

Financing of Political Parties in Comparative Perspective

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I. Introduction

The traditional model of political parties living completely or to a large extent on the regular contributions of their members does not apply anymore in practice. The importance of other sources of income has increased enormously. These developments in turn have created new opportunities for potential influence on the part of those willing to give money to a political party. This is the context in which both a growing concern among citizens about corruption and fading independence of political parties as well as a number of political scandals in European party systems has to be analysed. It is against this background that the Political Affairs Committee of the Parliamentary Assembly of the Council of Europe has commissioned this study.

Of course, the problems described above trigger the question for ways to secure on the one hand an up-to-date financing of political parties which must be in a position to build a forum for political discussion and activity in the life of a society and on the other to eliminate the loopholes for improper influence as far as possible. This comparative analysis provides an overview of the approaches adopted in this respect in 12 different European countries.¹ The countries selected for the purpose of this comparative analysis are Austria, Belgium, the Czech Republic, Denmark, France, Germany, Italy, the Netherlands, the Russian Federation, Spain, Switzerland, and the United Kingdom.²

For the purpose of this article a narrow interpretation of the "financing of political parties" will be applied in a way excluding from the scope of analysis forms of financing of independent organisations or bodies such as political foundations.

II. Private Sources from within the Party

1. Contributions by Members

Regular membership or affiliation fees generally can be regarded as the most democratic and unproblematic form of financing: they guarantee a certain influence of party members on official party politics without allowing single financially powerful persons or groups too much influence.

However, a shrinking percentage of contributions by members in relation to the overall budget has been diminishing this function for several years.³ The most important factor limiting the significance of membership contributions as a source

¹ The information contained in this report is mainly based on material available at the Max Planck Institute for Comparative Public Law and International Law in Heidelberg. It cannot therefore be excluded that certain recent amendments in single countries are not properly reflected.

² The authors wish to thank the following persons for providing information on specific countries: Tigran Beknazar (Russian Federation), Pia Carazo (Spain), Mahulena Hofmann (the Czech Republic), Karin Oellers-Frahm (Italy), Fredrik Thomas (Denmark), Brecht Vandenberghe (Belgium, the Netherlands), Christian Walter (France).

³ D. Schefold, *Parteienfinanzierung im europäischen Vergleich*, in: D. Tsatsos (ed.), *Parteienfinanzierung im europäischen Vergleich*, 1992, 481 (510).

of income is often a primary reliance on public funding. As example, we may look at Belgium where membership contributions make up less than 10% of every party's income, sometimes even less than 1%.⁴

In Spain also, the balance has shifted towards public funding, which constitutes 90% of the declared income of political parties (with the exception of the Izquierda Unida Coalition which receives 30% of its income from private sources).⁵

But also in cases where there is no public funding, sometimes the importance of membership contributions has been diminishing quite dramatically: for instance, the percentage of the British Labour Party's affiliation fees in the party's overall annual income dropped from more than 50% in 1992 to roughly 25% in 1997.⁶ This drop has been explained by a loss of party members,⁷ which as such could be seen as a democratic expression of members' discontent with the Party's performance. But since the increase in donations was much bigger than the loss of income from affiliation fees, the drop additionally may have to be explained with the "arms race" in general spending, in particular with regard to election expenditure, that has also been observed.⁸ In contrast to that, membership fees constitute the main and sometimes the sole (in the case of local sections of parties) source of political parties' income in Switzerland⁹ and in the Netherlands.¹⁰

The exact amount of membership fees to be levied is regulated by the parties themselves,¹¹ depending on how much emphasis a party puts on membership contributions. Often, parties fix a minimum contribution and apply a system of progressive contribution rates according to the income of the individual member or, at least, provide for a reduced fee for certain low income groups. For instance, political parties in Germany apply a progression rate between minimum and maximum fees according to the income of the member: usually 3 to 4 DM are levied as a monthly minimum and between 30 DM (CSU) and 440 DM (SPD) as a maximum.¹² However, on the average some DM 150 are paid by each member per year

⁴ In 1999, the Green Party (ECOLO) had an income of 169,410,558 BEF and levied 1,045,910 membership fees. Source: DOC 500671 (Chambre) 2.447/1 (Sénat).

⁵ F. Balaguer Callejón, *La financiación de partidos políticos en España*, Nomos 4 (1999), 29. For further references see S. Hofmann, *Parteienfinanzierung im Autonomiestaat Spanien*, 1998, 127–129. See also Schefold (note 3), 481 (510), who concludes that in general less than a quarter of a party's income stems from membership fees.

⁶ Fifth Report of the Committee on Standards in Public Life, *The Funding of Political Parties in the United Kingdom*, 1998, Vol. 1 (Cm 4057-I), 30.

⁷ *Ibid.*, 32 (quoting M. Pinto-Duschinsky).

⁸ *Ibid.*, 42 et seq.

⁹ T. Drysch, *Parteienfinanzierung – Österreich, Schweiz, Bundesrepublik Deutschland*, 1998, 73.

¹⁰ Cf. D.J. Elzinga, *Parteienfinanzierung in den Niederlanden*, in: Tsatsos (note 3), 333 (355).

¹¹ The possibility of political parties to raise membership fees is usually not legally restrained but sometimes is expressly allowed, for instance by way of reference to associations in general (cf. K. Oellers-Frahm, *Kandidatenaufstellung und Wahlprüfung in Italien*, in: R. Wolfrum/G. Schuster, *Verfahren der Kandidatenaufstellung und der Wahlprüfung im europäischen Vergleich*, 1994, 131 with further references) or by express provisions (for instance, in Spain in Art. 2 para. 2 of the *Ley Orgánica 3/1987 sobre la Financiación de los Partidos Políticos* [LOFPP]).

¹² Drysch (note 9), 76.

since the varying sums of membership obligations are equalised to a significant extent by varying moral of payment and sincerity in declaring the true income for membership purposes.¹³

It is also a question of a party's statute whether and how membership fees are distributed between the central organisation and decentralised parts on the *Land*, regional or local level. Depending on the distribution of competencies within a party's system this can also mean that the same party levies different membership fees in different regions.¹⁴ Sometimes, party membership includes the obligation to pay different amounts to different parts or sub-organisations of a party.¹⁵

It has to be kept in mind that membership fees sometimes do not constitute a pure source of private funding if they are encouraged by tax privileges for the members. This aspect will be discussed below.

2. Contributions by members of parliament: "party taxes"

Contributions by members of parliament, sometimes also called "party taxes", seem to constitute a widespread source of income for parties in European states. Members of parliament pay a certain amount of their diet as a parliamentarian to the party which they represent. Arrangements of this sort are frequently laid down in the parties' statutes and provide for voluntary¹⁶ or mandatory¹⁷ payments by members of parliament.¹⁸ Sometimes, the concept of "party taxes" is not confined to members of parliament but also applies to high ranking civil servants or judges who owe their position to a certain party.¹⁹

As far as can be seen there are no provisions in the states examined here which prohibit such arrangements. In the Russian Federation, there is even a law excluding parliamentarians from the restrictions imposed in this respect by virtue of the law on civil servants.²⁰

It may be discussed whether this type of source is private or rather a disguised form of public funding at least if the contribution is mandatory for members of parliament of a certain party. This is all the more so, if "party taxes" constitute a widespread practice and therefore will be taken into account by most parliamentarians when fixing their own diets.

¹³ Drysch, *ibid.*, 77.

¹⁴ For instance, the Austrian Österreichische Volkspartei (ÖVP) is organised in *Land* organisations which levy fees on the *Land* level varying from one *Land* to the other, cf. Drysch, *ibid.*, 72 et seq.

¹⁵ For instance, the French PS (Parti socialiste) claims fees for the section (which may be a regional or a professional sub-organisation of the party, cf. Art. 3.1. of the statute of the PS) and one for the central party organisation (Art. 2.5. of the statute).

¹⁶ Cf. for instance, the Statute of the Partito Democratico della Sinistra (Italy).

¹⁷ This is reported, for instance, from Austria and Switzerland, cf. Drysch (note 9), 89, 91.

¹⁸ Numbers on the situation in Belgium are given in the DOC 500671/002 (Chambre) 2-447/2 (Sénat).

¹⁹ This is reported from Switzerland, cf. Drysch (note 9), 91.

²⁰ Cf. Art. 11 (1) no.12 Law on Civil Servants of 31.7.1995 and the 1999 amendment (Russian Federation).

Moreover, this practice is problematic in a very fundamental respect as can be demonstrated by the critical discussion in Germany. It may be open to doubt whether this form of financing is compatible with the idea of a free mandate (Art. 38 I 2 of the Basic Law). Moreover, it may be asked whether it violates Art. 48 III 1 of the Basic Law which shall serve to secure the independence of the deputies through the payment of an adequate sum of money.²¹ If parliamentarians are paying a significant amount of money to their party only two conclusions are possible: either their independence is endangered or the amount of money paid to them is significantly higher than necessary. A prohibition of such practices is enshrined in the Law on Members of Parliament in Lower Saxony which expressly provides that parliamentarians may not give any donations with a view to their mandate.²²

3. Profits of Party-Owned Companies

Since classical forms of party-owned business – in particular, publishers, newspapers and maybe cinemas – are usually no longer profitable areas, political parties may be tempted to venture into other areas which are more economically attractive. In Austria, for instance, political parties have developed commercial activities in areas such as marketing, shopping centres, and house construction through companies owned or shared by them.²³

Such practices have given rise to suspicions of corruption: it is evident that certain economic activities such as house construction may very well profit from favourable political decisions. Therefore, it is clear that economic activities which have nothing to do with the parties' general function of transmitting the people's will into the (parliamentary) political debate are highly problematic.

However, legal restrictions on commercial activities of political parties are rare. The most far-reaching provision countering any tendency to earn money from commercial enterprises has been applied for a short period in the Czech Republic where political parties were neither allowed to become commercially active under their name nor are allowed to participate in a legal entity even if the commercial activities pertain to the classical fields such as publishing.²⁴ However, the law has been amended again and now allows for commercial activities in limited fields such as publishing, culture, or the production of promotion objects.²⁵ In the Russian Federation, commercial activities of parties are only admissible in as far as they are covered by the object and purpose of the party.²⁶ This could be read as

²¹ Parteienfinanzierungskommission 1993, BT-Drs. 12/4425, 30. Cf. also H.H. von Arnim, *Die Partei, der Abgeordnete und das Geld*, 1996, 315 et seq.

