Journal of the Spanish Institute for Strategic Studies
ISSN-e: 2255-3479

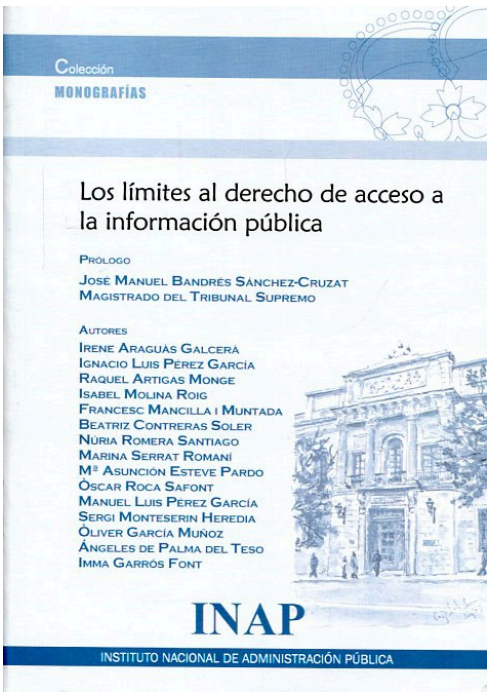
Imma Garrós Font
Doctor in Law and Assessorament Jurídic de la Regió Policial Metropolitana Barcelona department manager

Correo: imma.garros@gencat.cat

Book review

LOS LÍMITES AL DERECHO DE ACCESO A LA INFORMACIÓN PÚBLICA. VVAA: Instituto Nacional de Administración Pública: Madrid.2017.296 p.

ISBN978-84-7351-577-1



I

In the first chapter[1], produced by Irene Araguás Galcerá, several general considerations are formulated respecting the regulatory norms regarding the right of access, and the limits to which they are subject. The regulatory antecedents to the right of access to public information represent expression of that expressed in the contents of the Charter of Fundamental Rights of the European Union of December 7, 2000. Article 41 of this regulatory text proclaims the *"Right to good administration"*, specifying in its section 2 that this right includes, among others, *"(…) the right of every person to accede to the file affecting him, within respect for legitimate rights of confidentiality and of professional and commercial secrets."* In correlation with this precept, Article 42 recognizes the *"Right of access to documents"* and specifies that *"Every citizen of the Union or every physical or judicial person residing or having social domicile in a member State has the right to accede to the documents of the European Parliament, of the Council and of the Commission."* This precept finds its basis on the technical plane in Article 15 of the Treaty on the Functioning of the European Union (former Article 255 TEC), through which the institutions, organs and organisms of the Union are advised to act with the greatest possible respect for the principle of openness so as to promote good governance and to guarantee the participation of the civil society. All to be done in conformity with the principles and conditions established in agreement with this section.

It should be made explicit that these provisions are developed by Regulation (EC) no. 1049/2001 of the European Parliament and of the Council, of May 30 2001, relative to access by the public to documents of the European Parliament, of the Council and of the Commission, which has the objective of guaranteeing in the most complete manner possible the right of public access to documents and of determining the general principles, conditions and limits (for reasons of public or private interest) to be regulated in accord with Section 2 of Article 255 of the EC Treaty.

Likewise, it is of undeniable interest to cite Agreement number 205 of the Council of Europe on access to public documents, dated 18th June 2009. Its Article 2 sets forth the scope of the *"Right of access to public documents"*, stipulating that *"1) Each Party shall guarantee the right of anyone, with no discrimination of any kind, to accede, upon*

1 I wish to express my deep gratitude, honor and admiration to His Excellency Mr. Jose Manual Bandrés Sanchez-Cruzat, Magistrate of the Administrative-Contentious Courtroom of the Supreme Court, for the magnificent and exquisite prologue to the work, from which I highlight:

"(…) The information society opens new perspectives on the focus and understanding of the limits on the right of access to public information, for it has represented a profound change in public life and in the relationship between governors and citizens.

Professor Eduardo García de Enterría maintains that the confidence of the people in their institutions is a basic factor of democracy. Therefore, public officials assume the responsibility of carrying out their functions with absolute impartiality, objectivity and transparency, in order to achieve the re-establishment of a Public Administration which is permanently visible and unconditionally observable by the citizenry."

request, to public documents in the possession of public authorities. 2) Each Party shall take the necessary measures within its judicial code to assure compliance with the provisions on access to public documents set forth in this Agreement. 3) These measures shall have been adopted by each Party, at the latest, at the time when this Agreement comes into force." At greater length, note should be taken of Article 3 of the aforementioned Agreement regulating the *"Possible limits on access to public documents"*, establishing that *"!) Each Party may limit the right of access to public documents. Limits must be set forth in a law, be necessary in a democratic society and have as their objective the protection of: a) National Security, Defense and international relations; b) public security; c) prevention, investigation and processing of criminal activities; d) disciplinary research; e) inspection, control and supervision by public authorities; f) privacy and other legitimate private interests; g) economic and commercial interests; h) State policies regarding exchange rates as well as monetary and economic policy; i) equality of the Parties in judicial proceedings and the efficient administration of justice; j) the environment; k) deliberations within or among public authorities regarding the examination of a matter. In addition, it is expressly established that "2) Access to the information contained in an official document may be refused if it may, or probably may, damage the interests aforementioned in Paragraph 1, unless there exists a public interest which prevails in such revelation".*

In the Spanish judicial code it may be observed that the Spanish Constitution dedicates a precept to the right of access to public information in its Article 105.b). Beyond all doubt, this right constitutes a judicial guarantee for the public with respect to the actions of public powers. In development of this provision, Article 37 of the repealed Law 30/1992, dated 26 November, of the Judicial Regime, regarding the Judicial Regime of Public Administrations and the Common Administrative Procedure, incorporated the aforementioned right into the contents of said Article. Along these lines, the current Law 39/2015 dated 1 October, on Common Administrative Procedure of Public Administrations, has regulated rights of persons in their relationship with Public Administrations and in its Article 13 foresees *"d) access to public information, archives and registers, in accord with that set forth in Law 19/2013 dated 9 December, on transparency, access to public information and good governance, and the remainder of the Judicial Code."*

However, the concrete legal form of this right and its guarantees were consolidated with the passing of Law 19/2013, dated 9 December, on transparency, access to public information and good governance (henceforth, LTRAPIGG – Law of Transparency, Access to Public Information and Good Governance) [the Spanish Acronym – *LTAIPBG – Ley de Transparencia, Acceso a la Información Pública y Buen Gobierno*], as well as the Autonomous regulations approved in this regard. As a starting point, it should be noted that the LTRAPIGG was constructed as a law of the bases which increase and reinforce transparency in public activity—articulated through obligations of active publicity on the part of public Administrations and entities—and recognizes and guarantees the right of access to information—regulated as a right of broad objective and subjective scope granted to persons in order to request and obtain public information—within the terms of Article 105.b) of the Spanish Constitution and under the conditions set forth in the laws on transparency.

