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TRANSPARENCY AND ITS EVOLUTION IN THE ITALIAN LAW SYSTEM

The paper analyzes the institutes that have been introduced in the Italian law system since 1990 in order to ensure transparency in the relationship between public bodies and citizens. It focuses on the different conformations of the three existing rights to access, which can let us identify the different roles that transparency has assumed time by time in the Italian law system. The right to access was a momentous step forward for the Italian law system, given the fact that previously there was a different, antinomic rule. The author concludes that the Italian legal environment is quite far from total accessibility of data detained by public bodies and that the co-existence of more than one right to access causes some coordination problems.
Keywords: transparency, right to access, corruption prevention, Italian law system.

1. Introduction: central research question and methodology

The aim of this paper is to analyze how the Italian law system has acknowledged protection to transparency when public administrative bodies and their relations with citizens are concerned. This goal will be pursued through a diachronic examination of law texts, scholars' books and judicial responses; the interpretation of these materials will allow to show that transparency is thought by Italian legislative bodies and policy makers to be a word *bon a tout faire*, whose enforcement is a tool to promote time by time a certain but changing relationship between citizens and government. So in the Italian legal environment we can now find three different institutes whose basis is transparency and which though are extremely different. They will be described below and the investigation on them will result in a complex mosaic of overlapping elements rather than in an ordered stratigraphy[1].

2. The birth of the right to access: the ordinary right to access.

The first appearance in the Italian law system of the concept of transparency dates back to the nineteenth decade of last century[2]. In an attempt to make the relationship between administrations and citizens less self oriented and to ensure impartiality, a new legal institute was introduced, known as right to access (now ordinary right to access) to the acts – with this word we identify every document (written texts, tapes, audio registrations, files) – which are in possession of the authorities. It is to be clarified that, according to Italian law, it is possible only to get access to existing documents and it is forbidden to ask public bodies to elaborate information in their possession thus creating a new act.

The first legal discipline of the institute can be found inside law 241/90, the general law on administrative procedure, in particular at articles 22 and following.

[1] For this perspective see: Patroni F.G. (2013). La trasparenza della pubblica amministrazione tra accessibilità totale e riservatezza *FEDERALISMI.IT* <http://www.federalismi.it/nv14/articolo-documento.cfm?artid=22219> (2018, March, 10).

[2] For a scientific introduction see at least: Renda, F. (1990). *Legittimazione all'ostensione, natura giuridica dell'accesso e poteri del giudice amministrativo, in Foro Amm*, ex artt. 22, 241, 6/17, pages 1386 and following; Romano, A.: editor (2016). *L'azione amministrativa*, *Torino*, pages 907 and following; Canaparo, P. (2014). La via italiana alla trasparenza pubblica: il diritto di informazione indifferenziato e il ruolo proattivo delle Pubbliche Amministrazioni. *Federalismi.it* <http://www.federalismi.it/nv14/articolo-documento.cfm?artid=24228> (2018, March, 10); Scoca, F.G.: editor (2015). *Diritto Amministrativo, Torino*, pages 281 and following; Renna, M. Saitta, F.:editors (2012). *Studi sui principi del diritto amministrativo*, *Milano*, pages 141 and following; Sandulli, M.A. (2000). *Accesso alle notizie e ai documenti amministrativi*, Enc. Dir., agg. IV.

The right to access was a momentous step forward for the Italian law system, given the fact that previously there was a different, antinomic rule. Every act in possession of the administrative bodies was covered by secret; according to civil service general regulation[1] every public official was not allowed to show citizens any act and every infraction of this law was under penal law protection. This vision had been born in the fascist period, but it was not in debt of only a totalitarian perspective. In fact, it was mainly the consequence of a vision of constant contrast between citizens and administrations, typical of Italian legal environment: according to it, no document could be shown until the start of a trial where legitimacy of administrative decisions was put in question and furthermore this could happen only after a judicial order.

