

Country Reports on Political Corruption and Party Financing

FRANCE

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INTRODUCTION

French parties have a constitutional status but not a specific legal status. According to the provisions of article 4 of the Constitution of 1958, *"political parties and groups shall contribute to the exercise of suffrage. They shall be formed and carry out their activities freely. They must respect the principles of national sovereignty and democracy."* Parties have been considered legal entities since legislation on the issue was adopted in March 1988. In 2000, 176 political parties presented their accounts, and as a result got public funding and/or donations through tax relief. Most of these parties comprise very local structures without any real influence.

Political party funding amounted to 150 million euros in 2000. But these figures do not take into account the funding of electoral campaigns, which amounted to 28 million euros in the legislative elections of 1997, 35 million euros at the 1999 European elections and 82 million euros at the presidential elections of 2002. The large number of elections (local council, county council, regional councils, legislative elections, European elections, presidential elections) and the high cost of national elections (presidential and European elections) are factors that influence the costs of party and campaign funding.

In France the legislation on the funding of political activities was introduced as late as 1988. It was amended in 1990, 1993, 1995, 1996 and 2001. The 1988 Act established ceilings on electoral expenses and donations from legal or physical entities, and introduced public funding. In 1990, an independent Committee was created to control the enforcement of the regulations on campaign and party funding. Infringement of the rules on electoral campaign funding can be penalised by disqualification of the candidate. In 1993 the disclosure of donations from legal persons was introduced and in 1995 donations to candidates from legal entities with the exception of political parties were banned. Since 1996 candidates have been able to take legal action against alleged violations of electoral campaign funding laws at local level. The flat reimbursement of 50 per cent of the ceiling set on electoral expenses for presidential campaign was approved in 2001.

I. THE PROBLEM OF POLITICAL FINANCE SINCE 1980

1. The major corruption scandals

In 1999, out of 3,900 convictions on financial and economic matters, 250 were for sleaze (6.3 per cent compared with 2.5 per cent in 1990). Of these 250 cases, we do

not know how many politicians were involved, though four ministers have been imprisoned in the ten last years. Every party has been involved in a major scandal of sleaze for breach of trust. A leader of one party was actually prosecuted for breach of the regulations concerning party funding.

Some scandals have international dimensions. Examples are the assets of the former republican party which were held abroad at the end of the 1980s and early 1990s, and the Elf scandal, which has been the subject of investigations since 1994 (*Global Corruption report TI 2001, p. 145*).

Competing parties are sometimes involved in the same scandal. An example of this was the public contracting for the renovation of secondary schools in the Paris region. Parties are suspected to have received over 91 million euros in kickbacks between 1990 and 1996. These allegations concern public procurement projects Paris for public housing units, kickbacks on printing contracts and the use of public local funds to pay political party staff. The scandal emerged at a time when the Head of the State was simultaneously the president of the neo-Gaullist party and the mayor of Paris. Now, as President of the republic, he enjoys immunity from all criminal prosecutions except in the case of high treason. Criminal liability can only be invoked before the High Court of Justice.

2. The major changes in legislation on political finance

The rules on funding date from 1988 and have been amended in 1993, 1995, 1996 and 2001.

a) Disclosure of funding and expenses is required by candidates for each campaign with a constituency of over 9,000 inhabitants.

Accounts of parties (which get public funding and/or tax relief on donations) must be disclosed in the official gazette.

b) Contributions to candidates and political parties from legal entities (such as companies) have been banned since 1995. The only legal entities authorized to make donations are parties or political groups. Both the Council of State and the Constitutional Council have determined that a party is a legal entity that must have a political purpose and satisfy the requirements of transparency of the accounts of political parties. The only donations allowed, except those made by parties or political groups, are donations made by individuals.

c) See response in IV. Finance B. Public finance and media 1.a. Direct state subsidies to parties.

d) Enforcement is carried out by an independent body: the Campaign accounts and political funding committee (CAPFC) and by the electoral courts for elections (i.e. the administrative courts and the Council of State for municipal, cantonal and regional elections; the Constitutional Council for parliamentary and presidential elections).

