QUESTIONNAIRE

"Access to information held by public institutions and processing of (secret) information in administrative courts procedure"

A. Access to information held by public authorities:

Austrian management transparency at federal level is regulated by the "Auskunftspflichtgesetz" (the Grant Information Act) and "Auskunftspflicht-Grundsatzgesetz (Grant Information Act), ruling the respective legislative frames for the laws of the 9 Austrian provinces (Länder) to be issued with respect to "Auskunftspflicht" (i.e. information disclosure obligation):

In principle this provides that the organs of the Federal Government, of the Länder (there exist also such laws issued by each of the Länder of Austria) have to provide information concerning their area of effect/competences as far as an obligation of confidentiality shall not preclude it in the certain case. Everyone can ask for information (on the activites of the authority or any other relevant issue concerning the competent area of effect of the authority), and there are deadlines within which the executive must either give the requested information or formally decide why it does not give the information.

As a fundamental principle, individual citizens can not claim to inspect the court files, this is only open to parties to the case (party to a case: must have subjective rights, depends on the respective norm of administrative law, who can be party of a certain case).

EU-wide unique we have the constitutional principle of official confidentiality, which applies to all executive officers (entrusted with administrative duties or being executive officers of public law corporate bodies, like social security bodies or chambers) and comprises their obligation to keep confidentiality about all facts of which they have obtained knowledge exclusively from their official activity and which have to be kept confidential in the interest of the maintenance of public peace, order and security, of comprehensive national defence, of external relations, in the interest of a public law corporate body, for the preparation of a

ruling or in the preponderant interest of the parties involved. (Art. 20 para 3 Austrian Constitutional Act 1920).

Since 2013 there are efforts to enhance the Freedom of Information for the public. There is also the aim to adapt the official secrecy by Constitutional Provision.

After the elections to the National Council, the Government has committed itself in its work programme to undertake reforms addressing the official secrecy. The official secrecy should be replaced through the fundamental right to data protection. The first draft of the Federal Act amending the Federal Constitutional Law was expected (promised) for the first half of 2014. A very criticized draft amendment to the freedom of information law (FOI laws) was submitted for appraisal at the end of march 2014. The Austrian parliament did not enacted the Freedom of Information Act, until the end of June 2015. Another draft of the Federal Act amending the Federal Constitutional Law was expected in November 2015. The draft version was ratified 2016 and will come into force 2018. Federal states demand exceptions and additional restrictions from the information obligations.

The Austrian national transposition measures concerning:

Directive 2003/4/EC of the European Parliament and of the Council of 28 January 2003 on public access to environmental information and repealing Council Directive 90/313/EEC

Umweltinformationsgesetz-Novelle 2004
Official publication: *Bundesgesetzblatt für die Republik Österreich (BGBl.)*; Number: *I Nr. 6/2005*; Publication date: *2005-02-06*

Steiermärkische Raumordnungsgesetznovelle
Official publication: *Landesgesetzblatt (LGBl.)*; Number: *13/2005*; Publication date: *2005-03-23*

Gesetz vom 12. Oktober 2005 über den Zugang zu Informationen über die Umwelt (Tiroler Umweltinformationsgesetz 2005 – TUIG 2005)
Official publication: *Landesgesetzblatt (LGBl.)*; Publication date: *2005-10-12*

Kärntner Informations- und Statistikgesetz
Official publication: *Landesgesetzblatt (LGBl.)*; Number: *70/2005*; Publication date: *2005-10-17*

Gesetz über den Zugang zu Informationen über die Umwelt (Landes-Umweltinformationsgesetz – L-UIG)
Official publication: *Landesgesetzblatt (LGBl.)*; Number: *56/2005*; Publication date: *2005-12-13*

Gesetz vom 12. Oktober 2005 über den Zugang zu Informationen über die Umwelt (Tiroler Umweltinformationsgesetz 2005 – TUIG 2005)
Official publication: *Landesgesetzblatt (LGBl.)*; Number: *89/2005*; Publication date: *2005-12-15*

Oö. Umweltschutzgesetz-Novelle 2006
Official publication: *Landesgesetzblatt (LGBl.)*; Number: *44/2006*; Publication date: *2006-05-18*

Gesetz, mit dem das Gesetz über den Zugang zu Information über die Umwelt geändert wird (Wiener Umweltinformationsgesetz-Novelle 2005/Wr. UIG-Novelle 2005)
Official publication: *Landesgesetzblatt (LGBl.)*; Number: *48/2006*; Publication date: *2006-09-26*