²² Section 27 (2) Niedersächsisches Abgeordnetengesetz: "Abgeordnete dürfen niemandem Zuwendungen mit Rücksicht auf ihr Mandat machen."

²³ Drysch (note 9), 94 et seq.

²⁴ Art. 17 Law on Political Parties, amendment Law No. 117/1994 Coll (Czech Republic).

²⁵ Art. 17 Law on Political Parties, amendment Law No. 322/1996 Coll (Czech Republic).

²⁶ Art. 117 no. 1 (2) Civil Law 1994, Art. 37 (1) Federal Law on Societal Associations of 19.5.1995 (in the version of 18.7.1998) (Russian Federation). In the absence of a law on political parties the latter law is applied.

to exclude any activities not directly serving the transmission of opinions into political and parliamentary debate.

III. Private Sources from outside the Party: Donations

Donations have become a very important source of income for political parties in most European countries. One advantage of this source of income from the viewpoint of parties is that it allows for a certain flexibility: In contrast to public funding or membership fees which are more or less fixed or depending on the performance of a party in elections the money obtained through donations seems to be more open to a party's own endeavours in the financial field, in particular, by way of fundraising. This, however, is exactly the point giving rise to significant public concern and distrust in relation to party financing. For instance, granting access to political leaders in fundraising dinners raises suspicions that political influence can be bought. And, the more money a party manages to raise from private donors the more it will become dependent on them.

Whereas a number of countries (for instance, Austria, Switzerland, the Netherlands, the Czech Republic, Denmark and currently also the United Kingdom) apparently do not impose any limitations, others try to limit the possibility of improper influence through certain restrictions. There are two basic approaches in which some of these concerns are addressed apart from external control and transparency efforts which will be discussed later on in the report. One is to impose restrictions on the amount of donations. The other is to impose certain conditions on the qualification of donors or donations.

1. Maximum Threshold

Maximum thresholds have been adopted in France (50.000 FF per year and donor²⁷ and 30.000 FF for election campaigns²⁸), Belgium (20.000 BEF per year and donor to the same party and an aggregate of 80.000 BEF to all parties) and Spain (10.000.000 PTS per year and donor).²⁹

2. Further Qualification of Donors or Donations

a) Permissible or impermissible donors or donations

A good example of detailed regulation on the qualification of donors is the new Political Parties, Elections and Referendums Bill in the United Kingdom which is currently (as of July 2000) pending before the House of Lords and tries to settle

²⁷ Art. 11-4 loi n° 88-227 du 11 mars 1988 relative à la transparence financière de la vie politique (France).

²⁸ Art. 52-8 Code électoral (France).

²⁹ Section 4 (3) LOFPP (Spain).

the presently almost completely unrestrained legal situation of party financing. The new bill shall restrict the acceptance of donations to those coming from “permissible donors” and where the identity of the donors is known.³⁰ “Permissible donors” include individuals registered in an electoral register in the United Kingdom; companies registered in the United Kingdom or elsewhere in the EU if carrying out business in the United Kingdom; registered political parties; trade unions; registered friendly societies; and unincorporated associations carrying out business or other activities and having its main office in the United Kingdom.³¹ Foreign funding is thereby prohibited.³² If a party receives a donation not fulfilling the mentioned requirements it will be obliged under the new Act to return the donation if possible or send it to the Electoral Commission.³³

In contrast to this positive list of permissible donors the German Law on Political Parties chooses a negative approach by enlisting the “impermissible” donors: political foundations and parliamentary groups; corporate bodies or associations which are exclusively and directly created and working for non-profit, charitable or church purposes; and anonymous donors in cases where the donation exceeds DM 1.000 or “fake” donors who are obviously merely passing on the donations of third parties not named. Moreover donations of more than DM 1.000 are qualified as impermissible if they come from outside German jurisdiction unless they stem directly from the assets of a German as defined by the Basic Law (see Art. 116 (1) and (2) of the Basic Law), a citizen of the European Union, or of a business enterprise whose shares are owned to more than 50% by Germans as defined by the Basic Law. Donations to parties of national minorities, by that political party’s parliamentary group in the European Parliament or by a foreign member of the European Parliament are exempt from the prohibition of foreign donations. Finally, donations from professional organisations which had obtained the money with the *proviso* to pass it on to a political party or such donations which are clearly made in the expectation of some specific economic or political advantage are forbidden.³⁴ If a donation is inadmissible, it has to be passed on immediately to the presidency of the German Bundestag.³⁵

b) Donations from abroad

Provisions limiting the possibility of donations from abroad have also been adopted by other states. For instance, in France, any contributions from abroad

³⁰ Section 49 (1) of the Political Parties, Elections and Referendums Bill (pending in the House of Lords as of 10 July 2000) (United Kingdom).

³¹ Section 49 (2) Political Parties, Elections and Referendums Bill (United Kingdom).

³² Exception: Section 50, subsections (3) and (4) Political Parties, Elections and Referendums Bill (concerning the financing of expenses for an overseas visit by a party official) (United Kingdom).

³³ Section 52 (1) Political Parties, Elections and Referendums Bill (United Kingdom).

³⁴ Section 25 (1) Law on Political Parties (Parteiengesetz) (Germany).

³⁵ Section 25 (3) Law on Political Parties (Parteiengesetz) (Germany).

are impermissible.³⁶ In Spain, donations to political parties by other states or other public foreign organs are forbidden, with the exception of subsidies given by the European Parliament.³⁷ Similarly, donations for elections by foreign individuals, institutions or states are forbidden with the exception of subsidies given by the European Community for the elections to the European Parliament.³⁸ The Basque Country has a special regulation prohibiting donations from foreign persons or entities or from persons who do not reside in the Basque Autonomous Community.³⁹

c) The danger of improper influence through powerful groups

With a view to the danger of improper political influence on the part of financially powerful donors a situation in which donations do not go directly to the party but via associations which bundle a big number and high volume of donations is highly problematic. This has been reported from Austria where donations usually seem to be made through associations such as the "Vereinigung Österreichischer Industrieller" or trade unions.⁴⁰ The danger of increasing improper influence on the part of an association which pools donations with the aim to pass them on to a political party seems to be exactly the ratio underpinning the German prohibition of such procedure on the part of professional associations which has been outlined above. In contrast, trade unions and employers associations in Denmark are allowed to give money collected from their members to political parties; however, they must provide for the possibility that any member may opt out of the scheme.⁴¹

A particular interest in influencing political parties may arise on the part of enterprises, for instance, if they are competing for contracts with the State.

An interesting provision is likely to be applied in this respect in the UK after the future adoption of the Political Parties, Elections and Referendums Bill with regard to donations stemming from companies: Such donations are prohibited unless approved in advance by the company in a general meeting. Therefore, the action to be taken by directors or managers in this respect will be made subject to approval on a broader base depending, of course, on the statutes of the company in question. In case of a violation of this provision, the company must have a statutory right to recover the amount of the donation or expenditure jointly and collectively from the directors of the company.⁴²

³⁶ Art. 11–4 (5) Loi n° 88–227 du 11 mars 1988 relative à la transparence financière de la vie politique; Art. 52–8 (4) Code électoral (France).

³⁷ Art. 5 LOFPP (Spain).

³⁸ Art. 128 Ley Orgánica 5/1985 del Régimen Electoral General (LOREG) (Spain).

³⁹ Article 145 of the Electoral Law of the Basque Country.

⁴⁰ Drysch (note 9), 77.

⁴¹ Section 1, 2 Law on private donations to political parties, Lov 1990–06–30 nr. 404 (Denmark).

⁴² Section 132 and Schedule 18 Political Parties, Elections and Referendums Bill (United Kingdom).

In Italy also, public enterprises, companies with more than 20 % shares controlled by the State and institutions of public administration are not permitted as donors to parties.⁴³ This rule, however, seems to aim at avoiding a concealed form of public funding which would open wide ranging opportunities for exerting influence on the part of the executive. All other companies may only give donations legally if the decision for the donation has been made by the responsible organ of the company and is clearly set out in the company's annual balance.

A provision limiting the possible temptations arising from competition for public contracts has been adopted in Spain where donations made by public enterprises or by private ones which are contracting with the State have been forbidden.⁴⁴ The most far-reaching provisions in this respect apply in France⁴⁵ and Belgium⁴⁶ where only natural persons are permissible donors while legal entities and therefore most companies are excluded.

d) Anonymous donations

In general, it seems sensible to adopt provisions against anonymous donations while keeping the administrative burden proportionate by excluding low value donations from the parties' obligation to refuse anonymous donations as it is done in Germany and also foreseen in the new law project in Britain. More complicated provisions have been adopted in Spain. Anonymous donations shall not exceed 5 % of the amount awarded to the party in the General Budget of the State. This implies that a party with no awarded amount (for example parties without representation in the Cortes Generales) may not receive any anonymous donations.⁴⁷ These provisions give rise to criticism. First of all, the 5 % threshold may allow for a substantial contribution from anonymous donors which may run contrary to the aim of transparency. Moreover, the differentiation between parties with public funding and those with private donations is less than convincing and may even be considered to run contrary to the equality of chances for political parties.

e) Donations for election campaigns

Particular provisions may apply to donations for election campaigns. For example, in France, there are special requirements on calls for donations which may only contain the technical information necessary for the transfer of money.⁴⁸

Detailed regulations in this field have also been adopted in the Russian Federation, however, without being integrated in a general concept of regulating party

⁴³ La Legge No. 195 of 2 Maggio 1974 (Italy).

⁴⁴ Section 4 (3) LOFFP (Spain).

⁴⁵ Art. 11-4 Loi relative à la transparence financière de la vie politique (France).

⁴⁶ Art. 7 Loi du 19 novembre 1998 (M.B. 10 Décembre 1998, p. 39435); this article changes art. 16 bis. of loi du 4 juillet 1989 (M.B. 4-08-2000) (Belgium).

⁴⁷ Art. 4 (3) LOFFP (Spain).

