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(VENICE COMMISSION)

REPORT ON THE FINANCING OF POLITICAL PARTIES

prepared by

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Report on the financing of political parties

This report has been prepared from the replies to a questionnaire sent to all the countries represented within the Venice Commission.

Over thirty countries responded. They are listed here in alphabetical order: Albania, Argentina, Armenia, Austria, Azerbaijan, Bosnia and Herzegovina, Bulgaria, Canada, Croatia, the Czech Republic, Denmark, Finland, France, Germany, Georgia, Hungary, Ireland, Japan, Kazakhstan, Latvia, the Netherlands, Poland, Portugal, Romania, Russia, Slovakia, Slovenia, Spain, Turkey, Ukraine, Uruguay.

As in all surveys of this kind, the replies received by the secretariat differed considerably both in volume and in their degree of detail. The diversity of political contexts naturally results in very different situations in different countries.

This report clearly cannot set out to describe in full all the solutions found to the complex problems posed by the highly sensitive issue of party funding, which has numerous political ramifications. It will therefore not be possible to cite all the respondent countries in the report although, in view of the thoroughness of their replies to the questionnaire, many would well deserve to be mentioned. We will cite only a few countries as examples of the points we are seeking to make.

The aim of this synopsis of the national reports is merely to attempt to explain the major general principles - if any - adopted by the different countries, to highlight the implications of applying those principles, and to bring to the fore the similarities, or conversely the main differences, between solutions, with the aim of possibly suggesting improvements that might be made, here or there, to ensure that the functioning of political parties, which are absolutely essential to all democracies, gives rise to fewer difficulties, and possibly even fewer abuses, in future.

We shall first draw a number of general conclusions from the descriptions of the financing arrangements in force in the countries covered by the survey and then go on to examine the salient points of their replies to the main questions posed.

I. General observations

A. - Our first comment concerns the fact that interest in the issue of political party funding is a relatively recent phenomenon. Although this is understandable in the case of countries which began their transition to democracy only a short time ago, it is more surprising in those which have long had democratic systems of government and already have considerable experience of political pluralism, electoral contests and parliamentary - and possibly presidential - election campaigns.

It is astonishing that in many countries the main legislation governing the funding of political parties was passed only a few years ago. As a result, there is fairly little case-law - in particular from constitutional authorities - in this field. This situation does not facilitate an in-depth study of the many problems posed.

To cite two examples, the Austrian legislation on political parties was enacted only 25 years ago (1975) and the Austrian Constitutional Court, although the oldest in Europe, has delivered only a small number of judgments on the funding of political parties. What is more, those judgments deal solely with more or less technical matters.

Armenia, where the Constitution requires political parties to guarantee the transparency of their financial activities, has addressed the issue of party finances only in two very recent instruments (a law of 1991 and the Electoral Code of 17 February 1999).

This long-lasting indifference on the part of the public authorities in the majority of countries has had very harmful consequences. The complete lack of rules meant that anything was permitted. As political parties clearly could not survive merely with the funds raised through the collection of membership fees and as no form of public funding was provided, each party had to find its own expedients. The outcome was widespread reliance on dubious, undercover financing practices, which in many of the major democracies led to the prosecution, and even the conviction and sentencing, of party leaders, who, in an effort to obtain at all costs the financing vital to their parties' activities, had resorted to unlawful fund-raising practices Spectacular examples can be found in the scandals which have shaken Italy, Germany, France and the United States, among other countries, not all of which have yet come to a final conclusion in the courts.

B. - It should also be said that the countries which have felt the need to regulate political party funding - even if only recently - have not always followed their ideas through to their logical conclusion.

For instance, in both Bosnia and Herzegovina and Slovakia national law does not go far enough in regulating matters relating to the overall financing of political parties, whereas in Hungary the law entirely disregards the issue of private-sector funding and in Georgia it makes no provision for supervisory mechanisms. In Croatia the law is too vague, and in Latvia it is the entire party system that is in need of in-depth reform.

The major democracies themselves are also fully aware that the financing arrangements which they have introduced, albeit with a scarcely justifiable delay, have many shortcomings, lead to unfairness and leave room for some regrettable abuses. Although the situation is clearer, it is not yet rosy everywhere.

C. - It must be said that the diversity of the rules established in this field facilitates neither their understanding nor their observance.

