
Freedom of information laws and open government data as anti-corruption measures

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To cite this article:

Marinova Ivalina Svetli. Freedom of information laws and open government data as anti-corruption measures. International Science Journal of Jurisprudence & Philosophy. Vol. 2, No. 2, 2023, pp. 1-7. doi: 10.46299/j.isjpp.20230202.01.

Received: 12 20 2022 p.; **Accepted:** 03 07 2023; **Published:** 04 01 2023

Abstract: The phenomenon of corruption can be cited as a problem of social development – economic, political and social, in most of the counties in the world.

The corruption is concerned with the lack of democracy and can lead to unequal distribution of power and resources, lack of accountability, weak institutions and mismanagement. The purpose of the article is to analyze the importance of access to information laws and open data in the field of fighting corruption. The author argues his point of view, the access to public information is a basic value in a democratic society and a prerequisite for the right of citizens to reasonably express an opinion and disseminate it. The general scientific research methods applied in the article are: analysis and synthesis methods, methods of systematic research, inductive and deductive methods, comparative analysis, comparative-legal method and systematic interpretation. The study showed that in order to defend our guaranteed human and civil rights, we must, strive not to turn a blind eye to corruption, but to look for possible ways of counteraction and prevention. By joining forces in this direction, members of society can support democracy, protect their human rights and, just as importantly, protect the moral foundations of society.

Keywords: corruption phenomenon, access to public information, Freedom of information laws, open data, measures against corruption.

1. Introduction

At the end of the 20th and the beginning of the 21st century, several strong trends were observed in the world economy and politics. They are associated with changes in social and political systems, the modernization of states, the entry of societies into the age of postmodernism. Globalization is a modern phenomenon when multidimensionality affects the socio-political development of countries.

How we define and understand the corruption will shape the way we fight it. The norms of each national legislation should aim to protect the financial system and other sectors that are or could be the object of bad faith infringements. In these areas, strategies and coordination policies have been adopted at the level of the European Union, which are aimed at ensuring transparency and information exchange.

Freedom of information laws and open government data are an important part of anti-corruption measures. In countries where the rule of law is weak, transparency and accountability approaches may fail or may result in anti-corruption being used as a political weapon against political opponents.

2. Literature analysis

Ever since antiquity, corruption has been one of the most widespread and insidious of social evils. When it involves public officials and elected representatives, it is inimical to the administration of

public affairs. Since the end of the 19th century, it has also been seen as a major threat in the private sphere, undermining the trust and confidence which are necessary for the maintenance and development of sustainable economic and social relations. It is estimated that hundreds of billions of Euros are paid in bribes every year [1].

In a number of studies corruption is interpreted as the abuse of entrusted power for private gain. This definition has been stable since the 90s, but the referents are evolving. States that can govern well, it is argued, are the key to long-term development, to combating terrorism, and to preventing violent conflict and the resurgence of conflict in post-conflict transitions. Renewed emphasis on efforts to strengthen the rule of law is in large part propelled by this consensus on the importance of state building and governance [2].

Abuse of power can be defined from a narrow perspective (breaching the law) or a broader, moral perspective (illegitimate practices). Some alternative definitions will use the more limited notion of “public office” instead of “entrusted power”, which fairly reflects the tendency to focus on the public sphere in corruption studies. A strong emphasis on public office tends to overemphasize the responsibility of public agents and minimize the role of private individuals as bribe-givers.

According to experts like Fisman and Svensson [3], Billger and Goel [4] corruption exists as an impediment to a well-functioning democracy and economy. Brademas and Heimann note that after years of being tolerated with a mixture of apathy, cynicism, and denial, corruption is becoming a target of serious international action. The World Bank, International Monetary Fund (IMF), and other international organizations are now seeking to curb bribery and other corrupt practices [5].

Paul Haywood points out that corruption, and more precisely its political side, represents a different expression of the modern crisis of the state [6]. A. Dzhumaliev explains the consequences of corruption on the security and governance of the state with “the reduction of trust in state institutions and the so-called postmodern politics of fear” [7].

In her article “When pathology becomes the norm” prof. Nadezhda Yonkova examines a case in which a document entitled “Pre-election agreement” was published in the public space (social network). In it, representatives of two political entities for the territory of a Bulgarian municipality agree to support a second round of elections for mayor of the municipality.