Despite the fact that the right to access to public information is a broadly based right of subjective and objective scope, it is not of absolute character, and is conditioned by restrictions. As set forth in the Preamble to this Law: *"(…) This right shall only be limited in those cases in which such should be necessary due to the actual nature of the information—derived from that stated in the Spanish Constitution—or by its representing a conflict with other protected interests. In any case, the limits foreseen shall be applied in function of a test of harm (to the interest being safeguarded by the limit) and* of *public interest in release (that in the concrete case, public interest in the release of the information should not prevail), and in such a way as is proportionate and limited by its object and aim. Similarly, given that access to information may have a direct effect on protection of personal data, the Law clarifies the relationship between the two rights establishing the necessary mechanisms of balance. Thus, on the one hand, to the extent to which the information directly affects the organization or public activity of the organ, access shall prevail; while, on the other hand, those data are protected—as could not be otherwise—which the regulations characterize as being especially protected, access to which shall require, as a general rule, the consent of their title-holder.*

From this perspective, analysis is made of the legal structuring of the limits on the right of access to public information set forth in Articles 14 and 15 of the LTRAPIGG and in the precepts of certain Autonomous regulations. Finally, the controversy over the application of the limits is addressed. The reflection formulated is oriented in accord with Article 14.2 of the LTRAPIGG, according to which the application of the limits shall depend upon the circumstances of the specific case, justified and proportionate to their aim and object of protection, and especially to the concurrence of an over-riding public or private interest which may justify access. For a sharper focus on this perspective, it is opportune to note the regulation by Article 16 relative to partial access, whose regulatory content has specified that in those cases in which the application of one of the limits set forth in Article 14 should not affect the whole of the information, partial access shall be granted, once omission of the information affected by the limit has been carried out, unless this should produce distorted or senseless information. In such cases, the requesting party is to be informed that part of the information has been omitted.

II

After presenting and analyzing the right of access to public information and the limits conditioning it, Ignacio Luis Perez Garcia deals with the limit regarding "National Security" set forth in Article 14.1.a) of the LTRAPIGG. In the first part, he emphasizes the regulation formulated by Article 3.1 of Agreement no. 205 of the Council of Europe on access to public documents, dated 18 June 2009, regarding possible limits on access to public documents. According to this article, limits shall be promulgated in a Law, shall be necessary in a democratic society and shall have as their objective the protection of: *"a) National Security, Defense and international relations"*, among others.

Following all of the foregoing, analysis is carried out of the Constitutional regulation by Article 8 which shapes the composition and the missions of the Armed Forces, as well as the exclusive competence of the State in matters of Defense and the Armed Forces—Article 149.1.4 of the Spanish Constitution—and in those of public security—Article 149.1.29 of the Spanish Constitution—with the principal objective of contextualizing the content material on national security.

Previous to analysis of the material content of the regulation, examination is made of the implications of Law 9/1968, dated 5 April, on official secrets, modified by Law 48/1978, dated 7 October; as well as of Decree 242/1969, dated 20 February, through which are developed the stipulations of Law 9/1968, dated 5 April, on State secrets, and as such regarding classified information. Based on this information, also cited is Law 36/2015, dated 28 September, on National Security, and it is its First Final Regulation which establishes that the Law *"is dictated on the grounds of the contents of Article 149.1.4 and 29 of the Constitution which grant to the State exclusive competence in matters of Defense and Armed Forces and in matters of Public Security."* Thus, in the Preamble to the aforesaid Law 36/2015, dated 28 September, National Security is defined as *"(…) a space of new public action, focused towards the harmonization of objectives, resources and policies now extant in security matters. In this regard, National Security is understood to be the action of the State directed at protecting the liberty and well-being of its citizens, as well as contributing together with our partners and allies to international security in compliance with assumed commitments; a concept which, to date, had not been the object of integrated normative regulation. This effort at integration holds all the more importance since National Security must be considered to be an objective shared by different Administrations, State, Autonomous and local, Constitutional organs, especially the General Courts, the private sector and civil society, within the projects of the international organizations of which we form a part. Additionally, reality shows that the challenges to National Security which affect society display on occasion a high level of complexity, extending beyond the borders of traditional categories such as defense, public safety, foreign action and intelligence, as well as others more recently incorporated into the concern for security, such as the environment, energy, transport, cyberspace and economic stability."* This judicial construction is clearly patent in the text of the article. Along these lines, Article 2 of Organic Law 5/2005 dated 17 November, regarding National Defense, states that *"The policy on defense has as its end the protection of the whole of Spanish society, of its Constitution, of the supreme values, principles and institutions consecrated within it, of the social and democratic State of law, of full exercise of rights and liberties, and of the guarantee, independence and territorial integrity of Spain. As well, it holds the objective of contributing to the preservation of international peace and security, within the framework of the commitments entered into by the Kingdom of Spain.* This definition is amplified in Article 3 of the aforesaid normative text when it defines National Security as *"(…) the action of the State directed towards protecting the liberty, rights and well-being of citizens, guaranteeing the defense of Spain and its principles and Constitutional values, as well as contributing together with our partners and allies to international security in compliance with the commitments assumed."*

