

# Country Reports on Political Corruption and Party Financing

## ITALY

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### INTRODUCTION

When addressing political and social issues in Italy, the practice is to distinguish between the '*Paese legale*' and the '*Paese reale*', that is to say, between the legal and institutional structures on the one hand, and what actually happens in the country on the other hand. This distinction points to a gap between the complex system of laws and authorities that should regulate the life of Italian people, and the actual informal rules. Such a dichotomy is also apparent when trying to give a picture of party financing regulation in Italy. Indeed, there has in the last decade been a positive trend towards better rules, more transparency and public access to party expenditure records. However, looking at practices, recurrent political scandals and actual violations of the legislation in place, it is evident that the apparent progress is far from linear. There have been steps forward and steps backwards, and what is recorded by official documents is but a part of the full story. This brief report relies mainly on secondary literature, official documents and surveys. The attempt is, on the one hand, to portray the '*reale-legale*' dualism, and on the other hand to give a diachronic perspective on the evolution of party financing practices and regulations in Italy.

### A sketch of Italian political institutions

Italy is a parliamentary democratic republic. The head of the state is the President, who is elected for a seven year term. The Prime Minister is appointed by the President, subject to approval by the Parliament. The President represents the unity of the Nation, whilst the Prime Minister, as chief of the executive, is responsible for the political decisions of the government. Under normal circumstances, general elections are held every five years. The Parliament is the supreme legislative authority and consists of a Lower House or Chamber of Deputies (630 elected members) and an Upper House or Senate (315 elected members plus 10 non-elected members). The appropriateness of such a high number of MPs, in relation to a population of just 60 million, has often been called into question as it is associated with very high public expenditure, whilst it is dubious whether it increases the efficiency or representativeness of the system. The Constitutional Court is the final authority on the constitutionality of legislation and is a body of 15 judges, of which five are appointed by the President of the Republic, five are elected by Parliament, and five are elected by ordinary and administrative supreme courts. The Supreme Council of the Magistracy (CSM) oversees the administration of justice and is elected by Parliament and by the judges themselves.

The National Auditing Authority (*Corte dei Conti*) is an independent body that oversees the financial administration of entities that regularly receive state funding, and more generally assesses the efficiency and legality of public expenditure. It reports directly to the chambers of Parliament. Members of the National Audit Authority are magistrates and administrative staff.

## **A brief history of the Italian electoral system and the major political parties**

The political history of the Italian Republic is deeply rooted in the experience of Fascism and Anti-fascism. At the end of World War II, Italy faced a severe breakdown of its economy and deep losses, both material and moral. On 2 June 1946, Italians voted for their nation to become a Republic and for the new constitution, which banned both Fascism and the monarchy, and became effective in 1948. The prevailing interpretation of the Constitution was always according to the criteria of proportionality. Indeed numerous political parties emerged after the capitulation of Fascism, and it was common wisdom that a proportional system (and thus an executive power shared amongst a plurality of political subjects) would avoid the dangers of falling into a new totalitarianism.

Anti-fascist unity became the justification for strategic moderation and co-operation amongst the leaders of the main political parties. The Christian Democratic Party (DC) has played the strongest role in the history of the Italian Republic. Its main opponent was the Communist Party (PCI), the largest communist party in Western Europe. The Socialist Party (PSI) also played an important role, especially in alliance with the DC. Other minor parties were the Liberal Party, the Republican Party and MSI (a right-wing party inspired by Fascism). For more than 40 years, these parties maintained their general characteristics such as size and political influence. Despite some minor variations (such as the ‘democratic turn’ of some socialists, who split into the social-democratic party, PSD, and PSI), the modalities of coalition and the distribution of power amongst political parties remained stable, although the country itself was undergoing deep social and economic changes. Italy has had more than 50 governments in its republican history, yet this was never symptomatic of a real possibility of alternate governance. Indeed, most Prime Ministers were members of the DC, while a government led by the PCI was considered unacceptable in a coalition between moderate parties. What is now known as ‘*Prima Repubblica*’ (1946-92) was based on a proportional and polycentric system in which the competition and coalition dynamics remained more or less unchanged through time, without a genuine political regeneration (Cotta 2002, p.19). The main features of the democratic institution of the ‘*Prima Repubblica*’ gave shape to a consensus-oriented model that did not allow for the practice of alternate governance (Lijphart 1999).