So the tendency of Italian administrative bodies to be glass houses – a famous slogan coined by an Italian socialist politician, F. Turati[2] – was far from being detected and – the element which is the most important of all – it was clear that the legitimation to get access to documents was limited to the ones who were directly involved in an administrative procedure or the ones who wanted to start a process against an administrative decision. So the feature of the original right to access was very limited but it was tuned on the constitutional framework of Italy: only the people who could have a direct interest – the same expression we can find in civil process legislation – could access to documents. The request needs to have a proper motivation and it is goes through a scrutiny made by administrative body which detains the document. The procedure can last 30 days and if the administration keeps silence this is interpreted as a deny.

No matter if the law text originally spoke about everybody as theoretically entitled with this right, the judges have always given a narrow interpretation of it in accordance with the constitutional framework described above. According to courts everyone must be read as the only person damaged by an administrative act or the part of a procedure. In fact, in the general procedure law right to access is shaped still now as a prominent way of individual protection, given to the ones involved in a procedure and it is expressly forbidden to use it in order to control the administrative action.

Following the article 10 of l. 241/90, citizens are entitled to acquire documents (vision right) in order to express their opinion (voice right) inside the procedure[3] they are part of. Next to this version of the institute, the same law embodies a slightly different regime: following the article 22, every one, apart from being involved in an existing administrative procedure, is entitled to get access to documents, when their knowledge is related to the protection of a juridical relevant situation.

So – using a classification which is common among Italian scholars[4] – right to access is neither a subjective right nor a legitimate interest; it can be instead defined as a instrumental tool to protect a proper juridical situation in a process, in an administrative remedy procedure or in an administrative procedure of different kind[5]. This was made clear by the 2005 reform, which put inside the law text the judges' interpretation.

We can add that some Authors immediately pointed out the ambiguity of the law text: not only the right to access was not allowed to everybody, but – at a closer look – the Italian law system had more than two versions of the same right to access[6]. This was a consequence of EU legislation as far data (not only documents) concerning the environment protection[7] were involved and of a political mandate as far as right to know given to town and district council members, who could access to every

[1] *D.P.R., 15* (3/1957).
[2] It happened in 1908 year during a parliamentary speech.
[3] This theory was suggested by D'Alberti, M. (2000). *La 'visione' e la 'voce': le garanzie di partecipazione ai procedimenti amministrativi*. Riv. trim. dir. pubbl.: 1/00, pages 1 and following.
[4] See: Carpentieri, P. (2006). *La legittimazione all'accesso: una questione non ancora chiarita*, in Foro Amm., 6/95, pages 1358 and following and *Due domande in tema di "diritto" di accesso* (2018), *in Foro Amm.* TAR, 11/09, pages 3297 and following.
[5] According to rulings n. 6/06 and 7/16 State Council, Plenary Composition.
[6] See Occhiena, M. (1990). *I diritti di accesso dopo la riforma della l. n. 241 del 1990*, in *Foro Amm. TAR*, 3/05, pages 905 and following.
[7] According first to d. lgs. 39/97 and then to d. lgs. 195/05.

document belonging to the legal entity they were councillors, was in question[1]. In these two additional cases, there was no need of stressing an interest and the request of access could be without a motivation. It was, in the first case, a consequence of the primary role of environment protection actions, even from a multilevel perspective, and, in the second case, of control powers over administrative bodies entitled to political figures. In both these circumstances Italian law system for the first time has given an automatic and immediate legitimation to access.

These two institutes, whose application was in the nineteenth decade really narrow, can be shown as pivot cases in studying the evolution of transparency in Italian law system, which has been influenced also by international treaties (e.g. art. 10 European Convention of Human Rights) as for right to access development is concerned.