⁴⁸ Art. 52-8 Code électoral (France).

financing which is still lacking. By virtue of the rules on the financing of election campaigns, banning donations on the part of public institutions and legal persons with more than 30 % of public shareholders inhibits concealed public funding. In addition to that, anonymous donations and donations from charitable organisations are prohibited. With a view to impeding influence from abroad not only donations by foreigners or stateless persons are excluded but also by a Russian legal person if more than 30 % of its capital is controlled by foreigners. Moreover, donations by international organisations or movements are excluded.⁴⁹

An interesting provision concerns donations by legal persons which may only be accepted if the donor has been registered at least a year before the date of the election. Thereby, the concealment of a donation's true source by way of founding companies for solely this purpose is made more difficult.

IV. State Funding

1. Direct Funding

a) Of the parties as such

Whereas in some countries direct public funding has become the main source of income for political parties other states still completely reject the concept. In particular, Switzerland and the United Kingdom (with the exception of Northern Ireland)⁵⁰ do not provide any subsidies to political parties. In the United Kingdom, the possibility of introducing some form of public funding has been intensively discussed with a view to the elaboration of the new Political Parties, Elections and Referendums Bill, but was finally rejected apart from setting aside a modest sum of 2 million £ a year for so-called policy development grants in order to allow parties the financing of policy research.⁵¹ One argument forwarded against public funding was that the taxpayer should not be forced to support parties financially which he or she does not approve politically. Moreover, it was said that public funding would contribute to ossify the present party system by making it harder for new parties to establish themselves. Public funding was also regarded as increasing the distance between the political elite and the citizen who is to be represented.⁵²

After a number of corruption scandals the Italian people had clearly expressed its will (by 90.1 % in the respective referendum)⁵³ to completely abolish public

⁴⁹ Art. 62 (6) Election law (Russian Federation).

⁵⁰ Special provisions have been adopted with a view to Northern Ireland where the Northern Ireland Assembly Commission may make payments to political parties for the purpose of assisting members of the Assembly to perform their duties. Cf. Financial Assistance for Political Parties Act (Northern Ireland) 2000.

⁵¹ Section 11 Political Parties, Elections and Referendums Bill (United Kingdom).

⁵² Cf. Fifth Report of the Committee on Standards in Public Life, The Funding of Political Parties in the United Kingdom, 91 et seq. (paras. 7.19 – 7.23).

⁵³ T.E. Frosini, Finanziamento dei partiti e corruzione: brevi note sul caso italiano, in: P. Ridola, Finanziamento della politica ed egualianza delle chances, Nomos 4, 1999, 77 et seq., 82.

funding for political parties. Despite this clear vote the Italian legislature introduced a “voluntary” contribution which allowed the tax payer to devote some 4/1000 of his income tax to political parties.⁵⁴ Since a sum was specified in the general budget in advance it can hardly be said that the system was truly “voluntary”.⁵⁵ After disputes about the possibility of adopting such a system after the referendum⁵⁶ a subsequent law expressly reintroduced public funding of political parties, however, restricted to financing of election campaigns (see below).⁵⁷

On the other hand, there are also good arguments in favour of State funding which have motivated the majority of states to devise a scheme of public expenditure in favour of political parties. In particular, a substantial funding on the part of the State can guarantee equality of chances for political parties and sufficient independence from private donors.

Two variations of public funding are applied in practice which are often combined with one another: a certain lump sum on the one hand and a specific amount paid per each vote obtained in elections on the other hand. Details of the regulations adopted are often highly sophisticated and complex.

A lump sum (*Sockelbetrag*) is not necessarily granted in complete independence from electoral success or failure. Sometimes, it is conditional to a certain threshold of electoral success: for instance, in Austria, all parties with at least 5 members of parliament receive a lump sum.⁵⁸ In Belgium, political parties only qualify for a lump sum if they are represented in both houses of parliament.⁵⁹ Similarly, parties in the Netherlands only receive subsidies if at least one candidate has been elected into one of the two chambers of parliament; moreover, a party must have more than 1000 members paying a minimum fee of 25 Dfl in order to qualify for public funding.⁶⁰

A slightly modified approach is applied in the Czech Republic where parties receive a lump sum which is variable according to the percentage of votes obtained in general elections: lump sums are only paid if a minimum of 3 % of votes was obtained and are increased for every 0.1 % of votes between 3 and 5 % of votes

⁵⁴ Art. 1 Legge 2/1997 (Italy). Cf. F. Lanchester, *Das Gesetz zur freiwilligen Finanzierung von Parteien und politischen Bewegungen in Italien*, *Jahrbuch des öffentlichen Rechts* 46, 1998, 475 et seq., 479.

⁵⁵ Cf. G. Troccoli, *La Legge 2 Gennaio 1997, No. 2 ed il finanziamento dei partiti*, *Rassegna Parlamentare* 39, 1997, 615 et seq., 644 et seq.

⁵⁶ A law was introduced setting out a sum of 110 Billion Lira for public funding of political parties (Legge 146/1998 [Disposizioni per la semplificazione e la razionalizzazione del sistema tributario e per il funzionamento dell'Amministrazione finanziaria, nonché disposizioni varie di carattere finanziario]), refused by the President of the Republic but adopted in the same form again. *Frosini* (note 53), 84.

⁵⁷ Legge 157/1999, *Nuove norme in materia di rimborso delle spese per consultazioni elettorali e referendarie e abrogazione delle disposizioni concernenti la contribuzione volontaria ai movimenti e partiti politici* (Italy).

⁵⁸ Section 2 (2) (a) *Law on Political Parties (Parteiengesetz)*: 3 million ÖS (Austria).

⁵⁹ Art. 15, 16 *Loi de 04-07-1989, M.B. 20-07-1989* (Belgium).

⁶⁰ Art. 2 *Wet van 17 mei 1999, houdende regeling van de subsidiering van politieke partijen*, *Stb.* 1999, 257 (Netherlands).

obtained. If more than 5% were obtained the lump sum remains at the same level.⁶¹

In other cases, a party can only qualify for this kind of funding if it has demonstrated a broad support among citizens: in France, the payment of the lump sum is dependent on two requirements: first of all, the party in question must not have qualified for public funding based on the results achieved in elections; moreover, it must have obtained donations from a substantial number of supporters (10.000 natural persons as donors from an overall of at least 30 *Départements* having given at least 1 million FF to the party).⁶²

Whereas generally speaking a system providing for a lump sum is favourable for smaller parties which receive relatively more than in a system with an exclusive "success" approach it must not be overlooked that it sometimes may provide opportunities for manipulation by the bigger parties. This was to be observed in Austria where the lump sum first was pushed up from 4 million AS in 1975 to 14 million AS in 1985 and then reduced to 3 million AS in 1987 when the Green Party entered parliament with 8 deputies.⁶³ This experience shows the necessity for the possibility of a neutral review with a view to guaranteeing the equality of chances.

Of course, certain privileges for smaller parties can also be accommodated in systems linking public funding exclusively to the success in elections. A viable solution in this respect has been adopted in Germany where parties receive a higher sum (DM 1.30) for the first 5 Million votes obtained in federal, European and *Land* elections than for the rest of the votes (DM 1).⁶⁴

The "success" approach further differentiates between funding according to votes (for instance, Belgium⁶⁵ or Denmark⁶⁶) or parliamentary seats (for instance, the Netherlands)⁶⁷. The Czech Republic⁶⁸ and France⁶⁹ apply a system in which a specific sum is devised both for votes and parliamentary seats. In the French

⁶¹ Art. 20 (4), (6) Law on Political Parties and Political Movements, No.118/1994 Coll. (Czech Republic).

⁶² Art. 9-1 (1) Loi relative à la transparence financière de la vie politique (France).

⁶³ Drysch (note 9), 98f.

⁶⁴ Section 18 (3) Law on Political Parties (Parteiengesetz) (Germany).

⁶⁵ See art. 15 de la loi de 04-07-1989, M.B. 20-07-1989 (Belgium). The amount is for each party represented in both houses of Parliament 50 BEF for each vote obtained during the last elections for the Senate and the House of Representatives (Art. 16).

⁶⁶ Cf. Section 2 (1) Law on the financing of political parties (Denmark). Each party which has taken part in the most recent elections to the Folketing is entitled to receive public funding. For the year 2000 the sum was 21.75 Dkr (about DM 5.50) per vote, cf. information on the homepage, <http://www.danmark.dk>, visited on 5 July 2000 ("offentlig partistøtte").

⁶⁷ 24,575 guilders for each "Kamer" chair, Art. 6 Wet van 17 mei 1999, houdende regeling van de subsidiering van politieke partijen, Stb. 1999, 257 (recently increased, Staatsblad 475 of 6 October 99) (Netherlands).

⁶⁸ Art. 20 (5), (7) and (8) of the amended Law on Political Parties and Political Movements, Nr.118/1994 Coll. (Czech Republic); Art. 85, Law on Election to the Parliament of the Czech Republic Nr.247/1995 with amendments, Coll. Nr.65 of 30 October 1995, pos. 247.

⁶⁹ Art. 9-1 and 9-3 to 5 Loi relative à la transparence financière de la vie politique (France).

model, financing according to votes obtained is only possible if candidates have been presented in at least 50 constituencies or if the party qualifies for a lump sum. Regarding the funding according to the seats obtained all deputies have to declare their affiliation at a specific time; money is distributed to the parties according to this declaration of affiliation. Alternatively, the sum accorded to one party can be defined as proportionate of the overall sum reserved for public funding of political parties (Austria). Moreover, the sum transferred to a political party may be diminished by the amount of subsidies accorded but not used by the party in the foregoing year.⁷⁰

A specific form of public funding which is complementary to the funding linked to the success in elections is applied in Germany: political parties also receive DM 0.50 public subsidies for every 1 DM of membership fee collected or private donation obtained. In order to favour smaller donors, only up to DM 6,000 per person will be taken into account. Moreover, provision is made that a splintering up of the party system into very small groups is not supported by public funding through conditionality of funding on a minimum success in elections: at least 0.5 % of votes must have been obtained in federal or European elections, 1.0 % in *Land* elections; in the absence of a list, at least 10 % in the constituency.⁷¹ In contrast to that, a requirement of a minimum success of at least 1000 votes in a general election even in a small country as Denmark does not seem to constitute a sufficient threshold for countering the splintering of the system into mini-parties.⁷²

A maximum of public funding has been imposed in Germany: Since the new law adopted in 1994 has entered into force both a relative (public funding must not exceed the sum of other funding)⁷³ and absolute (230 Million DM per year – increased in 1998 to 245 million DM)⁷⁴ maximum of public funding applies.