Where rules exist and where there is also a will to enforce those rules, should they be ranked as constitutional law by including them in the Constitution? This offers the advantage of permitting the review of any subsequent law that might have the effect of undermining rights or possibilities granted, but entails the disadvantage of making it far more difficult to reform the entire body of rules.

Where criminal or civil penalties may have to be imposed on political parties which fail to comply with the funding rules, should the relevant legal provisions also be included in the Constitution?

It can be seen that in many countries a distinction would appear to have been drawn between political parties, which are normally mentioned in the Constitution, and their funding, which - where it is regulated - is governed by ordinary law.

D. - But what is a political party?

It is true that once the decision has been taken to provide political parties with assistance and funding for the pursuit of their activities (which often entail significant amounts of expenditure), it becomes absolutely essential to identify the potential beneficiaries in very precise terms. Whether funding is public or private - or both - who should receive it? In other words, should the Constitution give a precise definition of what constitutes a political party or, at the very least, stipulate the criteria to be met in order to be entitled to aid, and even ban its being granted to certain kinds of organisations whose intentions are unclear - or perhaps only far too clear?

In this sphere the countries have adopted a very broad range of solutions, depending on their own individual - more or less democratic - tradition.

Mention can be made of the following:

In France Article 4 of the 1958 Constitution provides "Political parties and groups shall contribute to the use of suffrage. They shall be freely established and carry on their activities freely. They shall comply with the principles of national sovereignty and democracy." The requirement that political parties must promote gender equality in access to electoral functions or elective office was recently added to this article. But there are no provisions on party funding.

It follows from the very wording of Article 4, which recognises the freedom of activity enjoyed by French political parties, that their functioning must not be entirely dependent on state aid. However, it was not until a law of 11 March 1988, which first seriously broached the issue of party financing, that the principle of public funding was established. That law's provisions were confirmed and supplemented by successive laws passed in 1990, 1993 and 1995.

Does this mean that parties are entitled to the promised state aid only in so far as they comply with the constitutional requirements (contributing to the use of suffrage, compliance with the principles of national sovereignty and democracy, promotion of gender equality)? It cannot be asserted that this is unequivocally the case, although, during the debate on the constitutional bill on gender equality, some people argued that parties might incur financial penalties if they failed to promote equality of access to electoral functions or elective office. Such financial penalties might in fact take the form of a significant reduction in the state aid granted to an offending party.

Liechtenstein requires political parties to assume the legal form of an association and to declare their commitment to the principles enshrined in the Constitution in order to qualify for public funding, which they are of course free to use as they see fit, on condition that they keep documentary evidence of the use made of funds.

In Portugal the Constitution provides that all parties shall enjoy freedom of association, apart from armed organisations of a racist nature. The implication is that since such organisations cannot, by definition, freely carry on their activities, they do not qualify to receive the slightest state aid.

It should be noted that in Russia the Constitution safeguards political pluralism, except in the case of parties whose aim is to overthrow the regime. However, the Constitution says nothing about party financing. It should be added that state registration of political parties is a mandatory formality.

In Spain the wording of the Constitution bears some similarity to that found in France. Article 6 of the 1978 Constitution similarly provides "political parties shall embody political pluralism … and shall be the fundamental means of public participation." Parties may be freely established and enjoy freedom of activity providing they abide by the Constitution and the law. Their internal structure and functioning must be democratic.

It was against the background of these requirements that the law of 19 June 1985 laying down the general rules governing elections and the law of 2 July 1987 on political party funding were subsequently passed.

Some countries' law says absolutely nothing about either political parties or their funding. This is the case in Switzerland, where no recognition is granted to political parties in the Federal Constitution, but constitutional case-law in fact acknowledges their "de facto" existence.

There is no federal law on party finances, and this would seem to imply that there are no restrictions on fund-raising, which is left to the parties' sole initiative. Nor are there regulations governing the use of funds raised by political parties.

In a limited number of cantons provision is made for full or partial reimbursement by the cantonal authority of the cost of printing and distributing ballot papers, but this public subsidy is confined to expenditure incurred in connection with an election.

What are the reasons for this virtually complete lack of legislation - whether federal or cantonal - on the specific subject of party financing?

A number of reasons may be advanced. Firstly, in Switzerland it is taken for granted that a party's main source of funds should be members' contributions. Similar traditions are to be found in other countries where the prevailing view is that parties, which function as private associations, must - like all such associations - be capable of financing themselves. However, this requires a civic sense among the general public and a strong public interest in community affairs. Both exist in Switzerland, but are far less in evidence elsewhere.

