8 May 2017

Working group meeting « Independence and Efficiency »

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

QUESTIONNAIRE

15 and 16 June, 2017

Bundesverwaltungsgericht - Federal Administrative Court,

Simsonplatz 1, 04107 Leipzig, Germany

A. Access to information held by public authorities :

The law of the European Union has a twofold approach with regard to access to public sector information: addressees are the Member States on the one and the EU institutions on the other hand. The later are addressed by art. 42 of the Fundamental Rights Charter and art. 15 par. 3 TFEU, which establish a right to access to documents of the European Parliament, the Council and the Commission as well as of Union's institutions, bodies, offices and agencies subject to the principles and the conditions defined in accordance with this paragraph. Hence regulation 1049/2001/EC of 30 May 2001 provides for public access to European Parliament, Council and Commission documents.

In the law of the administration of the EU (by Member State institutions) only sectorial limited provisions exist. The principle of conferral under art. 5 par. 1 and 2 TEU prohibits to establish a comprehensive and coherent legal framework for the national right to freedom of information. Hence secondary law provides only for public access to environmental information under directive 2003/4/EC and for the re-use of public sector information under directive 2003/98/EC of 17 November 2003, amended by directive 2013/37/EU of 26 June 2013. Both are implemented under the framework of the directive 95/46/EC on the protection of individuals with regard to the processing of personal data and on the free movement of

such data. Moreover Directive 2007/2/EC of 14 March 2007 establishes an Infrastructure for Spatial Information in the EU (INSPIRE).

QUESTIONS

1. **Whether the Members States exceed the minimum standard of the right of freedom of information under the secondary EU law ? If so, to what extent? In which fields?**

Italian legal framework on access to information is considered by some international experts and organizations to be among the most restrictive in Europe.
In the matter of access Law 241/1990 (The Administrative Procedure Act) remains the main reference of the current regulations of access, though since 2009 a series of further different regulations (Law 15/2009; Law 150/2009; Law 183/2010; Growth Decree 2.0 - Digital Agenda; Transparency decree 33/2013) have been introduced into the Italian legal system centred on principles such as the full disclosure of all information on the activities of public institutions and the total accessibility, also by way of electronic means, of all public data and information.
These new regulations have the potential to improve the overall transparency and facilitate access to information.
With the recent introduction of a further form of "right to know", renamed "civic access", the Italian legislator seems to have taken the road of a generalised application of the principle of transparency, according to the European approach.

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

At present, the Italian legal framework on access to information is made up of two legal disciplines: law n. 241/1990 remains the cornerstone but it is now flanked by the so called "civic access", introduced by the recent Legislative Decree nr. 33/2013 (as lately amended), presented as the "Italian Freedom of Information Act".
Considering the substantial differences between these two regulations, doctrine states that more "Rights to access" coexist in Italy.
This having in mind, in order to briefly answer the question, it can be said that the right to access to information moulded by the 1990 Law has become a subjective, enhanced legal position with a reinforced protection but, at the same time, it is still characterized by tight limits in terms of active legitimation (i.e. the applicant is obliged to reason his application and to demonstrate a personal and concrete interest).
The right to information sculpted by the 2013 Italian FOIA, as later modified by the 2016 legislator (Legislative Decree nr. 97/2016) contains interesting elements of proactive disclosure, generating the obligation of public bodies to provide, publish and disseminate information about their activities, budgets and policies in a way that allows the public to use it easily. This latter discipline, if, on the one hand, does not require any reasoning to get the requested information, becoming accessible to anyone, on the other hand is only useful to obtain the information subject to mandatory publication that hasn't been complied with.

2.1. 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?)

Both regulations allow anyone, natural or judicial person, to apply but, while the so called 2013 "civic access" can be exercised by anyone, without any obligation to motivate the request, access to administrative documents ex law 241/1990 requires an individual, concrete and present interest, directly linked to the document the private asks to access.

2.2. Does everybody have access to any kind of information?

No.
Law 241/90 allows access to "administrative documents" only. The Law defines such documents as "*every […] representation of the content of instruments, […] that are held by a public authority and concern activities of public interest […].*
However, the information held by a public authority that is not in the form of an administrative document shall not be accessible.
Regarding **the 2013 civic access**, which is precisely aimed at ensuring forms of widespread control over the pursuit of institutional purposes, the public has a right to know data and documents held by public persons, not necessarily in the form of an administrative document.

