

### **III. The new legislation in Italy concerning the funding of political movements and parties**

#### **Communication by Mr Giuseppe TROCCOLI (Italy), Cairo Session (September 1997)**

The Italian legislation on the funding of political parties is particularly delicate and has always proved difficult: since the first legislative intervention which, in 1974, introduced the public funding of political parties, up to the present day, numerous Acts have succeeded each other but without as yet resolving either the debate, which is especially bitter, or the criticisms. This is also demonstrated by the two referendums on the public funding of political parties (in 1978 and in 1993: the latter produced a victory for the opponents of this funding and resulted in a partial abrogation of the regulation then in force).

Following the approval at the beginning of this year of the Act n. 2 of 2 January 1997, which aimed to regulate voluntary contributions to political movements and parties, there finally exists a comprehensive legal framework for the funding of political parties. This funding can derive as much from contributions made directly by individual citizens, which are in all cases voluntary, as from contributions made by the State. Furthermore a set of obligations is set down for the responsible officials of the political parties and movements - which in Italy are unrecognised, *de facto* associations - concerning in particular the holding of balance-sheets and a complex system of controls, based on penal and administrative sanctions.

With regard to the voluntary contributions from citizens, the new Act already mentioned, which will come fully into force next year, effectively contains two instruments.

The first (art. 1 ) is the possibility of each taxpayer, on the occasion of the annual declaration of individuals' income, stating his wish to dedicate a portion equivalent to 0.4 per cent of an individual's income tax to the funding of political movements and parties. At the distribution of these amounts, which

constitute an ad hoc fund, those political parties and movements can participate (art. 2) which, on 31 October of each year, have at least one member elected to the Chamber of Deputies or to the Senate, and the allocation of the fund (art. 3) is made in proportion to the votes which each party or movement has obtained at the national level (that is according to a proportional share of 25 per cent) at the time of the last election to the Chamber of Deputies. To protect parties which represent linguistic minorities or which did not stand in the elections, the law provides for a portion equivalent to one nine hundred and forty-fifth of the fund for each member elected to Parliament on condition that he has declared himself to be associated with that party or movement.

The second instrument consists in the possibility of donations to political parties and movements made by individuals, companies and commercial organisations, the law permitting tax deductions for the donors.

To be specific, for donations from individuals of an amount between 500,000 and 50,000,000 lire the Act states (art. 5) that a deduction of 22 per cent from gross tax is possible. A similar deduction from gross tax is admitted for donations up to 50 million lire made to political parties and movements by companies or commercial organisations, on condition that there is no state involvement in the company or organisation and that the securities both of subsidiary companies and the controlling companies are not traded on the stock exchange. It is expressly provided (art. 7) that neither individuals nor companies nor commercial organisations whose tax returns have been negative in the previous financial year to that in which the donation is made can take advantage of the deductions provided for in the Act.

The new Act also contains (art. 8) a regulation both new and certainly improved (compared with that previously in force) on the balance-sheets of political parties. In seventeen paragraphs a complex and distinct system of obligations is elaborated, imposed on the legal representatives of the political parties and movements, who have to draw up a report on the financial year according to a precise model annexed to the Act, also accompanied by a report on the economic situation and assets of the party and the state of their management, added as a supplementary memorandum; these documents will have to be drafted in conformity with a model contained in the Act. It is necessary to annex to the report the balance-sheets of the businesses involved and also to respect the procedures for publicity (a condition of publication in at least two daily newspapers) and of control. These balance-sheets are sent to the President/Speaker of the Chamber [of Deputies], along with the President/Speaker of the Senate, who rely on a technical body, that is a college of five auditors whom they have appointed; in the event of a failure to comply with the obligations set out in the Act or of irregular drafting of the report, the President/Speaker of the

Chamber indicates this to the Treasury Minister who, until regularisation, excludes from the distribution of the fund (constituted by the 0.4 per cent of the IRPEF) the political parties and movements in question.

The Act also states that from the fourth year of its entering into force the parties which participate in the distribution of resources from the 0.4 per cent of the IRPEF must reserve not less than 30 per cent of funds allocated to them for their devolved structures (reports for these devolved sections will have to be annexed to those in the national section).

Finally, we should note that an ad hoc safeguard (art. 9) states that the total for the fund coming from the 0.4 per cent of the IRPEF cannot surpass the annual sum of 110 billion lire (a ceiling already reached if approximately 15 per cent of taxpayers express their preference for political parties) and that, furthermore, the tax deductions resulting from donations (coming both from individuals and from companies and commercial organisations) cannot exceed 50 billion lire per year.

If this ceiling is exceeded, the Treasury Minister sees to it that tax deductions for the next relevant financial year are reassessed in line with the necessary amount to ensure that the limit of 50 billion lire is respected.