Interpreting these precepts, the Sentence of the Constitutional Tribunal no. 184/2016, dated 3 November, emphasizes that *"(…) there exists substantial coincidence between the sense and the purpose of the titles with reference to competence of materials 4 and 29 of Article 149.1. of the Spanish Constitution and the concept of National Security, defined in Article 3 of Law 36/2015, as: "the action of the State directed towards protecting the liberty, rights and well-being of citizens, guaranteeing the defense of Spain and its Constitutional principles and values, as well as to contributing together with our partners and allies to international security in compliance with the commitments assumed." In Constitutional Tribunal Sentence no. 133/1990, dated 19 July, LB [Legal Base] 6, which resolves the appeal lodged against the since-repealed State Law 2/1985 regarding civil protection, the Tribunal refers to the public security policy which the Constitution reserves to the State in its Article 149.1.29 "as far as such public security holds a national dimension". The same is reiterated in Constitutional Tribunal Sentence no. 40/1998, dated 19 February, LB 52. Although Article 9.1 of Law 36/2015 states that "for the purposes of this Law, fundamental components of National Security are considered to be National Defense, Public Security and Foreign Action, as regulated by their specific rules," with respect to effects of competence, which are those being judged, it follows that the material content of National Security is embodied in the aforesaid titles and not the inverse. Regarding the foreign action to which this last precept refers, neither does its legal mention indicate that National Security holds broader and distinct content related to its international dimension. Simply, the mention in this precept of foreign action is a logical consequence of the foreign projection of the exercise of the specific competences (in this case, to reiterate, those of materials 4 and 29 of Article 149.1, Spanish Constitution). In addition, the competence of the State being clear, both in matters of defense and in matters of public security, it would make no sense that in a sphere such as National Security, so closely linked to both, to the point of identifying its ends and objectives and the judicial goods protected as indicated, State competence should become purely residual. Definitively, National Security is not a new competence, but is integrated into the State competences of defense and public security".*

III

In Chapter III, Raquel Artigas Monge and Ignacio Luis Perez Garcia analyze and interpret the judicial form of the limit regarding "Defense" regulated in Article 14.1.b) of the LTRAPIGG. Of special interest are the provisions established by the Constitution with respect to this material. According to Article 8.1 of the Spanish Constitution, *"The Armed Forces, consisting of the Army, the Navy and the Air Force, have as their mission that of guaranteeing the sovereignty and independence of Spain, defending its territorial integrity and the Constitutional order."* In keeping with this regulation, Article 30.1 of the Spanish Constitution formulates an important Constitutional declaration, stating that *"Spaniards have the right and the duty to defend Spain."* In addition, Article 97 of the Spanish Constitution establishes that *"The Government directs domestic and foreign policy, civil and military Administration and the defense of the State. It exercises the executive function and the regulatory authority in accord with*

the Constitution and the laws." With reference to the scope of State competence over this material, it must be noted in the first place that Article 149.1.4 of the Spanish Constitution bestows the exclusive competence of the State over Defense and the Armed Forces.

Having stated these precepts, the legal framework designed by Law 9/1968 of April 5 is interpreted, regarding official secrets, this law having been modified by the Law of October 7 of 1978. The aforesaid norm determines a set of positive measures to avoid the revelation of what should remain secret, establishing strict rules impeding the generalization of classification with a character of exceptional. Addressing the said limitation, Article 1 of the aforesaid Law regulates the principle of publicity in the action of State organs, subject to exceptions. According to this Article, State Organs shall be subject in their activities to the principle of publicity, in accord with the norms ruling their actions, except in those cases where the nature of the material itself causes it to be expressly declared "classified", whose secret or limited knowledge is protected by the present Law. In addition, those materials declared to be so by Law shall have the character of secret without necessity of previous classification. It is worth emphasizing that Article 2 defines material susceptible to declaration as classified. Specifically, as stated in this Law, a declaration as "classified materials" may be applied to matters, acts, documents, reports, data and objects, knowledge of which by unauthorized persons may damage or put at risk the security and defense of the State.

From this general overview, the Organic Law of 5/2005, dated 17 November, on National Defense, has as its object to regulate National Defense and to define the bases of military organization in conformity with the principles established in the Constitution. All of this, as expressed in Article 2 of this regulatory text, with the object of articulating a defense policy having as its end the protection of the whole of Spanish society, of its Constitution, of the supreme values, principles and institutions consecrated within it, of the social and democratic State of Law, of the full exercise of rights and liberties, and of the guarantee, independence and territorial integrity of Spain. It has as its objective contributing to the preservation of international peace and security within the framework of the commitments undertaken by the Kingdom of Spain.

The last part of this chapter quotes the concept of National Defense presented in Felipe Quero's *"Introduction to the Theory of National Security"*[2]. Specifically, this is defined as that *"General attitude of the nation, determined and decided to carry forward its collective project within the framework of the applicable international order, carrying out to this end such offensive and defensive actions as shall be indispensable—including those corresponding to legitimate victory over the aggressor—and expressly renouncing any initiative of subjugation or of the unjustified use of force."*

2 QUERO RODILES, Felipe. Introducción a la Teoría de la Seguridad Nacional [Introduction to the Theory of National Security]. Madrid: Ediciones Ejército [Army Editions], 1989.

IV

Chapter IV, entitled "Foreign Relations", as developed by Isabel Roig and Irene Araguás Galcerá, examines the material and formal character of this limit, as set forth in Article 14.1.c) of the LTRAPIGG, through rigorous and exhaustive analysis. As noted previously, with regard to European Union law, Article 4 of (EC) Regulation no. 1049/2001 of the European Parliament and of the Council, dated 30 May 2001, respecting access of the public to European Parliament, Council and Commission documents, based on Agreement no. 205 of the Council of Europe on access to public documents, and dated 18 June 2009, this considers that institutions may deny access to a document whose release may represent damage to the protection of: "a) (…)" international relations" (Art. 3.1), among others.

Taken as a starting point must be the fact that Articles 56, 63.2 and 93 to 96 of the Spanish Constitution of 1978 regulate the foreign activity of the State regarding international treaties. Moreover, specified in Articles 149.1.3º and 97 of the Constitution are matters *"of the exclusive competence of the Spanish State"* regarding questions of international relations as well as of the directing of foreign policy. Thus, the interpretation of Constitutional operation over the material is decisive.

