



AEAJ

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

Panel Discussion

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National Legislation

- Article 5A of the Greek Constitution. Access to information. Art. 9A. Protection of personal data.
- Law 2472/1997 “Protection of Individuals with regard to the Processing of Personal Data”
- Article 5 of the Code of Administrative Procedure (law 2690/1999 concerns the functioning of the administration)
- Presidential Decree 18/1989 (concerns the procedure in front of the Council of State) Law 2717/1999 Administrative Procedure Code (concerns the procedure in front of administrative courts)
- Presidential Decree 28/2015 codifies all existing legislation concerning access to public documents and elements

p.d. 28/2015

1. P.D. 28/2015
Part A
-Chapter A
Access to public documents
-Chapter B
On the re-use of public sector
information
Directive 2003/98/EC and directive
2013/37/ EC
-Chapter Γ
Access to Private Data
Part B
-Chapter A
Access to the Government Gazette
-Chapter B
Access to the General Records of
the State
-Chapter Γ
Access to the records of the Prime

-Chapter Δ
Access to the records of the
Municipal and Regional
Councils
-Chapter E
Access to public
environmental information
Directive 2003/4/EC,
directive 90/313/EEC
-Chapter Z
Access to geospatial
information
Directive 2007/2 EC
-Chapter H
Access to HELLENIC
MILITARY GEOGRAPHICAL
SERVICE data

-Chapter Θ
Access to cadastral data
-Chapter I
Access to the National Statistic
System Data
In accordance to the regulation
223/2009 EC
-Chapter IA
Access to tax and customs data
-Chapter IB
Access to the Hellenic Single
Public Procurement Authority
Registry
-Chapter IΓ
Access to medical records

The Court demands or accepts information

- P.d. 18/1989 art. 22 and Administrative Procedure Law, ar. 128A. The judge rapporteur is responsible for the assembly of all necessary documents. He can address all authorities and they have the obligation to provide information.
- P.d. 18/1989 art. 23 and Administrative Procedure Law art. 129. The authority needs to express it's opinion on the case providing the relevant file
- Administrative Procedure Law, art. 130. Every party has access to the file.
- P.d. 18/1989 and Administrative Procedure Law (several provisions). With a preliminary decision the Court can ask for a) additional evidence allocating the burden of proof and b) ask for a new administrative report concerning the facts of the case. The Court can ask for an expert opinion, witnesses and all kind of evidence.
- Combination of various provisions. The Court accepts all kinds of evidence, unless they are illegally obtained (CoS 3971/2010).

Jurisprudence

- CoS 4600/2005

State Secrets. The administration must provide the document and if the Court decides that there is a valid reason to classify it, it will not disclose it to the other party and its content won't be revealed in the text of the decision.

- CoS 1116/2009

Access to the records of the discussions of the Council of Ministers. A Minister was convicted because of a case of breach of EU law. The Council of Ministers decided to pay a full sum of money to EU, without taking into account some special circumstances. This fact had an impact on the procedure against the Minister. The Court demanded access to those documents.

The Court provides information

- According to the Administrative Procedure code, the parties have access to the file. No relevant provision in p.d. 18/1989
- According to the decision 4600/2005 the Court if it decides that an information is confidential, it cannot disclose it to the parties or the text of the decision

The Court examines an administrative decision to provide or not information

- The administrative decision with which a person is denied the right of access can be contested by making an Application for Annulment before the Council of State

Hellenic Data Protection Authority

- Opinion 2/2006. The Council of State cannot create a database with all its decisions, where everybody can have access and where the names of the parties will be disclosed only if they submit an application which will be admitted by the President of the Court before the hearing. All the decision must be anonymized.

Jurisprudence

- *Opinion of the Public Prosecutor of Arios Pagos 1/2005*

-The Public Prosecutor can ask all public services and all public legal persons for all kinds of documents, unless they are classified as state, military or diplomatic secret or linked to State Security or have to do with professional secrets. Personal Data laws are not applicable.

-The applicant must have an interest for public documents or specific legal interest for private documents

-the request must not constitute an abuse of the right to information or impair significantly the functioning of the public service

-third parties have access to public and private documents held by a public authority according to the specific laws governing the subject (eg. tax privacy, intellectual property, documents concerning family or private life etc.).

- **Council of State (CoS) 2869/2016**

A citizen filled a report to the Lawyer's Bar of Thessaloniki against an employee of the Hellenic Society for the Protection of Intellectual Property (AEPI) concerning the behaviour of this employee during an inspection of a person who sold illegal cd's. The Lawyer's Bars Board issued a resolution that AEPI's employees do not have the right to perform such inspections. Those documents were communicated to AEPI which requested the full text of the resolution, the proposal to the Board, the name of the rapporteur, the names of the members of the Board, the record of the meeting etc. AEPI it was denied access based on a standard practice of the Lawyer's Bar. This decision was annulled.

- **CoS 4154/2015**

A citizen has filed an accusation addressed to the Municipality regarding illegal building activities in its area without disclosing the name of the buildings owner. The Municipality verified those accusations and the Public Prosecutor started a penal procedure against the owner. The owner received a copy of the accusation and the citizen was defamed in various TV shows. The Hellenic Data Protection Authority issued a decision imposing a fine of 10.000 euros to the Municipality because of illegal processing of the citizens personal data. The Court dismissed the application for annulment and upheld the Authority's decision

- **CoS 2584/2015**

A lawyer asked from tax authorities to be informed on whether he has signed any guarantee agreement regarding taxation issues on behalf of any person during his 40 years of professional practice and if so, to be given a copy of this agreement. This was deemed an abuse of the right to information access



Thank you very much!