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Brief notes with regard to Electronic Democracy, Digital Citizenship, Legal Security

Contents: Introduction. – 1. Electronic Democracy. – 2. Digital Citizenship. – 3. Legal Security. – Conclusions.

Introduction. These brief notes are placed in the context of the information society, where information, in all its meanings such as construction of knowledge, communication and utilization¹, plays a vital role. Actions due to the development of information and telecommunication technologies and to the process of liberalization and harmonization in electronic communications implemented by the European Union² for the competitiveness of the domestic market and the fulfillment of the rights of EU citizens³, recognizing the right of access to networks as “keystone of goods and services usability”.⁴

In the communications market, the age of access and the right to interconnect tend to also ensure pluralism of operators as distributors of public communication services. Ensuring access to electronic communications services takes on a particular meaning of social equity and justice. If, on the one hand, the right of access to the network of operators determines the condition of effectiveness of economic initiative⁵ and the right of access to

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¹ P. COSTANZO, *L'informazione*, Bari 2004, 36.

² The Reform of the European Regulatory Framework for Electronic Communications of 2002 and 2009.

³ Framework Directive 2002/22/EC, OJ L 108/33 Given no. 4: The Lisbon European Council of 23 and 24 March 2000 highlighted the potential for growth, competitiveness and job creation, inherent for shifting to a digital, knowledge-based economy. In particular, it emphasized the importance of access to a world-class communications infrastructure and a wide range of inexpensive services for both European businesses and citizens.

⁴ V.M. SBRESCIA, *L'Europa delle comunicazioni elettroniche*, Napoli 2011, 24.

⁵ G. DE MINICO, *Internet Regola e Anarchia*, Napoli 2012, 45 et seq.

next generation networks⁶, on the other hand, the right to a fast connection determines the inclusion of the person in the social and political process⁷.

The fast connection, or the spread throughout the country of broadband and ultra wideband, would offer a real opportunity to set up essential public services to citizens such as, among other things, e-health and e-education.

The new generation networks implementation, not being established as a universal service (in fact, the European Union did not want to include the fast connection among the social rights), will not depend, despite the story of 2009⁸ on an obligation imposed on the incumbent, but on a free choice of investment and not on the basis of a social tie, preventing territorial rebalancing and administrative fairness.

1. *Electronic Democracy*. A thorough reflection on the phrase electronic democracy leads to identifying different meanings which in turn depend on how the term electronic approaches the term democracy. And so, a first meaning is definitely electronic democracy as recognition and guarantee of network access also due to policies for the sustainability of the costs for the acquisition of hardware and software resources, as well as policies for the expansion of network infrastructure.

Another plausible meaning is freedom and equality in the network, as long as the network is free of restrictions and prohibitions, confidential and secure; or understanding technology as a further means of participation, control and democratic decision. Last but not least, it could mean the electronic democracy understood as a third kind, after representative democracy and direct democracy.⁹

⁶ Namely New generation networks: a Next Generation Network (NGN or "next generation network") is a network based on packet switching in a position to provide services - including telecommunications services - and able to make use of multiple broadband technologies with QoS, in which the features related to the provision of services are independent of transport technologies used. It offers unrestricted access to users to different service providers. It supports generalized mobility enabling consistent and ubiquitous provision of services to users.

⁷ *Ibidem*

⁸ Directive 2009/140/EC of the European Parliament and of the Council of 25 November 2009 amending Directives 2002/21/EC on a common regulatory framework for electronic communications networks and services, 2002/19/EC on access to, and interconnection of, electronic communications networks and associated facilities, and 2002/20/CE on the authorization of electronic communications networks and services, OJ L 337, 18.12.2009

⁹ Così, P. COSTANZO, *La democrazia elettronica*, Milano 2003, 465 et seq.