Sometimes aims other than merely supporting the parties as the central elements of a political system may be fostered by way of party financing. This can be seen in France where public funding of political parties has been made a tool in encouraging the representation of women on party lists. The law on the women's access to political mandates prescribes that 50 % of candidates on a list must be women. A non-observance of this provision is sanctioned by a reduction of public funding in ratio to the actual percentage of women on the list.⁷⁵

⁷⁰ A.B. Pade, in: Karnovs lovsamling, Karnov 1998, Vol. 1, 1998, 64 et seq., Commentary of the Law on Financing of Political Parties, Fn. 7.

⁷¹ Section 18 (3), (4) Law on Political Parties (Parteiengesetz) (Germany).

⁷² Cf. Section 2 (2) and (3) Law on the financing of political parties (Denmark).

⁷³ Section 18 (5) Law on Political Parties (Parteiengesetz) (Germany).

⁷⁴ Section 18 (2) Law on Political Parties (Parteiengesetz) (Germany).

⁷⁵ Loi n° 2000-493 du 6 juin 2000 tendant à favoriser l'égal accès des femmes et des hommes aux mandats électoraux et fonctions électives (1); Art. 9-1 Code électoral; this provision has been declared constitutional by the Conseil constitutionnel, decision of 6 July 2000 (No 2000-431 DC) (France).

b) Of parliamentary work

Funding of parliamentary work of factions and groups exists in a number of countries⁷⁶ and sometimes is also divided into a lump sum and a sum paid per seat (Denmark).⁷⁷ Although means granted under this heading will usually not go to the parties' accounts, they concern political activities which cannot easily be separated from activities carried out by the party as such. Since the parliamentary work constitutes one of the most visible political activities of a party it seems appropriate to regard the funding of parliamentary work as a source of financing political parties as well.

Particular provisions apply in the United Kingdom where only parliamentary work of opposition parties is financed through specific funding (so called "Short money" in the House of Commons, "Cranborne money" in the House of Lords). The purpose of this money is to assist opposition parties in carrying out their parliamentary duties, in particular that of holding the government of the day to account. The money is used to provide research assistance for Front Bench spokesmen, assistance in the Opposition Whips' office and office staff for the Leader of the Opposition.⁷⁸

c) Of other specific activities

Funding of specific activities of political parties other than those in direct connection with election or referendum campaigns can pertain to, for instance, specific funds supporting the print media run by parties (Austria);⁷⁹ radio and television broadcasting by financial support and/or the division of broadcasting time

⁷⁶ The amounts awarded in Belgium are published in DOC 500671/001 (Chambre) 2-447/1 (Sénat). In Spain, Art. 34 of the Internal Regulation of the Senate as well as Art. 28 of the Internal Regulation of Congress provide for the awarding of subsidies to these parliamentary groups. This is done by giving the parliamentary groups two different subsidies, one according to the number of members of the group and the other being a fixed rate equal for all groups. All autonomous communities have regulations regarding subsidies to parliamentary groups. This is also true in the case of city and provincial parliaments. Most of the regulations of the autonomous communities are similar to the ones for Congress and the Senate. Only the regulations of Castilla-La Mancha state the absolute amount to be distributed. Andalucía, Aragón, Baleares, Navarra, Asturias, La Rioja and Valencia provide additional means for a special financial treatment of mixed parliamentary groups.

⁷⁷ Section 3 Law on the financing of political parties (Lov 1995-08-21 nr 704) (Denmark). Cf. also H. Zahle, *Institutioner og regulering*, Dansk forfatningsret 1, 2nd ed. 1995, 154. Lump sum for each group or faction: 203,000 Dkr per month (about 50,000 DM); per mandate: 32,000 Dkr per month (about 8,000 DM). *Folketingstidende 1996-97, årbog og registre*, 6. Partier. C. Tilsbud til folketingsgrupperne m.m., 50 et seq.

⁷⁸ The sums available have recently been increased, cf. *The Funding of Political Parties in the United Kingdom*, The Government's proposals for legislation in response to the Fifth Report of the Committee on Standards in Public Life, Presented to Parliament by the Secretary of State for the Home Department by Command of Her Majesty, July 1999, 6.6 et seq.

⁷⁹ Drysch (note 9), 104.

(Belgium,⁸⁰ the Netherlands⁸¹); political scientific institutes (Netherlands)⁸²; or political youth organisations (Netherlands)⁸³. The majority of states examined here do not provide for any subsidies in this field at all.⁸⁴

2. Financing of Election Campaigns

a) Approaches in general

In addition to those means granted according to the electoral success on a yearly basis, additional subsidies are often accorded especially for election campaigns. The amount granted to each party usually varies depending on the success in the elections. As far as there is a reimbursement of election expenditure either a certain sum is set out for an entire election which is distributed proportionally (for instance, in Austria⁸⁵) or a specified sum is reimbursed for each vote obtained. An exceptional system is applied in France where a lump sum of half the maximum expenditure defined by law is reimbursed from public sources, limited, however, by the amount of actual expenditures.⁸⁶

In those countries such as the United Kingdom or Switzerland⁸⁷ (with the exception of certain cantons) which are generally sceptical vis-à-vis public funding of political parties, election campaigns are hardly supported with public means. In the United Kingdom, there are only provisions granting free postage for promotion material in parliamentary and European elections and free meeting rooms for parliamentary, European and local elections.

⁸⁰ The Flemish government has divided 72 million BEF for television broadcasting of political parties (28 janvier 2000, Arrêté du Gouvernement flamant fixand la subvention pour l'année budgétaire 2000 en faveur des associations philosophiques et politiques agréées pour assurer des programmes de télévision, M.B. 2000-02-23) as well as a certain amount of time (28 janvier 2000, Arrêté du Gouvernement flamant fixand le temps d'émission attribué pour l'année civile 2000 aux associations philosophiques et politiques agréées pour assurer des programmes de télévision, M.B. 23-02-2000). For the French speaking part, see loi du 16 juillet 1973 garantissant la protection des tendances idéologiques et philosophiques, dite la loi du Pacte Culturel, M.B. 16-10-1973 (Belgium).

⁸¹ The State finances media time for political parties. The Commission for the media reserves time for political parties on public television if they obtained one chair in one of the chambers (cf. Mediawet, Art.39g, Stb. 1994, 386 geweizigd door art. 19 Wet subsidiering politieke partijen) (Netherlands).

⁸² On the basis of a subsidy agreement with a scientific institute. The amount granted depends on the number of parliamentary seats. Art. 3, 6 Wet van 17 mei 1999, houdende regeling van de subsidiering van politieke partijen, Stb. 1999, 257 (Netherlands).

⁸³ Art. 3 Wet van 17 mei 1999, houdende regeling van de subsidiering van politieke partijen, Stb. 1999, 257 (Netherlands).

⁸⁴ Cf. for instance, with a view to the (fruitless) discussions in Italy, Troccoli (note 55), 663 et seq.

⁸⁵ 20 öS per person entitled to vote are designated as an overall sum which is then distributed proportionally according to percentage of votes obtained, §2a Law on Political Parties (Austria). Cf. also Drysch (note 9), 102.

⁸⁶ Art. 52-11-1 Code électoral (France).

⁸⁷ In Switzerland, there is not even a reserved and free time on television for broadcasting, cf. Drysch (note 9), 118.

In Italy, reimbursement of election expenditure for general, European and regional elections as well as referenda has become the only source of public funding.⁸⁸ An application has to be submitted within 10 days after the expiry of the deadline for submitting a list of candidates. A specific fund is created for each of the bodies consisting of 4,000 Lire for each person entitled to participate in an election (reduced sum of 3,600 for European elections). The payment of the sum is stretched over the entire legislative period: parties receive 40 % of the sum in the first year and 15 % in each of the following four years. The money will be distributed according to the proportional distribution of seats in the respective body subject to a certain minimum success in elections (see below). A different system is applied for the distribution of the fund for elections to the senate which is distributed regionally. Sub-funds are created for each region according to the number of inhabitants where the subsidies are distributed proportionally to the results achieved by the parties again subject to a minimum of success.

In Spain, the State covers all declared electoral costs of political parties, federations, coalitions of groups of voters (in national and municipal elections, as well as for the European Parliament). This declaration of costs is supervised by the Tribunal de Cuentas, which also defines the permitted amount for each party. In case of two or more concurrent elections, the political parties and/or groups shall receive an additional amount of 25 % of the costs of the elections for the Cortes Generales.

The general elections subsidy is calculated taking into account both the amount of seats obtained in the representative body and the amount of votes. For example, the amount of general public funding for the national elections is two million pesetas per seat obtained in Congress or Senate and 75 pesetas per vote obtained for Congress or 30 pesetas for vote obtained for the Senate, with the condition that at least one candidate of the political group got a seat.

The maximum sum of public funding of an election campaign at national level in Spain is 40 pesetas per citizen entitled to vote in an electoral district.⁸⁹ In the municipal level the factor is 12 pesetas and for the elections to the European Parliament 20 pesetas.⁹⁰

In addition to this funding in accordance with election success, Spanish law also contains detailed provisions on the financing of promotion during election campaigns. There are special tariffs for the usage of the public mail system by parties and other political groups during elections⁹¹ which is combined with a public reimbursement of mailing costs of 20 pesetas per voting citizen in the electoral district in question,⁹² on condition is that the party is represented in one of the chambers of parliament. Moreover, political parties, coalitions, federations or groups of voters are accorded free broadcasting time for electoral publicity in

⁸⁸ Legge 157/1999 (Italy).

⁸⁹ Art. 175 (2) LOREG (Spain).

⁹⁰ Art. 193 (2) and 227 (2) LOREG (Spain).

⁹¹ Article 59 LOREG (Spain).