The contents of the chapter deal with analysis of the major precepts of Law 2/2014, dated 25 March, on the Foreign Service and Action of the State. According to its Article 1: *"The object of this Law is the regulation of the Foreign Action of the State, enumeration of its guiding principles, identification of the subjects and scope of these, establishment of the instruments for its planning, monitoring and coordination, and regulation of the State Foreign Service, in order to ensure the coordination and coherence of the whole of the actions constituting it and their adherence to the directives, ends and objectives of Foreign Policy".* Following introduction of the judicial concept, determination is made of the principles and objectives of Foreign Policy. Thus, Article 2.1 of the regulatory text cited refers explicitly to the basic principles of Spanish Foreign Policy, establishing respect for human dignity, liberty, democracy, the State of Law and of human rights. The Foreign Policy of Spain shall defend and promote respect for and development of international law, in particular respect for the principles of the Charter of the United Nations. It shall promote projects of European construction and of the Ibero-american Community of Nations, as well as multilateralism at the heart of the international community.

V

Chapter V, produced by Francesc Mancilla i Muntada, offers a very exhaustive description of the European and Constitutional bases of the limit to "Public Security" regulated in Article 14.1.d) of the LTRAPIGG. The author justifies the necessity of defining the indeterminate judicial concept within the framework of *"a multi-level*

judicial code, given that it is denominated uniformly in European, State and Autonomous regulations".

The European Agreement for the Protection of Human Rights and Fundamental Liberties, better known as the European Agreement on Human Rights, produced in Rome on November 4 of 1950, in its Article 10.2 recognizes public security as a limit on the right of freedom of expression. Moreover, Article 6 of the Charter of Fundamental Rights of the European Union, dated 7 February of 2000, regulates the "Right to Liberty and Security" and establishes the right to liberty and security of every person. Along the same lines, Regulation (EC) no. 1049/2001 of the European Parliament and of the Council, dated 30 May 2001, relating to public access to documents of the European Parliament, Council and Commission, regulates this among the exceptions set forth in Article 4 on access to a document whose release would represent harm to the protection of the public interest. The foregoing legislative panorama is completed with a reference to Convention No. 205 of the Council of Europe on access to public documents, dated 18 June 2009, establishing the possible limits on access to public documents, among which are found, in its Article 3.1.b), *"public security".*

In second place, and in dealing with Constitutional regulation, of note is Article 105.b) of the Spanish Constitution, according to which *"The Law shall regulate: b) Access by citizens to archives and administrative registers, except regarding that which affects the security and defense of the State, the discovery of crime and the privacy of persons".* Moreover, Article 104 of the Spanish Constitution attributes to the Forces and Corps of Security, under attachment to the Government, the mission of protecting the free exercise of rights and liberties and of guaranteeing citizen security.

All of the foregoing having been set forth, the entitlement to competence in this material is analyzed. Specifically, the framework of competence is studied with respect to "Public Security", and limits are defined as to what competence corresponds to the State in virtue of its exclusive titular nature and what role is played by those Autonomous Communities which hold competence in matters of protection of persons, goods and maintenance of public order. It is appropriate to refer, before examining Constitutional jurisprudence on the subject, to Article 149.1.29th of the Spanish Constitution, which attributes to the State exclusive competence over matters of *"Public security, without prejudice to the possibility of the creation of policies by the Autonomous Communities in the form established in the respective Statutes within the framework of the contents of an organic law".* This provision obligates definition of the scope of competencies in matters of Public Security and especially creation of concrete content on the material. For this, it is essential to learn the conceptualization of the material as well as the objectives and limits adopted with respect to the Constitutional jurisprudence.

As has been seen, the regimen of competencies regarding matters of public security derive from Article 149.1.29 of the Spanish Constitution and from Organic Law 2/1986, dated March 13th, on the Security Forces and Corps to which this refers, integral elements of the block of constitutionality together with the Statutes of Autonomy. Public security, according to Constitutional doctrine, (CTS) no. 33/1982

and 154/2005) includes police activity and other kinds of functions. Regarding this, Article 149.1.29 of the Spanish Constitution establishes an asymmetric regimen on attributing to the State exclusive competence over Public Security with a clause of exception in favor of the Autonomous Communities which may create autonomic policies as established in their Statutes, within the framework of the Organic Law cited. The Autonomous competence for the creation of their own policies is understood in the organic and functional sense. It includes all faculties proper to police services (CTS no. 175/1999, 148/2000, 235/2001 and 154/2005). However, State competence over public security demands a direct connection with the activity of protection of persons and goods, and negatively, the non-existence of specific links to the functions of the Autonomous police. The distinction between the two is not an easy one (CTS nos. 175/1999, 148/2000, 235/2001 and 154/2005), for which reason use is required of techniques of cooperation and coordination. The Organic Law on Security Forces and Corps refers to collaboration between the corps and forces of security of the state and the police corps of the Autonomous Communities, and regulates, as organs of coordination, the Council on Security Policy and the Security Boards of the Autonomous Communities. Based on Constitutional Tribunal Sentence no.123/1984 — as recalled in CTS no. 87/2016, dated 28 April (LB5)— the Tribunal has considered as improperly placed the inclusion of matters of *"civil protection"*, unmentioned in the Constitution among the criteria for definition of competencies, within the concept of public security of Article 149.1.29 of the Spanish Constitution. As stated in Constitutional Tribunal Sentence no. 87/2016, the Tribunal has restrictively defined the concept of *"public security"*, upon affirming that *"not all security of persons and goods, nor all regulation directed at achieving or preserving its maintenance, may be encompassed within the latter, for if such were to be the case, virtually the whole of the regulations of the Code would be rules of public security"*. (SCT no. 25/2004, dated 26 February, LB 6, among others).