At even a closer look, another relevant factor in the original configuration of right to access is its relationship with privacy, whose legal protection in the Italian law system is almost contemporary to the introduction of transparency principle. So inside the law context we can find a clear hierarchy between access (data disclosure) and privacy (data protection)[2]. It is not surprising, according to the original configuration of right to access, that privacy was almost always prominent. The only case when a document, containing relevant information on a third party (who must be asked his view by administration) and detained by an administrative body, could be shown is even now when it can be used inside a judicial trail or to start it. From this element we get another confirmation that right to access was originally tuned on the personalistic structure of Italian Constitution.

This discipline applies to private entities when they are entitled with activities of general interest.

To end the analysis of the introduction of right to access inside Italian law context, we can add that for a new legal situation a new kind of process was created. In it for the first time Italian administrative judges are given the power not to quash an act but to decide if a subject has a right towards an administrative body, which could be sentenced to fulfil a request from a citizen. A part from this relevant procedural conformation, we can finally add that right to access and its extent were forged inside trials concerning them, which even now are extremely frequent.

To sum up, we can say that original right to access was aimed at improving relationship between administrative bodies and citizens, as far as administrative decisions which affected directly them were concerned. It was given to a strict number of people and the need to know had to be motivated, no matter that the institute was defined as a minimum level of protection[3]. Transparency is here viewed as a value that can let citizens effectively understand only the administrative action they are involved in. It has a qualitative dimension[4].

3. The civic right to access

The second version of right to access is newer one. It dates to 2009 year[5]. It was shaped inside a general effort to reform not only the administrative action, but also administrative personnel. It had so a completely different perspective; its aim was to promote efficiency of civil servants by giving citizenship the chance of evaluating them after knowledge of their action. This version of right to access is in fact a tool to measure performances and assess administrative personnel; this opportunity is given both to control bodies and to citizens' general audience.

[1] According to art. 31 l. 142/90 and art. 43 d. lgs. 267/00.

[2] According to art. 24 l. 241/90 and articles 59 and 60 d. lgs. 196/03 (general regulation on privacy).

[3] According to the reform of 2009.

[4] See Marrama, R. (2018). *La pubblica amministrazione tra trasparenza e riservatezza nell'organizzazione e nel procedimento amministrativo*, in *Dir. proc. amm.*, 2/89, pages 416 and following and Manganaro, F. (2013) L'evoluzione del principio di trasparenza amministrativa. *Università Mediterranea di Reggio Calabria* <https://www.unirc.it /documentazione/materiale_didattico/1465_2013_352_18107.pdf> (2018, March, 10).

[5] According to d. lgs. 150. For a scholar introduction see: Simonati, A. (2018). *La trasparenza amministrativa e il legislatore: un caso di entropia normativa?*, in *Dir. Amm.*, 4/13, pages 749 and following; Torano, V. (2018). *Il diritto di accesso civico come azione popolare*, in *Dir. Amm.*, 4/13, pages 789 and following; Cavallaro, M.C. (2018). *Garanzie delle trasparenza amministrativa*, in *Dir. Amm.*, 1/15, pages 121 and following;

This perspective is somehow linked to the contemporary efforts of giving administrations a more entrepreneurial scheme of action. So the knowledge of some categories of administrative documents is thought to be a proper way of assessing administration and letting citizens be aware of how their money is spent. Consequently we can say that this second version of the institute has been altered from its original structure according to its different goal. In fact it has not an aim of protection for individuals (the only need which could originally lead to data disclosure) but a goal of general welfare; it becomes so entitled to every citizens.

Now the expression right gets its true and literary meaning: as consequence, we can speak – as suggested by some scholars[1] – about a civic/social right. Its fulfilment is granted with an obligation on an administrative body to show to the general public on internet certain categories of documents (they are indicated by law and they deal with how public money is spent). For instance, every contract between an administration and a private corporation, every outcome of personnel selection, every consultancy agreement, every information about revenues of politically relevant people need to be published in a brand new section of the web site of administrative bodies, which is called "transparent administration".