NÖ Auskunftsgesetz
Official publication: *Landesgesetzblatt (LGBl.)*; Number: *0020-2*; Publication date: *2006-11-22*

Gesetz über die integrierte Vermeidung und Verminderung der Umweltverschmutzung, die Beherrschung der Gefahren bei schweren Unfällen sowie den Zugang zu Informationen über die Umwelt (Burgenländisches IPPC-Anlagen-, SEVESO II-Betriebe- und

Umweltinformationsgesetz - Bgld. ISUG)
Official publication: *Landesgesetzblatt (LGBl.)*; Number: *8/2007*; Publication date: *2007-02-08*

Landesgesetz, mit dem Bestimmungen über den Katastrophenschutz in Oberösterreich erlassen werden (Oö. Katastrophenschutzgesetz - Oö. KatSchG) und das Oö. Feuerpolizeigesetz geändert wird
Official publication: *Landesgesetzblatt (LGBl.)*; Number: *32/2007*; Publication date: *2007-04-30*

Gesetz vom 4. Juli 2007, mit dem das IPPC-Anlagengesetz geändert wird
Official publication: *Landesgesetzblatt (LGBl.)*; Number: *72/2007*; Publication date: *2007-09-07*

NÖ Umweltschutzgesetz
Official publication: *Landesgesetzblatt (LGBl.)*; Number: *8050-7*; Publication date: *2009-11-30*

Gesetz, mit dem das Gesetz über den Zugang zu Informationen über die Umwelt geändert wird (Wiener Umweltinformationsgesetz-Novelle 2016 / Wr. UIG-Novelle 2016)
Official publication: *Landesgesetzblatt (LGBl.)*; Number: *62/2016*; Publication date: *2016-12-22*

National transposition measures concerning:

Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data:

NÖ Datenschutzgesetz (NÖ DSG) LGBl. 0901-0 (Land Niederösterreich),Stück 116/00 du 21/12/2000
Official publication: *Verwaltungsmassnahmen*

Gesetz über den Schutz personenbezogener Daten LGBl. Wien, Jahrgang 2001, n° 125 du 14/12/2001, Seite 685
Official publication: *Verwaltungsmassnahmen*

Gesetz vom 21/05/ 2003 über den Schutz personenbezogener Daten (Tiroler Datenschutzgesetz - TDSG) LGBl für Tirol n° 60 vom 15/07/2003 Seite 251 (SG(2003)A/07512 du 05/08/2003)
Official publication: *Verwaltungsmassnahmen*

Bundesgesetz über den Schutz personenbezogener Daten (Datenschutzgesetz 2000 - DSG 2000)
Official publication: *Verwaltungsmassnahmen*

Gesetz vom 12 juli 2000 über den Schutz personenbezogener Daten Landesgesetzblatt für Kärnten 9/10/2000
Official publication: *Verwaltungsmassnahmen*

Bundesgesetz vom 18/10/1978 über den Schutz personenbezogener Daten (Datenschutzgesetz - DSG)
Official publication: *Verwaltungsmassnahmen*

Gesetz vom 21. März 2001, mit dem das Salzburger Auskunftspflicht-Ausführungsgesetz geändert wird. LGBl. Land Salzburg Nr. 65/2001, 23. Stück., page 217; 29/06/2001
Official publication: *Verwaltungsmassnahmen*

Gesetz vom 20. März 2001 über den Schutz personenbezogener Daten in nicht automationsunterstützt geführeten Dateien (Steiermärkisches Datenschutzgesetz - StDSG) LGBl. Land Steiermark, Nr 39/2001, 16/07/2001, 15. Stück, seite 53
Official publication: *Verwaltungsmassnahmen*

Datenschutzgesetz 2000
Official publication: *Bundesgesetzblatt für die Republik Österreich (BGBl.)*; Number: *I Nr*

13/2005; Publication date: *2005-03-31*

Gesetz vom 30. Juni 2005 über den Schutz personenbezogener Daten bei nicht automationsunterstützt geführten Dateien (Burgenländisches Datenschutzgesetz – Bgld. DSG)
Official publication: *Landesgesetzblatt (LGBl.)*; Number: *87/2005*; Publication date: *2005-10-24*

