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The influence of social networks and internet fora on the decision-making process of legislative assemblies

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I. Introduction

Nowadays, we can perceive a growing discrepancy between the formal decision-making process of legislative assemblies, as it is laid down in the constitution and the internal regulations of Parliament, on the one hand, and the formation of the institutional opinion 'outside parliament', through social media and other modern methods of public expression on the other hand.

The impression one can have is indeed that public debate and the crystallization of the public decision is more and more taking place outside Parliament, while the parliamentary institution is progressively transformed into a sort of notary of positions already voiced and established outside its walls : its meetings appear more and more

as ex post ratifications of decisions which are already settled.

The striking feature of this development is that among its most prominent actors are the members of Parliament itself; they increasingly express themselves on social networks and modern tools of mass communication, and openly admit that these channels of expression are more visible and efficient in terms of popularity and political influence.

The question we would like to discuss is what attitude constitutional law should adopt vis-à-vis these evolutions.

II. Internet fora : a new form of participatory democracy

a. Reminder of the distinction between participatory and representative democracies

Modern democracies are mainly based on the model of representative democracy, i.e. a political organization in which citizens elect representatives who make decisions and pass laws.

This contrasts the model of participatory democracy, in which citizens directly take part in the debate, make decisions and pass laws. In practice, it seems almost impossible for a democracy to function solely on the basis of this model. However, a representative political system may include some aspects of participatory democracy.

b. Emergence of a “democracy 2.0” – Added value & risks

Public debate is more and more taking place on the Internet. Almost all MP's have Facebook and Twitter accounts, a webpage, a blog, private forum, ... in which they give their opinion on political issues and consult population on various subjects. This moves the political debate out of parliament.

This new model of democracy, sort of “democracy 2.0”, may bring many benefits but may also entail inconveniences that should be discussed.

c. Is it a kind of popular consultation/referendum?

Attention must be paid to the fact that such a “democracy 2.0” model, if it were to be generalized, would present some similarities with popular consultations or referenda, techniques which are prohibited in some constitutional systems.

Even if the expression of public opinion on the Internet is not be legally binding, MP's may feel morally obliged to comply with it.

It is worth noticing however that these moral constraints already exist, since the very vast majority of MP's do belong to a political party and these parties expect their MP's to follow the line determined by the party.

III. The link between hate speech on the Internet and parliamentary accountability

a. Freedom of speech vs. hate speech on the Internet

The danger on the Internet is that speech is even freer than in traditional social relationships. The limit between opinion and hate speech is often porous and it may be difficult to regulate speech flow.

An illustration of the attempt of *national* officials to address the issues of hate speech and misinformation is the initiative of the French president E. Macron in 2021 to create a commission designed to propose possible measures in this field¹.

Also, on the *international* level, the Committee of Ministers of the Council of Europe adopted very recently a Recommendation on combating hate speech². It underlines that “hate speech is a deep-rooted, complex and multidimensional phenomenon, which takes many dangerous forms and can be disseminated very quickly and widely through the internet, and that the persistent availability of hate speech online exacerbates its impact, including offline”. In particular, the Committee of Ministers recommends that Member States ensure that their legislation addressing hate speech covers online hate speech and contains clear and foreseeable provisions for the swift and effective removal of online hate speech that is prohibited under criminal, civil or administrative law.

b. Comparison between the protection of parliamentary speech in the parliamentary chamber and on the internet

In many constitutional systems, MP’s enjoy freedom of speech within the parliamentary chamber. When they are in the performance of their duties, they can say whatever they want, without fear of being sued.

In principle, this protection does not apply when MP’s express themselves on the Internet.

It may be interesting to discuss whether MP’s special freedom of speech should be adapted to forms of “democracy 2.0”.

c. Accountability of internet providers

Irrespective of the protection of parliamentary speech, Internet providers’ liability could apply in cases of hate speech, even if the relevant statements on the Internet were

¹ <https://www.lesechos.fr/politique-societe/emmanuel-macron-president/emmanuel-macron-installe-une-commission-contre-le-complotisme-et-les-fake-news-1350576>

² Recommendation CM/Rec(2022)16 of the Committee of Ministers to member States on combating hate speech, 20 May 2022, https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=0900001680a67955#_ftn1

made during a political debate.

It is necessary to check how to balance this liability, usual freedom of speech and MP's special freedom of speech.

IV. Discussion

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