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Yellow Brick Road to Digital State

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Abstract

The subject of the research is the transformation of the state institution under the influence of the digital revolution. The choice of topic is determined by the transition of the state institution from bureaucratic to service and from service to digital. This transition entails significant changes in the methods of regulating public relations, the forms of state participation in the life of citizens, as well as the architecture of interaction between state, business and society in the new environment. The aim of the research is to create and justify a model of digital public administration, in which the necessary access to personal information of the digitized state will not be used against citizens. Therefore, the digitalization of public administration should be a tool to improve the efficiency of public services. The research methods are: institutional and comparative legal analysis, as well as methodology of value chain management by M. Porter. The results of the research show that (1) the created value chain of public administration includes main and auxiliary activities in the system of public administration in the digital state, (2) changes in the governance due to the increasing role of the digital state have been proved based on the doctrinal components of the new public administration of C. Hood, and (3) substantiated the reasons for the evolution of public administration through the prism of management structures: from linear-functional to project-functional structure and, as a result, to state digital platforms. Based on the declarations of the UN General Assembly, the conclusion is made that it is necessary to strengthen the control of the judiciary over the executive to avoid the establishment of digital totalitarianism. These findings reinforce the methodological significance of the evolution of public administration, as well as the practical value in reforming the system of governance under the influence of the digital revolution.

Keywords: digital state, public administration, human privacy, value chain of public administration, digital totalitarianism

INTRODUCTION

States that transition from one political order to another do so with different aims. Their economic situation, sustainable power structures, the maturity of civil society, and their international competitiveness are factors that inform this transition. This last feature requires the creation of an effective institutional environment to attract investments, raising the quality of human capital and technological modernization.

A favorable environment for economic development has been created by the technologies of the 4^{th} industrial revolution, the Internet of things, and the digitalization of an increasing number of processes for production and service. They help to increase efficiency after all other management tools have already been implemented and have exhausted their capabilities. When the public administration system is assessed, the problem of efficiency can clearly be found there too. The transition from a bureaucratic state to a service state was done with the aim of increasing how efficient public administration could be. This would transpire by reducing the cost of performing public functions, whilst also improving their quality by optimizing service times, reducing waiting times, using budget funds in a targeted way, and individualizing state support for citizens.

The idea itself turned out to be quite attractive; it was first adopted by the United Kingdom (Barber, 2008), and later by many other states, including Russia. Criticism, however, was leveled at this approach almost immediately; service standardization was introduced as part of the transition to a service state, raising new problems. It turned out that, since citizens differ vastly in their requirements, their needs do not fit into the approved standards for the provision of public services. The transition from a bureaucratic to a service state was reminiscent of the transition from artisanal production to mass production; however, it was business that realized the significant diversity of human needs, and thus the inefficiency of mass production. Due to the hyper-competitive struggle, business was forced to switch to mass customization, which could individualize and satisfy various consumer needs. The inconveniences that service states place on their citizens also exposed how dissatisfied they were with public services. Here, however, this problem resulted in a decrease in the level of trust

citizens held in their state, which could be fraught with social upheavals. This outcome did not suit the authorities.

The transition of the political order from a service state to a more efficient system proved to be an urgent problem, yet a solution was found rather quickly, prompted yet again by business. For states that are rapidly losing their citizens' trust, digitalization has shown itself to be a lifeline. There has been a rapid growth in states which are transferring the order of their services to digital platforms. Estonia and Denmark were ahead of all other countries in the digitalization of their public administration.

In terms of the digitalization of the public services system, Estonia and Denmark are world leaders. In Estonia, almost all public services are provided digitally, apart from acts of civil status where a personal presence is necessary (marriage and divorce, as well as the purchase of real estate while making entries in the state cadastre). The authorities of both Denmark and Estonia were able to implement state digitalization projects; in terms of scale, these projects were comparable to the largest internet platforms (Fuchikawa, 2020). Importantly, the governments of countries leading in digitalization, as well as internet platforms, have set consumer needs as priorities, and agile technologies (flexible testing and learning methods) as their implementation method. The use of agile methods alone would not ensure success when digitalizing public services: changing the flow of information

is not consistent with consumer interests and, vice versa, the interests of consumers do not always coincide with the results of optimizing information flows.