3. The major recent court decisions

In January 1990, the Constitutional Council struck down the threshold of 5 per cent of votes to get public subsidies, deciding that it was counter to the Constitution because it was an obstacle to the emergence of new political parties (*89-271 DC, 11 January 1990 p. 21*).

The Constitutional Council also decided, in 1993, that expenditure for campaign material to promote the candidate's image must be incorporated into his or her campaign account and that if the maximum permissible expenditure level is exceeded the candidate is ineligible to run (*93-1328/1487, 9 December 1993, Constitutional Council, AN Loir-et-Cher Constituency 1, p.525*).

The Council of State considered that the very important assistance of a Departmental Council to promote a candidate can be regarded as a donation by a public authority, a practice that is forbidden by the electoral code (*Council of State, 8 November 1999, élection cantonale de Bruz, M. Barre, req. 201966*).

4. The public debates

Several prosecutions have been launched against parties, MPs and political leaders. The allegations concern campaign and party financing through public works, public procurements and kickbacks. According to a Gallup poll, 62 per cent of the population distrusts politicians in France because of sleaze.

The need for further guarantees of the independence of prosecutorial authorities has been the subject of debate in recent years, but the quashing of judicial procedures concerning town authorities involved in sleaze in Paris and the dismissals of the former secretary general of the communist party (Robert Hue), of a former socialist minister (Strauss-Kahn) and of Roland Dumas, former minister for foreign affairs, have raised suspicions about the ability of judges to seriously fight political corruption. In these cases the credibility of the justice system been somewhat eroded.

II. TRANSPARENCY

1. Reports on finance by parties and candidates

Parties and candidates (in constituencies with a population of 9,000 or more) receive donations from individuals through an agent, who serves as a screen between the donor and the party or candidate. Not only are the duties of an agent distinct from those of the candidate or party: the agent also has his own bank or post office account. The candidate is required to collect donations a year before the election. For those candidates who have received no donations there is no obligation to employ an agent. But the CAPFC considers that direct payment of electoral expenses by candidates should involve no more than modest sums. At the 1997 parliamentary elections, (the most recent figures available) 28 per cent of candidates had no agent. The agent may be a funding association subject to the law applying to certified associations, or an individual financial agent.

For political parties, funding associations must have an object confined to that one purpose; they must have a defined territorial constituency within which they operate and must have prior approval from the CAPFC. Political groupings prefer to resort to an association rather than an individual. The duties of an agent come to an end three months after the campaign account has been deposited.

Candidates in elections other than presidential elections have to deposit their campaign accounts certified by a chartered accountant, together with annexes, at the prefecture within two months of the ballot at which the election is won. The accounts must show all receipts and expenses incurred during the campaign for the year before the day on which the results are declared. This rule applies whatever the election results and whatever funds are committed. Accounts are submitted to the CAPFC. In presidential elections, candidates have to deposit their accounts with the Constitutional Council.

Political parties that are publicly funded or receive tax relief on private funding have to present to the CAPFC accounts certified by two accountants within six months of the end of the accounting year. The accounts cover: the headquarters' account (balance sheet and profit-and-loss account); the list of agents; accounts relating to press activities, property companies, publishers, training, businesses and to parties' territorial organisations unless these are totally autonomous; accounts of bodies, companies or businesses in which the party or grouping holds half the authorised capital or occupies half the seats on the administrative body or has a preponderant decision-making or management authority.

2. Access to reports

These accounts are published in the official gazette.

3. Publication of sources and amounts of donations

The donations of individuals are not published.

4. Declaration of assets of elected representatives

See response to question 1.

III. FINANCE

1. Donations

a) Limits on individual donations to candidates or political parties

In France donations to candidates as well as political parties are capped:

- Donations from individuals to the parties: 7,500 euros per year, per person;
- Donations from individuals to the candidates: 4,600 euros per year, per person.

