

# AMERICAN LEGAL SYSTEM: TRANSPARENCY IN GOVERNMENT AND NON- GOVERNMENT ENTITIES

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# TRANSPARENCY IN GOVERNMENT

- What do we mean by “Transparency”?
  - Being able to learn and understand the basis for decisions made by our decision-makers.
  - Being confident that decisions were based on the merits of the case and not on improper considerations:
    - Some say that there are three ways of winning your case in court: “Know the law”; “Know the facts”; or “Know the Judge”.
    - Transparency limits the “Know the Judge” option and emphasizes “Know the law” and “Know the facts”.

# TRANSPARENCY IN GOVERNMENT

- Transparency is intended to promote equality before governmental and judicial decision makers.
- To ensure we have a “level playing field”, not this :



# TRANSPARENCY IN GOVERNMENT

- Transparency also means knowing what the rules are that will control how a case is decided.
  - And that the rules will not be “bent” to unfairly aid one side.
    - So the rule acts like this; when it should act like this:



# TRANSPARENCY IN GOVERNMENT

- Transparency means understanding how government officials (whether judges, prosecutors or administrators) are making decisions
- Transparency applies not just to governments but to Non-Governmental entities, such as:
  - Large corporations (Společnost) or other business units
  - Labor Unions (Dělnická Unie)
  - Charities (Charitativní organizace) or other organizations depending on private donations

# TRANSPARENCY IN GOVERNMENT

- Why should we be interested in “*Transparency*” for these organizations?
- What about privacy concerns? Are there some organizations which should *not* be subject to transparency concerns? For example?
  - Religious groups (Náboženskou skupinu)?
  - Private groups ?



# TRANSPARENCY IN GOVERNMENT

- Why is Transparency Important ?
  - Encourages confidence in government if we know how decision-makers are thinking.
  - Prevents opportunity for corruption.
  - Makes it easier to predict how conduct will be judged by others.
  - Makes it easier for business people to understand the consequences of what they are doing:
    - Will a contract be performed as the parties expected?
    - How will a dispute about the contract likely be decided?
    - Will collection of the disputed amount be possible ?

# TRANSPARENCY IN GOVERNMENT

- What are the main tools for accomplishing transparency in the U.S.; would they be useful in the Czech Republic?
- **“Freedom of Information Act”** -
  - Requires that rulings of government agencies must be made public.
    - EXAMPLE: if an agency limits where auto parts can be manufactured, the reasoning and terms must be publicly explained
    - Requires that decisions of government agencies be made public.



# TRANSPARENCY IN GOVERNMENT

- Freedom of Information Act Exceptions
  - There are limits: certain matters can be kept secret if they fit in a particular category.
    - Example: Criminal investigations can be kept secret
      - Why? Good of bad ? (or sometimes good, sometimes bad?)
- Government Investigations can expose wrongdoing or not telling the truth
- Example: U.S. President Reagan made a decision to pay ransom to obtain the release of hostages in Iran, but denied he had done so.

# Transparency in Government

- ▣ Government investigation found that he had not told the truth. He had to admit this (or at least half-way admitted his error).
  
- ▣ He could have been removed from office because:
  - He violated the law by selling arms to Iran
  - He lied about it.
  
- Investigation signaled to other government officials the dangers of lying and violating the law.

# Transparency in Government

Video Courtesy of the  
Ronald Reagan Presidential Library

# Transparency in Government



# TRANSPARENCY IN GOVERNMENT

- Personnel Records
- National Security secrets
- Trade secrets
- Information about the financial condition of banks
- [There are more exemptions to be separately discussed, if interested.]

# TRANSPARENCY IN GOVERNMENT

## Another Way of Promoting Transparency:

- **Ethics Rules for Government Personnel**
  - When a government employee leaves the government for private business, should he be able to deal with his former government colleagues?
  - Rules relating to the “revolving door”
  - Rules restrict a government employee’s access to his former colleagues for a year or so after leaving the government.
  - Why have such a rule? What does it do and does it bring about “transparency”?





# TRANSPARENCY IN GOVERNMENT

- Are the restrictions excessive?
  - What is good and what is bad about these restrictions
- What is a “lobbyist” in the U.S.
  - Representative of private interests attempting to influence the government to help those private interests.
  - Is this good, bad, neither or both?
  - Suppose a “lobbyist” wishes to work for the government. Should there be restrictions on his/her doing so ?
    - Why? What kind of restrictions
    - Does the government gain or lose by these restrictions?

# TRANSPARENCY IN GOVERNMENT

- Should the names of those who visit important government officials be made public?
  - Why?
  - Does this make it difficult for those public officials to do their jobs?
  - Does it affect the integrity of their work if government officials know that their visitors are made public?
  - How does this apply to decision-making by judges and arbitrators: should those having contact with decision-makers be identified ?

# TRANSPARENCY IN GOVERNMENT

- **Restrictions on Election Contributions by Citizens**
  - Should contributions to election campaigns be limited?
    - Do limits favor those already in office by making it more difficult for new people to get elected ?
    - Is making a contribution to an election campaign a method of influencing government?
    - Is it sufficient to identify those who make the contributions (and the amounts); or should they be limited?

# TRANSPARENCY IN GOVERNMENT

- **Restrictions on Gifts**
  - Should all gifts to public officials be prohibited?
  - Should there be some small limits that are allowed?
  - Any differences for a judge or arbitrator?
- **Role of the Media – The Press, TV, etc.**
  - How does the media help to bring about transparency?
  - If a reporter learns of improper government action from someone inside the government, should the reporter be compelled to disclose the source of his/her information?