Between 1992 and 1994 Italy underwent a crisis and eventually witnessed a sudden collapse of a political order that had prevailed for about 45 years. Towards the end of the 1980s, the political establishment was challenged from multiple sources. The ‘Referendum Movements for electoral reform’ challenged the proportional system and aimed at an institutional change involving electoral law but also the regulation of party financing, through the majoritarian tool of the Referendum. These movements accused the system of a democratic deficit, because it favoured the logic of compromise over principles, and accused politicians of having overlooked the problem of party financing. The plurality of political parties was regarded as a waste of public money through state funding of parties and as an opportunity for corruption through illegal private funding. Some sectors of the judiciary questioned in court the

mismanagement of public resources and illicit exchanges between private and public money; entrepreneurs and businessmen accused politicians of graft and corruption, which was distorting free competition in the country. Indeed the topic of party finance was crucial in the years of the big crisis and dominated the public debate at the time. The problem of party financing and corruption was one of the issues that marked the end of the *Prima Repubblica*. The federalist movement in the North of the country (*Lega Nord*) lamented the inefficient management of public resources by the central power and pressed territorial claims, asking for more political and economic independence of the regions. This had a deep impact on the way that the Regions, the principle of subsidiarity and devolution entered the Italian political agenda in the years that followed (Cotta 2002, pp.17–25). All these questions hit the party system hard.

Following the collapse of the Soviet Union, the opposition PCI accomplished its democratic transformation into the *Partito Democratico della Sinistra* (PDS), whilst some members of the party joined the re-founded communist party, *Rifondazione Comunista*. The new political entity, the *Lega*, because of its territorial focus lacked the characteristics necessary to gain enough votes to lead a government coalition. The political representatives who tried to give voice to the concerns of the Referendum Movements (Mario Segni) and to the values underlying the work of the judiciary (Antonio Di Pietro) did not have great popular success. However, the investigations by the judiciary which involved hundreds of political figures, led to a deep crisis of the traditional parties, including the DC, which in 1994 was restructured and renamed *Italian Popular Party*. The DC lost its political predominance and was eventually fragmented into a number of small political parties inspired by Catholicism. It was the end of a political era that had opened opportunities for new political entities.

A serious budget deficit, deteriorating public services, and a heavy decline of the trust of Italians in the political class contributed to the collapse of the '*Prima Repubblica*'. The legitimacy crisis of the political class led to a reform of the proportional representation system, following a referendum in August 1993. Three quarters of the seats in the Chamber and in the Senate were now filled by majority voting, whilst the remaining seats were allocated by the proportional system. In the same year, 90 per cent of Italians voted for the abolition of public financing of political parties.

In the 1994 elections a new political entity emerged, *Forza Italia*. It was led and promoted by the media magnate Silvio Berlusconi, who became the first Prime Minister elected under the majority system. His government was toppled in December 1994 amid charges of corruption made against the Prime Minister himself.

The expectation had been that a majority system would simplify the diverse political landscape and favour the formation of opposite poles that could guarantee an alternation in government. This did not happen, however. During the election campaigns, a system of electoral alliances reproduced the logic of proportionalism and power sharing. Since big political entities were missing, broad coalitions were negotiated – this time before running for elections instead of afterwards, as in the *Prima Repubblica*. Thus, a plurality of small parties and political movements proliferated even under the majority rule.

This pattern of party fragmentation was a feature of the 1996 elections, won by the *Olive Tree* left wing coalition. Both the centre-right and the centre-left alliance presented one leader to the electorate as a candidate for the government of the country, showing that the system was taking a definite majoritarian turn. However, Romano Prodi was elected Prime Minister without being the leader of the major party in the coalition, but rather a representative of the most moderate party. This gave rise to a struggle between Prodi and Massimo D'Alema, the leader of the major party in the coalition (PDS), and with militants of the *Rifondazione Comunista*, the extreme left-wing of the coalition. These contrasts caused two major government crises, so that by the end of the legislature three more cabinets had to be formed (D'Alema I and II; Amato) and the Prime Minister was changed two times. These new governments were established without a direct popular mandate, thus reintroducing the shortcomings of the traditional indirect parliamentary system.

