

Civil Society, transparency and the right to public information

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Received July 14, 2017; Accepted December 2, 2017

Abstract

Civil society is an essential element in the democracy modern concept. Democracy is based in free will of persons to make a common purpose, furthermore they are created to quest individual and collective rights. The idea of liberty is coming to totalitarian governments where the State controls almost all the politic and economic environment. The international organisms helps promoting human rights and the free commerce can make developing countries be benefited. The quest of international rights be a medium to an international citizen where human right are the most important. Right to public information and transparency is very important to make real the civil society purposes. State must guarantee protection and promotion mechanisms, by example the application information. The technology media such as internet are really important in the development of the right to public information, the government obligation of giving information is an opportunity to challenge and improve public administration.

Civic Society, open society, democracy, mundial Citizenship, right to access to public information and transparency

Citation: OROZCO-VALENCIA, Zocimo Edilberto, VALENCIA-SALAZAR, Verónica. Civil Society, transparency and the right to public information. Journal-Economic History 2017. 1-1; 11-20

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Introduction

The present research work takes a tour of the organization of civil society in statist and closed governments, the opening of the free market is studied as a way to make governments grant rights to their citizens with transparency. This is achieved not only with the participation of civil societies, but also with the non-censorship and non-discrimination of the government towards citizens. The civil associations arise legally with the so-called partnership contract which is positive in the Civil Code.

The right to transparency and public information is a fundamental right with which the exercise of democratic life is carried out and gives strength to public institutions.

Problem Statement

The origin of civil associations is unknown as a means of seeking individual and social rights. With the right to transparency and public information, it is not only about gathering information, but also that the government improves and public resources are used in a better way.

Hypothesis

With a study of the civil associations inserted in an environment where the State retains a large part of the political and economic control, it is possible to achieve the resurgence of these, as a means for the internationalization of rights, the strengthening of democratic life through a tool which will be the request for public information, transparency and personal data.

Civil society and transparency

The distinction between civic society and civil society, developed in this paper, is as follows: the civic society that is the activist sector of civil society, seeks to democratically initiate changes for the common good.

The Civic Society has been identified as "civic culture" by Gabriel A. Almond and Sidney Verba. (LAZIN, 2007, p 185).

The civic society is the part of civil society that participates actively and is identified by its civic culture.

"Neither civil society nor civic society have been allowed to grow in most of the world. It is considered statism, a situation that occurs when a nation-state comes to own more than half of the gross domestic product (GDP) of a country. "(LAZIN, 2007, p.190).

In a statist country it is difficult for civil society to develop because of the level of control that the State has.

"In fact, this legal situation hinders the development of philanthropy in the countries. As long as nations do not adopt a legal system that allows companies and individuals to innovate without prior government authorization, innovation will be censored for fear of bureaucratic reprisals. "(LAZIN, 2007, p.194). It is necessary for countries to adopt a legal system that allows people to be innovative without consent, as well as government censorship and repression.

"The transnational social actors are increasingly related not only to international political institutions but also to those of an economic-financial nature, such as the World Bank, the IMF, the WTO and the BDI." (RAMIREZ Sáiz, 2006, p 276).

"The internet, a means of instant communication that has helped promote an accelerated process of globalization, is used in an increasingly contradictory way. On the other hand, it is also used by the Civic Society, which seeks to improve the globalization process by monitoring labor standards, in an attempt to limit the exploitation of workers by multinational companies. "(LAZIN, 2007, pp. 220-221).

Thanks to the internet as a means of communication, society has benefited, as a result of the process of globalization.

"Teodor Melescanu, rightly argues, that the process of globalization favors small and underdeveloped countries if they know how to take advantage of it, benefit from new possibilities and take advantage of the development of telecommunications and network systems. The impact of globalization has actually allowed the increase in global communication, which not only fosters economic growth, but also enables the growth of the Civic Society throughout the world. "(LAZIN, 2007, p.237).

Underdeveloped countries can benefit from the process of globalization through telecommunications that lead to economic growth and in turn civil society.

Following James W. Wilkie: "Surely the use of computers and the Internet by the masses is subverting the autocratic power of governments." (WILKIE, 2011, p.572).

The repeated practice of technology in the population means that governments have more limitations to exercise totalitarian power.

Civil society and Democracy

In the dimension of the political system, the links that are generated between government institutions and the different organizations of representation of society, establish a theoretical relationship of domination and subordination, which is made possible through two main factors: 1) The that has to do with the full application of the set of norms to which the political institutions adhere in their construction and operation, and 2) The legitimacy that is explained from the relationship between these organs and governmental structures with respect to society.

This translates into the capacity of the government and the fulfillment of social expectations, in such a way that the conjunction of legality and legitimacy makes possible, we insist, in a democratic system, stability based on the domination-subordination formula. (ROMERO, 2015. p.28).