⁹² Art. 175 (3) LOREG (Spain).

public radio and television. The time accorded by an electoral board varies depending on the number of votes received by the party in the electoral area in question or of the Congress of Deputies if the election is national.⁹³ The electoral board shall also allot time in private television broadcasting, which work with concession from the State, under the same terms.⁹⁴ Moreover, public funding is provided for putting up posters and distributing other propaganda through the press as well as private radio stations. Sums provided, however, do not exceed a specified percentage (25 % for posters etc.⁹⁵ and 20 % for press and private radio⁹⁶) of the maximum sum of public funding.

A particular approach has been adopted in the Russian Federation. The law on elections provides that each political group shall establish a fund for election purposes as the sole immediate source of financing election campaigns.⁹⁷ The means deposited in this fund shall be kept in a separate account; they shall only consist of the political group's own resources up to a maximum of 100,000 minimum wages, means accorded by the central election commission and donations by natural (150 minimum wages maximum per donor) or legal persons (20,000 minimum wages maximum per donor).⁹⁸ Moreover, candidates can be freed from working obligations and receive some 10 minimum wages from the electoral commission.⁹⁹

b) Maximum limitations on spending

Sometimes there are strict impositions on how much a party is allowed to spend during an election campaign.¹⁰⁰ In the United Kingdom, while there is little regulation of party income and almost no public funding on the one hand, limitations

⁹³ Arts. 60 to 67 of the LOREG. Regarding municipal elections cf. Ley Orgánica 14/1995 de Publicidad Electoral en Emisoras de Televisión Local por Ondas Terrestres and Ley Orgánica 10/1991 de Publicidad Electoral en Emisoras Municipales de Radiodifusión Sonora (Spain).

⁹⁴ Ley Orgánica 2/1988 Reguladora de la Publicidad Electoral en Emisoras de Televisión Privada (Spain).

⁹⁵ Art. 55 LOREG (Spain).

⁹⁶ Art. 58 LOREG (Spain).

⁹⁷ Cf. Art. 62, 63 Law on elections (Russian Federation).

⁹⁸ Art. 62 (4) Law on elections (Russian Federation). In the elections to the Duma 1999 the maximum of own resources of the parties were fixed at 16,698,000 Rubel (according to the exchange rate of 2.8.1999 – 1,263,086 DM), donations by natural persons at 25,047 Rubel (1,895 DM) and juristic persons at 3,339,600 Rubel (252,617 DM). An overall limit of campaign expenditure was fixed at 41,475,000 Rubel (3,137,291 DM). However, public means transferred to political groups for election purposes were not more than 220,000 Rubel (16,641 DM) which demonstrates the limited significance of public funding in this system.

⁹⁹ Art. 48 (1) Law on elections (Russian Federation).

¹⁰⁰ The limitation of expenditures must be compatible with the freedom of expression as protected under Art. 10 of the European Convention of Human Rights, in particular with a view to being necessary in a democratic society⁷. This was highlighted by the European Court of Human Rights in the case *Bowman v. the United Kingdom*, judgment of 19 February 1998, para. 41 et seq. The case concerned, however, the limitation of 5 British £ imposed by law on expenses incurred by a person who was not running for election but had presented the candidates' views (in this case on abortion) by distributing a high number of leaflets. The Court found a violation of Art. 10 by fourteen votes to six.

are imposed on possible campaign and election expenditure in order to avoid parties' "buying" votes through huge election budgets: a maximum of 30,000 £ in each contested constituency applies in a general election (a party contesting in each constituency of Great Britain may therefore incur expenditures of 19,230,000 £).¹⁰¹

Election campaign expenditure is also limited in Belgium where maximum sums have been set off for spending by one political party (40,000,000 BEF) and by particular candidates. Also in France, a maximum sum is fixed depending on the number of inhabitants in a constituency. In national elections, a lump sum of maximum expenditure of 250,000 FF is set per candidate which is increased by 1 FF per inhabitant of the constituency.¹⁰² In the Russian Federation, campaign expenditure for each election association is limited to 250,000 minimum wages.¹⁰³

c) Minimum level of electoral success as a condition for public funding

If there is any public funding it should guarantee equal chances for all political parties. It may give rise to criticism if funding is conditional on quite significant levels of success in elections, as for instance in the Swiss cantons of Fribourg and Genève (5 % of votes in proportional elections, 20 % in case of majority voting).¹⁰⁴ Similarly, in Italy, parties will only receive funding if they either have obtained 4 % of the votes or one of their candidates won a direct mandate and the party achieved at least 1 % of the votes. In this context, candidates will have to declare their affiliation with a certain party or political movement for the purpose of devising public money according to the electoral success.¹⁰⁵ Minimum requirements in elections for the Senate are 5 % of valid votes or one direct mandate.¹⁰⁶ Parties and lists of linguistic minorities are exempt from these requirements.¹⁰⁷

Also the threshold of 3 % imposed in the Czech Republic constitutes a significant hurdle for smaller parties.¹⁰⁸ In contrast, 5 % of votes obtained by a candidate in a constituency as a threshold for qualifying for reimbursement in France seems adequate.¹⁰⁹

¹⁰¹ Section 74 and Schedule 8 Political Parties, Elections and Referendums Bill (United Kingdom).

¹⁰² Art. 52–11 Code électoral (France).

¹⁰³ Art. 62 (5) Law on elections (Russian Federation).

¹⁰⁴ Drysch (note 9), 121.

¹⁰⁵ This has been criticised for unnecessarily limiting the political freedom of the candidates and ignoring political developments after the election: the declaration of affiliation is made for the entire legislative period irrespective of whether a deputy, for instance, changes the party. Cf. in particular Troccoli (note 55), 655 et seq.

¹⁰⁶ Those candidates not linked to a party receive their share of the fund if they were directly elected or achieved at least 15 % of the votes. Cf. Art. 6 Legge 23 Febbraio 1995, No. 43 (Italy).

¹⁰⁷ Art. 9 Legge 515/1993 (Italy).

¹⁰⁸ Art. 85 Law on Election to the Parliament of the Czech Republic No.247/1995 Coll. with amendments. Art. 17 (3) Law on Political Parties and Political Movements, No.424/1991 Coll. with amendments, generally stipulates that the parties and movements can be financially supported through financing of the election costs from the state budget.

¹⁰⁹ Art. 52–11 Code électoral (France).

If a certain minimum electoral success is not achieved by a political group in the Russian Federation (2 % of votes cast for a list or 3 % in case of majority systems), all means of public funding including compensation for free broadcasting time have to be returned to the central election commission. Also donations which have not been used have to be returned to the donors.¹¹⁰

d) Spending of public subsidies requirements for election campaigns

Specific requirements with regard to the spending of money obtained from public sources as a reimbursement of election expenditure may pertain, in particular, to the promotion of women's participation in political life. In Italy, for instance, 5 % of the means obtained must be spent in this respect; the use of the money must be expressly laid out in the annual balance report.¹¹¹

3. Tax privileges (indirect funding)

Tax privileges for donations and membership fees constitute a mixed type of funding; they encourage private financing through public means. Political parties do not benefit directly from the tax relief accorded to their members and donors but indirectly since this will increase the readiness of citizens to give money to parties.

Several countries have adopted an approach encouraging private donors and party members by offering the possibility to deduct the sum given to the party from their income for tax purposes or directly to a certain extent from their tax. For instance, in Italy private donors may deduce 19 % of a donation between 100,000 and 200,000 Lire from their tax whereas membership fees do not seem to range among privileged issues.¹¹² In France, private donors may deduce 50 % of a donation from their income.¹¹³

Special rules may apply to donations from legal persons if they are allowed at all. Italy applies differentiated provisions in this respect with a view to which companies qualify for tax privileges. In particular, only companies with their seat in Italy and without any ownership on part of the State may benefit from the full percentage of tax relief.¹¹⁴ Moreover, companies may only deduce donations from their taxes if in the year preceding the donation they indeed paid taxes.¹¹⁵

Whereas in Switzerland on the federal level and in most of the cantons there are no tax privileges, certain cantons constitute notable exceptions in this respect. In some of those cantons, privileges only apply if the donated sum is of a minimum amount or percentage of the overall income (e.g. 1 % in Basel-Land). Sometimes,

¹¹⁰ Art. 67 (4), (5), (9), (10) Law on elections (Russian Federation).

¹¹¹ Art. 4 Legge 157/1999 (Italy).

¹¹² Art. 13-*bis* (1-*bis*) and 10 et seq. Legge 917/1986 (Italy).

¹¹³ Art. 200-2 and -1 Code général des impôts (France).

¹¹⁴ Cf. Art. 91-*bis* and 87 (a) and (b) Legge 917/1986 (Italy).

¹¹⁵ Art. 7 Legge No. 2/1999 (Italy). Cf. Troccoli (note 55), 638.

donations are privileged by tax relief to a very important extent: in the canton of Schaffhausen up to 30% of the overall income can be deducted as donations to political parties.¹¹⁶

Developments in Germany demonstrate problems arising from tax privileges with a view to the equality of chances for political parties. Already in 1957, the German Bundesverfassungsgericht (Constitutional Court) ruled that the limitation of tax-privileges to political parties which are represented in federal or a *Land* parliament violated the principle of equal opportunities for political parties.¹¹⁷ The same verdict was made by the court in 1958 when it declared that a tax privilege equally accorded to all parties and donors was unconstitutional since recipients of high incomes and those parties usually attracted from these groups of voters benefited of this rule more than others.¹¹⁸ After the maximum amount of donations qualifying for tax relief had been fixed on a moderate level (600 DM for single persons) as a consequence of this judgment it took until the eighties until the legislator made another attempt to widen tax privileges. Having tripled the maximum sum for tax relief in 1980 the legislator raised the limitations on reducible tax amounts to 5% of personal income in 1984 thereby giving up the idea of an absolute threshold. This provision was combined with privileges for small donations which were made deductible to 50% from the tax-bill as in contrast to deduction from the income. Moreover, an equal opportunities compensation directly paid by the State to those parties with little income from donation was introduced. This model was largely accepted by the Bundesverfassungsgericht, with the exception of the 5% clause. The court indicated that an absolute limit of 100,000 DM would be acceptable.¹¹⁹

The new rules which entered into force 1989 provided for 60,000 DM maximum sum of reduction for single persons. In 1992, the Bundesverfassungsgericht ruled that this situation violated in several respects the principle of equal opportunities and the right of citizens to equal participation in the political process. It pointed out that the latter is only guaranteed if tax privileges remain within a sphere which can easily be used by persons with an average income;¹²⁰ this sphere was taxed at 1,200 DM for a single person per year.