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

With similar wording, both disciplines state that any public administration, independent or special agencies, public bodies and public service providers is obliged to provide access. The right to access can also be exercised towards independent regulatory authorities, within the framework of their respective internal rules.
Legislative Decree 33/2013 makes express reference to publicly controlled companies, associations and foundations mainly funded by public administrations.

4. What are the limits and exceptions?

The main limit of **the 1990 right to access** concerns the form of the information required: any information held by a public authority that is not in the form of an administrative document shall not be accessible.
It is expressly forbidden any access application made with the aim of generally monitoring the work of public authorities.
Furthermore, the right to access is excluded in case of documents having State-secret status, secrecy or disclosure prohibition provided for by law, taxation procedures, with regard to general administrative or normative documents and in other cases provided for by the government.
Civic access to data and documents is excluded if public prejudice to public and national security, defence and other relevant national interests are involved. It can be denied in case of privacy guarantee and to protect the secrecy of private correspondence and in any other case provided for under art. 24, Law 241/90.

When the access request involves conflicting interests, administrative jurisprudence has identified three level of third-party data protection: at the highest level, a situation of equal rank to that of the requested data is required (i.e. information disclosing health and sexual life); at a lower level, a strict indispensability is required (judicial and sensible data); at the lowest level a mere necessity.

5. Can one claim for an access before the court?

Yes, subordinately to applying to the competent authority.
If the access is denied or the public authority does not answer within 30 days, the applicant can go to Court. Alternatively, he may ask the national Ombudsman to review his instance, with no impediment to apply to the Court afterwards.
The rite on access to administrative documents and the right of civic access (art. 116 administrative Trial Code) provides that the court decides with a judgment in simplified form; upholding the grounds, it orders the exhibition and, where applicable, the publication of the requested documents within a period not exceeding, usually, thirty days, deciding, where appropriate, the relevant methods.

6. Depending on the state of implementation, which are the main topics on access to public sector information discussed in the jurisprudence of the respective Member State's courts?

Given the dual discipline governing access to information, the main thread of discussion in Italy concerns a possible future convergence of the two different form of access into one single legislation where a complete and effective disclosure realizes a fully implemented principle of transparency.

B. Processing of informations in administrative courts procedure :

According to article 6.1 of the Convention for the Protection of Human Rights and Fundamental Freedoms about the right to a fair trial : « *In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice* ».

These principles determine the fundamental rules applicable to proceedings before the administrative courts in Europe. How these principles are applied for the instruction and the judgment of cases brought before these jurisdictions? Are there any special rules or exemptions for cases relating to the protection of public order and public safety? What is happening when "a state of emergency" is implemented?

OUTLINE

According to the Code of administrative proceedings (hereafter, the Code), enacted by legislative decree nr. 104/2010, the principles of the European law (as laid down in the UE Treaty and in the European Convention for the Protection of Human Rights and Fundamental Freedoms - hereinafter ECHR) are applied in the administrative trial.
In particular, the principle of a fair trial within a reasonable time, laid down in article 2, para. 2, of the Code ("The judge and the parties cooperate to reach the goal of the reasonable duration of the trial"), replicates the fundamental principle set by article 6 ECHR.

The principle of an "effective remedy before a national authority", as set by article 13 ECHR is pursued through the arrangement of a fairly wide set of actions, all giving rise to cognizance proceedings: an action for annulment of administrative decisions; an action for compensation for damages; an action against "the silence" (i.e. inactivity) of a public administration and, as from 2012, an action for the order to administration to issue a certain act (as a substitute for the annulled act).

The enforcement of the judgements is guaranteed through a special action, namely through the "giudizio di ottemperanza" (i.e. enforcement proceedings), as explained later.
We can say that the described legal context is aimed at conflict resolution as far as the judge's attention is focussed on the requests of the claimant, not only in view of a due protection of individual rights and legal interests, but, as far as possible, also keeping an eye on the settlement of the conflict.