It can also be argued that in Switzerland political parties generally have a fairly lightweight internal organisation and, as a result, do not incur much expenditure. In larger democratic states political parties are huge machines necessitating a large number of permanent staff, vast premises and a high operating budget that cannot be covered merely from members' contributions, which are often completely insufficient in terms of the number of contributors and the relatively small amounts paid in.

One might add that if Switzerland some day wished to pass legislation on party financing, it would no doubt be obliged to hold a public referendum, with absolutely no guarantee as to the outcome given the hostile tradition mentioned above.

Switzerland has perhaps also been lucky in that, unlike some of its larger neighbours, it has not experienced a public scandal concerning political party financing, which would have tarnished the reputation of its governing class and forced it to regulate parties' sources of funds.

In Uruguay the Constitution provides for the existence of political parties, but the country has no legislation on their financing.

II. Guiding principles

All states wishing to bring some semblance of order to party funding, with the aim of both allowing the free expression of pluralist political opinion and guaranteeing equal treatment of all political parties according to their respective circumstances, are confronted with a number of major issues.

A. - The first is whether parties should be aided solely during election periods, to enable them to face the high costs inherent in any campaign, or whether, on a broader level, some form of regular, permanent funding of political parties should be introduced. The decision is an important one as it has obvious political and financial implications.

Confining funding to the full or partial coverage of campaign expenses (in particular through the reimbursement of a percentage of expenditure incurred) merely aims to avoid emptying the parties' coffers every time an election takes place and to permit the trouble-free functioning of the democratic process through the holding of regular, free elections. In this case, political parties are regarded as private organisations which have a free hand in raising the funds necessary for their day-to-day functioning but must be aided during the holding of elections, which are organised by the public authorities on their own responsibility.

The second approach, where the state bears all or part of the costs arising from political parties' very operation, follows a somewhat different line of reasoning. In this case political parties are regarded as officially recognised bodies, since they contribute to the state's ongoing democratic functioning, and it is therefore reasonable that the state should help to support their existence.

It therefore comes as no surprise that the countries which have opted for this second approach include those where parties are regarded as "institutions", whose means of subsistence cannot but be a matter of state concern.

This is the case in most of the major European democracies. Germany is a prime example.

The German Federal Constitutional Court acknowledges the need for public funding not only of campaign expenses, but also of expenses incurred in connection with political parties' routine activities, on condition that state aid is in inverse proportion to each party's self-financing capacity and is calculated solely on the basis of funding requirements absolutely essential to the proper functioning of the public authorities.

B. - The second issue is the nature of the funds that may be granted to parties or that they may themselves raise.

1. - Many states have, as a matter of principle, introduced a strict, mandatory ban on the funding of political parties by foreign entities or the acceptance of financial or material aid from foreign sources, whether another state, a foreign political party or foreign individuals or corporate bodies. This applies, inter alia, to Armenia (section 3 paragraph 4 of the law of 1991)

and Bulgaria, which prohibits political parties from accepting financial assistance, donations or legacies from foreign countries or organisations and even from anonymous sources.

Russia bans donations to campaign funds by foreign states, companies or organisations, stateless persons, international organisations and Russian legal entities in which more than 30% of the capital is foreign owned.

It is perfectly understandable that a state should be reluctant to allow a foreign country to interfere with its domestic politics by making funds available on a discretionary basis to certain of its political parties.

Although it had been common knowledge for many years that some parties, which had long been in positions of strength in some of the major democracies, regularly received funds from foreign states to finance not only their election campaigns but also their day-to-day existence, once general legislation on party funding was in the pipeline, this could no longer be officially permitted, or even merely tolerated.

In this connection, the spectacular scandal that broke out very recently in Germany shows to what extent public opinion in certain countries - but not all - heeds any hint of corrupt electoral practices which might - even indirectly - jeopardise the functioning of democracy.

2. - Public or private funding? Or both?

Here too the choice raises an essential substantive issue. As mentioned above, for decades many countries had no legislation governing the financing of political parties, which implies that the state took no interest in such matters, leaving each party entirely free to raise the funds necessary to its functioning here and there, without being too scrupulous about the methods employed.