At the same time, some state bodies cannot provide a unified architecture for their digital environment. In these situations, they are forced to coordinate their actions and projects at the governmental level (Osipov, 2016); when digitalizing their public service system, this acts as a consolidating and directing center. The role of each national government is not limited to consolidating the ideas of disparate and independent state bodies; the tasks faced by national government are much greater than might seem at first glance. The government should not only develop, approve and implement their digitalization strategy (in which the goals, objectives, priorities, and methods of its implementation are clearly fixed); it should also offer a unified IT platform, as well as the technical standards necessary for developing the components necessary to underpin their digital environment (with the possibility of their integration with each other based on a single digital

platform), and ensure the timely submission of bills to parliament, which will fix new institutional conditions for the provision of public services amongst many others[1].

The transition from a service state to a digital one also has a number of requirements. The first consideration is the coverage and quality of internet connection. It is no coincidence that it was Estonia and Denmark that were among the leaders in constructing a digital state - for implementing such large-scale internet platform projects, a small territory and a small population turned out to be positive characteristics.

Both in terms of population and territory, Russia is much larger, which means that its task of digitalization is much more complicated. However, this is merely the technical side of the matter; cell towers, satellite launches, and fiber optic networks can solve the coverage problem. However, another, much more serious problem almost always casts a shadow over technological advances in public administration: respecting the right to privacy. In countries where either bureaucracy and/or the service state are the prevailing political ideologies, it has been relatively easy to balance efficient digitalization with non-interference in citizens' private lives. For such public administrations, it is relatively easy to adopt a system of internet platforms and digitalize public services.

Institutions streamline how citizens and organizations act and contribute to stabilizing the state. If, however, the state is the main institution (or institution of institutions), the different levels of institutions must be clarified; branches of Big Government include executive institutions, legislative institutions, and judicial institutions. The most important condition for state sustainability is the balance between these branches. Obviously, the violation of this balance ultimately leads to instability, social upheaval, and even revolution.

However, it must be not forgotten that, at the end of the 20th century, about forty countries transitioned from authoritarianism or totalitarianism regimes to democracy. As the USSR collapsed, and a number of former socialist states transitioned to democracy, this mass change of regime should, in theory, have bought the problems of state science to the forefront of theoretical and legal research in sciences, especially since this transformation affected 24 CMEA countries (including observers and associate members). Some CMEA member countries have split up into separate independent states - for example, the Socialist Federal Republic of Yugoslavia, the Czechoslovak Socialist Republic, the USSR, and the German

Democratic Republic completely ceased to exist. Considering this, it seems

more than strange that the crucial issue of rediscovering the laws of formation and disintegration of states was not discussed in legal sciences; these were driving forces behind these states' historical development. Among such regularities, so-called "path dependence" can be clearly traced, which assess how future developments depend on previously achieved results, national characteristics, habits, beliefs, etc.

It is interesting to imagine that, by virtue of digitalization, such states can receive total control over the individualized information of each citizen, despite their background of exerting a totalitarian political order. Due to the gauge effect, individual statesmen could seek to establish unlimited power using the received official information.

In connection to this, in his famous "History of the Government", S.E. Finer convincingly argues that, throughout the 5200 year historical trend he describes, "the longevity of the state is ensured by the well-developed institutional structure of the state and its ability to unity in action" (Finer, 1997). Thus, it is not only international competitiveness that is dependent on a well-developed institutional structure, but also the longevity of the state.

This is a transition (or departure) away from the Marxist-Leninist doctrine, where the state is an arm of the ruling class and reflects their political power; notoriously, Lenin noted that the state can be a special tool for exerting control. When the state had the grounds for keeping one part of society from another, the Marxist-Leninist philosophy predicted that, if the basic conditions for creating a classless society were fulfilled, "the socialist state may wither away"; Lenin's hope was for the onset of communism to instigate this withering. The utopian idea of a classless society, as well as the political transformation in almost forty countries (CMEA countries and the Republics of the former USSR), should have manifested itself in political studies into the process of how a political order transforms and the results of such a process. Furthermore, the result of the transformation process is reflected, as we see it, in the institutional structure of the state and its stability.

Following the previously expressed ideas, special institutions play a rather important role in the development of states, contributing to the formation and transition to the next stage of development.

We are critical of the economic category of "institution", and use it only as a term denoting institutions rather than norms and rules

(although they remain in the theory of law). Our definition of the state follows that of Maurice Hauriou, the French lawyer who first conveyed the idea that the State - acting as the organizer, controller, and coordinator of social and political order - is the institution of institutions. Therefore, for us, regarding the political, economic and legal systems which society follows, the state is an institution of institutions, or the main institution above all (Hauriou, 1910).

