

**Constitutional Engineering in the Mirror of Parliamentary and Political Parties’
Archives – subtitle: “It Never Rains But It Pours.” - Speech Conference Vilnius
[1st slide]**

With a title like this speech has, you probably expect me to talk about the overall importance of developing an effective and self-enforcing constitution. A good theory, practice however is a different thing, and I plan to talk mainly of practice.

In the late 1980s, the Cold War ended, terminating superpower rivalry and providing many countries with an opportunity to choose new institutions. To make certain that this new transition was handled properly and effectively, the peoples of those countries must had to pay special attention to its most critical part: the writing of a constitution. There are basic guidelines for developing effective and self-enforcing constitutional contracts for new democracies. But it is obvious that a constitution cannot solve the problems of people who do not desire to live together peacefully. However, if people favor peaceful coexistence, an effective constitution provides major benefits. Its development should be the *first activity of a transition* to peaceful coexistence and sustainable development.

A proper constitution forms the basis for establishing the institutions to maintain and enforce the nation’s laws. It should provide for the establishment of a professional and neutral armed force, a properly constrained police force, an independent judiciary, independent news media, an independent central bank, a professional civil service; and an efficient and representative parliament. These institutions together, but independently, have a duty to uphold the constitution. How well they do so will determine the extent of peaceful coexistence and sustainable development.

[2nd slide]:

Change Is The Only Constant

Here we are, in Vilnius, in the Seimas, the parliament of Lithuania, one of the Baltic states that were internationally recognised – for the second time - as independent states, Lithuania in 1990, the two others in 1991.

Their past at that moment was foreign occupation, dictatorship, one of the inedible fruits of the Russian Revolution.

Revolution as you know, tended to be a violent affair, revolutions are traditionally cruel forms of transition. I am not going to dwell on this for long, let it be said that the aftermath of violent revolution usually is a bit too much to handle most of the time. Revolution eats its own children, as it is said. As we all know dictatorships resist change very effectively by exercising brute force and repression. This is – all together – still harder to swallow for a people, it is literally much too much to handle, all the time. But what can you do?, used to be the question. Just wait and be patient, adapt somehow, hide or shelter from the rain, till it stops raining, till the sun will shine again...

I am happy to be able to remark that nowadays revolutions tend to be relatively soft revolutions. If we look at the dissolution of the Soviet Union, and more recently at the Northern African and the Middle Eastern countries, revolutions seem to be different nowadays. Only Libya and especially Syria are now unfortunately experiencing a very violent transition period. The other new democracies there seem to have had a rather smooth start. How come? Well, the papers are full of explanations. Under the peaceful pressure of youth, helped by modern cell phone technology, the old regimes in Egypt en Tunisia simply gave up

and imploded. The somewhat older types of media played a similar role in the run up to 1989 when the Soviet Union, and after a while its satellite states and regimes simply dissolved.

The question of course is: why did this happen? Why does it happen. The answer, in my opinion is: new information and communication technology, that is the main cause: the distribution of information, the facilitating of fast and vast communication about this information, causes an automatic and autonomously emerging transparency unknown before, especially for such a vast amount of people. The new generation is much better equipped than the old one, the one in power, to handle and use this new technology.

It is an amazing feat of the new digital revolution: people reach for democracy, for democratic relationships, and they seem to succeed in that, thanks to the new media. A marvellous spin-off, a result to be really happy about.

But, there is always a but. There are other results too. Less positive results. The coin has a downside too. There we, the archivists, come in.

Democracies, new and old, seem to be in permanent transition now, driven by the continuous revolution in technology. People use these technologies very happily, it makes their work a lot easier, faster, more pleasant, but also fleeting. There's the catch.

Archives traditionally play an important role, not only in facilitating business (the dynamic phase), guaranteeing the legal quality of governmental work, but – and that is a main issue here – accurate and complete historical archives are an essential guardian of democracy, of just and honest relationships, of equivalence under the rule of law.

As everyone knows only too well, we all do nowadays our work, and produce our documents, the precipitation of our work processes, in a digital environment. Archives nowadays are primarily digitally born.

I now want to quote a few results of an investigation, done by two colleagues of mine in the Netherlands. They tested the quality of the municipal digital archives of 12 major towns. The results were dramatic. The researchers, Gijsbert Kruithof en Gijs Hillenius, quote the Dutch Mrs. Kroes, when she was the EU-commissioner for Competition.

"No citizen or organization should be forced or encouraged to use the technology of a particular company to access government information." She purposely mentions no names, but the rest of her talk shows clearly what she refers to: "We must not rely on one supplier, we should reject closed standards and we must refuse to establish pins on a particular technology by which we are at high risk losing complete control over our own information."

Precisely in this area, governmental bodies fail completely. A recent inventory (see G. Hillenius, 2011) shows that of all fifteen million civil servants in Europe (care and education not included) only some ten thousand work with a system, independent of IT suppliers. All other public bodies work with desktop software purchased from that one dominant IT vendor for which Kroes warned.

The result is that - all archival legislation aside -, far too many governments are in practice trapped in proprietary document formats from this supplier.

Another case study from Sweden made this truth evident, and the Swedish conclusion is reinforced by the results of the field test of our two researchers.