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I would now like to present for information an account of the regulations in force in Italy for the funding of parties and recall at the outset that the abrogating referendum of 1993 did not deal with that part of the legislation relating to the contribution of the State by way of the reimbursement of electoral expenses. This was a system issuing from Act 175 of 2 May 1974, amended on a number of occasions, which as a result of the last amendments introduced in 1993 (Act n. 515 of 10 December 1993) contains the following provisions:

1) for expenses incurred in elections for the two chambers a contribution equivalent to 1,600 lire per inhabitant, which will have to be subdivided into two funds of equal size, intended for electoral expenses incurred in the elections for each Chamber and distributed by the President/Speaker of each Chamber on the basis of varying criteria but which essentially take account of the number of votes obtained by those parties which have attained a certain quorum (for example in the Chamber of Deputies it is necessary to have exceeded 4 per cent of the votes cast at the national level or 3 per cent in the case of a deputy being elected. In the Senate there is a requirement of 5 per cent of the votes cast at the regional level). There are also provisions for the protection of linguistic minor-

ities, special clauses for parties which stand only in regions with a special status. This contribution has increased and at the last elections in 1996 it was about 90 billion 844 million lire.

2) for expenses incurred at elections to the Regional Councils the procedure is more or less the same and the corresponding contribution, granted by the President/Speaker of the Chamber on the basis of 1,200 lire per inhabitant, increased at the last elections in 1995 to about 57 billion 551 million lire. To benefit from the distribution of funds at the regional level it is necessary to have had a regional councillor elected and 3 per cent of the vote.

3) likewise, for expenses incurred in elections of Italian representatives to the European Parliament an allocation is always made by the President/Speaker of the Chamber of a contribution which, on the basis of a reimbursement of 800 lire per inhabitant, increased at the last elections in 1994 to about 45 billion 422 million lire. Those lists benefit from the distribution of funds, in proportion to the votes received, which have had at least one member of the European Parliament elected. This distribution is also the responsibility of the President/Speaker of the Chamber.

There also exist two sources of funding which we could describe as indirect in that they are not intended for political parties as such. The first consists in the contributions which each Chamber grants directly to its parliamentary groups, and this on a differing basis and according to various criteria but essentially in response to their administrative requirements. (To give an idea of the order of magnitude of these contributions: in 1997 it is expected that they will rise to about 25 billion lire granted to the Senate and 28 billion 800 million to the Chamber.)

The second consists in the contributions under the legislation in force on aid for publication with regard to the publishers of daily papers and periodicals, on condition that they are the organs of political parties represented in at least one branch of Parliament (art. 6 of the Act n. 67 of 25.2.97 and art. 3 of the Act n. 250 of 7.8.90); these contributions have risen in 1994 to about 28 billion lire.

An annual contribution is also made (art. 4 of the Act 250 of 1990) (equivalent to 70 per cent of the costs arising from the last two exercises) which must not under any circumstances exceed 4 billion lire, for radio organisations if they are organs of political parties represented in at least one branch of Parliament.

Finally we should note that in the fiscal plan the revenue from the undertaking of commercial activities during publicity and campaigning by political parties represented in the national Parliament or in the regional councils is exempted from income tax (DPR 26.9.1973, n. 601, art. 7) and that there are

also tax deductions through a reduction of the VAT on the typographic material necessary for the conduct of electoral campaigns ordered by the political parties and movements (art. 18 of Act n. 515 of 1993). There are also reductions in the postal rates for the sending of campaign material (art. 17 of Act 515) and the obligation for the Municipalities, in all elections, to provide free of charge for the use of the political parties and movements some offices for the purpose of holding meetings and debates (art. 18 of Act 515).

There is associated with this system for the regulation of the funding of political parties and movements a body of rules which have followed one another over the years, providing for the different subjects, persons and bodies a series of obligations, prohibitions, forms of publicity, controls and sanctions.

In particular, in addition to what has already been said above concerning the balance-sheets of the political parties and movements and the relevant controls, and leaving to one side the particularly complex subject of penal and administrative sanctions, it is useful to note:

1) the prohibition of funding or contributions from bodies of the public administration, public bodies, from companies having a public capital holding above 20 per cent or from companies controlled by the latter, to parties or their political and administrative branches, parliamentary groups, members of the Italian or European Parliament, regional, provincial or communal councillors, candidates for these offices, and the leaders of the political parties. This prohibition also extends to private companies, unless funding or possible contributions have been decided by the competent company authority and included in the balance-sheet, provided that they are not in any case forbidden by law (art. 7, paragraphs 1 and 2, Act 195 of 1974 and art. 4, paragraph 1, Act 659 of 1981);