Registerzählungsgesetz, Postgesetz 1997, Meldegesetz 1991, Bildungsdokumentationsgesetz
Official publication: *Bundesgesetzblatt für die Republik Österreich (BGBl.)*; Number: *I Nr. 33/2006*; Publication date: *2006-03-16*

Gesetz vom 4. Juli 2007, mit dem das Gesetz über Auskunftspflicht, Datenschutz und Landesstatistik geändert wird
Official publication: *Landesgesetzblatt (LGBl.)*; Number: *69/2007*; Publication date: *2007-09-07*

Bundesgesetz, mit dem das Datenschutzgesetz 2000 geändert wird (DSG-Novelle 2013)
Official publication: *Bundesgesetzblatt für die Republik Österreich (BGBl.)*; Number: *I Nr. 53/2013*; Publication date: *2013-04-17*

Question 1: Whether the Member States exceed the minimum standard of the right of freedom of information under the secondary EU law? If so, to what extend? In which field?

The scope of the Environment Information law is:

- Giving the public better access to environmental information.
- Further increase transparency and to raise awareness for the need of environmental situation in our working or living environment and the optimization of data.
- Additional reporting obligations for the authorities.
- Detailed information is easier to design.
- Processing documents electronically.
- Certain enterprises have clearly defined obligations to provide informations, especially to take precautions to ensure preparedness for operational disruptions and accidents.
- Besides there is the rights of citizens receive for access for receiving data from the national authorities.

To the fields: see above the National transposition measures in Austria.

Question 2: How broad is an access to information held by public authorities under national law established by national law?

Does everybody have access to any kind of information?

The implementation of the environmental information Directive took place at federal level in connection with the Environmental Information Act and at regional-state level in connection with the Environment Information law, the right of access law and several environmental laws.

Who can apply for an access to information (only natural or also judicial persons, private or also public – e. g. municipalities when performing matters of self-administration?)

Every natural and also judicial person.

The proof of legal interest is not required in any case (for example: minors; foreign citiziens, judicial persons as companies, organizations, institutions and corporate bodies).

Everybody is allowed to make an application for environmental informations without any proof (such us: without beeing a party; without having special interests or specific impairment).

Which information is available?

- The state of elements of the environment, such as air and atmosphere, water, soil, land, landscape and natural sites biological diversity and its components, including genetically modified organisms, and the interaction among these elements.
- Environmental factors (factors, such as substances, energy, noise, radiation or waste, including radioactive waste, emissions, discharges and other releases into the environment.
- Information on measures (such as policies, legislation, plans, programmes, environmental agreements).
- Environmental information "reports on the implementation of environmental legislation" as well as activities.
- Available techniques (BAT) and related cost-benefit studies.
- Information on the state of human health and safety where this can be affected by the state of the environment.

Question 3: Which institutions, authorities and legal bodies are obliged to provide access ?

- The national administration (management authorities, central and decentralised national departments, local authority departments).
- Decentralised juridical entities (for example: the Federal Environmental Agency (UBA)).

- In relation to environmental various public bodies referred (for example: on water authority boards).
- Decentralised juridical entities (for example: public services in local, single-sourced basic services, including water and energy, waste recycling, waste and sewage disposal, street cleaning).

The right of application for environmental informations concern matters with federal responsibility. If there is a Provincial matter in terms of legislation and enforcement (such as protecting nature and the landscape, hunting, fishing and construction law) each Federal State has its own terms of legislation an enforcement. The informations therefore you get at the nine state governments.

Question 4: Limits and exceptions?

Are there confidentiality interests?

- International relations, the maintenance of public order and safety.
- The protection of specific environmental sectors (such as as the location of rare species).
- The protection of personal data if there is a legitimate and overriding interest in doing so.
- Business or corporate secrets if they are protected by national or Community law.
- Aspects of Intellectual Property Rights.
- The confidentiality of the proceedings of authorities which are required to provide information and where the law requires such confidentiality.
- The course of justice, the ability of a person to receive a fair trial or the ability of a public authority to conduct an enquiry of a criminal or disciplinary nature.

Question 5: Can one claim for an access before the court?

- Yes…the decision of partial or total failure to communicate Environmental Information are also obliged to provide reasons for a decision to reject an application. The decision can be appealed against before the Administrative Court.

Question 6: Main topics?

VwGH (Supreme Administrative Court), decision v.30.3.2017 Ro 2017/07/0004:

“The right to information means that the disclosure of information should be the general rule.”

