

INTERNET, THE RIGHT TO BE INFORMED AND THE RULE OF OPENNESS OF THE STATE'S ACTIONS IN DEMOCRACY

by

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The goal of the article is to point out changes in the way of realizing one of the basic rules of democracy- transparency- under influence of the Internet. The following problems were analyzed: the term "transparency" and its meaning for democracy; the citizens' right to demand information from state institutions as the basic authority connected to the rule of transparency; transparency of state power (legislative, executive and judicial) in democracy in general; problem of limits of transparency realized by publishing information in the Internet. Author concludes, that political system's transparency and openness of the state's actions are the main goal of using the Internet by the state in democracy. He points out, that openness of the system is a principle realized in democracies which are mature and consolidated. Regimes referred to as pseudo-democracies which do not find transparency as one of priorities treat Internet as a competitive source of information. Thirdly, from perspective of citizen the transparency in the political dimension is especially important. In the context of representative power it limits informational manipulation on the politicians part (the governing side and the opposition side). Moreover, political transparency, understood in positive sense, gives a voter a chance to make decision basing on rational premises.

KEYWORDS

Internet, transparency, democracy, rule of openness of the state's actions

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1. TRANSPARENCY IN DEMOCRACY

The goal of this article is to point out changes in the way of realizing one of the basic rules of democracy- transparency- under influence of the Internet. The following problems were analyzed: the term “transparency” and its meaning for democracy; the citizens' right to demand information from state institutions as the basic authority connected to the rule of transparency; transparency of state power (legislative, executive and judicial) in democracy in general; problem of limits of transparency realized by publishing information in the Internet.

According to Transparency International, transparency should be meant as: [...] a rule of political system's functioning, allowing people whom the taken decisions concern, to know the basic data and statistics relating to them personally, as well as mechanisms and processes which had led to the decisions. It is responsibility of the people who take material decisions to act openly, predictably and understandably.¹ The rule of transparency refers to the whole of political system and means clearness of acting procedures of power on all levels, as well as to the non-state public sphere, especially to political parties. The objective matter is understood as equal to the rule of openness of the state's actions.

D. Held, giving assumptions of participation democracy (understood as a system where citizens actively take part in public life) stated that the necessary condition of its existence is transparency, that is open access to decision making process, which implies openness of the whole institutional system. Realization of this kind of democracy is possible in conditions of minimizing the influence of bureaucratic institutions and fluent functioning of information system.² The consequence of transparency introduction is increase in citizens' trust towards public institutions and towards political system in general. This in consequence leads to increase in participation and in support for democracy as a system.

Legality understood as following existing legal rules by state organs both at stage of making and of executing is one of principles connected to system's transparency. In the state of law the organs act not only basing on and in scope of existing norms, but follow clear to citizens procedures. Helpful is situation, when legal system lacks norms which are colliding and

¹ The Transparency International, 2010.

² Held, D. 1987

regulations are precise.³ According to the basic rules of theory of law, the citizen should be aware of public institutions' competences and scope of action, and transparency of the system is the factor of utmost importance here.

It seems then that transparency is of the same importance as other principles of functioning of democracy, like rules of: majority, representation, participation of citizens, equality in the face of law. The introductory condition of transparency rule realization exists in systems, where legality is not only a formal element of legal system, but as well the material basis of legal and political systems functioning. This excludes not only transparency in non-democratic regimes (totalitarian, authoritarian), but as well its functioning in democracies where only formal requirements are satisfied.