The text of the agreement states that “The candidate for mayor, if elected, undertakes to provide the implementation of 70 % of all municipal infrastructure projects to persons designated by the supporting political party” [8].

The scientific and legal-sociological analysis of the author of the article shows that in this case it is a matter of social deviance, assuming a chain deviance, since in order to fulfill the agreement, officials from the administration will conduct the procedures in a way to achieve the desired result, therefore their behavior will also be deviant. Prof. Yonkova points out reconciliation as a form of social deviation as a result of the increasing amounts of illegal redistribution of funds for personal interests.

When we talk about personal interests and private gain, it does not necessarily involve money or assets (even if it often does). It can be also a political corruption for a political party for example.

Generally high-level corruption is perpetrated by elites and involves large sums of money or highly substantial benefits (rent, power, influence). It results in significant losses for the state and its citizens. Grand, through which the aim is to ensure transparency and information exchange corruption usually implies money laundering, through sophisticated transnational schemes.

In our opinion, the main hypothesis that successfully works against corruption is the following:

- minimization of social norms (social acceptability of corruption, informal governance practices, hidden interests;
- in countries where the rule of law is weak, transparency & accountability approaches may fail or may result in anticorruption being used as a political weapon against political opponents.

3. The purpose and methodology of the article

The study is aimed at trying to analyze the importance of access to information laws and open data in the field of fighting corruption. The author proves the access to public information is a basic value in a democratic society and a prerequisite for the right of citizens to reasonably express an opinion and disseminate it. The study is aimed at trying to analyze the importance of access to information laws and open data in the field of fighting corruption. The author proves the access to public information is value in a democratic society and a prerequisite for the right of citizens to reasonably express an opinion. The corruption is a problem of social development (economic, political and social). She is the can lead to unequal distribution of resources, weak institutions and mismanagement. It can lead to unequal distribution of resources, weak institutions and poor governance.

During the study, general scientific research methods were used - deduction and induction, synthesis and analysis, scientific abstraction, systematic approach; specifically - legal methods of cognition - formally legal; legal forecasting, retrospective and comparative-legal method; substantiation of the essence, nature, and structure of terminology, which is the object of analysis.

4. Freedom of information laws and open government data and their contribution to the fight against corruption

Transparency International is a global movement working in more than 100 countries to end the injustice of corruption by promoting transparency, accountability and integrity. The most widely used global corruption ranking in the world is Corruption Perceptions Index (CPI). According to business experts, it measures how corrupt the public sector of each country is considered to be. The CPI is calculated using 13 different data sources from 12 different institutions that capture perceptions of corruption within the past two years. In figure 1 are presented the perceived levels of public sector corruption in European Union [9].

REGIONAL OVERVIEW



Fig. 1. The perceived levels of public sector corruption in European Union [9]

Sources rely in expert evaluations/assessments/surveys of:

- 1) corrupt behaviors in the public sector, including bribery, diversion of public funds, nepotism, state capture, etc.;
- 2) the mechanism available to prevent corruption in a country, such as the existence of adequate laws of financial disclosure;
- 3) conflict of interest prevention and access to information.

In countries like Bulgaria and Romania, corruption is becoming a systemic problem. In the cited, albeit democratic EU countries, it is often observed that revelations of criminal acts remain uninvestigated. Corruption at the highest levels of power remains hidden, and there are no guilty parties. This is one of the main conclusions in the report of the Bulgarian non-governmental organization "Anti-Corruption Fund", which analyzes 49 key investigations of the prosecutor's office and the practice of the Commission for Countering Corruption and Confiscation of Illegally Acquired Property in Bulgaria [10].

According to Transparency International public officials should be independent and there should be clearly formulated and comprehensive procedures to prevent conflicts of interest (including asset declaration systems) and nepotism. Local governments need an access to information framework, widely distributed data and reporting systems, and adequate participatory mechanisms for all citizens.

Mathias Back reviews [11:4] these general standards and the best practices in devolution and decentralization programs that may reduce corruption. In addition he also includes: clear electoral procedures; clear administrative procedures for public procurement; both internal and external audit mechanisms; complaints mechanisms, where reports of corruption can be directed. These can include whistleblower mechanisms and ombudsman offices.