2) the obligation of a joint report deposited every three months before the President/Speaker of the Chamber of Deputies, signed by the donor and beneficiary, of the donations and contributions, in whatever form provided, where the amount exceeded, in the course of the year, 11,653,427 lire (art. 4, paragraphs 3, 4 and 5 of the Act 659 of 1981);

3) the ceiling fixed for electoral expenses of the political parties or movements standing in elections for the two Chambers: expenses for elections to each Chamber cannot exceed the sum resulting from the multiplication of 200 lire by the total number of inhabitants of the constituencies for the Chamber and the colleges of the Senate (art. 10, Act 515 of 1993);

4) the obligation for the representatives of the parties and the lists to present to the President/Speaker of their respective Chambers within 45 days of their installation, the balance-sheet concerning the expenditure on the electoral

campaign and their respective sources of funding. This balance-sheet is then sent to an ad hoc board, established at the Auditor General's Department which, within six months, examines for conformity with the legislation both the expenses incurred and the regularity of the documentation provided.

These arrangements also apply to elections to the European Parliament and to the regional councils (the President/Speaker of the respective chamber being replaced by the President of the Chamber and the President of the Regional Council) (art. 12 and 16 paragraph 5 of the Act 515 of 1993 and art. 5, paragraph 4 of the Act 43 of 1995);

5) the untransferability and the non taxability of the State's contribution (art. 6 of the Act 195 of 1974).

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Mr OLLÉ-LAPRUNE thanked Mr TROCCOLI for his account of this interesting subject. He then gave the floor to members wishing to ask questions of Mr TROCCOLI or comment on the topic.

Mr VIVAS TAFUR (Colombia) explained that in his country there was no official scrutiny of the funding of political parties. He wondered about the relation between Mr TROCCOLI's comments and the question of a fiscal control which could affect political movements.

Mr DAVIES (United Kingdom) asked for an explanation of the value in dollars of the millions of liras mentioned in Mr TROCCOLI's text. He wished to have a sense of the order of magnitude of these sums so as to be able to judge the scale of the figures presented.

Mr TROCCOLI said that as he spoke one dollar was worth 1800 liras.

Mr ALBA NAVARRO (Spain) asked for further information concerning the system of grants and the rules for the funding of political groups. He wondered what was the relation between the financial aid which could be given to political groups in Parliament and the funding of the political parties. Were the political groups dependent on resources which they obtained from their own party?

Mr TROCCOLI explained the indirect methods of funding obtained by the parties. There were differences amongst the various political groups. Some were in fact directly dependent on the party. The most important of them however had an autonomous existence. It might happen that a portion of the

funding given to the political groups was used to provide certain services for the corresponding parties, even though they were two different institutions.

It was important to distinguish between two things: first, each Chamber provided finance to give to registered political groups. The funding of political parties had nothing directly to do with this procedure, even if the political groups could redirect some funds to their party. Furthermore, there was also financial assistance given to members of parliament in their own right, in particular to allow them to have a secretariat. However, it was also the case that a portion of this assistance was paid to the political group to which the member of parliament belonged. This was an agreement within the group.

Mr GORAYA (Pakistan) explained that in his country the problem of the funding of political parties did not arise in the same way. Many political parties were registered and their organisation was not specified in any constitutional provision. In Italy, by contrast, it appeared that the parties were structured and that they enjoyed a legal identity.

Mr TROCCOLI said that the political parties were in fact recognised in the Italian system. From the moment when a movement took part in elections it was necessarily given a status. A part of the funds came from the citizens themselves, another part was given to them so that they could conduct their electoral campaign. In the Constitution it was stated that the political parties were a method of participation for the people in political life. Thus the activities of the political parties appeared in Italy to have great importance. According to Mr TROCCOLI it would be opportune to use the new legislation to elaborate a genuine public regulation of the political parties. He thought that there were relatively few legislative provisions concerning political parties.

Mr NYS (Belgium) took up a remark made by Mr TROCCOLI during his presentation, according to which, in the case of the non-implementation of certain rules, the President/Speaker of the assembly had to convey this fact to the Treasury. Mr NYS asked about the sanctions available in such a case.

Mr TROCCOLI said that the sanction was financial. The party which exceeded in an election campaign the prescribed amount had to pay two or three times the sum exceeded. Mr NYS asked if the sanction could, in this case, go as far as the removal of the mandate. Mr TROCCOLI said no but stressed again the existence of limits for electoral expenditure.

Mr FARACHIO (Uruguay) asked about the existence of a permanent form of funding which could allow the political parties to pursue their activities.

Mr TROCCOLI made a distinction in his response between two forms of finance. The first was designed to meet electoral expenses. The second was

voluntary in its origin. It was the citizens who had the opportunity to finance a political movement.