Currently, a limit of DM 3,000 for single persons which can be deducted from the income¹²¹ and another DM 3,000 for single persons of which 50% can be deducted from the tax¹²² applies. Therefore, an overall maximum sum of DM 6,000 of donations may benefit from tax relief. It may be doubted whether this sum is within the limits envisaged by the Bundesverfassungsgericht in its decision of 1992.

¹¹⁶ Drysch (note 9), 84.

¹¹⁷ BVerfGE (Entscheidungen des Bundesverfassungsgerichts) 6, 273 (279 et seq.).

¹¹⁸ BVerfGE 8, 51 (63 et seq.).

¹¹⁹ BVerfGE 73, 40 (70 et seq., 85 et seq.). For criticism, see in particular the dissenting votes of judges Böckenförde and Mahrenholz.

¹²⁰ BVerfGE 85, 264 (313).

¹²¹ Section 10 b (2) Law on Income Taxes (Einkommenssteuergesetz) (Germany).

¹²² Section 34 g Law on Income Taxes (Einkommenssteuergesetz) (Germany).

In a number of other states donations and membership fees do not benefit from any tax relief scheme.¹²³ In the course of the recent efforts in the United Kingdom for reforming the system of party financing a tax relief of up to 500 £ has been recommended by the Committee on Standards in Public Life. However, this recommendation was rejected by the Government and was not included in the new bill on financing of political parties. The Government's rejection was based on the argument that, in principle, there should not be any form of state aid and that it was too expensive to warrant serious consideration in times of limited budgetary room for manoeuvre.¹²⁴

V. *Transparency, Control, Sanctions*

One of the central questions of party financing is how the provisions set out above can be controlled and how public trust in the parties and the political system can be fostered by transparency. Important elements in this respect are rules setting out parties' obligations to publish their finances and subject themselves to independent scrutiny. Finally, in case of evasion of obligations or other attempts of fraud clear sanctions should be provided for.

1. Rules on Book-Keeping and Publicity Principle

a) *Requirements to publish financial reports*

Usually, political parties are obliged to give some public accountability by submitting reports on their finances of the last year. Whereas a general obligation of that sort is widespread, provisions as to what exactly has to be reported in detail, the authority to which a report has to be submitted and whether and how the report has to be published vary widely. A situation like in Switzerland or in some Austrian states, where there is no obligation of political parties to report on their income and expenses clearly remains the exception.

In Germany, the obligation of political parties to give a public account of their finances is even enshrined in the Constitution (Art. 21 I 4 Basic Law). Reports have to include not only sources of income and overall budgetary volume but also expenses and property on all levels of the party structure. The idea is that an average citizen can inform him- or herself through specific reports edited by the administration of parliament and/or the president of parliament.

Generally speaking, parties have to give an account of their income and expenses. Frequently, the sources and expenditures to be specified are qualified by

¹²³ For instance, Belgium, Czech Republic (donations to political parties are not mentioned as qualifying for tax relief, Art. 15 (8) Law no. 586/1992 Coll.), Russian Federation.

¹²⁴ The Funding of Political Parties in the United Kingdom, The Government's proposals for legislation in response to the Fifth Report of the Committee on Standards in Public Life, Presented to Parliament by the Secretary of State for the Home Department by Command of Her Majesty July 1999, para. 6.3.

law. For instance, in Austria, funding received according to the law on political parties, membership fees, donations, contributions by persons holding a mandate for the party, profits from party companies, profits from property, loans, services, and other income must be specified.¹²⁵ Of course, other provisions apply on the level of the *Länder*: in some of the *Länder* no obligations for giving account of income and expenses exist whereas in others obligations vary from far-reaching obligations to publish the use of public funds as well as the sorts of income and expenses (Salzburg) to the obligation to keep books on the use of public funds (Oberösterreich) which is sometimes restricted to those parties represented in the *Landtag* (Burgenland, Kärnten, Niederösterreich, Tirol).¹²⁶

Detailed provisions apply in Italy where annexed to the law forms are set out which have to be filled in by the parties. The report must be accompanied by the balance of those companies in which the parties hold any shares – also if via trustees or other persons.¹²⁷

Publication requirements have to strike a balance between the need for providing a full picture of a party's financing and accessibility for the ordinary citizen. These requirements are reflected in a number of provisions in various countries. For instance, in Italy, where the report will be published in full length in the "Gazzetta Ufficiale" while at the same time it has to be published in a shortened version in two newspapers, one of which must have national distribution.¹²⁸ In France, the reports on the parties' bank accounts have to be published in full in the "Journal officiel"¹²⁹ whereas the reports on expenditures in election campaigns will be published by the Commission on financing of election campaigns in a simplified version.¹³⁰ In Belgium, a summary of the financial report is published in the official journal whereas the complete reports are contained in parliamentary documents. A mere obligation to make the report accessible in the parliamentary office as applying in the Czech Republic¹³¹ implies problems with regard to accessibility for the ordinary citizen, in particular, if not living near the parliament's building.

Interesting additional requirements are foreseen in the new bill to be adopted in the United Kingdom: according to this bill parties must adopt a scheme of their financial structure and lay it open to the Electoral Commission upon registration which will decide whether the proposed scheme properly reflects the organisation of the party.¹³² This includes a review of the position accorded to affiliated or associated bodies with an independent existence including the possibility that these bodies sometimes may rather have to be regarded as donors to the party rather than constituent parts of the party apparatus.¹³³

¹²⁵ Drysch (note 9), 135.

¹²⁶ Drysch, *ibid.*, 137. Art. 8 (13) Legge 2/1997 (Italy).

¹²⁷ Art. 8 (4) Legge 2/1997 (Italy).

¹²⁸ Art. 8 (13) Legge 2/1997 (Italy).

¹²⁹ Art. 11–7 Loi relative à la transparence financière de la vie politique (France).

¹³⁰ Art. 52–12 Code électoral (France).

¹³¹ Art. 18 (2) Law Nr. 322/1996 Coll. (Czech Republic).

¹³² Section 23 Political Parties, Elections and Referendums Bill (United Kingdom).

¹³³ Political Parties, Elections and Referendums Bill, Explanatory Notes, para. 65.

In France, specific provisions have been designed in order to secure transparency by some formal requirements. In particular, parties have to administrate the private donations received through a financing association or a trustee through one single account.¹³⁴ With regard to campaign financing the candidates are required to keep books and submit a final account about their expenses to the local prefecture which will forward the report to the Commission on financing of election campaigns.¹³⁵ Moreover, donations of more than 1,000 FF have to be given by cheque.¹³⁶ Similarly, all political groups competing in elections in Spain have to name an electoral administrator responsible for bookkeeping of campaign finances and directly responsible to the control institutions. An additional control is also created by the obligation to keep different bank accounts for campaign and permanent party funding.¹³⁷

Far-reaching control provisions have been adopted in the Russian Federation with a view to campaign financing. Not only the acceptance of donations and their use must be documented by the election associations but also the bank keeping their accounts has to transmit information on all financial operations of the election association of more than 2000 minimum wages, legal persons having donated more than 1000 minimum wages (reduced numbers apply to single candidates), the number of natural persons having donated more than 50 minimum wages and the overall sum of income and expenses to the central election commission on a weekly basis. The commission will then forward the information every fortnight to the mass media.¹³⁸ Moreover, election associations and single candidates are obliged to give to the central election commission a comprehensive account of their finances three times during an election period: upon registration, 10 days before and 30 days after the election.¹³⁹

Reporting obligations for persons or institutions other than the parties themselves seem to be the exception. In addition to the example of the Russian Federation mentioned above, Spain has also adopted provisions in this respect. In particular, banks and such companies which have entered into contracts with political parties of more than a million Pesetas have to submit information to the Tribunal de Cuentas.¹⁴⁰

b) Publication of donations and names of donors

In most of the states examined here provisions pertaining to the publication of donations and donors have been adopted although sometimes only quite recently: for instance, until the middle of the 1990's, in Denmark it used to be regarded as

¹³⁴ Art. 11-1 (2) and 11-2 (2) Loi relative à la transparence financière de la vie politique (France).

¹³⁵ Art. 52-12 Code électoral (France).

¹³⁶ Art. 11-4 Loi relative à la transparence financière de la vie politique (France).

¹³⁷ S.Hofmann, Parteienfinanzierung im Autonomiestaat Spanien, 1998, 141.

¹³⁸ Art. 66 Law on elections (Russian Federation).

¹³⁹ Art. 66 (2) Law on elections (Russian Federation).

¹⁴⁰ Art. 133 (3) and (5) LOREG.

part of the principle of secret voting that citizens must be able to express their political opinion anonymously, also by way of donations.¹⁴¹ The big issue is, of course, where the threshold is to be fixed above which donations and donors have to be published.

In Germany, this question has been pending several times before the Bundesverfassungsgericht because the obligation to publish the names of big donors has been regarded as one of the traits of parties' obligation to give public account of their finances.¹⁴² The German law on political parties started in 1967 from 20,000 DM as a threshold for publication obligations. This threshold was raised in 1988 to 40,000 DM which was subsequently overturned by the Bundesverfassungsgericht as a violation of the system envisaged in Art. 21 I 4 GG of the Basic Law.¹⁴³ As a consequence of this judgment a 20,000 DM threshold has been adopted incurring an obligation to publish the overall amount of donations by this donor, his/her name and address. This threshold has been criticised for being too high.¹⁴⁴ On the other hand, it must be kept in mind that the threshold should not be too low neither in order not to inflate the reports which could endanger transparency and accessibility.¹⁴⁵

Italian law provides for a threshold of about 12 million Lire including non-monetary support in one year¹⁴⁶ beyond which donor and recipient have to declare the donation to the president of the chamber of deputies within three months of the receipt of the donation. In the Czech Republic the donor's name, address and identity number must be set out in the annual report in case of a donation of more than 100,000 Kc (about 18 DM).¹⁴⁷

The new British bill provides for a differentiated approach to the threshold question. Moreover, it varies the reporting requirements according to the sensitivity of the period in question. To the present day, there has been no obligation to publish private donors in the United Kingdom. Labour publishes voluntarily the names of those who gave more than 5,000 £ in a year but without specifying the sum of the donation. The new bill foresees the publication of donor and sum on a quarterly basis in cases where an absolute or aggregate amount of more than 5,000 £ has been donated. If more money is donated by the same donor in the same year any sum exceeding 1,000 £ (absolute or aggregate) must be recorded. Smaller numbers apply if the donation is given to an "accounting unit" of a party (which probably covers constituency or regional organisations of a party) where every donation of more than 1,000 £ must be recorded. To comply with these requirements political parties will need to keep records of all donations received

¹⁴¹ Cf. Pade (note 70), Fn. 3.