The network as a reticular tool for the dissemination of information is, inevitably, a possible place for exchange of views and opportunities for active participation, but network timing is more often incompatible with the temporal and spatial requirement of arguments, so expressing personal opinions and having no possibility to control or to know the interpretations of others leads to inevitable errors, and there lies the danger of a plebiscitary democracy with totalitarian tendencies.¹⁰ Nevertheless, electronic democracy can contribute to the implementation of classical forms of democracy, albeit conditioned on the removal of inequalities caused by obstacles that prevent the access to the network and/or the usability of the plurality of comprehensive, updated and accessible information.¹¹

The network defines a different relationship between government and citizen and reiterates the importance of information as a fundamental element of democracy; although it was, before its global spread, the prerogative of a minority and in some cases it has led to strict control on citizens, the dissemination of knowledge and the tangibility of transparency of the conduct of those who govern and those who exercise economic power, through the network, could now create “a Bobbio image of power operating in an ivory tower”.¹²

It is true that the Internet must be regarded also as an instrument for the defense of individual freedom against dictatorship and against pseudo-democracies; we refer to the WikiLeaks case or the Snowden affaire, facts that cannot be reduced to simple leaks of confidential information.

As provided by art. 21 of the Constitution, namely the right to be informed and to inform, information constitutes one of the fundamental freedoms of the individual, a fortiori in the cyberspace.

¹⁰ *Ibidem*

¹¹ The Web index of 2013 of World Wide Foundation the crisis in 2008-2010 was accompanied by a double gap: *the digital one on infrastructures and access to connectivity, and the participative one, defined as unequal access to online knowledge and expressive possibilities that denies millions of people a free informed participation in public life. Censorship and surveillance on the Internet, both growing, help to maintain and exacerbate the gap between those who are connected and those who are not and between those who can and who cannot participate, invalidating critically the relationship between network and democracy ... Especially as long as the resources and computer skills remain so poorly distributed, technological change will only accelerate, rather than reduce economic inequalities.*

¹² G. AZZARITI, *Internet e Costituzione*, in *www.costituzionalismo.it*, f. 2/ 2011.

The Internet introduces a profound transformation of democracy rules, and in a context of radical social change, which regulatory tools are needed, and if needed, is it in order to regulate or more exactly to balance, on the one hand, the freedom to get information and inform, and on the other hand, the respect for the rights of the other parties?

A first consideration to be made is the following: an explicit inclusion of the network in the Constitution would not be conclusive because for any future technologies, which are not predictable, it is necessary to work on a new Charter, creating many problems for art. 138 which places strict limits on constitutional amendments; the second is that our Charter has a great flexibility in its mandatory contents, so much so that it is possible to include new situations, not predictable in the historical context of the drafting of the Constitution. In fact, the Internet, constituting a means through which information is conveyed, is attributable to "other means of dissemination of thought" according to art. 21 of the Constitution.

By distinguishing and putting on different levels the access and use of the network, some configure the constitutional right of free access to the network by each citizen as a fundamental human right, thus indicating the need for intervention in order to integrate the art. 21 of the Charter¹³.

With regard to network use, it is highly desirable the drafting of a complex and articulated corpus of behavioural rules that should operate around the world, reconfirming the insufficiency of the indication of a general principle of fairness in the use of the network, also protecting the rights, and not a general law of a single state, given the non-territoriality of Internet. If a possible solution is the drafting of an International Charter of Principles, which will be the constituent subjects and what would it be worth?

The Bill of Rights developed by the Internet Governance Forum (IGF) is the most comprehensive global Internet Bill of Rights; IGF is an association composed of representatives of governments, companies and associations and it is headed by the secretary of the

¹³ S. RODOTÀ provides an art. 21bis "Everyone has the right to equal access to the Internet network, on equal terms, with means that are technologically appropriate and that remove all obstacles of economic and social order.". Rodotà's proposal has taken the form of constitutional draft law A.S. no. 2485, XVI Leg., "Introduction of article 21 bis of the Constitution, laying down rules aimed at the recognition of the right of access to the Internet". G. AZZARITI, *op. cit.*, shares the same opinion, but the author believes that the text is to be inserted as paragraph 2 of Art. 21, because "the right of access is a specification of the more general right to freedom of expression".