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?**

> ***Art 63 of the Code - Evidence***
>
> *1. Notwithstanding the burden of evidence lying with them, the court may also ask the parties ex officio for clarification or documents.*
>
> *2. The court, also ex officio, may order third parties to produce in court documents or whatever else it deems necessary, according to Articles 210 and following of the Code of civil Procedure; it may also arrange for inspection in accordance with Article 118 of the same code.*
>
> *3. On request of a party the court may admit the evidence of witnesses, which is always taken in written form pursuant to the Code of Civil Procedure.*
>
> *4. Where it considers it necessary to ascertain facts or acquire assessments that require special technical skills, the court may order a verification or, if necessary, may request a technical expert.*
>
> *5. The court may also arrange for other forms of evidence provided for in the Code of Civil Procedure, excluding formal questioning and taking the oath.*

Under Article 63 C.p.a, the judge shall not admit the evidence of witnesses ex officio.
Legal evidence, i.e. formal questioning and taking the oath, is excluded on account of the public interest underlying in the administrative trial which cannot be disposed of by the private parties.
He may order a verification or, if necessary, may request a technical expert.
The court, also ex officio, may order third parties to produce in court documents or whatever else it deems necessary, according to Articles 210 and following of the Code of civil Procedure; it may also arrange for inspection.

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

> ***Art. 64. Availability, burden and evaluation of evidence***
> *1. The parties are responsible for providing the evidence that is available to them regarding the facts underlying the issues and pleas.*
> *2. Except in cases provided for by law, the court must base its decision on the evidence offered by the parties as well as the facts not specifically challenged by the parties involved.*
> *3. The administrative court may, ex officio, also arrange for the acquisition of information and documents for the purposes of reaching a decision that are available to the public administration.*
> *4. The court has to weigh the evidence according to its discretion and can infer proof from the behaviour of the parties during the trial.*

The Code basically provides the action for annulment of administrative decisions, due to breach of law, misuse or abuse of power, lack of competence.
The judge shall verify whether the issued act of the administrative authority was in accordance with the law and whether the administrative discretion was used in adherence with the spirit of the law (control involving "détournement de povoir" and "excès de povoir").

The check for legality of the contested act is performed on the basis of the factual and legal situation existing at the time of its adoption.
The judge seeks and knows ex officio the applicable law ("iura novit curia").
He can give a diverse interpretation or application of the law but cannot change the legal basis of an administrative act.

The proof of facts has a twofold profile, at the same time being a right of the party to demonstrate a favourable fact or situation and, in its procedural shadow, an onus incumbent on the interested party so that the failure to give the proof of the deducted facts brings the judge to disregard them.

The matter of proofs is of direct derivation from the basic principles of the administrative proceedings : the principle of the claim (the judge cannot investigate on facts not indicated by the parties), the principle of the debate (the judge cannot assume proofs without giving the

parties the possibility of counteracting and giving proofs to the contrary), the limit to the use of private science of the judge (the judge cannot assume initiatives on the basis of his personal private knowledge).

In collecting proofs the judge does not follow the inquisitorial model but a mixed one (dispositive-inquisitorial method: Council of State, Ch. IV, 11 February 2011 n. 924): the claimant draws the framework of the proof and, if he/she does not manage to completely produce the evidence (mostly documents), the judge can order the authority its exhibition. The judge shall use his powers in the matter of proof within the scope of the claim and in the limits of the fact allegations of the parties, whereas he cannot investigate on facts not offered by the parties.

The judge can order (even the authority) to exhibit proofs concerning the dispute within a deadline; if a party does not comply with the order, this behaviour may be evaluated by the judge as a ground to reject his/her arguments.

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?**

As for the facts and relevant policies concerning the challenged decision the court is informed by the parties, namely by the claimant, who shall contest the flaws and mistakes of the decision.