Transparency now is declined as total accessibility of certain categories of data. It is worth of notice that technology development plays a great role in changing the conformation of the right to access. The effort to enhance public administration performances is for the first time linked to the use of new technologies, which should give birth to an e-democracy. Transparency is no more viewed as a tool of individual protection and it has become a key factor for the entire legal system. It is worth of note that it has been named between the general principles of administrative action in 2005 year. Every misalignment can be corrected by every citizen, who is entitled by law with a mere legitimacy control advocacy power, which is to be activated through a request of publication.

A major critique is addressed to this second version of right to access: the documents are not easily understandable, even if they are published, and they are simply too many to serve the purpose of enhancing control on administrative bodies and on their personnel. It has been said that civic access is more something related to a voyeur than to a responsible citizen. The whole reform is so judged in a negative way also because the categories of documents to be published were not well defined till 2013[2]. Even after this year there were too many, so a diminishment of publication obligations took place in 2016.

It is however important to stress that law itself gives legitimation and points out the documents to be published, so there is no need of motivation when their publication is required. In this way the two distinguishing elements of traditional right to access are set apart.

Furthermore, to show the change of the institute conformation, we can add that this second version of right to access is always winning on privacy, which is not at all taken into account by law.

Only some efforts by Independent Authority entitled with powers of personal data protection were aimed at limiting the extent of the so called civic access.

It does not work as personal disclosure, but as notice of publication on web site. So it completely loses the personal feature, which was so relevant in the first type of access. It is, instead, a mean of correction of an administrative action, which is not following legal patterns and standards; so it can be defined as an objective remedy. This version of right to access still exists, but it has had no real impact or application. This is another difference with the first version of the institute, which has always been flourishing.

To sum up, we can say that civic right to access is a passive tool to promote administrative efficiency through legal publication obligations, even if law doesn't take care about data quality.

[1] Simonati, A. (2013). *La trasparenza amministrativa e il legislatore: un caso di entropia normativa?*, in *Dir. Amm.*, 4/13, pages 749 and following.

[2] According to d. lgs. 33/13. On the whole process of refining the obligations of publishing see Canaparo, P. (2014). *La via italiana alla trasparenza pubblica: il diritto di informazione indifferenziato e il ruolo proattivo delle Pubbliche Amministrazioni*, <http://www.federalismi.it/nv14/articolo-documento.cfm?artid=24228> (2018, March, 10).

Transparency is here viewed as a way to improve outputs and standards of public bodies; the boundary between publicity and transparency becomes not easily distinguishable, as transparency becomes a matter of quantity of data at citizens' disposal.

4. The general civic right to access

The latest comer inside the numerous rights to access in Italian law system dates back to 2016 year[1]. It is called general civic right to access[2] and it applies to public administration and to the private legal entities entitled with activity of public interest[3]. Its introduction can be studied and justified by two concurring reasons: the first one is related to another attempt to reform and improve performances of public administrations in Italy[4], which is turning out to be a fatigue worth of Sisyfus. The second is more interesting and it aroused the attention both of general public and of scholars. Data disclosure is not interpreted as a way of promoting freedom of information (differently from US FOIA and Court of European Rights perspectives), but it is responsive to international treaties against corruption (Merida Convention).

So transparency in its third version is mainly a way of preventing corruption[5], designed as every episode of maladministration. Just to ensure this goal everyone could ask administration to be aware of every document they detain and besides the obligations of publishing. So there is a complete transformation of the original logic of the institute: every piece of information should be made accessible to everyone at simple request, without motivation, just in order to ensure transparency.

Somehow this version of access is similar to the one contemplated in Freedom of Information Acts, which date back the seventeenth decades of last century in legal systems different from the Italian one. Though, it is not related to a right to information or to freedom of speech, but to a quite a different political model, according to which knowledge of documents used by administrative bodies is a tool to prevent crimes potentially committed by officers. This issue became quite sensitive in Italy starting from the end of last century. The main aim of the law is this one: an administrative law becomes a way to guarantee a criminal policy goal[6]. Another model which has been proposed to interpret this third version of right to access is the open government perspective. According to this position, the more information is given to general public, the more democratic and accountable a legal system is. Citizens can now solicit and check not only how public money is spent but how public

[1] According to d. lgs. 97/16, art. 5, II c.