B. Processing of informations in administrative courts procedure :

1. THE INSTRUCTION OF THE CASE

1.1. GENERAL DATA

1.1.1. Preamble: the system of evidence

Are all kinds of evidence admissible? Are the testimonies (opinions of witnesses) admissible?

Administrative Courts first instance : in principle there is no limitation of evidence. Especially witnesses and experts are regularly part of taking evidence by the courts.

Supreme Administrative Court (SAC) : generally, no evidence is taken by the SAC, it controls the legality of decisions of the first instance courts. Generally spoken, access to SAC is limited : « Final complaint against the ruling of an Administrative Court is admissible, if the solution depends from a legal question of essential importance, in particular because the ruling departs from the case-law of the Supreme Administrative Court, such case-law does not exist or the legal question to be solved has not been answered in uniform manner by the previous case-law of the Supreme Administrative Court. If the ruling only is on a small fine, federal law may provide that the revision is inadmissible. ». There exists the possibility for SAC by law (which is practiced sometimes) to decide in the merits of the case, if the matter has reached a stage permitting a decision and the decision on the merits is in the interest of simplicity, appropriateness and cost saving. In that case, the Supreme Administrative Court shall establish the relevant facts and, for that purpose, can also order the Administrative Court to supplement the evidentiary proceeding.

The burden of proof: who must prove: the claimant, the administration or the judge?

The Austrian system of administrative justice is based on the inquisitorial principle. Thus in general, it is the judge to take ex officio all evidence. Austrian procedural law provides for the obligation of a judge to set all facts and ex officio search for all evidence.

By jurisprudence and by some provisions of substantive administrative law, it it foreseen that the party to the case has the duty to actively co-operate and also contribute to the effective evidence taking of the judge (must not contravene or stay totally inactive), or that the burden of proof is changed by specific provisions of law (e.g. party has to give proof of special interest etc….).

This investigatory principle is also based for proceedings in administrative criminal law (which also fall under the competence of administrative courts). In this respect, the opinion of General Advocate concerning division of adversarial systems and investigatory systems is interesting to read (see case C-685/15). This Austrian case is still pending before the CJEU concerning this problem of position of the judge and problem of conversion of role of the judge with the role of the public prosecutor (in administrative criminal proceedings).

Background of this case: SAC found that there is no problem of Art. 47 FRC with the inquisitorial principle for judges (gambling case) and quashed a decision of first instance. The judge of first instance referred the case to CJEU: the admin judge must take full evidence, even when the administrative authority is not active at all, after the SAC had in detail decided which evidence must be taken (difficult issue in the pending case, because it concerns the legality of monopoly in gambling area) on public health criteria to avoid addictions with gambling machines by having a monopolist….

=> judge and public prosecutor in one function? Possible? Case Piersack? ECtHR case law exists on the issue of "confusion of the roles of prosecutor and judge" and the ECtHR has – on a case by case basis – already delivered some judgements if in cases of unclear roles of the prosecutor/judge impartiality of the court was still given.

The administrative authority is party to the case: it represents the prosecutor. However, it is more passive, there is another party by law: representatives of the financial police (which does check the gambling monopoly: they have more interests in the procedure, but do not represent the prosecutor).

Opinion of General Advocate C-685/15: court systems have either adversarial or the inquisitorial system. She notes that both might make difficulties as regards compliance with Article 6 of the ECHR and Article 47 of the Charter. In the adversarial case, weak representation of an accused may infringe the right to equality of arms. In the inquisitorial system, a failure properly to distinguish between what is the task of the prosecutor and what is the task of the judge may lead to the two functions get too close. But, if managed properly, each is a system for ascertaining the truth; they simply do so in different ways. So in principle, Inquisitorial principle is in line with Art. 6 ECHR and 47 FRC. In these circumstances, deciding about justifications for a system of monopoly (against the fundamental freedoms of EU treaties), the task of putting forward that justification can be a matter only for the Member State concerned. It is not for other parties to proceedings, including the national court or the party seeking to challenge the validity of the national measure giving effect to the derogation in question, to do so.

1.1.2. The role of the parties :

The content of the file and the debate: can the parties freely define what they communicate to the judge?

Due to the inquisitorial principle, the judge is not bound to the communication of the parties. The parties are free (generally, except there are other provisions provided by substantive administrative law in specific areas of administrative law) to communicate to the judge what they think is relevant.