In this context four forms of democratic system can be distinguished. It can take consolidated, non-consolidated, limited democracy and non-limited democracy form.⁴ In consolidated system an agreement of elites exists (government elites, opposition elites) as far as the existing rules of competition and institutional order are concerned. In this system democracy became not only a system of governing, but is also understood as a type of participation in public life and as a type of political culture. Non-consolidated democracies are characteristic of states, which fulfill procedure conditions of this type of government, but there is no agreement in elites as far as rules of competition and acceptance towards existing institutions are concerned. Lack in agreement leads to situations, when one part undermines the legitimacy of the institutional system (or elected power). It causes political conflicts escalation and weakening of state institutions. Limited democracies are based on a government formula characterizing in agreement of elites as to necessity of abiding basic rules of democracy, but participation of citizens in public life is not inclusive, but is limited by different censuses (mainly cultural and economic). Some citizens are then excluded from public life. In regimes called pseudo-democracies the system is ostensible, which means there is no pluralism or political competition, though there is a "democratic superstructure". In these regimes pluralism is apparent, constructed on the rule of subordination towards the power. There is no alternation of power, the citizens have no right to choose between competing political programs, because the existing are instrumental and their role is to

³ The Transparency International, 2010a

⁴ Burton, M. & Gunther, R. & Higley, J. 1993.

establish the governing power. In similar way the institution of elections is treated, it serves the purpose of confirming the existing political order.

Andrzej Antoszewski and Ryszard Herbut stated, that contemporary democratic system should fulfill four necessary conditions: maturity, stability, integrity and flexibility.⁵ A system fulfills the maturity condition when mechanism accepted at the beginning of democratic transformation survived over time without radical changes. Stability criterion means, that in critical situations (which sometimes occur in any system) of political, governmental, ideal or social-economical nature, democracies of this kind react by just a change of power elites, not by sudden change in government system. The integrity condition means ability of keeping integrity between values, structures and political behaviors. This condition assumes existence of democratic order in which on one hand there are basic for the system values realized by structures, on the other hand there is adequacy between political behaviors and structures. The last criterion is systemic flexibility, according to which in given democracy it is possible to accept deep changes, which do not pose a threat to its functioning. The reasons for changes are most commonly different types of crises- religious, ethnic, social, regional, and reforms exercised (even deep) are state's reactions a way of resolving crises and do not violate the essence of democracy.

Transparency of political system should be added to the four listed conditions as one of basic (fifth) systemic determinant. Systemic clearness in the logical and causal sense is closely connected to several problems and conditions: the problem of corruption; the scope of realization citizen's right to information (which can exist objectively or just formally); accessibility to information about procedures on which executive, legislative and judicial power is based as well as to self-government institutions, and to subjects who take part in governing processes like political parties, groups of pressure and interest. Transparency is in consequence a derivative of executing the rule of legality by the state.

It is hard to consider systemic transparency outside of the problem of corruption, because limited transparency is a premise of growth in behaviors connected to the phenomenon. There is a lack of estimated procedures of acting, information about state organs' functioning at different levels, which enables growth of the objective phenomenon. Lack of systemic trans-

⁵ Antoszewski, A. & Herbut, R. 2001.

parency is an element characteristic of democracies which do not fulfill the maturity criterion, in which there had not been established legal norms conditioning access to information. It should be stressed though, that there are exceptions to this rule because in some European countries, in spite of the maturity condition being fulfilled, there is an exceptionally high level of corruption. According to research led in this context by Transparency International, in this group there are countries like Italy and Greece,⁶ democracies that should be included into democracies both mature and consolidated.

2. THE INTERNET AND THE RIGHT TO INFORMATION

The rule of systemic transparency should be considered together with the right to information. The right can be understood as complementary to the rule of transparency, because the right to information is the basis to claim from a public organ in the object of gaining access to certain data. Nevertheless publishing in the Internet information to achieve legal, economical or political transparency is not helping realizing the basic goal, if a user is unable to find the information. This kind of situation can be caused by technically impaired functioning of websites, their wrong positioning. It is important though, from the citizen's point of view, that an information without accessibility is useless.⁷

The solution to this problem is correct choice of methods. In this context it is worth mentioning, that political institution make information public in the Internet in two ways. The first way is to public information in autonomous manner which means each institution on its own fulfills assignments connected to certain assignments. The second way is to catalog information in complete and coordinated manner which means a complete accessibility to all data of one state portal.⁸ Efficiency of the second mentioned solution, that is creating public portals of central scope, must be stressed. This kind of function in Poland was assigned for Biuletyn Informacji Publicznej (BIP in short),⁹ in Great Britain it is portal www.direct.gov.uk, in the US it is www.usa.gov. Information should be made public according to the principle of directing it toward the needs of citizens.

