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## **“The administration transparency in the right to civic access and the Law 150/2000”**

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### ABSTRACT

*The democracy is the government of the public power publicly* (Norberto Bobbio)

This essay proposes a comparison among three recent topics: the civic access right, the administration transparency and the law on public communication. The main goal of the present study is to prove that, only through a full application of the law 150/2000 and the employment of professional figures like journalists and public relators in public administration, it is possible to realize what the deputy Filippo Turati, in 1908, called “the glass house” in regard to the public administration, an expression which is still in use to indicate the citizen’s need to be granted a wider access to public administration, as a fundamental opportunity of participative action in the civil society. An effective and professional communication about the activities and life in public administrations is the necessary condition to grant transparency and positive finalization of those policies directed to ensure the basic services to citizens.

The first chapter evolves around the civic access right and the transparency in public administration. It starts from the same concept of “civic access”, representing a declination of the wider right to information, according to which every citizen (*quivis de populo*) can ask to have

access to public institutions information (data). This principle has become popular recently, thanks to technological progress enabling the massive circulation of data. After a brief historical track of the right to civic access in the world – from the freedom of the press act in 1766 by king Adolph Frederick of Sweden, *the tryckfahets for or ordning*, to the American “Foia” signed in 1966 by president Johnson – this essays proposes a deeper analysis of the general principle of (administrative) transparency, to linger on: the law decree Nr 33 of the 14<sup>th</sup> of March 2013 (unique text about transparency in public administration) on the law decree Nr 97 of 2016, the so-called “Italian Foia” and the recent interventions (April-July 2017) by ANAC (National Authority Anti-corruption) on transparency and Foia. In particular, there will be a deep analysis of the guidelines of the authority for the actuation of the generalized civil access and of the duties of publication according to the legislative decree 97/2016. In the last two paragraphs of the first chapter this essay illustrates: the “open government” model, a mode of ruling power based on instruments and technologies allowing state governments and administrations to be “open” and “transparent” towards citizens; the “open data” system of P.A. with the P.A. dataset (local and central ones) up dated to 10<sup>th</sup> September 2017, the experimental didactic project by the political social and communication sciences department of the university of Salerno named “Right to civic access” promoted in January 2013 by the laboratory “texts analysis for public communication” within the teaching of public communication and institutional languages in order to form university students (but also public relators and journalists) to writing practice of public communication and to the use of administration open data.

The second chapter concentrates on the evolution of the right to access to public information in the Italian legal system. A particular attention is paid to the law 7 august 1990 Nr 241, on the administrative procedure and the right to access to administrative documents, which gave birth to the abandon of the administrative secret and to the progressive affirmation of the general principle of transparency, as the basis of the administrative democracy in modern states. The law 241 is compared to the law 142 of 1990, on the local autonomy system, to highlight four substantial differences between the two back to the law decree n 33/2013, attention is focused on the articles of the above mentioned decree allowing the citizen-user to act the right to total acknowledgement of public administration work. It is so defined the principle of total disclosure opening to a subjective right, enabling anyone to ask for publications of data, information and documents the law obliges the P.A. to make accessible and that the same PA omits to publish on its own institutional site. Among the analyzed issues, there are the modes to practice the right to civic access. In the fifth

paragraph comes to term a new comparison between civic access and generalized access (respectively introduced by the law decrees 33/2013 and 97/2016) and the access to administrative acts (law 241/1990). The following step is to examine the case of the Campania region, convicted, by the sixth section of TAR Campania, by verdict n 5671 of 2014, to fulfill the obligations established by the article 27 of law decree 33/2013. As required by the applicant (a private society) acting against the Campanian regional administration, complaining injury as regards its own right to civic access and asking for the acknowledgement of the same right, in relation to an instance of its own of publication of acts POR-FERS Regione Campania. In the last part of the second chapter, the essay analyzes the continent an the critical points of the law decree 97/2016 which, due to the delegation article 7 of the law 7 August 2015, n 124 (so-called Madia law), has modified the law decree 33/2013, in order to grant a real and effective “right to know” towards the institutions. They are examined the recent survey, called “state ignorance”, carried out by the association “right to know “ showing the delay of the Italian Foia, and the latest indications from the Ministry for simplification and public administration (circular No. 2, published 6 June 2017) aiming at providing administrations with the necessary indications to apply effectively the rule concerning the generalize civic access, keeping in mind the application experience and the criticalities emerged through the monitoring of the public function department. In the third chapter, the study presents a deep analysis of the law 150/2000 “Public administration communication and information activities discipline” (with the different types of communications, structures, protagonists, websites and communication plan, etc...) and its complex applications; the implementing regulation of the law 150, the DPR 422/2001, the last fifteen years’ legal frame; the press reform bill (law 198/2016). A wide space is given to the press offices of public institutions (shared, associated or established after constitution of a commons’ union) and the actual difficult situation as iti revealed from a series of surveys recently carried out: the second national monitoring on the application of the law 150/2000, carried out by the Italian association of institutional and public communication, together with the department of public function and the high school of public administration (200); the survey of the national federation of the Italian press (2003); the report IULM-public function ministry (2004); the survey on the application state of law 150 (Abruzzo 2006); the report LSDI on journalism in Italy – updating 2015; the first report on the press offices in Tuscany (2016). The following pages are devoted to monitoring – carried out by myself between May and June 2017 (updated to August 2017) – of 250 municipalities of Naples and Salerno, showing a shocking situation, a jungle of ignored or denied rules. In those two areas, the municipalities “covered” under the communication point of view are 59 on 250, that is the 23,6%. If we consider the only presence of press office

(according to law 150) the situation get worst: the institution in order are 37 (thirty-seven) (eighteen in Naples and nineteen in Salerno) on 250, that is the 14,8% of the total. Afterwards, it has been examined the case of four Neapolitan municipalities that, between 2016 and 2017, made “non-transparent” nominations of press officers and spokesmen, provoking the harsh reaction of the order of journalists.

The third chapter ends with the latest news, the signature of the memorandum of understanding signed on the 12<sup>th</sup> July 2017 by FNSI and the association of Italian municipalities, to facilitate the constitution of press offices in municipalities according to the law 150/2000; and the official guidelines of the ministry to simplification and public function of 2 August 2017 giving status to the professional profile to the specialists of information and the communication within the public administration, and the final interview to Pier Carlo Sommo, general secretary of the association public and institutional communication (carried out on the third of September 2017) on the future of public communication in Italy and law 150. In the fourth and fifth chapters, the essay sums up this long cultural and professional track.

The final reflections aim at showing how public administration should necessarily open to communication professional figures, endowed with advanced language and data and information management competences in order to grant, effectively, to citizens the right to civic access. The law 150 has been and is a propulsive engine for the adoption of a clearer and more comprehensible language of the public offices. It, together with the rules on transparency, has contributed to the access to acts and administrative procedures, it has stimulated a more effective production of public services, favoring the introduction of the modes of listening to the users 'request and the citizens' participation in the town and administration government, and consequently a greater control of the administration action.

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