This completely anarchical state of affairs led to the excesses of which we are aware. Each party had to raise funds at all costs, and the richest were the strongest. Since there were no rules, and therefore no limits on either income or expenditure, parties competed with one another in a frantic race to find contributors, and the firms contacted took advantage of the position of strength in which they then found themselves in order to provide funds - with strings attached - to those parties that would get their message across and safeguard their interests.

Hence the - when all's said and done quite recent - idea of ending this constant quest for financing by providing a public source of funds, with the aim of placing parties and their candidates on a more equal footing.

The emergence of this new source of funds did not, however, mean an end to all private financing. But since the state was offering financial assistance, it could legitimately exercise some degree of supervision over parties' private sources of funds, so that the diversity of their nature and amount did not in fact undermine the equality between parties which the public financing arrangements were seeking to promote. Some countries' parliaments or constitutional courts would even go so far as to encourage parties to engage in profit-making activities as a means of increasing their autonomy vis-à-vis their backers, whether public or private, by generating their own funds.

For instance, the Czech Constitutional Court did away with legislation prohibiting parties from carrying on commercial activities. Czech political parties can now bring out publications and hold cultural events for fund-raising purposes.

In Japan, in a decision of 24 June 1970 the Supreme Court ruled that, although private firms could also continue to finance parties, under no circumstances must this become a means of exerting pressure on the parties concerned.

Public and private sources of funds therefore co-exist. But is it necessary to limit their respective amounts? And have such limits been imposed in practice?

C. - Limits on financing

1. - Where the state finances political parties it is naturally free to decide the nature and extent of the aid granted. A great variety of arrangements exist. Some states offer extensive coverage of the cost of election campaigns, parties' routine functioning and certain specific activities.

For instance, Austria makes an annual grant to political parties holding at least five seats in the National Council or those which, without having won any seats, polled more than 1% of the vote in the most recent elections.

Parties represented in the Council also receive financial assistance for the running of election campaigns (whether national or European).

Under a law of 1985, parliamentary groups consisting of at least five MPs also receive an annual grant to cover the cost of their work in the two chambers of parliament.

Apart from funding parties' political activities in the true sense, under a law of 1984 on the promotion of political training the state makes annual grants to fund political training activities pursued by the parties through the mounting of exhibitions or through foundations. Publication of periodicals for the purpose of dispensing political training may also be subsidised by the state.

In Spain the same principles govern the award of public subsidies. Firstly, there are "electoral" subsidies. The law defines a state contribution to campaign expenses payable not only to political parties but also to federations of parties and groups of electors, in so far as they have won at least one seat. This contribution is proportional to the number of votes polled.

Part of the subsidy may be paid in advance, on the basis of the amount received by each individual party for the previous election.

"Annual" subsidies, intended to cover a party's day-to-day functioning, are payable according to criteria based on the number of seats and votes obtained. One-third of the total amount is distributed in proportion to the number of seats, and the remaining two-thirds in proportion to the number of votes. Political parties which did not win any seat are not entitled to this subsidy.

In France, the law of 1988 (section 9, as amended) provides parties with a source of public financing, which is stable for the duration of parliament and represents a substantial amount. As in Spain, a law of 15 January 1990 established the principle of proportional

distribution of the sum concerned, but on a half-and-half basis. Half of the grant is based on performance in the general elections to the National Assembly. It is payable to parties which field candidates in a minimum number of constituencies and is proportional to the number of votes obtained in the first round of voting by candidates standing for the party concerned. The other half of the grant is calculated according to the number of members of parliament who have stated that they belong to the party and is payable on condition that the party already qualifies to receive the first half of the grant.

2. - The problem facing states which, alongside other public or private institutions, decide to finance political parties is striking a fair balance among all parties - in terms of the funds distributed - and avoiding distribution based on arbitrary criteria, which would favour the most powerful parties to the detriment of those which either did not score well in the most recent elections or are newly formed and have not yet stood the test of elections.

It is therefore important that state financing should be calculated on the most objective, fairest basis possible.

Constitutional courts whose jurisdiction extends to electoral disputes and the regulation of election campaigns must seek to ensure that such aid is equally balanced.

In Croatia, for example, the Constitutional Court has upheld the right of a political party representing a national minority to apply for reimbursement of its campaign expenses by the state. In even more precise terms, the Constitutional Court of Slovenia has held, conversely, that grants made to political parties by the state, calculated on the basis of the score obtained in local elections, do not breach the constitutional principles of the right to local self-government and the right to vote.

