant within the same time limit, thus complying with the Convention's requirement of promptness and a reasonable period of time fixed in advance. In case-law, failure to respond to an application within the time limit is regarded as a material breach.



Under the Convention, if an application is manifestly unfounded, it can be rejected. In the APIA, this possibility is limited to cases where the information has already been provided to the applicant within the previous six months, or the applicant has not specified the subject matter of the requested information within 30 days, where the request was vague or very generally worded and the institution has informed the applicant of this.

In case of refusal, the decision of the institution shall be in writing, containing a factual justification and an indication of the legal basis, and shall be served in its entirety to the applicant (Article 38 of the APIA). There is full compliance with the Convention.

Forms of access to official documents/information

Under the Convention, the applicant has the right to choose whether to inspect the original or a copy of the document or to obtain a copy, including in a form or format accessible to him, unless the preference expressed is unreasonable. Where part of the information in the document is inaccessible because of a restriction, access to the rest of the content must be provided, with the omissions clearly indicated.

According to the APIA, the applicant also chooses the form, which may be a review of the original or a copy, including electronic media, may be a link to a document stored at a specified Internet address, sending documents by e-mail or a reference (Article 26, paragraph 1 of the APIA)⁹. Access can also be requested and obtained through the online Platform for Access to Public Information established under the Act in 2015. On the platform, other registered users can view responses to requests for access to public information received from other applicants.

Persons with disabilities may request the information in a form appropriate to them (Article 26(4)). There are exceptions to the applicant's right of choice where there is no technical possibility, costs are unreasonably increased, there may be unlawful processing or copyright may be infringed. In cases outside the protection from unlawful processing and copyright, where there is a restriction on access to part of the document, partial access to the rest of the document should be granted (Article 7(2), Article 37(2)). Since December 2008, this obligation has been mandatory.

Under the Convention, the institution may refer the applicant to readily available alternative sources. In any case, where the requested information has been promulgated, the institution must refer the applicant under the APIA with precise indication to the

⁹ The forms are varied under the 2015 version of the provision.



relevant publication (Article 12(4)). Following the 2015 amendment, access to public records available online is made under the APIA (Art. 26(1), last sentence).

Fees for access to official documents/information

Under the Convention, on-the-spot inspection of documents is free of charge, and for other forms of access, a fee may be set not exceeding the actual cost of providing the document.

This is also the case under the APIA, as access is free of charge and only the material costs of provision are required (Article 20). In the law adopted in 2011. Order No. ZMF-1472 of 29 November 2011 of the Minister of Finance adopted maximum amounts of costs to be paid (e.g. 9 st for a photocopy of paper), and the review and provision of information and documents electronically are free of charge.¹⁰ . With the amendments to the APIA (SG No 49 of 2007), the executive authorities were obliged to provide a place for reading the documents in their premises.

Appeal procedure

The Convention provides for the right of an applicant whose request for information is refused, expressly or by implication, to appeal against the refusal to a court or other independent and impartial body. Under the APIA, applicants have the right to appeal decisions on their applications to the administrative courts and the Supreme Administrative Court. The right to appeal against the silence of the administration on an application, or the so-called silent refusal, is not explicitly provided for in the APIA, but it is clearly established in the unidirectional case law of the Supreme Administrative Court and the administrative courts.

According to the Convention, the procedure for appealing against refusals must be swift and economical. Under the Code of Administrative Procedure, the institution itself has the right to review its decision and amend or annul it, which in practice happens in some refusals.

Administrative justice is currently not expensive - the complainant, an individual or a non-profit legal entity, pays a fee of BGN 10 for the consideration of the complaint, and a legal entity, a trader, BGN 50.

