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My brief intervention, as it has been requested to me, will focus on two points:

- a) The competence and the influence of the Spanish Council of Transparency
- b) The application of the special provision against citizens abusing the right of free access to information.

a) The competence and the influence of the Council of Transparency

Recently, the Law 19/2013 of December 9 entitled “Transparency, access to public information and good government” has been passed in Spain.

When a citizen requests some information, they must address the administrative body that has that information and, in order to appeal against the decision of the administrative body, he may either lodge a direct appeal before the Court or he claim administrative review before a new administrative body: The "Council of Transparency and Good Governance.

The Council of Transparency and Good Governance is a public administrative body with legal personality having "autonomy and independence", but organisationally linked to the Finance and Public Administration Department.

The Autonomous Regions can also create their own Councils of Transparency.

The Spanish State Council consists of a President and a Commission.

The Chairman is appointed by the Government for a period of five years. He is proposed by the Ministry of Finance and Public Administration, after succeeding in a hearing before the Committee of the House of Representatives. His appointment must be ratified by the Congress.

The Commission consists of a Deputy, a Senator, a representative of the Court of Auditors, a representative of the Ombudsman, a representative of the Data Protection Agency, a representative of the Ministry and a representative of the independent authority on fiscal responsibility.

- Competence:

The Transparency Council has the primary role in ensuring the right of access to information, hears claims presented and answering queries. The Council has a time-limit of three months to solve the claims submitted. If they are not solved within that period, it means that the request is rejected. Appeals against the Transparency Council resolutions can be brought before the administrative courts.

The Council hasn't got legislative powers but adopts criteria of uniform interpretation, approves recommendations, promulgates guidelines and instruments to make the public Administration implementation of transparency and free access to the information easier. It Also reports on the regulatory projects and other initiatives to develop the Law or related to the purposes of the Council.

- Influence.

The Spanish Law of Transparency came into force on December 10, 2014 and The Council of Transparency was created in January, 2015, so it has not taken many decisions in this brief period, therefore I haven't got enough information to value its influence.

Nevertheless, the Central Government has recently demanded several reports to the Council in order to correctly apply the law. For example, the Council of Transparency has elaborated a report (1/2015), requested by the office of the Prime Minister, in relation with the possibility of facilitating information about the salary corresponding to certain positions that would allow to identify the persons who occupy them, as well as others salaries of other civil servants and remunerative complements of productivity.

So, it is probably that it has a great influence on the law enforcement by the public administration.

The problems will arise, in my opinion, between the Council of Transparency and the Data protection authority. In Spain they are independent entities and their decisions are based on different criteria.

Differences in the interpretation of both agencies ponder from different perspectives, transparency and data protection. To try to solve this problem, it is stated that one of the members of the Board of Transparency is a representative of the Data Protection Agency, but it does not seem that this measure is sufficient to avoid that conflicts may happen.

And appeals against the decisions of both entities correspond to different jurisdictional courts, so contradictory judgments may arise. In order to avoid conflicting judgements I think it would be desirable to unify the judicial control in the same Court.

b) Limitations for the exercise of the right to free access to information.

The importance of access to public information on guaranteeing the transparency, integrity and responsibility of the conduct of public affairs, has, on the other hand, some risks challenging the proper functioning of the institutions. And it's necessary to prevent from the abuse of the right.

The abuse in the exercise of this right by a citizen or associations can cause problems and eventually become a mechanism for obstructing the proper functioning of the public service.

The Spanish Law 19/2013 of December 9, allows the rejection of the request for access to information in certain circumstances.

The article 18 of the Law, establishes that the administrative body may refuse the request when:

- the information required a previous action to re-elaborate, or
- when the request is "manifestly repetitive or is not justified by the purpose of transparency of this Law."

As I said before the Law came into force on December 10, 2014, so there aren't decisions or judgments that have yet applied this special provision. That it is the reason why my intervention is based on the problems that can appear and not in the solutions given to real cases in application of the above mentioned disposition.

The disposition tries to avoid the abuse of the right and the collapse of the Administration. It's not easy to establish in which situations we can determine abuse is produced.

Should we consider all number of applications even when it could collapse the normal functioning of the administration? Should requests that require a disproportionate effort to search be taken into consideration?.

First of all, I would like to point out that refusal of the request for access to information has to explain the reasons supporting such decision, demonstrating that the administrative refusal is not discretionary or arbitrary. Otherwise, they would be arbitrary decisions.

It might be thought that it is disproportionate and improper when it's a generic request access all the documents in a wide period or when it is asked for all the information that takes place in the future without limit or any condition. To provide this information would be necessary to realize a great work that would force to destine a great number of persons to locate and systematize this information and could paralyze the activity of the administrative body for a long time. Especially in small administrations or when it is necessary to check a great number of administrative files.

It is not the case of a specific request of information even when it concerns to a great number of documents and the Administrative body doesn't appreciate intention to abuse, which requires a specific justification.

In order to distinguish between an incorrect information request and an improper one, the possibility of the requester to concretize the required information (within a deadline) should be granted.

Also it can be considered an improper request when it's "manifestly repetitive". It might take place in the cases in which a citizen misuses his right by means of continuous and repeated requests of information, or in those cases in those who produce actions coordinated in mass to themselves to ask for information.

There are some judgments that solved other suppositions of abuse in the exercise of the right to free access to information applying environmental regulation or Local Administration rules, which raise similar problems.

The Spanish Supreme Court, Administrative Chamber, in the judgment of April 4, 2006 solved a problem related to the right of access to the environmental information requested by an environmental association, in which information was requested monthly about the emission of a waste-to-energy plant.

The Local Administration refused the application understanding that the requested information was "excessive" and therefore "manifestly improper". The judgment dictated in the first instance confirmed the administrative resolution on having understood that it is "general and future information".

The Spanish Supreme Court maintains that the petition on future information does not necessarily mean that it is general, it be able to coexist perfectly a future information and at the same time specific; in other words: "the future information isn't necessarily generic".

About the improper character, it is to be considered that there is a difference between the appellant monthly requests for information and the repeated and numerically widespread, as the latter turns into a misuse of the right.

When the request is about general information, the solution it is the public and periodic diffusion of the information.

The Spanish Supreme Court, its judgment of September 27, 2002 (rec. 4941/1998), also considered a "generic" request is improper when the information claimed is on a matter or set of matters in general without specifying any file or date; limitation that logically spreads to the right to obtain copies or certificates of the documents, understanding that the possibility of obtaining copies of concrete documents, but not photocopies of everything, as it happens with the generic request effected by the actors.