However, concerning some questions of law : if there are not specific hints for the judge to investigate and take evidence with respect to a specific issue to solve the case (e.g. party does not claim that he/she has not received the administrative decision properly, there is not hint in the files that there was a problem, then the judge would not need to investigate in all details, unless ex officio there is a hint for the judge to check).

There are only some specific issues, which – in every case – the judge must check ex officio (e.g. if the court is competent ex materiae, ex loco).

In detail it is the jurisprudence (in some few cases on the specific provisions of substantive administrative law) which sets the frames what to examine ex officio in every case and what depends to a greater extent on the communication of the parties. This is partly due to the fact that the same procedural code is also applicable for courts as well as for administrative authorities (in a subsidiary way, in addition to a relatively recently published law on procedure of administrative courts first instance).

Can the parties, at any time, introduce new elements into the debate?

Yes, in general there is NO limit at all.

Only in specific cases (e.g. according to jurisprudence of SAC : removal orders of the administrative authority : relevant time of relevant facts and law : this is when the order was issued… there are also some other exceptions, e.g. tax law, mainly based on jurisprudence).

Is a replica always possible? Has the opposing party a minimum duration to answer?

In general it depends : right to be heard must be recognized. So if the judge wants to refer to it or deems it relevant for the case, then replica must be possible by the other party to the case. Duration : generally depends on the time limits set by the judge. These must be reasonable, depending on complexity etc…

1.1.3. The role of the judge :

Some parties are weak, others are powerful : is this issue taken into account in defining the applicable rules?

In general, as there is no obligatory representation by legal practisioners before administrative courts of first instance. Therefore also the law does not differentiate between weak and powerful, but grants full rights to all parties. This also applies to the administrative

authorities, which are also party to the complaint procedures before the administrative courts.

E.G. as the judge is obliged to give some instructions to persons who are not represented by professional council. E.G. the need to need to inform ex officio of specific deficiencies of written submissions (of formal nature) is not given for professional legal practisioners (by jurisprudence), whereas it is relevant for others (who are not represented) in more depth. So in detail some slight differentiations might exist according to jurisprudence.

Does the judge have a purely passive role or can he/she (or should he/she) require the production of information to a party to the dispute?

The judge acts in an inquisitorial way in Austria. I.E. judge must take all evidence necessary. To a certain extent there exists the general obligation of participation. See above.

Can the judge involve third parties in the debate? Do these third parties have the same rights in this debate?

In Austrian system, relevant in order to be party to the case is always the issue, if subjective rights are violated.

The system of administrative jurisdiction is based on this principle (control of legality of administrative decisions, if they violate subjective rights granted by administrative law and NO objective control of legality). In this case also third parties have a standing as a party to the case. Once you are a party, in principle all rights (granted to parties of a case) are granted equally to all parties (sometimes restrictions, see e.g. building construction cases etc…).

If the judge can hear also third parties : it depends on the necessary evidence to be taken by the judge. Third parties might be relevant, if they can give evidence (as testifying persons).

Substantive law partly (and quite often) foresees also the standing of certain (additional, i.e. third parties) administrative authorities as party to the case. (E.G. in cases of animal welfare, not only the administrative authority is party to the case as well as the individual person affected (e.g. animals are confiscated), but in addition law foresees also the standing as party to the case of the administrative authority « animal welfare ombudsperson »).

It depends a lot on the substantive administrative law, which must be closely looked at in order to see if third parties have the standing as party to the case.

Once these administrative authorities have a standing as a party to the case, in principle full rights exist (sometimes : limitation of rights).

In addition to the standing as party to the case, substantive law also foresees sometimes that some administrative authorities (mainly specific federal ministers) have ex officio a right to file a complaint before SAC.

Can the judge freely decide to ask opinion to an expert?

Because of taking evidence ex officio, it is also the obligation of the judge to call an expert (which might involve costs), IF it is necessary to solve the case, i.e. expertise in questions of facts necessary.

1.2. THE PRINCIPLE OF CONTRADICTION AND ITS LIMITS

Can the judge ask to a public authority to provide a secret information ?

No.

These secret information provided to a court by public authorities has to be communicated to the parties or not? Can the judge supply documents or other materials produced by a party (or a third party) to the opposing party? How does this mechanism apply ?

The judge must be aware of the provision of Art. 6 ECHR in any case : i.e. equality of arms and fair trial principle. There exist only few exceptions, namely : » the authority shall see to it that a judicial inspection shall not be abused for purposes of violating a secret of art, manufacturing or business. » This is relevant e.g. in cases of public procurement control or in cases of licence for a company.