METHODOLOGY

Institutional analysis and legal comparative analysis were used in the article to identify and justify the institutional structure of a state on its way to digitalization. An interdisciplinary approach was used in the research because institutional theory has a duality, based to both legal and economic sciences. Legal science laid the theoretical foundations of institutionalism, and economic science contributed to the implementation of the ideas of institutionalism in the practice of political order transition and public administration.

The necessity to move from a service state (with its mass standardized approach to satisfying citizens' needs) to a digital state (with mass individualized satisfaction of citizens' needs for public services) was brilliantly shown by Michael Porter in his famous figure of the value chain (Porter, 2004).

We have taken advantage of its development, and will show how the public administration system can be analyzed from the perspective of this value chain; the needs of the consumer must be met as and when it is convenient for them. We called this figure the Value Chain of Public Administration (fig. 1).

As can be seen in figure 1, public policy can conditionally be divided into two large groups of policies: main and support.

The main policies have conditional stages, as well as stages in the manufacture of a product in business: from incoming material, information, and financial types of flows (amongst others), through their transformation, into an outgoing flow. The marketing block comes afterwards. By thinking about what products we associate with individual countries, it becomes clear that each country, due to the international division of labor, specializes in its own product groups. Due to the transition to the VI technological structure, obviously, services occupy an increasing share of the structure of the economies of highly developed countries; therefore we distinguish services as the final level of the main policies of the state, which is something slightly separate. State policies which support this are

diverse and specifically relate to each individual state, but we can distinguish these as: infrastructure, human capital development, technological development, and institutional policy.

Infrastructure is a block of supporting policies in the field of social development, industrial policy, transport, and the financial structure, but it is not limited to them.

The development of human capital affects the areas of healthcare and medicine, education, culture, science, food safety, ecology, social insurance, etc.

Technology development stands out as a separate policy group, since it relies on the state at whichever stage of technological development it is; that is, it is reliant on how effectively the business is heading towards technological modernization.

Institutional policy forms the basis of all other policies. It consists of the quality and integration of effective market and state institutions that are aimed at the quality protection of property rights, quality justice, and protecting competition. This is the only part of the Value Chain of Public Administration that the state can use in a coordinating role. The most important function here is to ensure fairness, without violating human and civil rights, when making decisions about security, protection, and law and order. The main institution here should be a court, which must be independent from the executive and legislative branches.

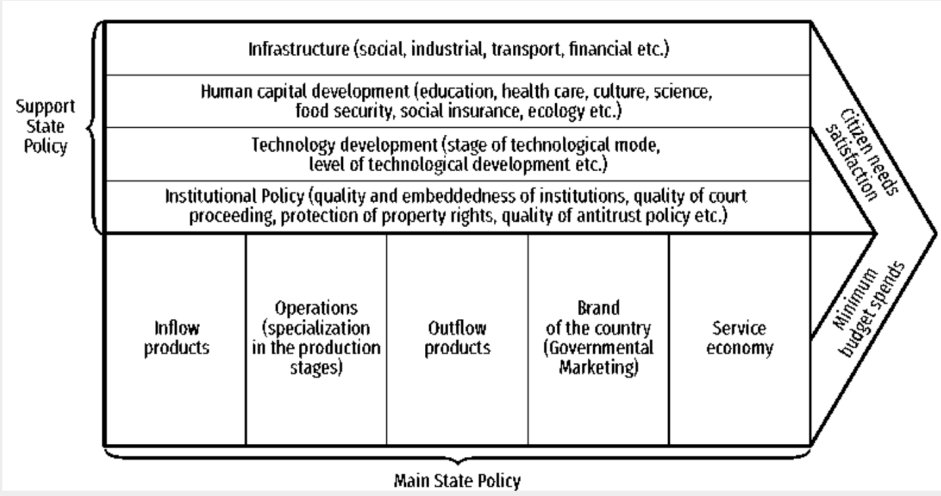

Fig. 1. Value Chain of Public Administration, doctrinal components of modern public administration

At the right end of the value chain, it can be seen that most politicians aim for a minimum of budget expenditures; this is the

target performance indicator they aim to meet precisely. At the same time, supportive politicians aim to meet citizens' public service needs. It is here that a citizen faces the state face to face.