In the past few decades, **the access to information** has become consecrated by many Constitutions as a self-standing fundamental right (see for example in Europa: Austria (Article 20.3 and 20.4 Const. 1920), Belgium (Article 32 Const. 1831), Bulgaria (Article 41 Const. 1991 as amended through 2007), Finland (Article 12 Const. 1999), Greece (Article 5A 2001), Hungary (Article VI.2 Const. 2011). Even in those that do not expressly refer to such access we find traces of transparency or principles that depend on public disclosure, and constitutional court precedents suggest that transparency is a basic prerequisite for a constitutional state (legal state) [12] guided by the principles of democracy and rule of law. It should also be noted that in most cases legislators have defined the right to information as a fundamental right [13].

The right of access to public information is a value of paramount importance for democratic societies. Without it, it would be much more difficult for citizens to form a real picture of the state of the actions (inactions) of entities with leadership functions in the state. We find the public importance of access to information in its contribution to increasing the efficiency and effectiveness of administrative bodies and preventing the risk of corrupt practices. The derived characteristics of the right of access to public information also distinguish it as a guarantee for the protection of other basic human rights and interests. This type of information is aimed at society and is for its benefit.

Open data and open government concern a wide range of areas in the daily lives of EU citizens. In order to modernize strategies in this regard, in 2011 several countries create Open government partnership. It encourages open data development in over 60 countries. 99 governments currently participate in it. The purpose of the partnership is for governments to make specific commitments to promote transparency, involve civil society in governance, fight corruption and use new technologies to improve the quality of governance. The political and social benefits of open data as a powerful anti-corruption tool are as follows better accountability and transparency of institutions, equal access to data, increased citizen influence and confidence in state institutions [14].

Greater transparency and integrity in the public sector limit significantly the opportunities for corruption, and that means greater competitiveness, more efficient tax collection and spending public funds, as well as strengthening the rule of law [15].

It is a fact that access to information laws have greatly enhanced the role of civil society in the fight against corruption. The provision by the state to citizens of each of the above-mentioned types of information helps in the prevention and limitation of corrupt practices.

Civil society has the necessary expert potential and organizational channels to solve socially important issues, including cases of corruption. And besides, there is an undeniable interest to do it. Especially in the case of corruption at the local level (local authorities) it is immediate contact with civil society. This means that the ability of civil society to indicate irregularities in the activities of public officials and to remove them is increased due to existing proximity and local knowledge of the issues meaning, first of all.

Today, civil society is called upon to play a decisive role in solving a number of socio-economic, environmental and technological challenges faced by individual countries and the globalizing world.

International organizations have encouraged countries to adopt Freedom of Information (FOI) laws as a means to increase transparency and thus combat corruption. The recent introduction of FOI laws in several countries is used as a natural experiment to determine their effect on corruption perceptions and the quality of governance [16]. Using different corruption perception indices, both at the macro- and micro-level, it was found that countries that adopted FOI laws saw an increase in perceived corruption and a decrease in the quality of governance, rather than the expected improvement. This increase in corruption perceptions seems to take place in the initial years of the reforms, with no considerable decrease in the long term. Countries with a free and clear press appear to be the ones experiencing the increase.

Societies around the world have adopted some anti-corruption strategies that empower citizens to hold public officials accountable. A number of these strategies are premised, even if implicitly, on the principal-agent model [17].

Constitutional and legislative provisions on freedom of information do not perceive such access as an end in itself, but rather as a means to achieve other goals. The focus is on the functions of citizen oversight and participation, that is to say options that are made available not only to the citizen but to anyone who lawfully resides and/or maintains a community in the territory of a nation state or political community (such as the E.U. "compound of States"). The supervision function complements other national control mechanisms; regarding the right of access to documents, it can also serve – at least preventively – to fight illegality and corruption in public institutions and more effectively than the "internal" control mechanisms of national government institutions.

Placing the Corruption Perceptions Index in the context of Transparency International's reports, we concluded that "higher-ranked countries tend to have higher levels of press freedom, access to information about public spending, stronger standards of integrity for public officials, and independent judicial systems ". Oversight of the activities of state administrative bodies may also include government actions [18].