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

> ***Art. 43 - Additional grounds***
> *1. The main and incidental applicants may introduce with additional grounds new reasons in support of applications that have already been proposed, or new issues so long as they are related to those already proposed. For additional grounds the rules for the application apply, including that relating to the time limit.*
> *2. Notifications to the counterparties take place under Article 170 of the Code of Civil Procedure.*
> *3. If the new application referred to in paragraph 1 has been made through a separate action before the same court, the court shall ensure the applications are combined according to Article 70.*

With the "additional grounds" the Code grants the parties to enrich the trial with new reasons in support of application already proposed or to introduce new issues.
Additional grounds not resulting from the subsequent acquisition of new elements must be made within the time-limit for the lodging of the application. When the applicant becomes

acquainted with new elements, he may articulate new censures within 60 days (or 30 days if the subject is under article 120 of the Code)

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

> ***Art. 46. Constitution of the parties called***
>
> *1. Within a period of sixty days from their receiving notification of the application, the parties called may appear, submit briefs, deposit applications, state the evidence they intend to rely on and produce documentation.*
>
> *2. The administration, within the period referred to in paragraph 1, must produce the contested measure, as well as the acts and documentation on which the act was enacted, those mentioned in it and those that the administration considers useful for the decision of the court.*
>
> *3. The documentation referred to in paragraph 2 shall be communicated to the parties by the secretariat.*
>
> *4. The periods referred to in this article are increased in the cases and to the extent provided for in Article 41, paragraph 5.*

The administrative trial is governed by the principle of contradiction (or adversarial principle) and is therefore set in such a way as to always allow a reply to the counterparty. In the ordinary rite, the deadline for submitting defensive memory is 60 days after notification of the claimant's act. These terms are increased in the cases provided for under art. 41, paragraph 5, and halved for the proceedings referred to under art. 119 C.p.a.

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?**

Owing to the dispositive-inquisitorial method, the claimant draws the framework of the proof and the judge can order the authority its exhibition. So the judge has instructing powers as proves are in the sphere of the administration and the private party finds in an objectively position of disparity which the judge has to remedy by using instructing powers

- **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?**

He has a full access to facts and, where necessary, he shall ascertain the facts deduced by the parties which are relevant for the decision.

According to Council of State, Plenary hearing, 23 March 2011, n. 3, the judge has an instructing power ex officio and a wide evaluation power of proves.

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

> ***Art. 28. Intervention***
>
> *1. If the ruling has not been brought against one or some of the parties against whom judgment has to be pronounced, they can intervene, without prejudice to the right of defence.*
>
> *2. Anyone who is not party to the judgment and is not debarred from the exercise of relevant actions, but has an interest, may intervene accepting the state and degree which the judgment is at.*
>
> *3. The court, also on the request of one of the parties, when it considers it appropriate that the trial be directed against a third party, orders the intervention.*
>
> ***Art. 49 - Integration of the adversarial elements***
>
> *1. When the application has been brought against only one of the counterparties, the president or college orders the integration of the adversarial elements in relation to the others.*
> *2. The integration of the adversarial elements is not ordered in the event that the application is manifestly inadmissible, unacceptable, estopped or unfounded; in these cases, the college provides a judgment in a simplified form in accordance with Art. 74.*
>
> *3. The court, in ordering the integration of the adversarial elements, sets the relative deadline, indicating the parties who have to be notified of the application. It may permit, if it were considered necessary, notification by public proclamation, laying down the means for this. If the act of integrating the adversarial elements is not promptly notified and deposited, the court provides in accordance with Article 35.*
>
> *4. Those against whom the adversarial elements are integrated pursuant to paragraph 1 shall not be affected by previous pleadings*
>
> ***Art. 51 - Intervention by order of the court***
> *1. Where the intervention referred to in Article 28, paragraph 3 is employed, the court orders the party to call the third party to appear, indicating the acts to be served and the deadline for notification.*
> *2. The constitution of the intervening party follows the procedure laid down in Article 46. The provisions of Article 49, paragraph 3, third sentence apply.*

In compliance with the necessity of a complete contradictory, given the introduction of art. 28 as an enhancing contradictory integration tool, *jussu iudicis* integration should be considered as a judge's power/duty.
It's worth pointing out that, unlikely the civil trial, the mechanism of the direct call of the third party is not contemplated in the administrative one, since it is always the court that envisages the integration of the contradictory even if after the party's solicitation**.**

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

> ***Art. 19, parag. 1 - Inspector and technical expert***
> *1. The court can be assisted, for the completion of specific acts or the whole trial, by one or more inspectors or, if necessary, by one or more experts.*

Yes. The judge may request, whenever deemed appropriate, the assistance of an expert in the conduct of technical and/or specialistic operations. However, the Code seems to introduce a preference for verification since it requires, for the sole use of technical expertise *ex officio*, the condition of indispensability.