UN. As any international charter of principles, without appropriate legal form, it will be binding on the states if implemented by an international treaty; until then, it will operate on the level of argumentation and persuasion.¹⁴

2. *Digital citizenship*. In the new historical and social context, *the innovation* and the issue of digital divide (whether social, geographical and generational) are rising, becoming by now part of the group of *civil rights*, because not being able to access the network, not being partakers of the results of innovation entail a restriction of the *rights of participation and citizenship*. In order to implement a framework of social development ensuring greater participation of citizens¹⁵, it is right and necessary that innovative technologies are aimed at improving the processes of public administrations, as well as the processes of private enterprises. And, as already mentioned, because the new *fundamental rights of citizenship* in the third millennium have an actual use, it is necessary that advanced technologies take up their place in the definitions of *universal service*¹⁶, insomuch that both citizens and businesses have access to the new opportunities offered by information and communication technology.¹⁷ The main services which all citizens and businesses may use are listed below; although not exhaustive, this information represents a set of possibilities that leads to a new way of interaction of the network users with new technologies: access to information and interaction with the local, central, national, European government; Internet and mobile banking; tele-

¹⁴ G. AZZARITI, *op.cit.*

¹⁵ <http://laboratorioinnovazione.wikispaces.com/Cittadinanza+digitale>.

¹⁶ The first definition of universal service given by the secondary Community law refers to a "defined minimum set of services of specified quality which is available to all users regardless of their geographical location and, in the light of specific national conditions, at an affordable price". (Directive 97/33/EC of 30 June 1997, art. 2, paragraph 1, letter g)

¹⁷ It refers to broadband, WI-FI and WiMAX. Broadband indicates the transmission and reception of information data sent and received simultaneously in greater quantities on the same cable or by radio through the use of transmission media and transmission techniques which support and exploit a bandwidth greater than the previous telecommunication systems known as narrowband systems. The WI-FI network (Wireless Fidelity) is a telecommunications network, possibly interconnected with the Internet, conceptually similar to a cellular network covering a small-scale (*local*), with two-way radio devices such as access points (APs) in lieu of the traditional radio base stations of mobile phone networks (client-server architecture model). *WiMAX* (*Worldwide Interoperability for Microwave Access*) is a technology of radio transmission, and therefore (*wireless*, for the use of Internet and telephony services). This is a new technology for wireless broadband access. Thanks to WiMAX, it is possible, without any telephone cable, to phone and surf the Internet with ease, safety and high speed. Source: Wikipedia

medicine, telecare, telemonitoring; e-learning or distance education, access to advanced training services, to define them in only one word, *infomobility*.

The e-government model to which we need to reference tends to modify the public administration by intervening on the flow of information transfer within the apparatus, establishing a new governance, open to the multiplicity of stakeholders in public decisions; consequently, we switch from the management system of vertical type to a horizontal reticular system, and public administration becomes a partner in the delivery of services together with private partners; above all, a more flexible public administration which abandons the "command and control" model and focuses more on the "public value" to pursue.

Technological changes and socio-economic conditions determine the need for continuous functional change of government, sometimes the need to reinvent functions, tasks and purposes. The task of a modern public administration in the third millennium is to coordinate, promote, enhance the experiences of innovation coming from different realities and different stakeholders, and therefore to guarantee quality and accountability for its own choices, actions and expenditures.¹⁸

New models of management and policy-making¹⁹ are emerging, with great spontaneity, in the panorama of public administration; cities and regions become breeding ground of innovation: from welfare to digital artisan production of *fab labs*²⁰, up to innovative management of common goods. Public administration must overcome the command-control model and assume the role of coordinator of a multitude of players and networks to pursue the public good; it must create, through the active involvement of citizens and mass collaboration, social value, by exploiting the enormous potential of social media with the creation of collaborative communities, more precisely it must create a civic engagement, a set of individual and collective actions designed to identify and address issues of public interest. A radical redefinition of the relations of public-private collaboration is underway: new

¹⁸ E. CROCE, *Modernizzazione del paese e valorizzazione del capitale professionale delle pubbliche amministrazioni*, in *Rivista elettronica di diritto, economia, management*, 1-2013, 8.

¹⁹ Policy-making is the ability to get results without resorting to legislative innovations, but simply through better coordination of available resources.