First, the right of inspection of files may be limited by law :

« Excluded from the right to inspection are parts of files whose disclosure would result in damage to justified interests of either party or of third parties or jeopardize the work of the authority or impair the objective of the proceeding. »

Secondly, the parties to the case have to claim their justified interest to protect certain data (i.e. in principle Art. 8 ECHR rights) and in any case give full information to the judge.

Thirdly, it is the decision and the obligation of the judge to weigh the interests of the party to the interests and right of a fair trial and has to find a middle line …. According to jurisprudence of SAC.

Is the principle of the adversarial specially adapted in certain areas?

In certain cases : change of burden of proof.

In certain cases : party must make it credible

Public procurement cases

Must the judge respect secrets? What are these secrets? The secret of privacy? The secret of business? The secret of defence and public safety?

As noted above : judge must have insight view and weigh the interests of Art. 8 ECHR with respect to guarantees of Art. 6 ECHR. Depends on a case to case basis

2. THE CLOSURE OF THE INSTRUCTION

2.1. How and when does the closing of the instruction of a case takes place: before the hearing, at the time of the hearing or after the hearing?

Closing of instruction : only when public pronouncement of the judgement takes place (or with written decision). Few exceptions exist in substantive administrative law (e.g. building construction cases and certain interventions of neighbours…. Etc.).

2.2. Can the judge reopen the investigations or the debate between parties about a case at any time?

Yes, inquisitory principle.

3. THE HEARING

3.1. Possibility of a judicial decision without a hearing?

In general in first instance administrative court proceedings : oral hearings when Art. 6 ECHR OR Art. 47 FRC is involved (with very few exceptions, which clearly follow jurisprudence of ECtHR on Art. 6 ECHR, see Axen jurisprudence : waiver/ highly technical issues/ purely legal issues and purely questions of law which can also be decided on the basis of the files)

3.2. Possibility of an hearing without the presence of the parties?

If formally and by law delivery of summoning the party to the oral hearing is ok and the party does not appear : yes, hearing can be done.

Party is only excused to come : « Whoever is not prevented from appearing by illness, disability or any other justified obstacle is obligated to comply with the summons and can be summoned by subpoena or be made to appear by force. Use of such compulsory measures is only permissible if it was announced in the summons and the person has been served the

summons personally; the enforcement authorities are in charge of implementing such compulsory measures. »

When a party is prevented and excused, the oral hearing must be postponed.

3.3. Possibility of an in camera hearing?

We do not have provisions to exclude the parties to the case when hearing sensitive witnesses (like in the penal courts).

There is the possibility to exclude the public to the oral hearing under certain conditions (interest of the party, interest of public national order, moral order).

3.4. Possibility of a hearing in a closed court ?

In general it does not exist, exceptions by law see point 3.3.

However, we have a provision (Art. 17 of our procedural code) which obliges the judge to apply also in addition the specific procedural provisions of administrative law (which is applicable to the proceedings before administrative authorities). Therefore, it might be the case that some substantive laws provide exceptions (e.g. disciplinary proceedings). In case they do (you always need to check the respective law), the obligation to apply such restrictions might be applicable (which would run counter the general provision of the procedural code applicable to administrative courts, which do not foresee closed court hearings). the law is totally unclear. no jurisprudence of SAC yet.

4. THE JUDICIAL DECISION AND THE CONTENT OF THE REQUIREMENT OF MOTIVATION

4.1. To what extent is it possible to use a secret / not public information in the reasoning of a judgement ?

In principle Art. 6 rights must be granted. The judge must weigh the interests and probably tries to find other evidence to give a profound basis for his/her reasoning.

4.2. Are all judgments pronounced publically published ? Are there some exceptions ?

We follow the jurisprudence on Art. 6 ECHR : in principle public pronouncement. There are exceptions, when the difficulty of the case allows the judge not to pronounce orally.

C. Management of information and secret / or not public information by administrative courts during the state of emergency

Is there a specific national regulation about that?

No specific provisions exist for cases of emergency.

It must be noted that the ECHR and with it Art. 6 ECHR is part of our constitution. Therefore in cases of emergency, the rights of Art. 6 ECHR must be granted. However, therefore we would need to clearly check jurisprudence of ECHR, which in general allows more margin of appreciation in cases of emergency (see case Lawless vs UK), as long as there is the assumption of having a state governed by the rule of law.