1.2. THE PRINCIPLE OF CONTRADICTION AND ITS LIMITS

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

Yes. When it comes to accessing or viewing classified documents, jurisprudence has clarified that the mere classification of secrecy cannot justify the refusal to file documents requested by the judicial authority (Cons. St., sez. VI, n. 47/2009). When the judge orders the showing of a classified document, the Administration may not obscure it unless it is in agreement with the court itself.
For acts covered by State-secrecy status, pursuant art. 42, law nr. 124/2007, the right to access is excluded *ex lege*, except for the Constitutional Court.

But, when it comes to exhibiting sensitive data documents and there's the proven existence of needs for protection which are likely to preclude the disclosure, the judge may, in any case, verify the possibility of allowing their vision and/or the extraction of a copy, safeguarding the paragraphs to be kept confidential by dimming the sensitive data with any suitable technique, including the addition of "omissis" (Tar Piemonte, Sez. I, nr. 320/2014).

- **These secret informations 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?**

When the public authority fulfills an order of showing, the document is immediately brought to the attention of the opposing party. It must be underlined that in the Italian legal system, unlike in some other European countries, the secrecy discipline, even at the highest rank of State-secrete status, does not interfere with the common procedural rules and in particular with the burden of proof (Tar Lombardia, Brescia, nr. 1140/2007).

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

No, the existence of secret or not public information does not involve exception to the application of procedural rules and the principle of the adversarial is regularly applied.

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

Secrets that are other than by State-secrete are not in itself opposable to the judicial Authority.
In the right to access and right to know fields, Law refers to cases of secrecy or disclosure prohibition expressly provided for by law. Secret of privacy and business, which can be considered as "relevant opposing interest", are taken into account by the judge, during the trial, in balancing the interests of the parties.

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?

> ***Art. 73. Hearing with discussion***
>
> *1. The parties may submit documents up to forty clear days before the hearing, briefs up to thirty clear days and present replies, to the new documents and new briefs lodged for the hearing, up to twenty clear days.*
> *2. At the hearing the parties can discuss briefly.*
> *3. If the court feels it will base its judgment on a matter that has emerged ex officio, the court indicates this at the hearing, reporting it in the minutes. If the question emerges after moving on to the decision, the court reserves this and by order allows the parties a period not exceeding thirty days to deposit their briefs.*

The parties may produce documentation (not later than 20 days before the public hearing) and final written notices (not later than 10 days before the public hearing).
The instruction of the case is then closed, just before the public hearing.

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

> ***Art. 54 - Late deposit of briefs and documents and suspension of deadlines***
>
> *1. The late submission of briefs or documents may be authorised exceptionally, on application by one party, by the college, while ensuring the full respect of the rights of the counterparties to be heard on such acts, when their production within the legal deadline proves to be extremely difficult.*
> *2. Deadlines regarding hearings are suspended from 1 August to 31 August each year.*
> *3. The suspension of the deadline provided for in paragraph 2 does not apply to preliminary proceedings.*

The Code provides, under art. 54, the possibility that the court exceptionally allows the submission of late memories or documents where the compliance with the terms of the law is extremely difficult.

3. THE HEARING

3.1. Possibility of a judicial decision without a hearing?

No.