The unique, combinatory nature of the main and supporting policies - their quality, their interaction and their coordination - are a condition for a state's stable institutional structure as it transitions from one political order to another. In this case - in the transition from a service state to a digital one - the most important role is played by institutional policy, since all other policies seem to retain their essence in this transition. We take this methodology to describe the transition process of the state from a bureaucratic to a service and to a digital one.

Almost all the types of policies included in the Value Chain of Public Administration can be digitalized; due to new technologies, both the efficiency of spending budget funds and the quality of public administration services can be improved. The only policy which largely cannot be digitalized is institutional policy, since this is a mechanism on which the architecture of the entire public administration system of a digitalized state can be founded. The sustainability of the state depends on how effectively this function is realized and how sustainable the institutional structure is. For a digital state, this is also true, since satisfying the needs of public service consumers is not reliant on if the quality of these services is low and if citizens express their dissatisfaction through social upheavals that shock the state. Thus, institutional policy is the main component of state policy for maintaining the state's sustainability and development.

The philosophy of transitioning from a service to a digital state is based on satisfying the needs of the consumer, which is expressed precisely as a tool of the value chain.

DISCUSSIONS

Public and private managements have long been interacting with each other (Lepawsky, 1949; George, 1972; Bourdieu, 2012; Mann, 2012). The business analogy and the methodology of professional economics revealed their influences on public administration. Public administration on all levels must be made cost-conscious - and hence efficient - by measuring the productivity of their services at whatever level they originate. It was argued that only by this macro means, in which the country was again made fully competitive, can the state hold its competitive global position (Dimock, Dimock, Fox, 1983).

When Hood (1991) formulated his principles for new public management, he focused on the business practices and management tools of a business enterprise. As it happens, his ideas turned out to be revolutionary precisely because of how business practice transferred to the sphere of public administration. Paying tribute to Hood's ideas, we note that they remain relevant when reviewing the transition from a bureaucratic state to a service one, nor from a service state to a digital one.

Firstly, Hood correctly noted that, if a state maintained a long peaceful condition after the Second World War, they created for themselves a set of unique social prerequisites and economic conditions which contribute to the growth of the global economy. Indeed, a lasting peace creates opportunities for long-term forecasting, and thus public administration systems can be designed on an increas-

ingly effective basis. In wartime, this is completely impossible, since the logic of public administration is subordinated to a mobilization economy, as Andrain correctly notes (Andrain, 1994)

Sustainable economic growth created the conditions for a positive change in the levels of income and distribution mechanisms. Revolutionary technological changes have also had a significant impact on the socio-economic system, which has led to the removal of traditional barriers between "public sector work" and "private sector work" (Jessop, 1988). The work of state apparatus has become more and more like how corporations function: similarities can be seen in management tools, decision-making mechanisms, methods of selecting personnel, their promotion along the career ladder, etc.

The use of business tools in government - which are significantly different from bureaucratic tools - has led to a uniform approach to business and government.

This trend could not but lead to the digitalization of the state. The digitalization of business, and the creation of internet platforms and ecosystems, had already been rapidly developed. The state simply had to follow.

Swan noticed that one implication of blockchain governance is that the model of government could shift from being the compulsory, one-size-fits-all, "greater good" model - as it is at present - to one that can be tailored to the needs of individuals; it is thus possible to imagine a world of governance services which is as individualized as Starbucks coffee orders. As an example of personalized governance services, one resident might pay for a higher-tier waste removal service that includes composting, whereas their neighbor pays for a

better school package. Personalization in government services, instead of the current one-size-fits-all paradigm, could be orchestrated and delivered via blockchain (Swan, 2015). As can be seen, blockchain - as one digital technology - may be used in public administration videlicet for individualized needs in the satisfaction of citizens in public services.

administration vidictect for individualized needs in the satisfaction of citizens in public services.