The government-individual relationship makes it a relationship of active-passive subject, which applies the rules and which must abide by them. The government must comply with social expectations to live in a democracy, this gives stability to political control.

Chairez Ramírez expresses the evolution of the cultural part of the citizens: "That ability to understand, first, and after exercising in a broad sense the scope of the political culture put into practice by citizens, contributed to the combination between reforms with participation, open new democratic expressions that very soon had effects in the institutional composition and in the own political system of deep authoritarian roots (ROMERO, 2015. P. 32).

When civil society understands the scope of the culture of human rights and is able to put it into practice, that opens democratic forms of expression not seen before, that permeate the democratic practices themselves, in the political system that has the total control of the State.

"As can be seen, the issue of the participation of civil society in the process of institutional democratization is signified by its degree of specific importance, understood, as we have insisted, as a product of the cultural evolution of citizens". (ROMERO, 2015. p.33).

For this reason, the issue of the participation of civil society in democracy is the product of an evolution of the rights and culture of citizenship.

"With the theoretical support of contextualized institutionalism, we understood how political governability replaced the idea of stability, since the reforms operated in conjunction with the participation of civil society, and how through this it became possible to move towards a system of greater democratic quality". (ROMERO, 2015. p.34).

The reform in the law, together with the participation of civil society, made the political system have a better democratic quality.

Civil society can not be reduced to an area dominated by the powerful; In short, a civil society in which organized interest groups prevail. A healthy democracy requires a civil society that is also healthy; a civil society that aims at the common good and that respects equality in the freedom of all individuals and not, only, the freedom of those who have power and influence. (SAÍZ Vidal, 2014, p.320).

A civil society where the main objective is the common good is what society needs so that the freedom and equality of individuals is respected.

From the liberal paradigm, voluntary associations are celebrated because they constitute the means for personal fulfillment. The aim of voluntary associations, defended by liberals, is to bring together individuals with similar interests in their midst and, therefore, they are the translation of a culture marked by individualism and the idea of personal fulfillment; therefore, associations are individualistic enclaves. (SAÍZ Vidal, 2014, p.320).

Associations are a means for personal fulfillment, bringing together people with similar interests and this translates into the search for freedom and individuality.

We agree with Yael Tamir, who maintains that, for a good democratic functioning, associations allow individuals to gain influence in the public sphere, since they serve as a counterweight to the power of government. (SAÍZ Vidal, 2014, p 324).

The associations and therefore civil society, is a counterweight to the government, which improves the democratic life in a society.

Civil society and open society

"The Open Society is democratic, a civil society based on the freedom of citizens to think and write openly in a fair system, where government agencies (including the police and courts) operate independently on behalf of the population, which expects and receives fair treatment in accordance with the law. " (LAZIN, 2007, p 435).

In an open society, civil associations think and write openly in a framework of freedom.

"As an analysis of the Spartan social institutions, at the same time as the conditions that determine their stability or instability, and as an attempt to reconstruct the most rigid and primitive forms of tribal life, this description is, in truth, excellent". (POPPER, 2006, p 69).

It is important to analyze society in its time to reconstruct the way of life and its description.

The institution that, according to Plato, should take care of the training of future drivers [of the State] could be described as the State's educational department. (POPPER, 2006, p.49).

With the State in control of Education it is expected that future political actors will be provided with the education they need to continue with the state monopoly.

Continuing with the same idea, Popper asserts: "... we will say, that Plato's political program was much more institutional than personalist; thus, he hoped to be able to stop the political change through the institutional control of the succession in command. The control had to be educational and based on the authoritarian conception of learning, that is, on the authority of the experts of men of recognized probity". (POPPER, 2006, p. 159).

With the control of education, in addition to other aspects where the State contains power, the survival of the statist-institutional system was guaranteed.

"The open society, on the contrary, defends the [free] market. In it, commercial activity is paramount. The open society, committed to a humanism that focuses on faith in reason, freedom and brotherhood of all human beings. The open society does not seek to make its members happy, it is content to provide the framework of freedom and justice that allows everyone to carry out their happiness project, without telling anyone how to be happy. "(MUÑOZ Ferrol, 2011, pp. 144-145).

In the open society, individual rights allow people to seek their life project without imposing the concept of happiness.

World citizenship in the search for rights

"Faced with the neoliberal globalization implanted by the economic powers (and by the politicians who assume it as a project), the literature on new international actors alludes to an alternative globalization that they are trying to build. They recognize and incorporate the potential that opens this process and try to reduce and control its negative effects. "(RAMIREZ Sáiz, 2006, p.29).

As a result of globalization, new international actors emerge, as in the case of this work, it refers to civil society.

This is intended to minimize the harmful effects of the free economy system.