Cash donations must account for 20 per cent of the maximum allowed. The tax benefit accruing to a donation is 50 per cent of the sum due but not more than 10 per cent of assessed income. Donations are authorised from the first day of the twelfth month preceding the first ballot until the day when the election is declared. They entitle the agent to a receipt from the CAPFC, stating the agent's name and address if the donation is in excess of 3,000 euros. About half of all donors do not take up this tax benefit for fear that their identity might be revealed – an unwarranted fear since confidentiality is assured.

It is forbidden for a public law corporation to make a cash donation. As for benefits in kind, their lawfulness is a matter of interpretation by the electoral judge, depending on the individual circumstances, the terms on which the benefit is agreed and the amount involved. If the amount is large (for instance, if the public authority that the candidate (the sitting member) represents finances the setting up of a communication strategy), it is likely that the campaign account will be rejected (see above the sentence of the Council of State of 8 November 1999 II, 3).

b) Limits on corporate donations to candidates or political parties

Corporate donations have been forbidden since 1995. No company can finance a political party or a candidate.

c) Trading in influence

The legislation on trading in influence is not enforced because it is so difficult to secure evidence of influence peddling. Only 63 condemnations for all kinds of trading in influence were registered by 1999.

2. Public finance and media

a) Direct state subsidies to parties

The total amount of appropriations entered each year in the central government budget for the parties is 80 million euros. The first part of this is for the funding of parties and groups in proportion to their results in the parliamentary elections. The second part is to fund parties and groups with seats in parliament. To qualify for funds from the first part, a party must have put forward candidates in at least 50 constituencies, and funds are allocated in proportion to the number of votes obtained in the first ballot. As there is no minimum number of qualifying votes, even very small groups can access public funds. This is no small advantage since it lasts for the entire life of a parliament, which is five years. This rule will be changed in the near future when a threshold of 1 per cent of the votes will be required under a new bill concerning elections at the regional councils and at the European Parliament.

b) Direct state subsidies to candidates

The central government makes a flat-rate reimbursement of 50 per cent of the maximum authorised electoral expenses, provided that the candidate obtains 5 per cent or more of the votes cast in the first ballot. This system was extended to presidential elections by the Institutional Act of 5 February 2001, and there is no doubt that it has undesirable effects. Some candidates, for example, tend to exaggerate

their expenses so as to reach the maximum reimbursement by including in their account expenses not remotely connected with the election (e.g. hairdressing or restaurant bills).

c) Indirect state subsidies to parties

- subsidies to 'L'Humanité' (organ of the Communist party: 2, 34 million euros in 2001);
- tax relief: 50 per cent of the sum donated with a ceiling of 10 per cent of assessed income;
- subsidies to parliamentary groups and to pay the assistants of the members of the Parliament (214 million euros in 2003 for both assemblies).

d) Indirect state subsidies to candidates

- free postage,
- posters on authorized boards;
- tax relief: 50 per cent of the sum donated with a ceiling of 10 per cent of assessed income;
- TV and radio airtime for elections;
- election costs: public subsidies in the central government budget 2002 for the presidential election (273.3 million euros) and for the legislative elections (95.9 million euros).

e) Media space

- Legislative elections: 3.5 hours of airtime on radio and TV for the first ballot, divided according to the strength of the parties represented in Parliament (one half of the time for the ruling parties, the other half for the opposition); 1.5 hours for the second ballot;
- Presidential elections: equal time for the candidates (15 minutes maximum for the first ballot, 1 hour for the second ballot, for each candidate);
- Broadcast equality is enforced by the Independent Broadcasting Authority (*Conseil supérieur de l'audiovisuel*).

f) Abuse of power

Candidates can always refer cases to the electoral judge for discrimination by radio and television, by the press, by publications, through the use of official functions or through pressure or recommendations to vote in a certain way. But if there is no evidence to show that the applicant was discriminated against in such a way as to affect the outcome of the ballot, the claim is dismissed by the judge.