TABLE 1. DOCTRINAL COMPONENTS OF NEW PUBLIC MANAGEMENT WITH SPECIFIC FOR DIGITAL STATE

No.	Doctrine	Meaning	Typical justification	Specific for a Digital State
1	*'Hands-on professional management'* in the public sector	Active, visible, discretionary control of organizations from named persons at the top, 'free to manage'	Accountability requires clear assignment of responsibility for action, not diffusion of power	Responsibility for creating an internet platform in the form of value chain of public administration
2	*Explicit standards and measures of performance*	Definition of goals, targets, indicators of success, preferably expressed in quantitative terms, especially for professional services	Accountability requires clear statement of goals; efficiency requires 'hard look' at objectives	Transition from the mass satisfaction of citizens' needs to mass customized individualized satisfaction of citizens in public services
3	Greater emphasis on *output controls*	Resource allocation and rewards linked to measured performance; breakup of centralized bureaucracy-wide personnel management	Need to stress *results* rather than *procedures*	This task remains, since the project approach to solving public administration problems is not removed from the agenda when moving to a digital state

Continuation of Table 1

No.	Doctrine	Meaning	Typical justification	Specific for a Digital State
4	Shift to *disaggregation* of units in the public sector	Break up of formerly 'monolithic' units, unbundling of U-form management systems into corporatized units around products, operating on decentralized 'one-line' budgets and dealing with one another on an 'arm's length' basis	Need to create 'manageable' units, separate *provision* and *production* interests, gain efficiency advantages of use of contract or franchise arrangements *inside* as well as outside the public sector	Creation of a system of distributed solutions of public administration problems in public project offices
5	Shift to greater *competition* in public sector	Move to term contracts and public tendering procedures	*Rivalry* as the key to lower costs and better standards	Increased competition between state and business for IT professionals capable of creating and managing internet platforms
6	*Stress on private sector*	Move away from military-style 'public	Need to use 'proven' private sector man-	Strengthening the trend towards the adoption

The logic of state transformation and its apparatus is laid out in the following figure.

As history shows, the process of transforming from a bureaucratic state to a digital state requires going through a service state type. Due to this, it must be observed that transitioning directly from a bureaucratic state to a digital state is impossible, as states cannot jump from single production directly into mass individualized customization. This is a kind of law of the evolution in business and public administration. In this paradigm of transforming into a digital state, it is necessary to note the risks of violation of human rights.

As law is digitalized, the risks of a technocratic attitude towards individuals increase; a person, their basic human rights and freedoms, and their security and dignity may be more susceptible to this threat. Berman noted that people mainly see the law as a mass of legislative, administrative, and judicial rules that apply in their country (Berman, 1994). Digitalization runs the risk of taking a further step towards the mechanization of law coming true. Primarily, the robotization and algorithmization of law enforcement are the main contemporary trend (Hong, Goodnight, 2020; Eldem, 2020).

Robotization is a specific technocratic paradigm which, in a developed and politically organized society, transmutes the law into a tool of social engineering and a highly specialized form of social control.

Pound noted that, under these conditions, "law" was given a new meaning. Conditions for this change include: social control as state control; the state as an end in itself; the legal order as a regime for ordering all conduct and dictating all adjustment of relations by official application of the force of a politically organized society to the case at hand; law as what those officials do because they do it; the judicial process as simply effective exertion of the power of the state officials (in other words, an omnicompetent state, in contrast with politically organized society carrying on a regime of social control through orderly application of force according to prescribed models or patterns of decision and determination); a law state (Pound, 2002).

Facial recognition systems provide a very useful digital technology, which can make public services individualized, as has been noticed by Swan (2015). This technology is already used in banks for financial services, where offices no longer require documents to prove identify before providing financial services. Another way facial recognition systems are used is by the police and Interpol; the

Interpol Face Recognition System (IFRS) contains facial images received from more than 160 countries, making it a unique global criminal database. As Interpol's official site makes clear (www.interpol.int), computerized facial recognition is a relatively new technology which law enforcement agencies around the world are introducing in order to identify persons of interest. Coupled with an automated biometric software application, this system is capable of identifying or verifying a person by comparing and analyzing the patterns, shapes and proportions of their facial features and contours. Proving its effectiveness, more than 650 criminals, fugitives, persons of interest, or missing persons have been identified since the launch of Interpol's facial recognition system at the end of 2016.