In Hungary the Constitutional Court has ruled that the legislation providing for state aid to be granted solely to parties which obtained more than 1% of the votes cast in the preceding election is not unconstitutional.

More often than not, national law - of which we have seen a number of examples above - makes public aid for political parties conditional on both the number of seats obtained and the overall percentage score.

3. - The issue of private funding is more complex. It is therefore not surprising that different countries have adopted different solutions in this field.

Some countries permit private funding of political parties without imposing any restrictions on its amount or origin. Others prohibit it and regard as lawful sources of funds only grants made by the state and individual membership fees. Some confine themselves to imposing maximum limits on private financing.

Examples of legislation or case-law are cited below.

In Japan, in a decision of 24 June 1970 the Supreme Court held that private firms could contribute funds to political parties, on condition that such financing did not constitute or become a means of exerting pressure on the parties concerned.

In France, a law passed in 1990 made it lawful for firms to make contributions to political parties, where such contributions were deemed to be in keeping with the firm's corporate

purpose, and specified that the amounts concerned would be deductible for corporate income tax purposes. Contributions had to be paid to political parties' financing associations or financial agents. However, the law did place a limit on contributions by corporate bodies, which could not exceed a sum specified on an annual basis. Since these financing arrangements gave rise to many misunderstandings, a very strict law was passed on 19 January 1995, banning corporate contributions to political parties.

Contributions by private individuals may take only one of two forms. They may be "identified", in which case a limit per donor is imposed, or may be contributions from unidentified individuals collected at meetings, rallies or fund-raising events.

D) Supervision of financing

1. - Supervision may, firstly, take the form of a reporting requirement, making it compulsory for each political party to explain the origin of the funds at its disposal.

In Bulgaria, for example, supervision of this kind is exercised by a standing committee of the National Assembly (committee members may include civil society representatives), to which political parties are required to submit an annual report indicating the amount and the origin of their funds and expenditure incurred over the past year.

Parties must file a similar report two weeks after the holding of elections. Similarly, the many members of parliament and newly appointed municipal councillors and mayors are required to report their sources of funds and their campaign expenditure to the respective body to which they belong within one month of the holding of elections.

Canada also requires the submission of an annual report.

2. - Supervision may also be performed by Constitutional Courts. However, given that the legislation governing such supervision is recent there is not yet enough constitutional case-law to permit an assessment of the scope and effectiveness of this form of supervision.

3. - State financial bodies (in particular an Auditor General's department) may also be vested with some degree of supervisory authority (particularly Courts of Auditors).

4. - Lastly, those who break the rules on party financing may be liable to criminal penalties.

5. - These various techniques may moreover be applied concurrently. In Russia, for instance, supervision of political party financing is exercised by both the public prosecution service at the level of the Federation, which also monitors social associations' compliance with the law, the Federation Ministry of Justice, as the body which registers social associations and ensures that their activities are in keeping with their statutory purposes, and financial bodies (divisions of the Federation Auditor General's department, the tax inspectorate), which monitor social associations' sources of income, the amounts of the contributions that they receive and the payment of tax.

6. - Some states rely on their political parties' good sense and probity, trusting them to carry out their own internal supervision by means of a number of non-contentious techniques such as audits, accounting systems and their own statutory financing bodies.

7. - Mention can also be made of other more stringent means of supervision.

Where the law has been broken, some states have no hesitation in even going so far as to permit their constitutional court to disband or ban the offending political party. Others empower, and even make it binding on, their electoral commissions to refer to the courts any breaches of the electoral code that come to their knowledge. A number of states merely confine themselves to imposing financial penalties, for instance a reduction in the amount of state aid granted the subsequent year.

Conclusion

It can be seen from an examination of the various systems established by individual states to organise political party financing in the best possible way that, although the chosen techniques often differ considerably, the underlying concerns are the same everywhere and the objectives fairly similar.

The constant aim is to meet the requirements inherent in the inevitable cost of democracy. If the democratic process is to function well, it is necessary both to limit, as far as possible, and reduce expenditure by political parties and at the same time to safeguard the principle of equality between parties, which often appears to be jeopardised in favour of mainstream parties, which - because they obtain the highest scores and the largest number of seats - are allocated considerable public subsidies.

It is also necessary to ensure greater transparency in the reporting requirements imposed on parties and more thorough supervision of the uses made of the funds that they receive.

In the case of funds from private sources there is doubtless also a need for stricter regulation in terms of the fixing of limits and more severe penalties for those who break the law.