In the literature on world citizenship, the supporters of it point out six main reasons to justify its validity:

- a) The international recognition made on the rights of citizens.
- b) The establishment or progressive construction of world public spheres.
- c) The creation of an emerging global community.
- d) The existence of supranational institutions, laws and policies (regional and international)
- e) The normative perspective on world citizenship.
- f) The activism or militancy of transnational sociopolitical actors.

In the concept of world citizenship, the international concept of citizen rights is included, but so is the request for rights by the population itself, an expression that is only possible in a democratic environment.

"It should be noted that the human rights pacts and conventions, both universal and regional or specific, are legally binding for the countries that subscribe them (SERRA, 1993: 386), therefore, parameters for the definition of rights are conceived in a scale that is increasingly global. There is an expansion of the deterritorialization of rights, despite the territorialization of their application. "(RAMIREZ Sáiz, 2006, p.45).

International conventions are legally enforceable for countries that sign such conventions; due to this, the human rights that human beings have are increased. Rights cease to be enforceable only in the country of origin and expand to other latitudes.

Transnational social actors are increasingly related not only to international political institutions, but also to those of an economic-financial nature, such as the World Bank, the IMF, the WTO and the IDB. (RAMIREZ Sáiz, 2006, p.276).

The character of international and multinational organizations such as the IMF and the IDB, make the opening of international markets directly related, and therefore, promote human rights. The issue of human rights contains philosophical, but also economic and commercial, which as we have previously commented can be used by developing countries.

It is not opposed that civil society can seek rights that are recognized in international treaties and therefore in the pursuit of these rights a world citizenship is achieved.

Civil society in its legal aspect

Labariega Villanueva expresses: "It seems logical to think that the Mexican legislator, at the time of elaborating a concept of association, could be influenced by said antecedents. [The German civil code of 1896; French Law, relating to the civil association contract of July 1, 1901]; the Swiss Civil Code (sic) of December 10, 1907; and the Belgian Law (sic), of June 27, 1927. "(VILLANUEVA, VI, No. 11, page 164).

The Mexican legislator had background information from other parts of the world, to elaborate the creation of the civil association figure that we have today and that is included in the federal Civil Code.

Labariega Villanueva himself expresses, "The coder provides us in article 2670 of the CCF (Mexican Federal Civil Code) a notion: When several individuals agree to meet, so that it is not entirely transient, to realize a common purpose that is not prohibited by the law and that they do not have a predominantly economic character, they constitute an association ". (VILLANUEVA, VI, No. 11, pp. 164-165).

The definition of the Federal Civil Code is very specific, in that it will be an association where a group of individuals meet to achieve a common goal, in a non-transitory manner, that this purpose is not prohibited by law and is not predominantly economic.

"It is not superfluous to remember that, as a contract, it must fully comply with the elements of existence and validity, such as expressing the will to form an association, the purpose of the association, the denomination, the nationality, the legal capacity of the associated to be bound and freedom in the manifestation of will, the legality of the end and the form required by law, and so on. (Articles 1794 and 1795, CCF). (VILLANUEVA, VI, No. 11, page 167). The partnership contract requires a set of formalities not only to exist but also to have effects against third parties; that the will of the partners is not vitiated by nullity and comply with requirements of form and substance such as, the denomination, the capacity, the legality of the purposes, among others.

Public information and transparency

The right to public information, transparency and personal data is recognized in our maximum legal order.

"...The Mexican Constitution recognizes in article 6 the freedom of any person to seek or investigate information of the State and its organs, which is protected by a right so that the

State or its authorities do not prevent it from doing so." (LÓPEZ AYLLÓN, 2009, p.17).

The search for information from the State and its organs is a fundamental right that should not be impeded by the State.

The process of access to information and access and rectification of personal data are administrative procedures that have two stages. The first is processed before the authority that has (or should have) the information. This stage begins with a request presented in the Information Unit, by Internet... as in an innovative way established by the Access to Information Law of the Federal District. "This request must contain the minimum information necessary to be able to identify the documents that are requested." (LÓPEZ AYLLÓN, 2009, pp. 48-49).

The exercise of the right to information begins with a request for information, which must contain the minimum data to locate the information requested.

The second stage of this right to information is the review procedure. This procedure is processed when the organ to which the information has been requested carries out the following conducts: denying access to the information, declaring that the information is reserved or confidential; declares the inexistence of the information; does not comply with the terms, deadlines or modalities of delivery of the documents required in the access request; delivery incomplete information or that does not correspond according to the terms of the request, and finally, that refuses access or rectification of personal data.

Article transient Third, the decree amending Article Six of the Constitution obliges have electronic systems, so anyone can make use of remote access mechanisms to information and review procedures. (LÓPEZ AYLLÓN, 2009, P. 51).

Other authors comment: "On the one hand, the technological innovations that have occurred in recent years, particularly the convergence of telecommunications, information technology and audiovisual media, are producing a profound revolution in the social capacity to process, store and transmit information". (CARBONELL Sánchez & Carpizo, 2000, p. 159).