¹⁰ The order is promulgated in art. SG No. 98 of 13 December 2011. Its content is available at: http://store.aip-bg.org/laws/zapoved_1472_minfin.pdf



With the amendment of the APIA in 2018, the examination of cases of appeals against decisions and refusals of the obliged subjects became a single judicial instance - the administrative courts (Article 40, paragraph 3 of the APIA). Although the legislative initiative of this change was not dictated by a friendly attitude towards citizens and was not aimed at the protection of their rights, in practice it led to a significant shortening of the time limits for the consideration of an appeal under the APIA. The usual timeframe for this is several months, and it should be taken into account that administrative justice in Bulgaria is developing at a rather fast pace. It should be concluded that the timeframes for consideration of cases in the courts are shorter even than the timeframes within which complaints are considered by information commissioners or commissions in some other countries.

There is therefore compliance with the Convention.

Additional measures

The Convention provides for an obligation to inform the public about the right of access to information and to take concrete action to improve the conditions for access to information.

The first measure relates to the training of institutions on information obligations. In Bulgaria, in the previous years, trainings were held for public officials on the APIA, organised by the Institute of Public Administration. The amendments to the APIA, promulgated by SG 104 of 05.12.2008, created an obligation for the heads of administrative structures in the executive power system to provide training to employees (§ 9 of the Transitional and Final Provisions of the Act on Amendments and Supplements to the APIA of 2008).

The Convention's requirement to provide information facilitating citizens is fulfilled by the obligation to publish up-to-date information containing a description of the powers and details of the organisation, functions and responsibilities of the relevant administration (Article 15(1)(1) of the APIA). This information is to be published on the websites of the institutions in accordance with Article 15a(1) of the APIA. Lists of issued acts, description of information files and resources, i.e. maintained registers, contacts of the unit responsible for receiving applications for access to information should also be published on the internet. In 2015, the list of categories of information to be published on the websites of the institutions was significantly expanded, including thanks to the advocacy of API Foundation.

State authorities and local self-government bodies are obliged to designate officials responsible for the provision of information and to designate places for reading documents



(§ 18 of the Transitional and Final Provisions of the Act on Amendments and Supplements to the APIA of 2007).

The Convention's requirement to maintain effective document management and retention systems is also reflected in national legislation. Article 42 of the eGovernment Act entrusts the Council of Ministers with the adoption of a regulation on the general rules for the internal circulation of electronic and paper documents in administrations. A special regulation was adopted in 2008 to fulfil this obligation. The rules of individual administrations should be in line with these common standards. The grounds and procedure for the destruction of documents are laid down in the National Archives Act, which provides for the functioning of permanent expert committees (Article 49). Special rules apply to information classified as State or official secrets. Destruction of such information is permissible only after the expiry of one year after the period of its protection, following a proposal by a committee and the authorisation of the State Information Security Commission.

It should be noted that in 2020 the API, commissioned by the Council of Ministers, produced a Handbook for the Administration entitled "How to apply the Law on Access to Public Information"¹¹. Together with the Handbook, model of internal rules for different categories of executive authorities were developed and published.

Publication at the initiative of public institutions

The Convention requires such publication in order to enhance the transparency and efficiency of public administration and to promote informed participation in matters of common interest. The APIA imposes a general obligation on the heads of entities within the executive branch to publish for transparency purposes, including online, 17 categories of information, including but not limited to:

- The internal rules on access to information /in the section "access to information"/;
- The procedure for access to the maintained public registers /in the section "access to information"/;
- The report on the applications received under the APIA, the refusals issued and the reasons for this /in the section "access to information"/.

¹¹ Available at: http://store.aip-bg.org/publications/handbooks_and_brochures/Naruchnik_2020_ZDOI.pdf



The model internal rules developed by the API on behalf of the Council of Ministers also contain more detailed instructions on the implementation of the obligations to publish information on the internet.

Obligations to publish certain categories of environmental information are provided for in the Environmental Protection Act. The Environmental Protection Act also provides for an obligation to publish information in order to protect the life, health and rights of people (Article 14, paragraph 2, item 1).

Conclusion

From the presented analysis of the compliance of the provisions of the APIA and the national legislation in general with the Tromsø Convention, it follows that there is a clear conclusion that there is such compliance and there is no obstacle to the accession of the Republic of Bulgaria to the Convention.

Prepared by:

/ Alexander Kashumov, Executive Director of AIP/