

Case study 3: Controlling political party funding in Italy *Professor Massimo Siclari, Università di Teramo, Italy*

1. Introduction

As has often been remarked, political parties perform a fundamental role in contemporary democracies. They are “permanent channels of political participation” and “organising elements of social pluralism”.^{1,2}

Most democratic constitutions drafted during the past 50 years give formal recognition to political parties and provide the foundations of their legitimacy.³ Less consistent, however, is the function such constitutional statements perform in terms of the operations and requirements placed on political parties in different countries.⁴

In Italy, article 49 of the Constitution provides that: “All citizens have the right to freely associate in parties in order to contribute through democratic processes to the determining of national policies.” There is no single implementing law to regulate, in a general way, the organisation of political parties, however. At the time the constitution was drafted and in subsequent debates, concerns and doubts were raised, and though many draft laws were prepared, these were never seriously examined by the Parliament⁵ and political parties were left to regulate themselves autonomously.

Given the historical circumstances in which the Constitution emerged, its drafters were concerned to insert a prohibition against the re-emergence of the former Fascist Party (XII transitory and final provision). Implementing legislation for this provision was subsequently adopted and criminal sanctions were imposed (first by Act 1546 of December 1947, then by Act 645 of June 1952 and later modified by Act 152 of May 1975).

2. The sources of political party funding regulation

The first Act concerning political party funding was approved by a vote of Parliament in May 1974 (Act No. 195), many years after the Constitution of the Italian Republic was issued in December 1947.

¹ P. Ridola (1997), p. 103.

² For details about the theoretical debate, see P. Ridola (1982), pp 66, C. Rossano (1990), pp 1, S. Bartole (1997), pp 705; on interference between the party system and the system of government, see L. Elia (1969) and more recently P. Ridola (1997), pp 103 and S. Mangiameli (1998), pp 139.

³ See, for example, art. 49 of the Italian Constitution (1948); art. 21 of the German Constitution (1949); art. 4 of the French Constitution (1958); art. 10 of the Portuguese Constitution (1976); and art. 6 of the Spanish Constitution (1978).

⁴ See P. Ridola (1982), pp 72.

⁵ For information on the most recent draft bills proposed to the Chambers, see V. Lippolis (2003), note 13 at pp 925-926.

The delay between the promulgation of the constitution and the first law on party funding was due to concerns about state involvement in the organisation of political parties. Despite this concern, there was agreement to draft laws on funding for three main reasons:

1. The public nature of the party functions, linked to the provision of Art. 49 of the Constitution
2. The need to protect political parties from dependence on strong financial organisations and lobbies
3. The concern to eliminate hidden and illegal funding in the face of a demand for transparency of the economic and financial life of parties

Act No. 195/1974 established two kinds of public funding:

1. Funding of the electoral campaigns of the Chambers of Parliament (articles 1 and 2)
2. Funding of the ordinary activities of parties represented in Parliament (articles 3 and 9)

These provisions were modified by successive Acts that expanded public funding to European and regional electoral campaigns.⁶

In exchange for receiving public funding, political parties were asked to comply with fairly modest reporting requirements. They had to prepare a very generic financial balance sheet and publish it in the official newspaper of each party as well as in one national newspaper. These statements were then verified by a technical committee appointed by the Conferences of Presidents of the parliamentary groups of the two Chambers. The committee would draft an annual report of its findings, which would be published – alongside the political party balance sheets – in the official gazette.

The Act also contained provisions for criminal sanctions of violations of the law (art. 7). These rules continue to be enforced by the sentences of the *Corte di cassazione* (the Italian Supreme Court) and by the *Corte dei conti* (the Italian Audit Court).⁷ This is the last part of Act 195 of 1974 that remains in force.⁸

The two articles that governed the financing of the ordinary activities of parties represented in Parliament were repealed by a popular referendum in 1993. Act

⁶ Act 11 of January 1978, Act 422 of August 1980, Act 659 of November 1981.

⁷ See Cass. Pen. Sez. V, 13 giugno 1998, n. 10041; Corte dei conti – Collegio di controllo sulle spese elettorali, *Referto ai presidenti delle Camere sui consuntivi delle spese sostenute e dei finanziamenti raccolti dai partiti, liste e gruppi di candidati in occasione della campagna per le elezioni della Camera dei deputati e del Senato della repubblica del 13 maggio 2001*, Roma Corte dei conti luglio 2002.

⁸ For a critical view of the meaning of the Act 195/1974 within the Italian political system, see P. Ridola (2000a).

515 of 10 December 1993 modified the rules on the funding of the electoral campaigns (which were partially modified subsequently).⁹ The Act:

- Provides limits for expenditure by political parties and by individual candidates in general elections;¹⁰
- Specifies the type of expenses that can be refunded (production, purchase or rent of materials and instruments for electioneering; distribution and dissemination of these materials and instruments, including print media, radio and television costs, renting cinema halls and theatres; organising electioneering meetings; costs related to registering on electoral lists; electoral campaign staff; travel expenses, phone and postal costs);
- Imposes funding transparency;
- Provides new special control boards (created within the Audit court and within the Appeals Courts (*Corti d'appello* or the *Tribunali*)).