According to Constitutional jurisprudence, "Public Security" refers to *"activity directed towards the protection of persons and goods (security in the strict sense) and towards the maintenance of the peace and order of citizens";* although it is not limited to the regulation of *"the specific actions of the so-called Security Police"*, since *"police activity is one part of the broader material on public security"* which *"covers a wide spectrum of administrative actions"* (CTS no. 86/2014, dated 29 May, LBs 2 and 4, among others) and includes *"a plural and diversified set of actions, distinct by their nature and content, although oriented towards a single intention of protection of the judicial good so defined"* (CTS no. 235/2001, dated 13 December, LB 6, and those therein cited). Following all of the aforesaid, it may be stated that there exists a substantial coincidence between the sense and purpose of the titles of competence regarding materials set forth in article 149.1.4 and 29th of the Spanish Constitution and the concept of National Security, defined in Article 3 of Law 36/2015, dated 28 September, as*: "the action of the state directed towards protecting the liberty, the rights and the well-being of citizens, towards guaranteeing the defense of Spain and its Constitutional principles and values, as well as towards contributing together with our partners and allies to international security in compliance with commitments undertaken".*

VI

In Chapter 6, Beatriz Contreras Soler addresses the judicial requisites of the limit on the right of access to public information with respect to "The prevention, investigation and sanctioning of penal, administrative or disciplinary infractions" set forth in Article 14.1.e) of the LTRAPIGG. Through this process of conceptual definition, it is concluded that the limit embraces a total of up to nine limits, as enumerated in the following: 1) Prevention of penal infractions. 2) Investigation of penal infractions. 3) Sanctioning of penal infractions. 4) Prevention of administrative infractions. 5) Investigation of administrative infractions. 6) Sanctioning of administrative infractions. 7) Prevention of disciplinary infractions. 8) Investigation of disciplinary infractions. 9) Sanctioning of disciplinary infractions.

In the first place, the concepts are addressed of the *"prevention of penal, administrative or disciplinary infractions".* As analyzed, one of the judicial goods protected by the cited precept consists of guaranteeing the good outcome of those actions and measures designed to avoid or impede behavior which constitutes a penal, administrative or disciplinary infraction. Following the outlining of the foregoing, study is undertaken of *"investigation of penal, administrative or disciplinary infractions"* and it is noted that all of the said categories belong to the phase of inquiry, also called investigation. This phase is that within which is carried out all action designed to reveal the existence of the infraction and the circumstances surrounding it. Finally, *"sanctioning of penal, administrative and disciplinary infractions*" is addressed. Nonetheless, it should be equally emphasized that the sanction is the consequence or effect of behavior which constitutes the infringement of a judicial regulation. As such, as stated in the chapter, it is appropriate to take into account those aspects related not only to the imposition of sanctions, but also to their execution.

By way of conclusion and with reference to the specification of the principal judicial goods protected under Article 14.1.e of the LTRAPIGG, in the author's judgment it is necessary *"(…) to guarantee the good outcome of those actions and measures designed to avoid or impede behavior which constitutes a penal, administrative or disciplinary infraction; assure the good outcome of all of those acts of investigation which may be carried out throughout the phase of inquiry, whether of penal, administrative or disciplinary proceeding; and oversee the good outcome of those acts related not only to the imposition of sanctions applied under the Law, but also to their subsequent execution".*

VII

Chapter VII, produced by Nuria Romero Santiago, examines and verifies the limits on access to public information associated with the principle of "The equality of the parties to judicial processes and the effective judicial protection" set forth in Article 14.1.f) of the said LTRAPIGG. Having stated this, the author reflects upon the way in which this limit is articulated in the Spanish Constitution, carrying out a study on

the principle of equality regulated in Article 1 of the Spanish Constitution, as well as of Article 9.2 of this regulatory text, with the aim of recalling that it corresponds to the public authorities to promote conditions such that the freedom and equality of individuals and of such groups as they may belong to be real and effective. Following this, it is emphasized that the right to equality is recognized in in Article 14 of Chapter II, Title I, of the said Constitutional text. This being so, and following the central line of thought centered on the limit of reference to the equality of parties and to effective judicial protection during the judicial process as set forth in Article 24 of the Spanish Constitution, emphasis is placed on the Constitutional nature of these, given that, as fundamental rights, they are especially protected by means of recourse to appeal on the grounds of unconstitutionality.

As the author argues, *"(…) the equality of the parties in judicial processes stems from the more general principal of equality before the Law"*. Both questions have been addressed extensively on the part of the doctrine which sees greater judicial security in face of the possibility that *"Equality of arms between the parties, within the sphere of procedural action, is included in natural-judicial principles"*. In this regard, it is emphasized that in order to define a concept on the equality of the parties to judicial processes *"(…) it is a prerequisite to begin from the principle of equality linked to contentious processes, where the principal interested parties to the process (i.e., the parties) must be treated with impartiality, that is to say, that all of the litigants must have the same opportunities of action during the process, with none standing in a situation of inferiority; in spite of which, it should be emphasized that the situation at the outset is not identical. The acting party, initially, is in an objectively more favorable position than is the other party, but only at the outset, given that the dynamic must change once the process is underway, to become a homogeneous situation"*. From the analysis carried out, it is concluded that the protected judicial interest of limit is intended to guarantee, on the one hand, the equality of the parties to the judicial process and on the other, to guarantee as well the fundamental right to effective judicial supervision, both recognized by the Constitution.

VIII

The principal thesis upon which Nuria Romero Santiago expounds in Chapter VIII is the analysis of "The administrative functions of vigilance, inspection and control", as limit on the right of access to public information regulated in Article 14.1.g) of the LTRAPIGG. Beyond a doubt, the difficulty of this analysis lies in defining the material content of the said judicial concepts. According to the author, the true judicial interest protected in this principal is to be found fundamentally in the confidential nature of sensitive information. Due to this, *"It is intended to protect and guarantee the confidentiality of information relevant to methods, specific locations and the limits to the intervention of those specific services, to the end that inefficiency be avoided, as well as to avoid invalidation of any act or official document which may have been issued"*.

These arguments are based upon the idea that Constitutional regulation of the administrative functions of vigilance, inspection and control is to be found in Article 103 of the Spanish Constitution, the precept wherein the principles of action of Public Administration are articulated. In this context, starting from the basis that Public Administration serves the public interest with objectivity, Section 3 of this Article refers to the regulation of a system of incompatibilities and guarantees designed to safeguard the impartiality of civil servants in the fulfillment of their functions.