⁶ The Transparency International 2010b.

⁷ Bargmann, M. & Pfeifer, G. & Piwinger, B. 2004.

⁸ Kubicek, H. 2004.

⁹ Biuletyn Informacji Publicznej 2010.

Searching Internet to find certain information depends on functionality of browsed websites. From perspective of official sites created by state institutions some instruments enabling finding data that is searched. Considering character of the instruments, we may list: general browsers, which theoretically enable finding a certain chain of signs from a portal; subjective catalogs, which work according to idea of grouping information according to names of institutions; objective catalogs, which enable finding data according to material groups; and alphabetic catalogs. From perspective of a citizen the most fruitful is combining different types of information cataloging (alphabetic, subjective, objective).

The right to information realization is influenced by the fact, that the net enables growth of information portals which are an alternative to the existing media order.¹⁰ It is worth observing, that for its twenty years of expansion, the net became the strongest media influencing systemic transparency. The strength is caused by two elements. Firstly- the Internet, as opposed to the traditional media, enables literal transmission, without intermediaries (journalists, editors). Secondly- basically no subject can control in full the Internet transmission. An apparent example of this is the Unites States' situation towards the WikiLeaks portal. It must be reminded, that in genetic sense "the creator and executor" of the global net architecture is the government of United States. And the net, designed as an instrument securing safety of the country in case of conflict¹¹ by Americans, forty years after its creation was used against the interest of the States, aiming at the American reason of state. If the American state had been for four years of the WikiLeaks portal's existence (2006-2010) unable to block its functioning and solve the matter in accordance to the reason of the state it means no country in the world (no matter what their regime) is able to control the Internet transmission.

In case of creators of WikiLeaks a conflict of two ends should be mentioned. On one hand, activity of ideal character is stressed, its goal would be achieving "transparency of governments" or even some sort of "global transparency" and on the other hand a conflicting goal declared by the establishment of WikiLeaks can be described as "aiming at the situation when politics is moral". A mean to achieve these goals is publishing in the Web examples of political and military strategies which are in obvious conflict

¹⁰ Hague, B. , Loader, B. 1999.

¹¹ Maj, P. 2009.

with universal moral rules. WikiLeaks' activity for "global transparency" states at least three problems, which can be formulated into questions: Where are the limits of systemic transparency? Should a state, acting by diplomatic means, be valued morally, since the reason of state is at stake? Should a state, acting internationally by diplomatic means, but on the edge of law or outside of law, be transparent on the same rules as in case of internal politics? It is hard to answer explicitly to these questions, but the specifics of diplomacy, external politics and military actions is not based on moral reasoning. Among others this is the reason why at the listed spheres ends the systemic transparency, also as far as the Web is concerned.

Basic problem of the Internet, connected to the right to information is the matter of liability of the source. Since there is no center verifying information published in the web, the only method and criterion of liability is researching its source. Official government sites, existing in the "gov" domain, are reserved for state institutions, and information there published is treated as liable. But majority of information is published in other domains, found by different often hard to spot subjects, which leads to lack of the information liability. Additionally the problem of liability of data is complicated by political practices of disavowing of opponent, which is true also in the Internet. A common practice became creating sites thought to be connected to the opponent and then listing them in browsers like Google in the manner, that they appear in the results before the official sites. That leads to the fact, that one of the most basic features of the web, anonymity of the users, can not be seen as a positive feature in the context of transparency, because anonymous sources of information are those whose liability is hard or impossible to confirm.

3. INTERNET AND TRANSPARENCY

With a simplification it can be stated, that all official activity of state in the Internet points at realizing the transparency rule, it is the main goal of using the global web by institutions. If we look back at the past since the 1990s, two periods in the last twenty years can be distinguished: strategical planning and execution of offices computerizing, standardizing of so-called IT services, creating of common for different offices rules of administrating websites. Each of the period is a reflexion of the state organizing (in a planned manner) its presence in the Internet, aiming at transparency. Apart from state institutions the rule of openness of state activity is executed by

main opposition forces (political parties), as well as trade unions, employers organizations, and other agents from the sector of non-governmental organizations.