[2] For a scholar introduction see: Algieri, P. (2017). Il diritto di accesso alla luce del nuovo Decreto Trasparenza. *Il Diritto Amministrativo Rivista Giuridica* <http://www.ildirittoamministrativo.it/archivio/allegati/Accesso%20civico,%20di%20PIETRO%20ALGIERI.pdf> (2018, June, 13); Carloni, E. (2016). *Il nuovo diritto di accesso generalizzato e la persistente centralità degli obblighi di pubblicazione*, in Dir. Amm., 4/16, pages 579 and following; Villamena, S. (2016). Il c.d. FOIA (accesso civico 2016) ed il suo coordinamento con istituti consimili. *Federalismi.it* <http://www.federalismi.it/nv14/articolo-documento.cfm?Artid=32823&content=Il+c.d.+FOIA+ed+il+suo+coordinamento+con+istituti+consimili&content_author=Stefano+Villamena (2018, June, 13). Gardini, G. (2017). Il paradosso della trasparenza in Italia: dell'arte di rendere oscure le cose semplici. *Federalismi.it* <http://www.federalismi.it/nv14/articolo-documento.cfm?Artid=33162&content=Il+paradosso+della+trasparenza+in+Italia:+dell%27arte+di+rendere+oscure+le+cose+semplici&content_author=Gianluca+Gardini (2018, June, 13); Foa, S. (2017). *La nuova trasparenza amministrativa*, in Dir. Amm., 1/17, pages 65 and following; Porporato, A. (2017). *Il nuovo accesso civico generalizzato introdotto dal d. lgs. 25 maggio 2016, n. 97 attuativo della riforma Madia e i modelli di riferimento* <http://www.federalismi.it/nv14/articolo-documento.cfm?Artid=34149&content=Il+%27nuovo%27+accesso+civico+%27generalizzato%27&content_author=Anna+Porporato (2018, June, 13); Berti, A. (2018). Note critiche sulla "funzionalizzazione" dell'accesso civico generalizzato. *GIUSTIZIA-AMMINISTRATIVA.IT* <https://www.giustizia-amministrativa.it/cdsintra/cdsintra/Studiecontributi/Indicealfabetico/index.html?option_value=Berti%20Suman,%20Adele> (2018, June, 13).

[3] See, in particolar Canaparo, P. (2014). La via italiana alla trasparenza pubblica: il diritto di informazione indifferenziato e il ruolo proattivo delle Pubbliche Amministrazioni. *Federalismi.it* <http://www.federalismi.it/nv14/articolo-documento.cfm?artid=24228> (2018, March, 10).

[4] According to l. 124/15.

[5] Pajno, A. (2015). *Il principio di trasparenza alla luce delle norme anticorruzione*, in *Giustizia Civile*, 2/15, pages 213 and following.

[6] This perspective is founded on l, 190/12.

decisions are taken; general right to access so is a way to promote not only control but participation to public choices. It is an overall change from the original configuration of right to access: this one in fact could not serve control purposes, which is the goal general civic right to access is aimed at.

This third version of the institute is more dynamic than the second one: in fact, knowledge of documents is not the mere consequence of a legal obligation, but it follows the proposition of a request by a citizen.

Letting apart the emphasis of the law text, we can say that legitimation is presumed under a law basis and there is no need to indicate an interest in the request. So it has been said that this third version right is re active, while the second version one is pro active. The newly again emerging role of a private request can help us to show another partial similarity between the civic right to access and the general civic right to access: in the last one privacy protection has again an important role. In fact some documents cannot be made at disposal if they can cause a concrete threat to certain public interests or to private third party's ones.