3. Limits on expenditure

The rules concerning *electoral expenses* for each election in constituencies of over 9,000 inhabitants are as follows: the candidate is required to enter into his campaign account expenses incurred by himself or on his behalf during the year preceding the first day of the month of the election and up to the day of the election. So what is or is not an election expense is difficult to determine. Expenditure on printing for the official campaign, expenses following the election, the cost of purchasing books and of make-up are not considered as electoral expenses. Nor are New Year's greeting cards, Christmas presents the candidate's taking part in a dance organised by the community or in traditional events. On the other hand, any expenditure clearly linked with the election such as the cost of producing or distributing pamphlets or posters is held to fall under electoral expenses.

Commercial advertising is banned for three months before the first ballot and up to the day when the election result is declared. So a candidate cannot distribute a publicity insert calling for his re-election. Commercial political propaganda on television is also prohibited. The electoral courts have endeavoured to define the concept of electioneering propaganda. A brochure personally promoting a candidate has been held to be electioneering propaganda and must therefore be included in the campaign account. But articles about the progress of public works in a constituency where an election is being held should not be regarded as electioneering publications.

The *ceiling on electoral expenses* is calculated by population on a sliding scale. For instance, in a commune with a population of 15,000, the ceiling is 18,000 euros for the first ballot and 22,000 euros for the second, with a coefficient of increase. For parliamentary elections, the average ceiling is 38,100 euros per constituency plus 0.15 cents per inhabitant. For presidential elections, the ceilings are 14.7 million euros and 19.7 million euros for the two ballots. All these figures are regularly adjusted for inflation.

IV. OVERSIGHT, SANCTIONS AND ENFORCEMENT

1. Oversight institutions

Funding of elections

As has already been noted, controls on the *funding of elections* are exercised by the CAPFC and the electoral courts (i.e. the administrative courts and the Council of State for municipal, cantonal and regional elections; the Council of State for European elections; the Constitutional Council for parliamentary and presidential elections).

The CAPFC is an administrative authority of nine active or honorary members – three each from the Council of State, the Court of Cassation and the Audit Court. It appoints its own chairman. Members are appointed for five years. The Committee has an investigative role, and its findings are not binding on the electoral courts. There are two possibilities: either the election is not contested before the electoral courts and the CAPFC has six months in which to rule on the campaign accounts; or the election is contested before the administrative court, which stays proceedings and has two months in which to rule on the accounts after two months have elapsed from the time of their deposit. In the Constitutional Council, proceedings need not be stayed.

The CAPFC can approve, reject or adjust the accounts. It will refer an account to the electoral courts if it has not been deposited on time, if it has been rejected, or if it is

well above the limits. The Committee publishes campaign accounts in a simplified form in the official gazette. It may refer an account to the prosecuting authorities, as it has done in cases where it considered that relinquishing a claim amounted to a disguised donation or that public funds had been misappropriated. There are various reasons for rejecting a campaign account: a deficit unaccounted for, no vouchers, or no account opened by the agent. At the 1995 municipal elections, out of 4,110 lists, 112 were referred to the electoral courts. At the 1997 parliamentary elections, where there were 6,359 candidates, 274 were referred to the courts.

Funding of parties

Regarding *political parties*, the CAPFC has three duties. First to establish whether there has been any breach of the rules for setting up accounts or for donations by natural or legal entities. If need be, it will refer the case to the courts under section 40 of the Code of Criminal Procedure, as it did in the case of donations by a foreign legal entity that were authorised but had not passed through an agent. It must publish the summary accounts of political groupings in the *French gazette*. The CAPFC must establish and transmit to the Prime Minister a list of the political groupings which it considers have met their accounting obligations, so that they can qualify for public funding. But it does not approve or reject party accounts. These accounts do not have to be supported by receipts. The Committee is not authorised to rule on whether expenses are appropriate or to investigate party accounts. If, then, unlike many of its foreign counterparts, the CAPFC has unquestionable authority, in reality the control it exercises is only formal. *Penalties* apply both to candidates and to political parties.

Concerning the candidates, there are *electoral, financial and criminal penalties*.

Electoral penalties – which are ordered by the electoral courts either after the case has been referred by the CAPFC or following a direct referral – are of three kinds.