¹⁴² BVerfGE 20, 56 (106); 24, 300 (356); 85, 264.

¹⁴³ BVerfGE 85, 264 (318 et seq.).

¹⁴⁴ C. Landfried, *Parteifinanzien und politische Macht*, 2nd ed. 1994, 305.

¹⁴⁵ Landfried, *ibid.*, 305.

¹⁴⁶ Art. 4 (3) Legge 659 /1981 (Italy). The sum of originally 5 million Lire has been constantly adopted to inflation through ministerial decrees.

¹⁴⁷ Art. 18 (1) (d) Law Nr.117/1994 Coll. (Czech Republic).

and accepted above the *de minimis* level of 200 £.¹⁴⁸ During a parliamentary general election period, donation reports will have to be submitted weekly.¹⁴⁹

Certain obligations are also to be imposed on the donor: In order to avoid evasion of reporting requirements by giving a donation in numerous small parts below the 200 £ threshold, the donor is required to report to the Electoral Commission if the overall sum exceeds 5,000 £. Donations by companies of more than an aggregate of 200 £ must be disclosed in the director's report.¹⁵⁰

Moreover, it has been suggested by Labour that all donations and donors of more than 50 £ should be communicated without being publicised to the Electoral Commission to be established under the future act. A provision of this sort already exists in Belgium where donors having given more than 5,000 BEF are disclosed to a commission.¹⁵¹ In the UK, however, this proposal has been rejected by the Committee on Standards in Public Life as too intrusive and administratively burdensome.¹⁵²

Although there is no obligation to publish the name of donors in Spain, there is a certain control with regard to donations for election campaigns. The parties must keep information on the name, address and identity number of the donor to which the control bodies must have access at any time.¹⁵³

One may wonder about the usefulness of a provision as it is currently applied in Austria obliging parties to publish all donations beyond a certain sum (100,000 öS) without having to provide any more details about the donor other than grouping him/her into a category such as natural person, company, association etc.¹⁵⁴ Another peculiar provision applies in Denmark where those parties not entitled to public funding are also exempt from submitting reports on the private donations obtained.¹⁵⁵ Moreover, the Danish provisions obliging parties to publish the overall amount of anonymous donations as well as each anonymous donation beyond a certain sum¹⁵⁶ may hardly counter the negative repercussions of anonymous donations on transparency.

¹⁴⁸ Section 57 Political Parties, Elections and Referendums Bill (United Kingdom).

¹⁴⁹ Section 58 Political Parties, Elections and Referendums Bill (United Kingdom).

¹⁵⁰ Section 133 Political Parties, Elections and Referendums Bill (United Kingdom).

¹⁵¹ See 10 décembre 1998 – Arrêté royal fixant les modalités d'enregistrement de l'identité des personnes physiques effectuant des dons de 5,000 BEF et de plus à des partis politiques et à leurs composants, à des listes, à des candidats et à des mandataires politiques, et déterminant les facilités du dépôt des relevés annuels y relatifs, M.B. 23 décembre 1998 (Belgium).

¹⁵² Committee on Standards in Public Life, 51.

¹⁵³ Art. 132 (2) LOREG (Spain).

¹⁵⁴ Drysch (note 9), 81. A former law pushed through by the SPÖ ordering the publication of all donations of more than 30,000 öS with name and address of the donor was suspended soon after entry into force and later on replaced.

¹⁵⁵ Section 7 a (2) Law on Financing of Political Parties (Denmark).

¹⁵⁶ Section 3 (2) Law on Donations to Political Parties (Denmark). Cf. also Pade (note 70), Fn. 11.

2. Institutions Exercising Control

The standing of the institution entrusted with controlling the parties in their financing performance clearly has an impact on the effectiveness of control as well as on the public confidence in the procedures. In most states examined here, reports submitted by the parties will be subjected to some review by an external body although the degree of independence varies greatly.

In some countries, official auditors review the financial reports and balances. This has got the advantage that these persons are well trained in examining complex financial transactions and accounts. On the other hand, there is the question how they are picked. In Austria, the auditors for reviewing the parties' reports are appointed by the minister of finance from a list of 5 persons suggested by the parties themselves.¹⁵⁷ In Germany, auditors with very close links to the party to be reviewed (such as members of the presidency or a commission of the party, or employees) must not be appointed as auditors for the financial report of the party.¹⁵⁸ In Italy, the position of the auditors who are working in a committee of five (*collegio di revisori*) is reinforced since they are appointed for an entire legislative period.¹⁵⁹

In the UK, special bodies for monitoring party financing, the Electoral Commission and the Speaker's Committee, will be created and established by the future Political Parties, Elections and Referendums Act.

The Electoral Commission is independent of any government department and will report directly to Parliament. Commissioners will be appointed by Her Majesty on the presentation of an address from the House of Commons and will enjoy substantial security of tenure: they will be appointed for up to 10 years with the possibility of reappointment. A removal from office is therefore only possible on an address of the House of Commons to that effect which can only be made if the Speaker's Committee has decided that one of the grounds for removal is fulfilled.¹⁶⁰

¹⁵⁷ Drysch (note 9), 134.

¹⁵⁸ Section 31 (1) Law on Political Parties (Parteiengesetz) (Germany).

¹⁵⁹ Art. 8 (12), (14) Legge 2/1997 (Italy).

¹⁶⁰ Grounds for removal are enumerated in paragraph 3 (5) of Schedule 1 Political Parties, Elections and Referendums Bill: "No motion shall be made for such an Address unless the Speaker's Committee has presented a report to the House of Commons stating that the Committee is satisfied that one or more of the following grounds is made out in the case of the Electoral Commissioner in question –

- (a) he has failed to discharge the functions of his office for a continuous period of at least 3 months;
- (b) he has failed to comply with the terms of his appointment;
- (c) he has been convicted of a criminal offence;
- (d) he is an undischarged bankrupt or his estate has been sequestrated in Scotland and he has not been discharged;
- (e) he has made an arrangement or composition contract with, or has granted a trust deed for, his creditors; and
- (f) he is otherwise unfit to hold his office or unable to carry out its functions."

The Electoral Commission has got the function of receiving accounts, reports of disclosable donations and returns as to election expenses from political parties and a duty to monitor compliance – but not to mount criminal prosecutions. It has got the power to require registered political parties to provide information to the Commission relating to their financial affairs. Moreover, a person authorised by the Commission may also enter the premises of a party to inspect their financial records.¹⁶¹

The Speaker's Committee which is composed of the Speaker of the House of Commons, the Home Secretary, the Minister for Local Government, the Chairman of the Home Affairs Select Committee and five Members of the House of Commons appointed by the Speaker has general oversight of the exercise of the Commission's functions and, in particular, responsibility for approving its budget and five-year corporate plan. Both Commission and Committee are required to report annually to the House on their performance.

Whereas the Commission seems to provide for sufficient independence of Commissioners it is not evident why itself is being controlled by a body composed of members of the government and of parliament which cannot be considered independent.

In the Belgian system, the controlling commission (*Commission de contrôle des dépenses électorales engagées pour les élections des Chambres fédérales, ainsi qu'au financement et à la comptabilité ouverte des partis politiques*) is composed of an equal number of members of the House of Representatives and the Senate and thereby gives rise to doubts as to the independence as an institution of control. Similarly, a control body composed of representatives of different executive branches and institutions as it is established at the central election commission as well as at election commissions in the subjects and the constituencies in the Russian Federation¹⁶² does not provide for sufficient independence.

In contrast, the French *Commission nationale des comptes de campagne et des financements politiques* which is responsible for monitoring the financing both of parties in general as well as election campaigns is composed of nine members – (three members each of the *Conseil d'Etat*, *Cour de Cassation* and court of auditors) – appointed for five years. Such a composition leaves little room for doubts about the independence of the Commission's members.

A tribunal is endowed with the task of supervising financial performance of Spanish parties both generally and in the course of election campaigns.¹⁶³ The *Tribunal de Cuentas* has the power to ask the parties for information about the source of donations. However, it is not obliged to publish this information in its

¹⁶¹ Section 136 Political Parties, Elections and Referendums Bill (United Kingdom).

¹⁶² Art. 69 Law on Elections (Russian Federation).

¹⁶³ The *Junta Electoral Central* and its subordinated *Juntas Electorales Provinciales* and *Juntas Electorales de Zona* are also in charge of supervising and controlling electoral expenses in the period before the elections. After the elections this task is continued by the *Tribunal de Cuentas*. The *Junta Electoral Central* is a permanent body composed of eight judges members of the *Tribunal Supremo*, plus five Professors of law, sociology or political science. The members are elected by the national

report. Moreover, the transparency of the general party finances suffers, as a rule, from huge delays in publication since the final report is published only after the commission of parliament in charge has adopted its conclusions. For example, in 1997 only the Reports until the year 1989 had been published.¹⁶⁴

3. Sanctions for Violations

The existence and effective imposition of sanctions can play an important role in discouraging parties or party members from attempting to evade the rules of public accountability and transparency or limiting the freedom of parties with regard to their sources of income.¹⁶⁵

a) Evasion of restrictions on donations

Possible sanctions in this field are the forfeiture of donations, fines or prison sentences, withdrawal of a certain status, or deprivation of public funding. Sanctions can be directed both against the party as such as well as against the individual party member etc. personally involved in the situation.