So in this version of right to access we can identify a general legitimation, but not all the requests can be positively asked if they are against certain interests, not clearly defined by law[1]. In these cases it is mandatory to give the request a proper motivation, which the administration needs to assess and state case by case if the need to know is more prominent than privacy protection. These procedures must end again in 30 days time from the request. Legal system in this case presents itself as an open texture, which can be filled by soft law, whose creation role is entitled to National Anti Corruption Authority[2]. Even from this more limited perspective, we can appreciate that the new version of transparency is servant to corruption pre-emption. In fact, the same administrative body is entitled with vigilance over these two juridical goods; furthermore, every administration needs to adopt year by year a document, in which it has to show to the general public its goals as for both transparency and corruption contrast are concerned.

But there are some more features in accordance to which general civic right to access is similar to the ordinary right to access. A third person, whose personal data detained by an administrative body are asked, can oppose a request of general civic right to access as it happens when original right to access is concerned. In this case we can identify a big contrast between a traditional subjective position protection (privacy) and a new way of enforcing a public good at general audience disposal (transparency); it has been suggested by scholars that people sovereignty to be effective requires a full disclosure of data about public choices in order to let people control them; nevertheless the confrontation between transparency and privacy should be solved giving a prominent role to the latter, which has a clear constitutional basis (art. 2 and 3) as a personal dignity right[3]. It is not surprising again, if we remember the constitutional conformation of the Italian law system, that in these circumstances jurisdictional rulings[4] and Privacy Protection Authority statements[5] are trying to limit the right to access in favour of private protection.

This third version of right to access has recently started to be used; so it is really difficult to give a first statement on its efficiency. It has been said[6] that it could be used to reshape the whole legal

[1] Art. 5 bis d. lgs. 33/13. A critique to this legislative approach can be found in C. Deodato (2017). La difficile convivenza dell'accesso civico generalizzato (FOIA) con la tutela della privacy: un conflitto insanabile? *GIUSTIZIA-AMMINISTRATIVA.IT* <https://www.giustizia-amministrativa.it/cdsintra/cdsintra/Studiecontributi/Indicealfabetico/index.html?option_value=Deodato,%20Carlo> (2018, June, 13).

[2] This power was put in action through a guide line, published in January 2017.

[3] Nicotra, I. (2015) *La dimensione della trasparenza tra diritto alla accessibilità totale e protezione dei dati personali*, *FEDERALISMI.IT* <http://www.federalismi.it/nv14/articolo-documento.cfm?Artid=29659&content=La+dimensione+della+trasparenza+tra+diritto+alla+accessibilità+totale+e+protezione+dei+dati+personali:+alla+ricerca+di+un+equilibrio+costituzionale&content_author=Ida+Nicotra, June 2015.

[4] *Ruling* n. 3631/16 by State Council.

[5] *Statements* n. 162/17, 246/17, 506/17 and 18/18.

[6] Perna, R. (2017). *Accesso e trasparenza: due linee destinate ad incontrarsi?*, *GIUSTIZIA-AMMINISTRATIVA* <https://www.giustizia-amministrativa.it/cdsintra/cdsintra/Studiecontributi/Indicealfabetico/index.html?option_value=Perna,%20Rosa>, (2018, June, 13), who suggests that the ordinary right to access is going to disappear.

system, which should be built in accordance to the value of openness. This should be the key factor in every use of public powers.

As for now, we can say that it is a kind of action without a personal interest at its basis. This role is taken by an aspiration to the protection of a public good, as we can define corruption contrast. In every case that a general civic access request is made, citizen takes the role of the substitute of a public body.

This feature is quite in contrast with Italian constitutional framework; so it is not strange that first rulings in this field have tried to put a limit to this kind of request with the abuse of the right argumentation. From this perspective we can appreciate the emulative potential of this version of rights to access; this risk is the reason according to which the usage of this institute should always be scrutinised in a strict way to check if it is tuned on the purposes it was created for and that every general civic access request should give start to a deep administrative procedure. In fact, in these cases there is no need to protect a relationship between a single subject and an item but to protect a relationship between a citizen and a value; so if the request has a different aim, it can be legitimately rejected. So a limited role of a personal interest as a filter of juridical relevance can be found even as for this institute is concerned[1].