Candidates who have committed an offence are disqualified, whether they were elected or not, and whether the election is contested or not. Disqualification relates only to the term of the elected member and runs for a year from the day on which the electoral court's decision becomes final. The disqualification rule has been qualified, however, by the legislature. Initially, under the 1990 Act, the court would automatically disqualify a candidate who had failed to deposit his campaign account or whose account had been rejected. But if a candidate had exceeded the ceiling for electoral expenses, the court had discretion: in practice, it would disqualify the candidate only if the excess was more than 5 per cent of the electoral expenses.

In 1996 the legislature permitted the electoral court (the administrative court – the rule was not extended to the Constitutional Council for parliamentary elections) to refrain from disqualifying a candidate whose good faith has been established. Good faith, which can redeem the candidate, has been allowed in the following circumstances: where the applicable law is unclear and where application of the law would lead to very inflexible situations. If the account is rejected but good faith is allowed, the candidate is not disqualified.

Where the party-list system applies, the candidate heading the list is disqualified and the candidate following the last person elected is declared elected.

While disqualification is applicable to all elections, electoral penalties do not apply in presidential elections. When the Constitutional Council declares the results of a presidential election, it has the force of a judicial decision that cannot be challenged.

The second scenario is the annulment of an election. An election is annulled when a candidate is disqualified on application. If no application is made, the elected candidate steps down.

Financial penalties are incurred when the accounts have been rejected by the CAPFC. When they are incurred, the candidate loses the flat-rate reimbursement of his electoral expenses. This is determined by the CAPFC in the case of elections other than presidential, and by the Constitutional Council in the case of presidential elections. Only financial and criminal penalties can be applied to presidential elections.

Even if it is demonstrated that the candidate has acted in good faith, *criminal penalties* may still be incurred if, for instance, he or she received a donation from a legal person. An elector or other applicant is always entitled to refer an offence to the criminal courts even if it has been the subject of proceedings in the electoral courts. The CAPFC can also institute criminal proceedings. It is increasingly doing so, as if it were trying to claw back power lost in the electoral arena when the legislature introduced the good-faith defence.

With regards to political parties, there are three kinds of penalties : *administrative, financial and criminal penalties*.

Administrative penalties are of three kinds. First, the authorisation of parties' funding associations that have failed to meet the obligations imposed upon them (i.e. opening of a single account) or have accepted unlawful donations may be withdrawn.

Where the authorisation is withdrawn, votes cast in the association's administrative district do not count towards the amount of the first part of direct public aid for the following year. Financial agents who are individuals may also have their authorisation withdrawn. In 2001, 13 authorisations were withdrawn, but only nine of them by way of penalty; the other four withdrawals related to changes of associations.

The Audit Court rather than the CAPFC may exercise control over the parties.

The *financial penalty* that may be incurred is the loss of public assistance from the budget the following year. This is imposed where the party has failed to fulfil its accounting obligations or received donations that have not gone through a financial agent.

Criminal penalties are of two kinds. First, individuals who have made or received donations unlawfully may be fined 3,750 euros or imprisoned for one year, or both. This penalty is incurred where the maximum authorised donation is exceeded, where the donation was made by a legal entity or where the maximum donation in kind is exceeded. Second, there is a five-year exclusion from procurement contracts.

2. Independence of Prosecutors and judges

The magistrates

France has investigating judges to whom the public prosecutor must refer criminal cases. Since January 2001 there is also a new type of judge – the liberties and detention judge – who is responsible for deciding on preventative detention for people under investigation. All of these judges and prosecutors belong to the same body of magistrates.