²⁰ A fab lab (from fabrication laboratory) is a small shop that offers custom digital manufacturing. A fab lab is generally equipped with a series of computerized tools able to realize, in a flexible and semi-automatic manner, a wide range of objects. These include technological products generally considered to be the exclusive prerogative of mass production.

techniques referred to as *solution economy*²¹. The development and expansion of phenomena such as *crowdfunding*²², *crowdsourcing*²³, *ridesharing*²⁴, *app-developing*, *co-design* and participation or creation practices characterizing the various fields in the institutional sphere, starting from Digital Agenda to smart cities, which provide for inclusiveness (participation of stakeholders in the development and achievement of a responsible and strategic response to sustainability), materiality (relevance of the themes), responsiveness (response to issues raised by stakeholders), for a different relationship with the citizen, redefining the metamorphosis of the public sector from a logic of "service provider" to the one of "service facilitator".

To be able to run any complex project or simply to implement new services, public administration necessarily needs to involve external parties such as suppliers, sponsors, non-profit organizations, partners, interested citizens. Therefore, this means governing the network of the various stakeholders involved by developing a new participatory operating model by which to achieve a public action that is supported by the citizens, instead of being carried out "against their will".

This new mode to interoperate, defined as Solution Revolution, is a global phenomenon, which affects mostly non-governmental actors committed in solving the greatest challenges of modern society. Government and public authorities can no longer play on their own: there is a need to welcome a new collaborative paradigm.

²¹ <http://www.ilsole24ore.com/art/notizie/2014-05-27/lo-stato-diventa-partner-e-ora-solution-economy-202855.shtml>

²² Crowdfunding, or collective funding in Italian, is a collaborative process of a group of people who are using their money to supporting efforts people and organizations. Crowdfunding can refer to initiatives of any kind, from aid during humanitarian tragedies to supporting art and cultural heritage, participatory journalism, up to innovative entrepreneurship and scientific research. Crowdfunding is often used to foster innovation and social change, breaking down the traditional barriers of financial investment.

²³ Crowdsourcing (from 'crowd' and 'outsourcing' "outsourcing part of its activities") is a business model in which a company or an institution entrusts the design, construction or development of a project, object or idea to an indeterminate group of persons previously unorganized. This process is favoured by instruments made available by the web. Usually, the mechanism of open call is made available through the portals located on the Internet. For example, the public may be required to develop new technologies, carry forward design activities, define or develop an algorithm, or help to record, systemize or analyse large amounts of data. Crowdsourcing was initially based on the work of volunteers and enthusiasts who dedicated their free time to the creation of contents and problem solving. The open source community was the first to benefit. The Encyclopedia Wikipedia is considered by many as an example of crowdsourcing.

²⁴ Ridesharing: this term is often used by companies, journalists and other categories to make reference to the tendency of structuring mass collaboration, made possible by the new technologies of Web 2.0, in order to achieve specific objectives.

The right way is erasing the boundaries between public sector, private enterprises and civil society; the outcome will be of mutual benefit.²⁵

3. *Legal security*. The term security takes on different meanings depending on the context in which it is used, so security may be construed as a set of means for protection from attacks or from external threats to a social group or a specific community organization; or as a set of rules for the protection of fundamental rights and also provisions that limit the action of the individual for the protection of collective interests; and last but not least, as a set of rules for the protection of legally relevant goods or fundamental principles of a given legal system. All these profiles are relevant and law protected, the primacy of one over the other is due above all to the legal order type of the state.

In relation to society, legal security is also called social security; it is defined as expectation for a legal system to intervene in the free play of social and economic relations and to take protective measures in favour of those economically weaker or culturally disadvantaged. By virtue of this, the necessity of regulatory interventions for the relationship between citizens and public administration should be highlighted; in this regard, through the technologies of information society, institutional communication and provision of services of public institutions take on an additional importance in the redefinition of the public sphere itself in a globalized society, where the Internet represents an innovative tool and which is not to be ignored, as it allows expressing opinions without the typical filters of other means of communication. Similarly, computerization involves many aspects of social life, relationships between individuals and relations between citizens and public administrations, and thus new requirements to regulate new situations. The role played by computerization in inter-subjective relations is such that digital equality, if not assumed as social right, can lead to situations of substantial inequality; and equally, the right to education must be guaranteed by the State. In support of the above, the Digital Administration Code provides that institutional communication should use new telematic instruments as a new form of

²⁵ W.D. EGGERS, P MACMILLAN, *The Solution Revolution: How Business, Government, and Social Enterprises are Teaming Up to Solve Society's Toughest Problems*, Harvard Business Review Press- 2013.