The administrative data (data on routine operations, workforce information, service delivery, etc.) has an enormous potential for evaluating the effectiveness of programs and interventions, and for conducting other analysis that can improve program management or inform evidence-based policymaking [19]. The implementation and use of information technology by public authorities is often associated with the concept of "e-government" and the related term e-government. The rapid development of information and communication technologies (ICT), their penetration into all spheres of public life and the advantages they provide lead to the impossibility of being isolated from the processes related to public administration. Government organizations are entering a new state through ICT transition. Building e-government is a priority both at European and national level.

Policymaking purposes can be associated with, for example, identifying corruption-prone areas, procedures or positions at risk, or monitoring trends over time. Analysis of administrative data can serve many purposes: identify breakdowns in service delivery, irregularities in administrative practices/decisions, etc. Big data approaches to capture corruption in the public sector tend to rely on such administrative data.

Open data portals are single, central, public web-based information systems that provide for the publication and management of information for re-use in an open, machine-readable format together with relevant metadata. The publication of public sector information in an open machine-readable format is an obligation for public sector organizations under Directive (EU) 2019/1024 of the European Parliament and of the Council of 20 June 2019 on open data and the reuse of public sector information, amending Directive 2013/37/EU of June 26, 2013.

We would like to draw attention to the new directions in e-government. First of all, e-governance, through the application of information technology, will improve the productivity and efficiency of the administration. The main goal is to ensure democracy and transparency of the administration. E-governance should provide adequate and efficient administrative services by applying information technology in appropriate places. E-governance requires reengineering of work processes in public administration and rethinking of traditional virtualized bureaucratic models.

The main goal of the changes is to improve the quality of life of citizens. If we look at how administrative services are currently defined, we will see that they largely depend on the administration itself that provides them.

Evolution of the use of information and communication technologies in the public sector can be divided into three stages:

- 1970 – 2000, Govt. 1.0 Informatization – local centers are created in which information is concentrated in a given vertical (e.g. Ministry of Trade, Ministry of Industry, Ministry of Energy) and data related to the activity of this economic branch are processed accordingly. They are mostly used for making management decisions;
- 2000 – 2013 Govt. 2.0 E-government/E-transformation – e-government and open government are entering. The administration begins to process information using personal computers. The exchange of data and information between different administrations in different industries is starting to take place. Data is starting to open up for citizens and businesses. They are beginning to gain access to the data that has been collected about them, as well as to other data that has been collected by the government for other purposes, but the collection of which has been paid for with taxpayers' money. Figuratively, we can say that citizens and businesses become "co-owners of this data";
- 3. 2013 + Govt. 3.0. – the third period of development is characterized by the introduction of the so-called smart management (or "flexible management"). The administration actively adapts to the needs of citizens and businesses and accordingly responds flexibly to their needs so that it can provide adequate solutions that are individualized for individual citizens or specific companies.

The tendency is towards strengthening of civil participation in state or municipal governance. One of the main pillars of e-governance is transparent governance. The latter includes: 1) The right to know – disclosure of any type of public information. 2) Use of public data by the citizens and businesses. 3) Public-private partnership.

5. Conclusions

The study showed that the use of political power for personal benefits and unpunished corruption are significant problems of the social development of modern societies - economic and social.

In general, countries (especially developing ones) need to strengthen their capacity to fight corruption crimes through technical assistance on the treasury side (more transparent public accounts and internal audit) and on the tax side (more capacity for tax audits and investigations, digitization of anti-bribery processes).

The existence of adequate laws on financial disclosure, conflict of interest prevention and access to information are some of the most important mechanisms available to prevent corruption in a country. Undoubtedly, the unification of efforts and the search for adequate ways of counteraction on the part of citizens in this direction would contribute to upholding the rule of law.

It is well known that no democracy is immune to corruption. Good governance is not an end goal, but a constant process of reaffirming democratic checks and balances, the principles of the rule of law

and human rights. Anti-corruption policies are a guarantee of national security, stability and sovereign policy.

Our future interest is focused on researching adequate approaches and proposing ways of cooperation between countries on the problems related to corruption.

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