The legislation also created new mechanisms of funding political party activity,¹¹ but these were criticised by the general public and by jurists for being counter to the popular demand expressed in the 1993 referendum,¹² and were soon abolished.¹³

3. Controls on political party funding today

As noted above, Act 515 of 1993 established different electoral expenses control bodies. These are:

a. **Il Collegio di controllo sulle spese elettorali presso la Corte dei Conti**

This special board comprises three members drawn among the judges of intermediate level of the Audit Court (*Consiglieri*).¹⁴ The board is supported by civil servants who ordinarily work in the Audit Court, but who are exempt from any other work during the period of operation of the temporary special board.

Representatives of political parties and political forces that are recognised by law (movements, lists or groups of candidates that qualified to compete in the Parliamentary election) must present their electoral expense accounts to the presidents of the respective parliamentary chambers within 45 days of the start of the mandate of the new Parliament. These accounts are then submitted to Audit Court.

⁹ Act 157 of June 1999; Act 156 of July 2002.

¹⁰ About the problems, see P. Ridola, (2000a).

¹¹ Act 2 of January 1997.

¹² See F. Lanchester (2000), T.E. Frosini (2000), B. Caravita di Toritto (2000) and C. Pinelli (2000).

¹³ See art. 10 of Act 157 of June 1999.

¹⁴ *Consiglieri* are the intermediate judges of the Audit Court; lower judges (*referendari* and *primi referendari*) or higher judges (presidenti di sezione and Primo presidente) are not allowed to be members of the special boards (*collegio*).

Within the Audit Court, the special board is given six months (which can be prolonged at most by a further three months) to check whether the expenses are in accordance with the provisions of Act 515 of 1993, and to verify whether invoices and bills of expenditure are formally correct. If the board identifies any kind of discordance with the legal provisions, it can fine the party.

The main breaches sanctioned by the law (art. 15, paragraphs 13, 14 and 15) are:

- Lack of information about funding sources (which carries a fine for the party of €5,000 – 50,000)
- Breaches of the expenditure limit (which carries a fine for political parties of a minimum of half to a maximum of three times the amount by which the limit was exceeded)
- Non-submission of accounts (which leads to suspension of the refund until the accounts are presented)

The sanctions are enforced by the Presidents of each Chamber, who have the power to reduce the amount of public funding or, in the worst case, suspend all payment to the party. Parliamentary rules for enforcing these sanctions were approved by both the Senate and the Chamber of Deputies in July 1994. According to these rules, electoral refunds can only be paid to organisations or individuals with a right to receive them and only if they are under the financial guarantee of a bank or an insurance company.

If the board suspects that there was illegal funding (under art. 7 of Act. 195 of 1974), it must inform the judicial authorities, who must investigate and prosecute any criminal offence.

This system has some disadvantages.

First of all, the special board is not a permanent body. Its members are drawn fresh for each election. In practice, their choice has not been influenced by political considerations and the special board is considered to enjoy a high level of independence. Its independence is reinforced by the fact that the three members of the court have the status of audit court judges. But the choice is not dependent on the members having expertise in the area of party funding. Moreover, given that the special board is chosen for each election, for a period of at most nine months, the individual members are not able to build up expertise. Another disadvantage is that in the case of concurrent elections (for instance, national and European), two different boards will be appointed, with inevitable consequences for the coordination of the oversight process.

Secondly, the control consists of a procedural check of whether the sums listed in the balance sheet and the invoices and bills match. The control body does not have any autonomous power to verify whether these reflect actual expenditure.

Finally, there is no coordination between the special boards of the Audit Court and the regional electoral monitoring bodies, which are discussed below.

b. I Collegi regionali di garanzia elettorale

Art. 13 of the Act 515 of 1993 stipulates that within the *Corte d'Appello* (Appeals Court) or where there is no appeals court the *Tribunale* (Tribunal) of the main town of each province, a *Collegio regionale di garanzia elettorale* (regional electoral oversight bodies) must be created. The regional boards comprise the president of the Appeals Court (or of the tribunal) and another six members who appointed by the president for a term of four years, which can be renewed only once.¹⁵

These regional boards receive the statements of accounts of individual candidates, which they verify to ensure that they are correct.

Any voter can access the accounts and call them into questions within 120 days of the election. If the board does not identify any irregularity in the statements of accounts within 180 days of the election, the accounts are considered to have been positively verified.

As with the rules governing political party campaigns, breaches of the rules on declarations and accounts for individual candidates may result in a fine. In some cases, the individual responsible for the violation may be declared ineligible as a candidate or may even be suspended from parliamentary office.

The regional boards have the power to request of any public body any information that might be useful for verifying the accounts.

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¹⁵ Half of the members are ordinary judges and the other half is selected among chartered accountants or professors or law, administration or economics. In addition to the regular members, the chairman appoints four deputy members chosen from any of these categories.

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