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

> ***56. Monocratic precautionary measures***
>
> *1. Before the treatment of the interlocutory application by the college, in cases of extreme gravity and urgency, such as not to allow even a delay until the date of the council meets in chambers, the applicant may, with the interlocutory application or a separate application notified to the counterparties, request the President of the Regional Administrative Court, or the section thereof where the application is assigned, to provide for interim precautionary measures. The interlocutory application cannot be proceeded with until the presentation of the request for the hearing on merits, unless this has to be set ex officio. […]*
>
> *2. The president or a judge appointed by them verifies that the notice of application has been delivered to the recipients or at least the public party and one of the counterparties, and provides with a motivated decree that cannot be appealed against. […] When deemed necessary the president, in chambers and without formalities, can hear, also separately, the parties that made themselves available before the adoption of the decree.*
>
> *3. When a decision on the interlocutory application has irreversible effects, the president may subordinate the granting or denial of the injunction to the provision of a security, also by a suretyship, determined by the impact of the irreversible effects that might be produced for the parties and others.*
>
> *4. The decree, which in any case must indicate the council in chambers referred to in Article 55, paragraph 5, in the case of acceptance is effective up to said chambers. The decree loses efficacy if the college does not provide on the interlocutory application in chambers referred to in the previous sentence. For as long as it remains effective, the decree can be revoked or modified by notified application from one of the parties. Paragraph 2 applies to the latter application.*
>
> *5. If the party exercises the power under the second sentence of paragraph 2, the provisional measures cease to have effect if the application is not notified in the ordinary manner within five days of the request for interim protective measures.*

Whenever reasons of extreme gravity and urgency arise, an interim precautionary measure may be granted, without the prior hearing of all the parties.
However, this measure are only provisionally effective, pending the subsequent precautionary phase in camera hearing at the presence of the parties.

3.3. Possibility of an in camera hearing?

Law provides for cases dealt with in a camera hearing:

> ***Art. 87, coma 2 - Public hearings and proceedings in chambers***
> *2. In addition to the other cases expressly provided for, the following are dealt with in camera:*
> *a) preliminary judgments and those relating to the execution of preliminary collegial measures;*
> *b) judgment on matters of silence;*
> *c) judgment on matters relating to access to administrative documents and the violation of obligations of administrative transparency;*
> *d) judgments of compliance;*
> *e) judgments in opposition to the decrees that pronounce on the dismissal or estoppel of proceedings.*

The "other cases expressly provided for by law" are:
1) Raising of lack of jurisdiction (art. 15 Code);
2) The suspension orders made under art. 295 CPC) (art. 79, parag. 3, Code);
3) Correction procedure (art. 86 Code);
4) Appeals against the orders of the Regional Administrative Courts which have declined jurisdiction or competence (art. 105, parag. 2, Code).

3.4. Possibility of a hearing in a closed court ?

> ***Art. 87, parag 1 - Public hearings and proceedings in chambers***
> *1. Hearings are public under penalty of nullity, except as provided for in paragraph 2, but the president of the college may arrange for a closed session, for reasons of state security, public order or morality.*

Yes. It is a novelty inserted by the first Corrective Decree of the Code in 2011 (Legislative Decree nr. 195/2011), which introduced an institute into the administrative trial already known to the civil and criminal codes. The decision to hold a closed session hearing is at the discretion of the President of the Chamber.

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 judgment ?

Since the Code of administrative trial does not provide for exceptions to the obligation of reasoning a judgment and given that the common procedural rules are not affected by the discipline of secrecy, any information produced or disclosed during the trial can be used by the Court to reason the judgment.

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

> ***Art. 89 - Publication and communication of the judgment***
>
> *1. The judgment must be drafted no later than the forty-fifth day from the decision of the case.*
>
> *2. The judgment, which cannot be changed after it is signed, is immediately made public through its deposition with the secretariat of the court which delivered it.*
>
> *3. The secretariat acknowledges the deposition of the judgment at the foot of the page, adds the date and signature, and within five days communicates it to the interested parties.*

The Code states that the judgment, which cannot be changed after having been signed, is immediately made public through its deposition with the Secretariat of the Court which delivered it.
When the judgment contains sensitive data, protected by the special provisions of the Code on the protection of personal data, the administrative judicial activity must take appropriate safeguards: the Code provides a dimming procedure aimed at concealing personal data contained in judicial proceedings, so as not to compromise a full comprehension of the legal reasons of the decision. This procedure may be activated either at request of the part or made *ex* officio by the Court.

C. MANAGEMENT OF INFORMATIONS AND SECRET / OR NOT PUBLIC INFORMATIONS BY ADMINISTRATIVE COURTS DURING THE STATE OF EMERGENCY

Is there a specific national regulation about that?

No, not at the present moment.

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