The 2001 elections are regarded by political scientists as a definitive expression of a majoritarian logic, with a coalition leader who aspired to be elected Premier and was the main actor in the electoral campaign, and a winning coalition, the right-centre *Casa delle Libertà* (led by Berlusconi), that had a secure majority both in the Upper and in the Lower house. Moreover, the leading party of the winning coalition (Berlusconi's *Forza Italia*) had a neat predominance over allied parties, expressed also in terms of votes. *Forza Italia*'s leader was the undisputed head of a strong executive. However, the process towards a majoritarian system has not discouraged the formation of small political parties. The two major coalitions were indeed formed by eight centre-left, five centre-right political parties, without counting very small political entities. This fragmentation, balanced by bipolarism, still complicates the political relationships and jeopardises government cohesion (Sani 2002, p.39). Thus, the expected benefit of majoritarian rule in bringing about a decrease in the party number did not materialise. The reduction in public spending on party financing seems to be a mirage for the Italian people and the worst nightmare for professional politicians who even very recently approved a law that reintroduces public financing of political parties.

As this report will show, the problem of party financing and corruption is far from being resolved. However, media and public opinion have been less sensitive to these issues with respect to the early 1990s. Debates on war and terrorism, but also on labour law and the difficult international economic situation have diverted the attention of the public away from both from the recent legislation on these matters and from the worrying episodes of corruption reported by the media.

## **I. THE PROBLEM**

### **1. The major corruption scandals**

In Italy the most important series of scandals were uncovered in the early 1990s and are remembered by the name "*Tangentopoli*" (Bribe city). Those scandals were handled by specialised sections of criminal courts and in particular by the famous "*Pool Mani Pulite*" of the Milan Public Prosecutor's Office, which exposed a picture of corruption and illegality that was without precedent in the history of Western democracies. On 17 February 1992, Socialist city councillor Mario Chiesa, who was also the president of the municipal home for the elderly, *Pio Albergo Trivulzio* of

Milan, was arrested while accepting a bribe. Chiesa's testimony gave rise to a chain of confessions that resulted in indictments against hundreds of entrepreneurs, public administrators and politicians at all levels of the government, up to the national leadership (OECD 2000, p.193). Assistant prosecutor Antonio Di Pietro was the main actor in the investigations, which revealed the scandal involving the heads of public sector agencies appointed by political parties, party cashiers, who co-ordinated party funding and '*portaborse*', who were responsible for organising illicit activities in the public administration. More than 500 former MPs were involved in these scandals, as well as many former ministers including five former prime ministers. From 1992 to 1996 the Milan Public Prosecutor's Office made 2,392 requests for judicial action related to crimes of corruption (ISTAT, Official Statistics on Corruption).

Emblematically, socialist leader Bettino Craxi in a speech to the lower chamber on 3 July 1992, admitted involvement in the scandals but tried to play down the relevance of the offences, claiming that 'everybody knew' anyway, and that corruption was just part of the system. All parties and their representatives were guilty of having had recourse to irregular or illegal political funding. For Craxi, illicit activities were necessary if political parties were to flourish. If those activities were to be considered criminal activities, then the party system was indeed a criminal system. A few months later, the testimony of many businessmen and party members confirmed that he was involved in the system of corruption. In response Craxi started gathering information on the illicit activities of political opponents in order to prove that corruption was generalised. Indeed, *Mani Pulite* revealed that most politicians were systematically violating the law, but that public opinion was not prepared to buy Craxi's excuses. It was the beginning of the most serious political crisis in the history of the Italian Republic, which revealed the moral and organisational degeneration of political parties. The illegal funding, involving complex deals and kickbacks between parties and public and private sector companies, was revealed in many judicial enquiries such as the Eni affair, the Enimont affair and the Milan Metro Underground Affair (Della Porta and Vannucci 1999, p.1-32). New scandals continued to emerge and illicit activities continued in the following years.

A second wave of scandals (*Tangentopoli 2*) exploded in 1995 when several public sector managers were accused of having diverted public resources to private purposes. In a report to the Senate on 30 March 1998, the head of the finance ministry police (*Guardia di Finanza*), Ronaldo Mosca Moschini, stated that during the period 1992–1997, 2,700 persons were prosecuted and €600 million illicit money was discovered. However, Moschini agreed that it was impossible to give a very accurate account (Teodori, 1999).