In the objective formulation the rule of openness is realized on the legal, political and economical levels. In political context materials concerning agents taking part in political actions are published, especially information on: content of positions of politics in public debate, concerning political behaviors, which in case of councilors and deputies means direct access to voting results with the name list; election programs and other elements connected to the political thought sphere. This is highly politicized information, causing conflict and different interpretations. During last years in Poland as this kind of data information concerning co-operation with security services in PRL can be concerned. In Polish legal system there is an obligation to bring to light information about working for security organs or about undertaking of co-operation with them, under threat of losing the taken public position.¹² The most commonly known situations of using the web in this way were: publishing so called Bronisław Wildstein list, consisting in first and last names of over 162 000 people, made public in the internet between January and February 2005, and also making public the acts of archbishop Stanisław Wielgus, first in "Gazeta Polska" and then on the newspaper's website, in December 2006.

Legal transparency is a program acting of state, self-governmental institutions, political parties and other agents aiming at spreading in public opinion with the use of Internet information about content and the interpretation of legal acts. Norms presented concern firstly legal procedures, especially administrative; secondly important regulations constructing legal order in given state and institutional norms of internal character, like statutes and regulations of institutions functioning.

Transparency in economic dimension is giving access to data about central and local budgets, reports on using Union funds by institutions, macro and micro-economic data connected to financial state of countries. Openness in the matter of the state of country finances in the context of financial crisis, which had begun in 2008 seem of specific importance, because lack or confiding of information of the sort may lead to occurring Hungarian or Greek variant, what in both cases had led to worsening existing economic

¹² The Act of Oct. 18Th 2006 concerning revealing information about security organs documents from the period 1944-1990 and the content of the documents 2006

situation. Taking under consideration financial activity of other agents, an important component of economical transparency are parties reports concerning using of goal subsidies from state budget, and also financial clearings of past election campaigns. Further in polish legal system there is an obligation to give wealth statements by candidates to offices coming from elections. The web is probably the best instrument for revealing data of this category.

Publishing objective data (political, legal, economical) by the state in the web is not free, but is in form legally obligatory. In mature and consolidated democratic systems institutions activity in this area is predicted by relevant legal acts. In case of Poland, the law concerning realizing of the rule of transparency in the web is especially regulated by four normative acts ("The Act of Sept. the 6th 2001 on access to public information" 2001, "The Act of Feb. 17th 2005 on computerizing of acting of agents that realize public assignments" 2005, "The Decree of the Board of Ministers of Oct. 11th 2005 on minimal requirements of the IT systems" 2005, "The Decree of the Minister of the Interior and Administration of Jan. 18th 2007 on *Biuletyn Informacji Publicznej*" 2007).

The special attention should be focused on the basis of the rule of openness of the state activity- the Act on access to public information. In article 7 of the objective act ways of giving access to public information by the state were specified. According to its content, the way is: announcing public information (and office documents) in *Biuletyn Informacji Publicznej*; giving access; allowing entry for the proceedings of organs coming from elections and giving access to documents also audiovisual and IT, documenting the proceedings. Access to public information is free from payment. The main media used in realizing the right to information is in the light of the Act's regulations the Internet.

4. TRANSPARENCY OF POWER

An important issue are changes in the context of publishing information by the legislative power. One of ways to assure clarity of the parliamentary work is making public official registers concerning the representatives directly (their behaviors, speeches, reports, ways they voted). It has two aims: it lets to document parliamentary activity (or its lack) and contributes to growth in the effect of work clarity.¹³ A good example is the practice used in

¹³ Hoff, J. 2003.