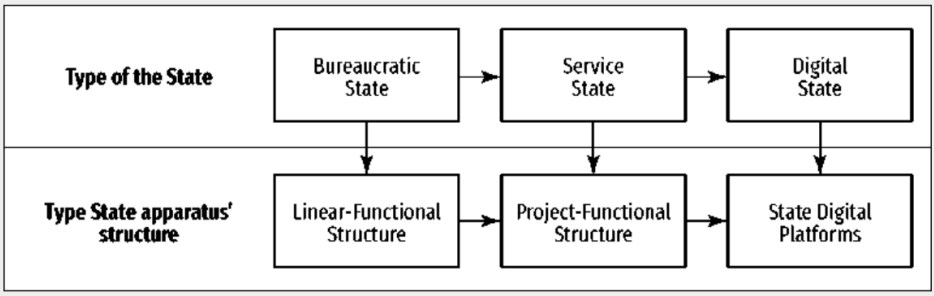

Fig. 2. Evolution of Types of the State and its apparatus' structure

Of course, facial recognition systems allow wanted criminals to be identified; however, people who have committed no crimes or offenses, but whose movements will be controlled in order to track criminals, should be allowed to voice their opinion. Such controls could lead to the development of secrets in a citizen's personal life. There are people who take pleasure in showing themselves to the whole community, but not everyone shares this feeling. Knowing that they are being constantly monitored, does this not pose a threat to a citizen's mental health, as was notoriously noted by George Orwell (1945)?

CONCLUSION

The resolution adopted by the General Assembly on 18 December 2013 (on the report of the Third- Committee (A/68/456Mdd.2)). 68/167 "The right to privacy in the digital age", reaffirms the right to privacy, according to which no one shall be subjected to arbitrary or

unlawful interference with his or her privacy, family, home, or correspondence, as well as reaffirming the right to the protection of the law against such interference, as set out in article 12 of the Universal Declaration of Human Rights and article 17 of the International Covenant on Civil and Political Rights. Following on from that point, the General Assembly notes that the problem of human rights in the digital age is in the full growth, with no reasons to say that almost 7 years the situation is becoming better; the General Assembly also affirmed that the same rights that people have offline must also be protected online, including the right to privacy. In this case it must be noted that this point runs counter to the task of security and facial recognition systems, and also with free access of state security bodies to mobile calls, SMS, and suchlike. In addition, the access internet platforms have to the private lives of citizens must be assessed. Internet platforms track user requests and offer contextual advertising, information, or products in accordance with user requests. As mentioned above, the General Assembly's Resolution warns of threats to privacy, and names the tasks the state must undertake to respect and protect the right to privacy, including in the context of digital communication. It also suggests measures that must be implemented to put an end to any violations of those rights, and the conditions that must be created to prevent such violations, including by ensuring that relevant national legislation complies with obligations under international human rights law. Using digital platforms to collect personal data runs counter to personal privacy.

The resolution adopted by the General Assembly on 18 December 2013 (on the report of the Third- Committee (A/68/456Mdd.2)). 68/168 "Globalization and its impact on the full enjoyment of all human rights" recognizes that while globalization may affect human rights (by its impact on, interalia, the role of the State), the promotion and protection of all human rights is first and foremost the responsibility of the State. Protecting human rights holistically is a task for individual actors/States, who have their own goals of security, and thus may be interested in violating human rights - for

altruistic reasons - to achieve such security. However, if the State predicts threats against its power, such data can also be collected and used against individuals. Looking to the future, there is conflict of interest between the responsibility of Digital State to protect privacy as basic human right, and the task of Digital State to control people and their political activity.

This conflict of interest is the key problem Digital States face at present and in the foreseeable future. If this problem is not solved, people around the world will face a new digital totalitarianism; if so, supposed democracies could exert total control over the behavior of their citizens.

The essentials of digital totalitarianism include the extinction of the spirit of justice, the removal of emotional sources of thoughts, formal logical solutions to disputes, and the denial of the spirit of the law in favor of its letter. The problem is that all citizens are different from each other, but in the framework of algorithmization, these differences in nature cease to exist and each citizen becomes just a registration object with serial number. Commonly, this political order is called "digital totalitarianism" (Diamond, 2019), as there are many similarities between this public administration and the worst examples from history.

Strengthening the role of the Constitutional court could solve this problem; this is the solution we propose. By virtue of its authority, the court should work more diligently to verify that executive authorities, if they try to establish control over the society using digital technologies, comply with fundamental human rights. Such a decision is possible only if the constitutional court is truly independent from the executive authorities, which today seems utopian. It would be necessary to strengthen the role of legislative power in the formation of the constitutional court, and to protect the judges of the constitutional court from pressure from the executive authorities. The power balance of legislative and executive bodies in the formation of a constitutional court can lead to the judiciary as a whole exerting increased independence; to us, this seems the only way to avoid slipping into digital totalitarianism.

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