On 19 December 2001, Luigi Odasso, general manager of the hospital "Le Molinette" in Turin was caught while accepting a bribe. He confessed that bribes were used to cover the 'costs of politics', namely that the money was used to buy (under false names) membership cards for the party he supported, *Forza Italia*. Moreover, he confessed to having assigned lucrative jobs to many medical doctors in exchange for political favours. The reaction of *Forza Italia*'s leadership was to consider it an isolated case with no support from the party organisation. Odasso maintains that the opposite is true, that bribes and exchanges of favours constitute a general pattern of behaviour, intrinsic to politics. In May 2002 the Potenza Public Prosecutor's Office requested the arrest of more than 20 people involved in the INAIL (National Institute

of Insurance) affair, which involved bribery and illicit public contracts. The arrest of two MPs, Antonio Luongo (DS, one of the centre-left parties) and Angelo Sanza (FI, one of the centre-right parties), was also requested. The lower Chamber rejected the request, in a decision supported both by the government and opposition.

## **2. The major changes in legislation on political finance**

In the 1980s, political finance was regulated mainly by Law no.195 of 2 May 1974 on 'State Contribution to the Financing of Political Parties'. This law established that all parties receiving more than 2 per cent of valid votes in general elections were entitled to state subsidies. Public funding came in the form of annual subsidies for political activities and ad hoc contributions to election campaigns (general, local and European). Law 195/74 banned contributions to parties from public sector companies and required the declaration of all private contributions exceeding €516.45. No limits were placed on the size of private contributions, nor were tax concessions made available. Moreover, Law 195/74 introduced sanctions against illegal funding and against violations of the rules on the publicity of annual party balance sheets. In 1978 the Radical party promoted a referendum for the abrogation of state subsidies to political parties, but without success. Law no.441 of July 1982 established that MPs and local councillors should present their annual income tax returns and provide details of election campaign spending. Law no.413 of 8 August 1985 required parties to publish an account for party expenditures for electoral campaigns with detailed description of costs (e.g. expenses for media access, publications, posters, etc.). Moreover, it established that state subsidies should be redistributed between the party central organisation and its local groups. Until 1993, the privilege of parliamentary immunity against prosecution was maintained with regard to most crimes, including corruption.

In the referendum of 18 April 1993, 90.3 per cent of voters expressed their disapproval of public financing. As a result, state contributions to party finance were drastically reduced, and the need for private contributions increased. Law no.515 of 10 December 1993 introduced important rules for campaign spending, campaign contributions and transparency of party balance sheets. Provisions for annual public funding for political activities were abrogated, and campaign subsidies were replaced by campaign reimbursement. According to Law 515/93, money is distributed among parties according to the percentage of votes they obtain. Moreover, the law requires the media to guarantee equal access to broadcasting time for all candidates and parties and to abstain from publishing poll results 15 days before the election date.

The maximum spending for each candidate was limited to €41.316 plus €0.051 per citizen in a single seat constituency and €0.04 per citizen in a multiple seat constituency. Campaign contributions above €5,000 would have to be named and no single contribution could exceed €11,182.96. Campaign spending was limited for each party to a sum obtained by multiplying the number of inhabitants for constituencies in the lower house or college for the Senate in which candidates campaigned by €0.10. Candidates and parties were entitled to special discounts on postal spending concerning the electoral campaign and reduced IVA (VAT) rates on typographic materials.

Representatives of parties were required to present an account of spending and sources of funds to the presidents of the chambers, to be sent to the National Auditing Office where the documents were examined by three magistrates and specialised staff. Additionally, the *collegi regionali per la garanzia elettorale* were regionally based committees with the task of monitoring party funding and expenditure. Fines of between €25,822.84 and €103,291.38 could be issued for breaking the law on campaign publicity. Moreover, the state could suspend the license of a radio or television station for violations of the rules regarding the electoral campaign.

On 30 June 1994, the Technical Committee for the Audit of the Annual Accounts of Income and Expenditures of Political Parties (*Comitato Tecnico per il controllo dei bilanci dei partiti politici*) published its recommendations for fostering transparency in the official gazette. The Committee's proposal was to make party balance sheets more detailed and comprehensive. In particular, it recommended that party balance sheets should be more like those of a business company, including detailed economic accounts and an inventory.