The link to a general value is meaningful also because this civic access right has some points of concordance with environment protection or competition promotion: it is a way to give relevance to a good with is in possession to an open number of legal subjects.

At the end of this reconstruction, we can statue that right to access has become a way of protection for transparency itself and it is no more a tool to protect a different juridical situation. Transparency is anyway a value protected not by Constitution (as impartiality and efficiency), but only by l. 241/90. Differently from FOIA model[2], we are not looking at a political right, but at a civil right (control on administrative choices endowed to everybody). It is a difference even with European Convention of Human Rights model, in which transparency is acknowledged mainly to media, described as social watch dogs[3]. In its third version, transparency becomes something in the middle between publicity and need to know.

This means that again privacy protection needs to be taken into account. The potential contrast between data protection and transparency should be now solved according to a common legal text in European Union, Regulation 2016/679. It is difficult that general civic right to access can be compliant with new rules of data protection, as its limitation is not clear.

5. Conclusions

Having completed the recognition of rights to access which can be found in the Italian law system, we can now make some final remarks.

A general perspective of analysis helps us to underline that in the Italian legal environment we are quite far from total accessibility of data detained by public bodies. Furthermore, it seems that criminal repression bodies (penal judges, police corps) could more effective in fulfilling the goal of corruption pre-emption than an administrative set of rules. As for this goal is concerned, it can be said that the recent stress on transparency as a tool to avoid maladministration is contradictory if we bear in mind that the Italian law system has recently made controls on administrative bodies quite loose. In fact, we can say that corruption phenomena explosion can be linked from a temporal perspective to the sunset of general control procedures (first decade of the third millennium). So it can

[1] See Administrative Tribunal of Milan (1951), *Ruling*, 17.

[2] Galletta, D.U. (2016). *La trasparenza per un nuovo rapporto tra cittadino e pubblica amministrazione: un'analisi storico-evolutiva in una prospettiva di diritto comparato ed europeo*, in *Riv. i*t. dir. pubbl. e com., 5/16, pag. 1019 and following.

[3] See sentence Magyar Helsinki Bizottsàg c/ Hungary (2016, November, 08) by European Convention on Human Rights Court; for a scholar view: E. Carpanelli (2017). *Sul diritto di accesso alle informazioni di interesse pubblico detenute dalla Stato: alcune riflessioni critiche a margine della sentenza della Corte di Strasburgo nel caso Magyar Helsinki Bizottsàg* c. Ungheria, in Oss. Cost., 2/17.

be suggested that a better way to avoid maladministration episodes could be tougher control policy rather than obligation of publishing or general civic access, which are ordered by law with a financial invariance clause.

The co-existence of more than one right to access causes some coordination problems: we can say that judges are now suggesting that the three rights of access can be depicted as three conferences drawn around the same point (transparency) but with a different area[1]. The difference between them is that ordinary access has a narrow legitimation, it applies only to documents not under an obligation to be published and directly relevant for the asker, but can give a deep look into administrative choices, civic right to access is entitled to everybody but can be used only for some typical categories of documents, general civic right to access is entitled to everybody, can be used for every kind of document detained by public administration, but it can give only a superficial knowledge of how public bodies work.

A part from these differences, what should matter most is that transparency, in all the institutes that enhance it, should allow citizens to gain trust about administrations and their action. If a public choice can be really understood, in fact, it should be easier for it to be accepted by people because they are persuaded about its legitimacy; that is what transparency should aim at according to the writer of this paper. It is however naive to think that this important goal can be reached simply by publication of loads of documents.

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[1] According to sentence n. 5515/13 by the State Council.

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