IX

In Chapter 9, Maria Serrat Romani offers a study on the limit relative to "Commercial and Economic interests" covered in Article 14.1.h) of the LTRAPIGG. According to the author's interpretation, *"The interests which are the object of protection in the said limit are those which make up the information of economic and commercial character of the Administration, and not that of private individuals".* It may be of interest to note that Cerillo Martinez[3] considers that the limit under analysis intends to *"protect undue damage to commercial or negotiating positions, and in particular it is understood that within this category may be included commercial secrets which contain, among other items, information relative to production procedures, commercial strategies or client listings".*

In synthesis, the author considers that *"the criterion by which protection is established is based on the principles of equity, proportionality and equality of the subjects entering into competition in the national economic sphere. That is to say, a judicial framework of protection is established in order to guarantee equality of opportunity in the obtaining of benefit. Then protection of the public interest consists in establishing an equilibrium between the conditions in which the public company enters into competition with the private. This disproportion in competitive balance may lead to the generation of a loss of benefit which affects the quality of the service lent, with the resulting prejudice for the citizens to whom the service is directed, of the consequences which a deficient service may generate in the general society. Nonetheless, the scope of protection is not limited to the general interest, this being understood as the common good, but rather is a question of the protection of the particular interest of the State itself. That is, the State is obligated to a contractual relationship, defined as a social contract, with the citizens to whom it provides public services in exchange for their taxes. Should the State, by reason of disproportion in competitive equilibrium, fail to comply with its contractual obligation, providing poor services or eliminating them, the prejudice to the citizens may originate social discontent and bring about serious social reaction putting in danger the continued existence of the State itself".*

3 CERILLO MARTINEZ, AGUSTÍ. Public transparency of private entities and confidentiality of company data". In: D. Canals Ametller (publisher). Data. Protection. Transparency and Good Regulation. Girona: University Document, 2016.

For all of the foregoing, it is necessary to point out that the protected judicial interest of limit, in the words of the author, consists in *"guaranteeing healthy and free competition in equality of conditions on the part of the subjects who act within a single economic sector, so that their acquisition of profit shall be in the fairest of conditions, at the same time guaranteeing public service of quality. Nonetheless, the primacy of economic secrets shall be affected whenever there exists a general interest in their being revealed, even though this may prejudice the entity".*

Finally, it is important to note that this is not a case of a novel limit, given that protection of the commercial secret is regulated in specific rules in European Union law, in State regulations and in those of the Autonomous Communities.

X

In Chapter X, Maria Serrat Romani studies the limit with reference to "Economic and monetary policy" set forth in Article 14.1.i) of the LTRAPIGG. At European level, Regulation (EC) no. 1049/2001 of the European Parliament and of the Council, dated 30 May 2001, relative to access by the public to European Parliament, Council and Commission documents, states in its Article 4.1 that *"The institutions shall deny access to a document whose release may be prejudicial to the protection of (…) the financial, monetary or economic policy of the Community or of a member State".*

It is concluded that economic policy refers to the decisions adopted by governments in the economic sphere, covering systems setting tax rates and government budgets, as well as the labor market, national property, and many other areas of government intervention in the economy.

The author understands that the judicial interest protected in both cases is *"the general interest"* given that prejudice may be produced due to unduly early release of certain economic and monetary forecasts which might affect the economic interests of the State if there took place an abuse of information by reason of the post which is held. Therefore, it is fundamental to oversee public servants in the carrying out of their functions, since the interest sought by limitation on information respecting economic and monetary policy is to ensure the well-being of the State, which must represent the well-being of its citizens. In other words, revelation of certain information may prejudice the pursuit of such well-being.

XI

Next, Maria Asuncion Esteve Pardo offers a presentation of the elements which make up the limit on the right of access to public information relative to "The professional secret and intellectual and industrial property" as set forth in Article 14.1.j) of the LTRAPIGG. The professional secret is understood to be a legal right and obligation held by certain professionals, by reason of their posts or by certain enterprises

within the sphere of their technical and commercial activity, to hold in secret information received from their clients or patients. The regulatory judicial framework regarding this material embraces a great number of rules, and the rights of intellectual and industrial property have as their object the protection of non-material goods created or produced by physical or judicial persons which may be the object of industrial and commercial exploitation.

The commercial secret has been the object of recent regulation through Directive (EU) 2016/943 of the European Parliament and the Council dated 8 June 2016, relative to the protection of un-divulged technical knowledge and company information (commercial secrets) against their illicit acquisition, utilization and revelation. According to Consideration 2 of the said Directive: *"Companies, whatever their size, value commercial secrets as much as patents or other rights of intellectual property. They use confidentiality as a management tool for the competitiveness of the company and of innovation in research, to protect information of a wide range of types not limited to technical knowledge, but rather including commercial data such as information on clients and suppliers, commercial plans and market strategy studies".* Taking into account the foregoing, Article 2 of the said Directive establishes that there shall be understood as: *"1) "commercial secret": information complying with all of the following requisites: a) being secret in the sense of not being, in its totality or in the configuration and precise assembly of its components, generally known by persons belonging to the circles in which the type of information in question is normally used, nor easily accessible by them; b) holding commercial value due to their secret nature; c) having been the object of reasonable measures, in the circumstances of the case, to maintain it secret, taken by the person who legitimately exercises its control".*

Article 20.1.d) of the Spanish Constitution addresses the professional secret in that *"(…) The law shall regulate the right to a clause of conscience and to the professional secret in the exercise of these liberties.* Deriving from the said guarantees, intellectual property is found to be regulated in Royal Legislative Decree 1/1996, dated 12 April, through which is approved the Revised Text of Law of Intellectual Property. For its part, industrial property is covered in several laws: Law 224/2015, dated 24 July, on Patents; Law 17/2001, dated 7 December, on Trademarks; and Law 20/2003, dated 7 July, on Judicial Protection of Industrial Design.