Mr NKHAHLE (Lesotho) said that in his country there was no question of having this sort of legislation. He asked furthermore about the necessity of establishing a framework and fixing limits for electoral expenses. He thought however, that a mechanism of regulation might turn out to be necessary. Some candidates with a personal fortune could in effect enjoy an unjust advantage in relation to others less wealthy. He ended by asking again if it was appropriate to define a rigid framework and fix in advance a prescribed ceiling.

Mr TROCCOLI explained that this question of the funding of political parties was essential for the health and life of a democratic system. The parties had an essential role in politics. That was why it was necessary to establish clear rules regarding their funding. He recalled the distinction made in his country between the public funding given to parties for electoral campaigns and funds from the citizens themselves to allow parties to undertake their daily and ordinary activities. He added that some candidates in elections could be citizens who were richer than others. However, the same rules of funding for their party applied to them and their opponents. He concluded by putting forward the large number of laws on the financing of parties which had succeeded one another in Italy, and also in France where legislation on this matter tended to be changed frequently.

Mr RAVAL (Philippines) asked about the existence in this area of sanctions applying to the individuals themselves. He explained that in his country when an elected member of the Chamber of Representatives did not provide the accounts of his electoral campaign he could not take his seat in Parliament; he was in a sense "disqualified".

Mr TROCCOLI said that this type of sanction was also available in the Italian system. If a party did not present its balance sheet and accounts, it could not receive a financial contribution. If the electoral expenses had exceeded the prescribed amount, other sanctions were then applied. Moreover, sanctions against the candidates themselves could be applied but they followed illegal conduct on the part of the persons concerned. In this case, there was the loss of the parliamentary mandate. He ended by adding that a trend was developing in Italy of substituting criminal sanctions with administrative sanctions.

Mr BECANE (France) noted that the number of parties in Italy was very large. The legislation explained by Mr TROCCOLI would make no contribution to stemming the emergence of new parties. He asked about the rigid aspect of this new legislation.



Mr TROCCOLI admitted that this aspect was mentioned in the criticisms frequently made of this law to the extent that financial assistance was given to parties on a proportional basis. It was a risk the Italian Parliament had decided to take. He added that whilst it was true that there were numerous small parties in Italy, they often formed coalitions. Thus the actual tendency was towards the gathering together of parties and thus was nearer to a 'majority' system. However, when it came to the funding of parties, the rule of proportionality had been maintained.

Mr SOHONI (India) congratulated Mr TROCCOLI on his interesting presentation which dealt with a subject which was essential for democracy. He explained that in his country the idea of public funding for electoral campaigns was the subject of numerous discussions. At regular intervals it was considered by Parliament. However, the complexity of the Indian electorate and even the nature of elections had meant that no decision had been taken in this area. Before taking an initiative on this question it was necessary to agree on the contents of the desired reform. He added that those in power in India preferred up until now to deal with this problem on a case by case basis without drafting comprehensive legislation.

He then asked for clarification of the Italian system. He returned to the question of a fixed ceiling. He also asked about the electorate as considered in the law. Was it the electorate registered at the date of the election or at the moment when certain expenditure was incurred? He also asked who made the calculation: was it parliament or the political parties? What happened if they arrived at different results from their calculations? He also asked about the way in which indirect funding was treated. Finally he asked for more details on the function and role of the court which, within the judicial system, had the responsibility to deal with these affairs.

Mr TROCCOLI returned to the funding and the balancing of electoral expenses on the basis of the number of inhabitants in the constituencies where the lists were presented. On that matter, it was the most recent census of the population which was used. A simple multiplication thus allowed one to know the ceiling for authorised expenditure. No discretionary calculation was therefore possible. He then explained that the competent body for this type of legal dispute was the Auditor General's Department and in particular a special College of this Department. It was this College which had to detect problems of excess expenditure. Pecuniary sanctions could be decided upon in cases of a violation of the rules by the political parties:

Furthermore, other rules applied to the candidates themselves since they had their own responsibilities. In their cases other procedures applied.

He said that since public money had been granted to the political parties for their electoral campaigns, about twenty years ago in Italy, there had been the obligation for parties to prepare a financial balance-sheet of their activity. Moreover it had been decided that these questions came within the competence of Parliament. Mr TROCCOLI concluded by noting that the fact that the Italian Parliament had such a role in this matter had encouraged him to present a communication before the Association on this subject.

The President, Mr OLLÉ-LAPRUNE, thanked Mr TROCCOLI for his presentation and noted that he had spoken of two different processes: the funding of parties and its extension to political groups, and the question of electoral campaigns, which constituted another problem. He added that the Association could at some later point consider more comprehensively all the problems relating to the public funding of political life