In the United Kingdom, in case of the acceptance of donations from an impermissible source or an unidentified donor the future Electoral Commission will be in a position to apply to a court to order the forfeiture of donations; any sums forfeited shall be paid into the Consolidated Fund.¹⁶⁶ Moreover, the evasion of restrictions on donations is to be made a criminal offence for any person knowingly to participate in an arrangement or to withhold information or supply false information, so as to evade the restrictions on the sources of donations.¹⁶⁷

Harsh punishments are foreseen in Italy for the acceptance of impermissible donations: the penalty is 6 months to 4 years imprisonment and a fine up to three times the sum that was illegally accepted. Moreover, public funding will be reduced by a sum double the amount of money illegally accepted¹⁶⁸ or not

congress. Autonomous Communities may also create Juntas Electorales for parliamentary elections. One of the main tasks of the Juntas is the distribution of television and media time (as well as many other duties regarding election proceedings and fairness). In practice the Junta Electoral Central has stepped back in its control task of party expenses during elections and left most of it to the Tribunal de Cuentas.

¹⁶⁴ Hofmann (note 137), 152.

¹⁶⁵ It is also possible that a violation of certain fundamental values of a democracy by a party incurs sanctions by way of fines or reduction of public funding. For instance, in Belgium parties not respecting the European Convention on Human Rights may be sentenced by the Conseil d'Etat to a fine or to suspension of public funding for three to twelve months. Cf. 12 février 1999. – Loi insérant un article 15^{ter} dans la loi du 4 juillet 1989 relative à la limitation et au contrôle des dépenses électorales engagées pour les élections des Chambres fédérales, ainsi qu'au financement et à la comptabilité ouverte des partis politiques et un article 16 *bis* dans les loi sur le Conseil d'Etat, coordonnées le 12 janvier 1973, M.B. 1999–03–18 (Belgium).

¹⁶⁶ Sections 53–55 Political Parties, Elections and Referendums Bill (United Kingdom).

¹⁶⁷ Section 56 Political Parties, Elections and Referendums Bill (United Kingdom).

¹⁶⁸ Art. 7 (3) Legge 195/1974; Art. 4 (1), (2) Legge 659/1981; Art. 3 Legge 22/1982 (Italy).

properly reported.¹⁶⁹ If the declaration of a donation beyond the permissible maximum amount is omitted this may be punished with a fine amounting to a sum of 2 to 6 times of the undeclared sum. In addition to that, the person involved may be disqualified from the exercise of public functions.¹⁷⁰

Similarly, a party having accepted illegal donations or not having published a donation according to the law in Germany will have to transfer the respective donation to the presidency of the Bundestag and will be punished with a reduction of public funding for the next year of twice the sum of the respective donation.

Instead of linking the amount of the possible fine to the sum of the donation provisions in France for violating rules on the maximum limitation of donations and on the procedures to be observed foresee a range between 360 and 15,000 FF.¹⁷¹ The disadvantage of this provision is that it does not allow for sufficient flexibility regarding penalties in the case of illegal big donations, in particular, having in mind the admissible maximum of 50,000 FF. However, in addition to the fine the recognition as a financing association is withdrawn which means that the party will not get any public funding for votes obtained in the region in question.¹⁷² Moreover, public funding for the next year will be withheld if a party has accepted donations in any other way than through the prescribed trustee or financing association.¹⁷³

b) Violation of reporting requirements

Civil penalties are to be imposed in the United Kingdom after the future adoption of the Political Parties, Elections and Referendums Bill in case of violation of reporting requirements (varying according to the time of delay between 500 and 5,000 £).¹⁷⁴ Moreover, there are specific criminal offences to alter, suppress, destroy etc. documents or records relating to the financial affairs.¹⁷⁵

If a balance or financial report is not submitted properly public funding may often be withheld until the shortcomings of the report have been remedied. Provisions of this sort apply, for instance in Italy,¹⁷⁶ France,¹⁷⁷ Germany,¹⁷⁸ or the Czech Republic.¹⁷⁹

¹⁶⁹ Art. 4 (12) Legge 659/1981 (Italy).

¹⁷⁰ Art. 4 (6) Legge 659/1981 (Italy).

¹⁷¹ Art. 11–5 Loi relative à la transparence financière de la vie politique (France).

¹⁷² Art. 11–6 Loi relative à la transparence financière de la vie politique (France).

¹⁷³ Art. 11–8 Loi relative à la transparence financière de la vie politique (France).

¹⁷⁴ Section 137 Political Parties, Elections and Referendums Bill (United Kingdom).

¹⁷⁵ Section 138 Political Parties, Elections and Referendums Bill (United Kingdom).

¹⁷⁶ Art. 4 (16) Legge 659/1981 and Art. 8 Legge 157/1999.

¹⁷⁷ Art. 11–7 (2) Loi relative à la transparence financière de la vie politique (France).

¹⁷⁸ Section 23 (4) Law on Political Parties (Parteiengesetz) (Germany).

¹⁷⁹ Art. 20 (3) Law No. 117/1994 Coll (Czech Republic).

c) *Violations of provisions concerning campaign financing*

Similar rules apply with regard to violations of obligations in the financing of election campaigns.

For instance, if the French Commission on financing of elections detects irregularities in reporting performance (balances not presented in time or not in accordance with the legal requirements) or spending that was beyond the maximum limit, it is obliged to transfer the case to the electoral court. Moreover, usually the case will also be transferred to the public prosecutor.¹⁸⁰

If a candidate has spent more money than admissible he or she will have to pay the equivalent of the sum exceeding the maximum threshold to the State.¹⁸¹ In addition to that, no public funding will be afforded to the respective candidate. The same sanction applies if the candidate failed to comply with an eventual obligation to declare his financial situation.¹⁸²

In Spain, the main sanction imposed on parties by the Tribunal de Cuentas is the reduction of the subsidy to be paid for campaign expenses. The Tribunal would also inform the relevant authorities if there is conduct which could be criminally punishable. Moreover, bookkeeping fraud or irregularities or a misappropriation of funds can be punished with prison (*pena de prisión menor*) or a fine of 30,000 to 300,000 pesetas.¹⁸³ In case of the intention of personal enrichment the prison sentence may be increased (*prisión mayor*).

In the Russian Federation, violations of the obligation to pay back election subsidies will lead to the forfeiture of claims for public funding including free broadcasting time in the next elections.¹⁸⁴ The use of illegal means or donations may be punished with a fine of three times the amount illegally used.¹⁸⁵ A violation of reporting obligations may be fined with 10 to 50 minimum wages.¹⁸⁶ Moreover, violations of the provisions on the financing of election campaigns may lead to the withdrawal of the admission to the elections and the invalidation of the election result.¹⁸⁷

VI. *Concluding Observations*

Most of the states examined here have taken substantial legislative activities throughout recent years, not uncommonly in connection with or as a reaction to

¹⁸⁰ Art. 52–15 (2), (3) 3 Code électoral (France).

¹⁸¹ Art. 52–15 (6) Code électoral (France).

¹⁸² Art. 52–11 (1) Code électoral (France). This may be the case for members of the government, deputies of the European Parliament, presidents of certain regional representative bodies, or mayors of bigger towns, Art. 1 and 2 loi relative à la transparence financière de la vie politique (France).

¹⁸³ Art. 149 LOREG (Spain).

¹⁸⁴ Art. 67 (19) Law on elections (Russian Federation).

¹⁸⁵ Art. 40.18.

¹⁸⁶ Art. 40.17 Amendment Law to the Law on Infringements of Order of 1 December 1999 (Russian Federation).

¹⁸⁷ Arts. 80, 83 Law on elections (Russian Federation).

scandals of corruption or other improper influence on political decisions through financial means. The fact that such an old and traditional democracy as the United Kingdom is approaching legalistic intervention in a sphere, which had so far been almost completely unregulated may well be regarded as a preliminary climax of these developments.

The analysis has demonstrated that the old type of party financing – the funding exclusively or at least in most part through membership fees – can hardly be applied in practice anymore. Despite its fundamentally democratic character and far-reaching exclusion of opportunities for improper influence eventually to be exerted on a monetary basis, a financing primarily based on party members is also no longer an adequate solution to counter the temptations of other possible sources of party income: modern democratic systems depend on a strong visibility of parties in the political debate. To this end, political parties need substantial financial means to present their views in a recognisable way which can compete with an enormous flood of other information purported through modern media.

All other approaches – the financing of political parties through private contributions other than membership fees either from within or outside the party system and the various approaches relying on public funding – are not without problems.

In particular, contributions by parliamentarians to their party deduced from their allowances may constitute a concealed form of public funding and are not easily reconcilable with the supposed independence of members of parliament and the exercise of a free mandate – at least in cases in which the payment constitutes a statutory or *de facto* obligation.

Other private sources – be it in the form of profits from party owned companies or donations – go along with the danger that inappropriate links are construed between donating money and specific political contents or decisions. In this context, it must be emphasised that the mere impression of misuse may erode public confidence in the political system and thereby constitute a danger to democracy.

On the other hand, while putting more emphasis on public funding may, of course, limit the potential influence of private individuals or companies, it increases the dependence of political parties from the State. This in turn may encourage political parties to rely too much on public money while at the same time losing sight of the interests of those whom the parties are supposed to represent. Moreover, if public funding is provided to political parties due regard must be given to the equality of chances, not only for established parties but also for new political movements.

In order to evaluate whether a particular system strikes a fair balance between the concurring interests it must be examined in its entirety. For instance, the problems going along with a complete reliance on private sources may to some extent be countered through the adoption of a maximum limit of admissible expenditure as can be seen by the example of the United Kingdom. Of course, the potential chilling effect of such a maximum limit on political parties' thirst for money is

limited by the fact that the overall sum required for running a meaningful national election campaign in a big country will be quite substantial and therefore the threshold imposed will have to be quite high. This may leave more room than desirable for eventual influence through financial transactions.

The best solution probably lies in a wealthy mix of different sources of income while at the same time imposing strict limitations on certain sources as well as providing for complete transparency of parties' finances with a view to avoiding any potential influence of money on policy. In this respect, it may come as a surprise that maximum limitations on private donations are only imposed in three of the countries examined in this report.

It goes without saying that any limitations imposed on political parties and their financial sources will only work with strong mechanisms of control and sanctions for eventual violations. Therefore, control bodies should be composed of independent members and be provided with sufficient means – both with a view to financial equipment and procedural powers (including search powers) – for effectively exercising their function.