It is clear that civil partnerships may exercise the right to information as provided in Article 1 of the Constitution of the United Mexican States:

"Article 1. In the United Mexican States, all persons shall enjoy the human rights recognized in this Constitution and in the international treaties in which the Mexican State is a party, as well as the guarantees for their protection, whose exercise may not be restricted or suspended, except in the cases and under the conditions that this Constitution establishes ".

The civil associations to be recognized legal persons have the right of access to information as everyone.

"... If we consider that the subjects bound by the right of access to information perform such diverse functions, ranging from legislative activity to the delivery of justice, through the management of public services or police activities... previous allows to provide citizens with information on the Internet, timely and detailed, about the specific functions of each State body ". (LÓPEZ Ayllón, 2009, p.34).

The government's role is so diverse that it includes several activities, which can be consulted by citizens on the Internet, while the government itself provides detailed and timely information.

"Experience shows that the generation of good quality information is a difficult task, which requires continuous coordination and evaluation within each of the government agencies ... the obligations to generate information should not be seen as burdens, but rather as a window of opportunity, which allows public organizations to modify their information management practices and advance an authentic transparency policy that maximizes the public use of their information, both for the organization itself and for its users, ie the citizens. " (LÓPEZ Ayllón, 2009, p.35).

The generation of good quality information is the responsibility of each of the government agencies. It should not be viewed with regret, but as a challenge to advance the transparency policy, for the proper use of public resources and to benefit the government and the public citizens.

Following López Ayllón: "Thus, the situation of Mexican legislation and jurisprudence regarding information is explained both by the absence of a social communication policy that allows coherent structuring of the legal regime of information, and by a formulation rigorous dogmatics of information freedoms "(CARBONELL Sánchez & Carpizo, 2000, p.180).

The above can only be achieved through a political consensus that includes the State, the media and civil society, regarding the objectives, function, means and guarantees of information, which should take into account the economic conditions and technological information, in particular, the existence of information networks on a global scale. This consensus could be translated into the corresponding legislative or regulatory measures and the creation of the appropriate institutions responsible for the application and evolution of the legal framework. (CARBONELL Sánchez & Carpizo, 2000, p.181).

As of today, there is no uniform policy that explains the totality of information freedoms.

The information policy should include the State, the media and civil society, taking into account the economic and technological conditions that are available today, particularly in the case of Mexico. When this consensus is reached among the main social actors, it will be possible to reach a social pact for the application of the optimal regulatory framework in the area of the right to information and transparency.

Results

It is difficult that government offices currently provide data, since they do not want to have problems and try to discourage citizens, channeling all requests through the transparency office.

The process of gathering information is slow even if it is for the realization of a scientific work, a thesis, and even with a letter of support from the university. The officials are not accessible.

The average time to receive the information is three months, because even when the time is shorter indicated in the law, they almost never give the applicant what they request, having to file a resource which is issued by the National Institute of Transparency and Public Information and Protection of Personal Data.

Conclusions

A democratic environment is necessary so that civil society can exist and develop, in this way it will make proposals towards society and towards the government, in search of a better standard of life and the common good.

The participation of civil society is fundamental to achieve rights.

Although civil society is an association, we can not rule out that it can also defend individual rights, so it also defends the individuality of people.

Requests for public information can make civil society meet its goals of seeking an end and the common good, in addition to improving the government and taking care of state resources.

Individual rights are no longer delimited by a specific territory, this is due to international treaties and international organizations.

International organizations that promote international trade also promote human rights in developing countries, with which they can benefit and mitigate the controversial effects of globalization.

Civil society must exist to seek the common good and not for the benefit of a group of people.

Open society does not tell us how to be happy, it expects people to be happy in freedom and individual rights. Each one looking for the best form of self-realization.

The civil association contract is a legal document that carries all the formalities of the contracts, so the lack of an element can lead to the nullity or non-existence of the company.

The right of access to information begins with a request that must contain minimum requirements, such as providing some information that allows identifying the information as best as possible. The response to the request for information, if it does not satisfy the request of the applicant, may be a recourse for review, or if public information is denied.

Civil associations, being legal persons, have all the rights established in the Political Constitution of the United Mexican States, which is why the right to public information is implicit.

They must converge government, civil society and media, to make a work agenda that improves the legal framework of the right to public information and access to personal data in Mexico.

Proposals

1. Training is provided to public officials, because even though the institutions have transparency units and all the subjects are obligated, the transparency unit has to wait until the units give them the information.

2. Emphasize the obligation of the subjects to generate the information, because even when there is not in the form in which it is requested, they can generate it from the requests for information.

3. The information must be classified by government agencies because sometimes they do not classify it correctly, but they accumulate data without previously seeing that information can be sub-generated..

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