The author maintains *that "the protected judicial interest in the cases both of the professional secret and of intellectual and industrial property is an interest of private character. The professional secret protects the confidentiality of information obtained by certain professionals by reason of their posts or by certain companies within the sphere of their technical and commercial activity".* In addition, it is noted that *"The rights of industrial and intellectual property have as their object the protection of immaterial goods created or produced by physical or judicial persons which may be the object of industrial and commercial exploitation".*

It is stated in conclusion that the essential element for the determination of access to information classified as "confidential" shall be *"to prove its confidential or secret character and allege the interest which may be prejudiced if such information were released".*

XII

Chapter 12, produced by Oscar Roca Safont, focuses on the limit on "The guarantee of confidentiality or the secrecy required in processes of decision-making" set forth in Article 14.1.k) of the LTRAPIGG.

Before addressing the examination of the interest judicially protected by the limit, it is worth pointing out that Article 3 of Agreement no. 205 of the Council of Europe on access to public documents, dated 18 February 2009, establishes among possible limits on access to public documents *"k) deliberations within or among public authorities with reference to the examination of a matter."* In addition, Article 4.3 of the (EC) Regulation no. 1049/2001 of the European Parliament and of the Council, dated 30 May 2001, states that *"Access shall be denied to a document composed by an institution for its internal use or received by it, related to a matter upon which the institution has not yet reached a decision, saving when such release bears a greater public interest".*

Regarding the scope of this guarantee, the author indicates that *"The expression "required" used by the precept, in our judgment, cannot mean that in every decision-making process, secrecy or confidentiality be demanded. Rather the opposite, the limit is designed so that it may operate in those processes which "require" confidentiality or secrecy, which does not always and in all cases occur".*

The article concludes with several observations of great interest, especially regarding the need to pass the test of damage, that is, in the author's words, "(…) the consideration that the request for information represents a prejudice which is concrete, defined, and measureable for the interest protected by the exception—in this case, the decision-making process—does not exempt the subject from the obligation to carry out a second test of deliberation or of interest. Within the said second test there must be consideration as to whether, in the specific case, the public interest in learning the information should prevail over the protection of the decision-making process". It would also be necessary that, following the provisions of Agreement no. 205 of the Council of Europe on access to public documents, dated 18 June 2009, it should be a regulation at the level of a law which would establish the judicial regime to be followed in matters of confidentiality or secrecy.

XIII

Similarly, Chapter XIII, produced by Sergi Monteserín Heredia and Manuel Luis Perez Garcia, analyses the legal composition and aspects which condition the scope of the limit on "Protection of the Environment" set forth in Article 14.1.l of the LTRAPIGG.

In this regard, the specific judicial regime on environmental matters is determined by Law 27/2006, dated 18 July, which regulates the rights of access to information, of public participation and of access to justice in environmental matters, (incorporating

Directives 2003/4/EC and 2003/35/EC). Article 13.2 of the said regulatory text warns of the possibility of denial of requests for information if the revelation of the information requested could negatively affect any of the items enumerated as follows: *"a) The confidentiality of the procedures of public authorities, when such confidentiality is set forth in a regulation at the level of a Law. B) International relations, national defense or public security. c) Causes or matters subject to judicial procedures or in process through the courts, the right to effective judicial protection or the ability to carry out an investigation of a penal or disciplinary character. When the cause or matter is subject to judicial procedure or in process through the courts, the judicial organ in question must in all cases be identified. d) The confidentiality of data of a commercial and industrial character, when such confidentiality is set forth in a regulation at the level of a Law of in Community regulations, with the aim of protection of legitimate economic interests, including public interest in maintaining statistical confidentiality and fiscal secrecy. e) The rights of industrial and intellectual property. Excepted are those cases in which the title-holder has consented to their release. f) The confidential nature of personal data as regulated in Organic Law 15/1999, dated 13 December (RCL – [Legislation Chronological Repertoire] 1999, 3058), on Protection of Data of a Personal Nature, whenever the interested person whom the data concern has not consented to their manipulation or revelation. h) Protection of the environment to which the requested information refers. In particular, that which refers to the location of endangered species or to their areas of reproduction.*

By way of conclusion, the authors argue that the character of the judicial concept under analysis is indeterminate, diffuse and ambiguous, according to the regulation on transparency, access to information and good governance. This is not so in the case of regulation of access to environmental information, given that the objective is *"the protection of endangered species, in such a way that the request for information shall only be denied when this affects and prejudices very specific species of fauna which are subject to many threats and as such deserve special protection, since their preservation is necessary to the balance of the ecosystem and biological diversity, and since the loss of a species may be irreparable".*

XIV

In Chapter XIV, Oliver Garcia Muñoz offers a general view of the contents set forth on "Protection of data of a personal nature" within the sphere of transparency, access to public information and good governance.

The legal outline of the right to protection of personal data acquires particular relevance in the regulations on transparency, access to public information and good governance due to its specific and differentiated regulation respecting the limits on access to public information regulated in Article 14 of the LTRAPIGG. Article 5.3 of the LTRAPIGG itself regulates the general principles of active publicity and establishes that *"Application shall be made, as necessary, of the limits to the right of access to public information set forth in Article 14, and especially of that which derives from protection of data of a personal nature, regulated in Article 15. In this respect, when the information contains especially protected data, publicity shall only be carried out following disassociation of these".*

Following this premise, Article 15 of the LTRAPIGG[4] exhaustively and independently regulates protection of personal data with respect to access to public information. Having stated the foregoing, according to Article 15.3 of the LTRAPIGG, *"When the requested information does not contain data especially protected, the organ to which the request is directed shall grant access following sufficiently reasonable consideration of the public interest in the release of the information, and the rights of those affected whose data appear in the requested information, in particular their fundamental right to protection of data of a personal nature"*. Finally, the legislator recognizes in Article 15.4 of the LTRAPIGG that if access is effected following the disassociation of the data of a personal nature, in such form as shall impede the identification of the persons affected, that established in the foregoing sections shall not be applicable.

To this idea there is added a broader perspective. Specifically, Article 15.5 of the LTRAPIGG sets forth that regulation of protection of personal data be applied to the treatment of such data following exercise of the right of access. From this premise, it is concluded that the inordinate nature of the protection of personal data on the limits to the right of access to public information is evident.