The Dutch Records Act is not followed

The average citizen will not be concerned about the Archives, but the Dutch archives sector has already been aware in a very early stage that good regulation regarding digital archiving is essential for the guaranteeing of permanent access to government information. Since 2009, a

new archive scheme has been put into force with specific demands on archiving of digital records. The main points are:

1. Electronic records must - by the time of transmission to the States Archives - be stored in a accountable and fully validated documented file format that meets an open standard,
2. The administratively responsible governmental institution links metadata to its records;

Archivists know that there is a huge gap between regulation and practice. Citizens and historical researchers have not yet or hardly noticed and will only notice this after the passing of ten to twenty years, when the governmental digital records are to be transferred to the National Archives (as it is prescribed in Dutch archival law). In the sample the two Dutch researchers show what the public already experiences if the government makes digital documents available.

Swedish example

Sample shows: the digital archive of local failure

Towns failure to store documents digitally. This shows a minimum sample of twelve Dutch municipalities. Many of the requested electronic files are not open, difficult to read or stored in the wrong, proprietary formats.

The reason for the Dutch sample are the articles by two Swedish researchers, Björn Lundell and Brian Lings of the University of Skövde. The duo tests for some years how the Swedish government can meet its own policy on open documented standards.

They made good use of the Swedish law. It requires that all public authorities answer all questions by citizens. It gave the academics a response of 99 percent in their research from 2009, when all 290 minutes municipalities requesting the City Council meetings.

The request:

1. The minutes of the last digital council in 2008;
2. The minutes of the first digital council in 1999;
3. The earliest minutes available digitally.

40 percent of all municipalities could no longer access the minutes from 1999. A municipality had no digital repository. Other records turned out to have been erased, nobody did know where they were recorded or reported that they, due to technical problems, were no longer accessible.

Documents of a more recent date were more available, but in many cases are no longer readable in the most recent version of the software with which the documents were produced. Lundell certainly is concerned about the vast interconnectedness of the dominant IT vendor with governments.

"Governments forget the long-term interests when they purchase software " he concluded earlier this year,

For the Dutch sample the same documents were requested by the researchers:

The minutes of the last digital council in 2008, the minutes of the first council meeting in 1999; The earliest minutes available digitally.

They poked at random 12 Dutch from a list of Dutch municipalities.

Municipalities: Landsmeer, Eemnes, Haarlem, Katwijk, De Bilt, Barneveld, Utrecht, Maassluis, Tilburg, Geldrop, Aalten and Coevorden.

The results were shocking:

1. Only 20 of the 36 requested documents were received in a digital format;
2. only 10 of the 20 digital documents were in an open and documented format;
3. though two of the 20 documents were not readable anymore;
4. the presentation of digital files on the websites of municipalities was often unclear and incomplete;

5. many of the records' status was unclear.

No open formats

The majority of documents the researchers received, were delivered in Microsoft Word format. This is not Open Document format. The Archives Rules require that records appearance in transmission should be stored in a valid and honourable fully documented file. Formally, municipalities still deliver Word documents to the public. They make it so very difficult for themselves, because they will sooner or later have to migrate those documents to an open format including PDF / A and they will have to migrate them as comprehensive documents and certify the metadata of the electronic records.

It is also not very friendly to citizens. He or she is forced to work with a commercial package to view documents.

Unclear presentation

The most recent City Council Minutes of the municipalities are often available, they are put on their websites. This is of course a great service, but the researchers noticed quite often what was lacking. They found that usually it was not made clear what's digital and what's not digital, and what is made available on the website or not. Often there is much more digital material than what appears on the website.

Regarding the minutes that are made digitally available, hardly any metadata are to be found. When trying to find out whether a digital document is authentic, metadata are essential. You could compare the presentation of digital documents on the websites of municipalities with the sliding of some boxes with yet-uninventoried records.

Already two of the twenty documents are completely unreadable, i.g. the unreadable minutes of a council meeting of Tilburg from November 2005, not a very old document, isn't it? It probably concerns a document in a older Microsoft Word version. This document however is perfectly readable if you open it with Open Office and Libre Office, two publicly available suites of office applications.

In many documents that the municipalities supplied, the status was unclear. The researchers received council minutes of the municipality of De Bilt, with at the top of the document the marking 'Concept'. After enquiries about that it turned out that delivery of the "final" document was impossible.

Conclusions of the case

The Dutch case shows that municipalities have serious shortcomings in the supply of digital City Council Minutes: unclear presentation; barely open and documented standards, a number of unreadable documents, and an unclear status.

The results raise several questions on how the situation is with regard to the digital records and documents management at the municipalities. That question the researchers did not investigate. they only conclude that much remains to be done before government will be able to make relatively simple digital documents such as council minutes, available to citizens, now and in the future.

Suggestions

The researcherse are very well aware that their research case is little more than a sample. But the results certainly indicate that to extend such an investigation to more municipalities and other governmental bodies would be wise. They expect the results to be similar. An important next step would be to also explicitly ask for the metadata that the governmental institutions link to its digital documents.

Now, let me end with a confession. This presentation is produced with two software applications manufactured, developed, marketed and supplied to the Parliament I work for by the one 'who's name is not to be spoken'...