popular participation²⁶, the right to computer literacy²⁷, and the right to the use of information technology.²⁸

Conclusions. The rules with which the Internet should be equipped are inherent to the true nature of the network, they are based on principles of equality and freedom. So asymmetric rules should intervene for the less fortunate categories, if state powers do not put in place appropriate tools, to the protection of the network non-territoriality and universality, in order to achieve substantial equality that realizes social inclusion and democracy even more than the manifestation of thought and freedom of the press, in consideration of the other important peculiarity of the network: its neutrality that actually provides users with a genuine pluralist choice of information sources. Technological progress is not intrinsically directed at a single and predetermined direction; this is the legislator's task, who directs the technology toward a goal, for an advantage in favour of the weak person weak or of the strong one, the first choice will result in a distributed growth, the second in a further enrichment.²⁹

There are widespread calls for the drafting of a "bill of digital citizenship rights" to guarantee the right to digital identity, the right to personal data protection, the access and social inclusion right, the right to education, the right to information and content use, the right to participation, the right to everyday use of digital technologies benefits³⁰. The bill

²⁶ Digital Administration Code, Legislative Decree No. 82 dated 7/3/2005, art. 9 "The State encourages all forms of use of new technologies to promote greater participation of the citizens, even residing abroad, in the democratic process and to facilitate the exercise of political and civil rights, both individual and collective. "

²⁷ Digital Administration Code, Legislative Decree No. 82 dated 7/3/2005, art. 8 1. 1. "The state promotes initiatives to favour computer literacy of the citizens, with particular attention to groups at risk of exclusion, in order to encourage the use of public administration telematic services."

²⁸ Digital Administration Code, Legislative Decree No. 82 dated 7/3/2005, Article 3 "Citizens and businesses have the right to request and obtain the use of information and communication technologies in communications with the public administration, with the entities referred to in Article 2, paragraph 2, and with the managers of public services in accordance with the provisions of this Code. "

²⁹ Così G. DE MINICO, *op. cit.*, 202 *et seq.*

³⁰ <http://laboratorioinnovazione.wikispaces.com> "... unique digital identity should be formally assigned at birth and recognized as essential for all communications with the administrations and between administrations, through different available tools and technologies; it should guarantee security and privacy of personal data in public and private archives; it should guarantee access to the network, regardless of the economic, logistic and territorial conditions, and it should eliminate the technological barriers that prevent the effective use of services and information through ICT, personalised lifelong learning, technological literacy widespread through daily use of technology in schools, availability of archives of research, publications and courses for citizens self-training implemented with grants from universities and cultural institutions; it should guarantee citizen's

must constitute the basis for both the drafting of the bill of digital services, prerogative of public authorities, and for the creation of codes of conduct for the network users, where, in addition to duties, the responsibilities to conduct contrary to the common rules must be specified, too.³¹

The improvement of people's lives will increasingly depend on the growth of democratic governance through the use of the network.³²

Abstract

Information, consultation and active participation by means of telematic tools increase administration transparency and accountability; under these conditions, stronger relations with the government encourage active citizens and facilitate their integration in the society. Likewise, they foster citizens' commitment in public life, by stimulating their participation in political debates, elections and community life, thus contributing to the consolidation of democracy.

Camerino, luglio 2014.

access to high quality, comprehensive, up to date, diversified information, as a duty and not as an optional service, making it available on non-proprietary formats, giving visibility and transparency to its operational and decision-making processes, ensuring that the "public contents" are available on the net, reproducible and usable for the cultural growth of the community, for example by adopting Creative Commons licenses; it should ensure that citizens participate in the political decision making process by consultation and interaction with the public authorities and political organizations; it should ensure implementation of a transparent and functional public administration and development of services that concretely impact on the quality of life and democratic participation."

³¹ A code of conduct represents a social contract between the company and its stakeholders and has the function of legitimizing the company autonomy, publicly announcing that it is aware of its obligations of citizenship, that it has developed policies and business practices in line with these obligations and that it is theoretically able to implement them through appropriate organizational structures and sanctions. This last part, however, seems the most difficult to achieve.

³² W.D. EGGERS, P MACMILLAN, *op.cit.*