Thus, it is necessary to cite Regulation (EU) no. 2016/679 of the European Parliament and of the Council, dated 27 April, relative to the protection of physical persons regarding the treatment of personal data and to the free circulation of such data, and due to which Directive 95/46/EC stands repealed. The said Regulation contains major innovations in this material, tending to guarantee protection throughout the entire Union based on a foundation of judicial security and of transparency with respect to operators. As promulgated in Consideration 13 of the Regulations, need for normative regulation is justified as having the aim of providing judicial security and transparency to the economic operators, including microenterprises and small and medium companies, as well as offering physical persons of all member States the same level of rights and binding obligations and responsibilities with respect to those responsible for and charged with such treatment. Similarly, the European rule represents a substantial improvement in the regulatory framework and guarantees better coherent supervision of the treatment of personal data and equivalent sanctions in all member States, as well as effective cooperation among the authorities of control of the different member States.

XV

Next, in Chapter XV, Angeles de Palma del Teso presents and systematizes "The Rights of Minors" within the sphere of transparency, access to public information and good governance.

4 Section 1 is modified by final Disposition the eleventh, section 2, of Organic Law 3/2018, dated 5 December, on Protection of Personal Data and guarantee of digital rights (Official Gazette no. 294, on 12/06/2018).

Although in the LTRAPIGG "The Rights of Minors" are not specifically regulated, Organic Law 19/2014, dated 29 December, on transparency, access to public information and good governance, passed by the Parliament of Catalonia, regulates them as a limit on the right of access to public information, in Article 21.1.e).

For its part, Organic Law 8/2015, dated 22 July, on modification of the system of protection of children and adolescents, in its Article 2 regulates in detailed fashion the judicial concept with regard to the "overriding interest of the minor". As aforesaid, determination of the overriding interest of the minor in each case shall be based upon a series of accepted criteria and values universally recognized by the legislator which much be taken into account and considered in function of various elements and of the circumstances of the case, and which must be explicitly presented within the motives for the decision adopted, in order to determine whether or not the principle has been correctly applied.

XVI

Finally, Imma Garros Font dedicates Chapter XVI to the study of "Privacy and other legitimate private rights". The regulatory antecedents of the limit affecting privacy and other legitimate private rights represent the expression of the provisions contained in Article 8 of the European Agreement for the Protection of Human Rights and of Fundamental Liberties, produced in Rome on 4 November 1950, regarding the right of respect for private and family life, whose aim is the protection and the development of human rights and fundamental liberties. In addition, it is of undeniable interest to cite Agreement no. 205 of the Council of Europe on access to public documents, dated 18 June 2009, since its Article 3.1 bestows the prerogative upon the States so that they may limit the right to access to public documents, with the caveat that the limits must be set forth in a Law, be necessary in a democratic society and have as their objective the protection, among others, of *"[…] f, privacy and other legitimate private interests"*.

The Spanish Constitution of 1978 also recognizes the Universal Declaration of Human Rights in its Article 10, Section 2, when it states that *"The regulations regarding the fundamental rights and liberties recognized by the Constitution shall be interpreted in conformity with the Universal Declaration of Human Rights and the international treaties and accords on such matters ratified by Spain"*.

As previously justified, the LTRAPIGG, in its Article 14, exhaustively regulates the right of access, and especially that derived from protection of personal data, in Article 15[5]. Beyond a doubt, this does not constitute a system of *numerus clausus* so

5 Section 1 stands modified by final Disposition the 11th, Section 2, of Organic Law 3/2018, dated 5 December, on Protection of Personal Data and guarantee of digital rights (Official Gazette no. 294, dated 06/12/2918).

that the Autonomous Communities may develop the limits to the right of access to public information in their Autonomous legislation, even in the case of a base law. The limit which is the object of the study "Privacy and other legitimate private rights" is an example of this. Despite this not being included on the list of those cited by the State legislator, some Autonomous Communities such as Catalonia (Law 19/2014, dated 29 December, on transparency, access to public information and good governance—Art. 21.1.f--) and the Charter Community of Navarre (Charter Law 11/2012, dated 21 June, on Transparency and Open Government—Article 23.1 f--) include it coherently, although with different nuances, in their regulations on the material.

In this regard, basic legislation is not exempt from regulation on the subject. Protection of the limit under analysis would stand perfectly included in Article 15 of the State base law (LTRAPIGG) relative to protection of personal data. According to the applicable text of its section *"1. If the information requested should contain personal data revealing the ideology, union/labor affiliation/membership, religion or beliefs, access may only be granted in cases where consent, express and in writing, of the person affected is present, unless the said person had made public such data prior to the request for access. If the information should include personal data referring to racial origin, health or sexual life, include genetic or biometric data, or contain data relative to the commission of penal or administrative infractions which did not carry with them a public warning to the guilty party, access may only be authorized in case of the existence of express consent from the affected party or if such were protected under a regulation with force of law. 2. As a general rule, and except where in the specific case, the protection of personal data or other Constitutionally protected rights should prevail over the public interest in release which should impede this, access shall be granted to information of mere identification related to the organization, functioning or public activity of the organ. 3. Should the information requested not contain specially protected data, the organ to which the request is directed shall grant access following sufficiently reasonable consideration of the public interest in release of the information and in the rights of those affected whose data appear in the requested information, in particular their fundamental right to the protection of data of a personal nature (…)*

The inclusion of the limit within Autonomic regulations on transparency cited above represent a certain denaturalization with respect to traditional judicial categories employed by Constitutionalist dogma or that of Administration. Despite this, a holistic treatment of the limit may be given and integrated into the rights consecrated in Article 18 of the Spanish Constitution—the right to honor, personal and family privacy, to one's own image, to the inviolability of the domicile and to secrecy of communication. In the first place, because "the right to privacy" forms part of the additional category of the "rights of personality", cited in the Statement of Motives of Organic Law 1/1982, dated 5 May, on civil protection of the right to honor, personal and family privacy, and to one's own image, and in second place, because the term "other legitimate private rights" is used from a broader concept to refer to "rights of the private sphere".

Regarding the content and limits to the right of privacy and other legitimate private rights—the right to honor, to one's own image, to the inviolability of the domicile and to secrecy of communication—consolidated doctrine exists proceeding from the Constitutional Tribunal and from the European Tribunal on Human Rights.