Scottish parliament, that is putting of the official parliament website specific types of information about each of the deputies. The following elements were made accessible: 1) video footage of the deputy's speech; 2) their personal website address; 3) recent wealth statement; 4) data on representative's part in specific committees actions and information on what sort of matters are their responsibility.¹⁴ The lower House of Parliament of Czech Republic published on its websites information about belonging to parliamentary groups and political organizations.¹⁵ Similar resolutions take place in the Polish parliament.

Considering different types of information that is made accessible by the executive power, they can be grouped into four categories. The first concerns institutions, their assignments and structure; data on clerks and executive representatives; their competences; working hours and possibilities of contact. Second group are mainly legal acts connected to executive sphere, which means accessibility to codified norms, regulating citizens' , private sector and other agents' functioning. The third group of information concerns current politics (current matters) and it is the source of the latest information on institutions functioning. The last category consists in archival data, concerning past politics, past events connected to executive power.

Transparency of the executive power is realized also by introducing into the process of law making the stage of social Internet consulting. At the stage of consulting proposed legal solutions a deadline is fixed to which individuals, groups of people or institutional agents interested in a given problem, can have a voice, in writing, through Internet, about a certain proposal. These kinds of consultations are used by British government, an example actions taken by the.¹⁶

The main aim of realization of the openness rule in context of judicial power is clarity of court procedures. Realization of this project is possible thanks to Internet transcriptions from the court rooms and live transmissions. Transcriptions in the real time consisting in the most important information about the current case in the court calendar, were initiated by royal courts in England and Scotland, function in the XHIBIT system (The website of British judicial system 2010). Its rule is introducing data step by step into the system which takes form of official relation from the court

¹⁴ The Parliament of Scotland official website 2010.

¹⁵ The lower House of Parliament of Czech Republic website 2010

¹⁶ Health Department The official website of British Health Department 2010.

room. The British system revealed co-operation between institutions of justice and legal security organs, by coordinating accessibility to information that is sent to witnesses, victims, police, prosecution, and even jails. Public transmitting of court cases in the global network is a solution that plays a socializing roles as well.¹⁷ Transmissions of this type are often used in American legal system.¹⁸

5. RECAPITULATION

Reassuming, seven conclusions must be drawn. Firstly one should agree with Agnieszka Rothert's opinion, that using the web to inform citizens and revealing decision making process is the cheapest and the most efficient way of realizing social control.¹⁹

Secondly, political system's transparency and openness of the state's actions are the main goal of using the Internet by the state in democracy.²⁰ Apart from rules of majority; representation; citizens' participation; equality in the face of law the systemic transparency became the principle of equal importance.

Thirdly, openness of the system is a principle realized in systems which are mature and consolidated. Regimes referred to as pseudo-democracies which do not find transparency as one of priorities treat Internet as a competitive source of information. They aim at limiting its influence on society.

Fourthly, all kinds of legislative connected to computerizing and introducing IT services, taking strategies towards e-government are caused by working of international organizations. Projects of this type are especially elaborated at the forum of United Nations, European Union, Organization for Economic Co-operation and Development. Without clear actions directing processes of change at forums of mentioned organizations the scope of realization of the openness rule in each different country would be different. The main result of their activity is transparency standardization at international scale.

Fifthly, the openness rule realized by publishing information in the web is not of absolute character. Similarly to freedom rights, in the context of ob-

¹⁷ The website of Center for Legal and Court Technology 2008.

¹⁸ Supreme Court of Ohio website 2008.

¹⁹ Rothert, A., 2001.

²⁰ Di Maria, E. & Rizzo, L. S. 2005.

jective rule there are limitations. As far as the state is concerned, they are clear and marked in any given case by the reason of state.

Sixthly, because of its specifics the internet on one hand is a set of sources of undeniable liability (information coming from official state sites), on the other hand the vast majority of accessible data is of unofficial character which makes the network as well a developed instrument of informational manipulation, which is worth remembering.

Seventh conclusion is, that from perspective of citizen the transparency in the political dimension is especially important. In the context of representative power it limits informational manipulation on the politicians part (the governing side and the opposition side). Moreover, political transparency, understood in positive sense, gives a voter a chance to make decision basing on rational premises.