The procedure

It is based mainly on two principles: the principle of discretionary prosecution by the prosecutor and the inquisitorial model, which gives the investigating judge the role of conducting the proceedings. The French prosecution service is headed by the Minister of Justice. The question of whether the minister can instruct judicial authorities not to prosecute or to terminate proceedings has always been subject to debate. The current Minister of Justice and his two predecessors have undertaken not to issue any hierarchical instructions in individual cases where politicians are involved. The influence of the prosecutor and that of the political power remain important, however. For instance, when an investigating judge needs to extend his investigations on the basis of new facts, this extension requires the agreement of the public prosecutor. The reluctance of the Minister of Justice to interfere in proceedings does not prevent other forms of intrusion of the executive through the career of the magistrates. The former practice and culture of instructions is still reflected in the attitude of prosecutors, too, who in some sensitive cases try to gauge the views of their superiors as to the advisability of prosecution (*Greco report on France, 2001*). But even this practice seems to be on the decline (*Laurence Vichnievsky, Sans instructions, Stock, 2002*). Cooperation between the police and the investigating judges is not always adequate either. Moreover, investigating judges claim for more personnel to conduct difficult and long investigations, which frequently require more international judicial cooperation. Sometimes they come up against a refusal to cooperate by the executive power when the case is covered by the Official Secrets Act (Elf).

The latest reforms on penal procedure introduced safeguards and guarantees to the indicted person which offers possibilities to counter proceedings and to annul them. It also forces the investigating judges to devote more time defending proceedings than dealing with the core issues of the case.

V. CONCLUSION

There are positive points in the French system:

- a decrease in electoral expenditures at local level
- the independence of the control body (the CAPFC)
- There are weaknesses and loopholes:

Regarding *campaign funding*, this regulating of the funding of election campaigns was initially conceived quite separately from the rules of classic electoral litigation. But this independence gradually faded away. This can be seen, for example, where the penalty for allocation of donations by public law corporations and of benefits in kind is a special case or where a disqualification ruling depends on the amount by which permitted electoral expenses are exceeded. It is as if the pragmatism of the court had little by little triumphed over the rigour of the law.

Since 1990 the CAPFC has examined over 38,000 accounts¹. More than 2,000 candidates have been disqualified, 1,500 of them for failure to deposit campaign accounts or for depositing them after the time limit had . That leaves 500 disqualifications on other grounds, accounting for 1.3 per cent of campaign accounts. It is tempting to conclude that these rules have created a virtuous circle. Certainly the

¹ This statistics was established in 1998-1999 by the CAPFC.

rules appear to be quite effective where constituencies are of a reasonable size. On the other hand, where the constituency encompasses the entire nation (as in presidential elections) and is difficult to control because of its size, the effectiveness of the rules is much more doubtful. It is extremely difficult in this case to be certain of the lawfulness and limitation of resources and expenses spread over a very large area. What is more (and this is the majority of cases), where a campaign is funded by personal contributions and by a loan from a party which then refinances itself by flat-rate reimbursement (a source of public funding), the CAPFC and the electoral courts have only very limited means of controlling the origin of funds. In terms of personal contributions, the Constitutional Council recently highlighted when it monitored the funding of the 2002 presidential election. Lastly, we must note that while candidates in all elections are open to electoral, financial and criminal penalties, candidates in presidential elections are exempt from electoral penalties.

Regarding the *parties*, the penalties that exist – both administrative and financial – have no deterrent effect. In terms of the financial penalty, 80 per cent of parties presenting accounts do not receive public funds but comply with the requirement so that their donors can claim the tax credit attached to the donation. Lastly, party leaders are not prosecuted for infringing the law on party funding but for trading in favours, concealment of misappropriation, or the misuse of a company's property or credit for personal advantage. In other words, offences involving political corruption are prosecuted under the criminal code rather than legislation on the funding of political parties. Moreover, while the criminal code has allowed for the punishment of legal persons since 1993, political parties are excluded.

More generally these rules have been conceived in an exclusively national context unresponsive to the development of political sleaze at the international level.

SOURCE MATERIAL

Electoral code and bill 88-227 of 11 march 1988

Jurisprudence of the Constitutional Council and of the Council of State

Annual reports of the Campaign Accounts and Political Funding Committee edited by the French Gazette

Marie-Josée Fulgeras, *Affaires à suivre*, Albin Michel, 2001

Greco Report on France 2001, Council of Europe

Laurence Vichnievsky, *Sans Instructions*, Stock, 2002