Law no.2 of 2 January 1997 gives tax payers the opportunity to allocate a small percent of their income tax (IRPEF) to a fund for financing parties and political movements. This fund was intended to supplement the need for subsidies in the absence of private contribution. Compared to Law 195/74, the new law made provision for a more active role for the voter/tax payer, as individuals had the choice to contribute to party financing simply by ticking a box on their tax return. At the same time these subsidies could not be categorised as private funding as those using the check-off facility cannot choose which party should receive the donation. Rather, the money converged into a common fund that was redistributed on the basis of the electoral results. All parties or political movements that have at least one MP elected in one of the two chambers, are entitled to a share of this fund, up to a maximum of €56,810,259. Moreover, Law 2/97 established that physical and legal entities are entitled to a deduction of 22 per cent from their income tax bills based on their contributions to party finance. Concerning transparency, this law implemented the recommendations of the Technical Committee made on 30 June 1994. Accordingly, itemised balance sheets, together with a synthesis of the management activities, should be made available to the public by the 30 June of each year and published in the official gazette and in two newspapers.

Law no.157 of 3 June 1999 abolished the voluntary contribution of a small percent of the IRPEF. Indeed only 1 million Italians (out of 14 million potential contributors) used this facility. In this way €25,822.84 were lost to party organisations, which – circumventing the law – had assigned this money to themselves. Law 157/99 reintroduced public financing to political parties disguised under the label 'electoral reimbursement', to be allocated to parties in proportion to their electoral results. The vote in favour of this law was taken after a long and harsh parliamentary debate and supported by the votes of the parties Ds, Ccd, Lega, Rifondazione; and opposed by An, FI, the Democrats and Di Pietro's Italia dei Valori. Law 157/99 established that €2.06 for each voter should be assigned to the funding of each electoral campaign (lower house, Senate, regional elections and European elections). All parties that obtain more than 4 per cent of the vote or win at least one parliamentary seat, are entitled to a share of this fund. In addition, Law 157/99 abolishes reduced postage fees in the last month of the campaign. However, other forms of tax concession are conceded for the management of the buildings belonging to parties as well as for

cultural and political events organised by the parties, for the occupation of public spaces for political activities, and for all legal operations linked to the life of the party. Taxpayers are given a deduction of 19 per cent from their income tax bill for contributions to a political party, with a maximum of up to €103,291.38. Contributions from the state or state-owned companies are made illegal. Moreover, 5 per cent of the funding received by each party had to be devoted to increasing women's participation in political life. As a result of this law, the Italian state has granted €342,410,924.09 to political parties in three years (adding up electoral reimbursement and tax relief).

On 25 July 2002 the Senate (Ddl Senato 1601) finally approved a provision granting political parties €125 million per year in 2002 and 2003, and €153 million in 2004, as reimbursement for electoral campaign expenses. The contribution is calculated as one euro per voter, in each year of the legislation, up to a total of 5 euros. Compared with Law no.157/99, all parties with over 1 per cent of votes are entitled to claim reimbursement. These provisions on electoral reimbursement were adopted almost unanimously by the major political parties represented in parliament, with the exception of some MPs of the Margherita and UDEUR (both part of the leftwing coalition) and the abstention from the vote by members of the Green Party. A poll carried out this summer by the Istituto Cattaneo-Itanes and published on 21 July 2002, revealed that only 4 per cent of Italian citizens strongly agree with public financing of political parties; 17% agree; 21% disagree; 47% strongly disagree; and 10.9 % of Italians do not wish to express an opinion.

### **3. The major court decisions since 1995**

In Italy there have been many court decisions concerning electoral laws. The following are some of the most relevant:

- **Constitutional Court (sentence no.422 /1995): against establishing a quota for the participation of women in parliament.**
- Constitutional Court (sentence no.161/1995): on rules concerning Referendum campaign advertisement.
- **Supreme Court (Cassazione, sentence no.478/1998): on limitation of freedom of speech during electoral campaigns.**
- **Constitutional Court (sentence no.13/1999): on the Referendum concerning electoral law and party financing.**
- Constitutional Court (sentence no. 10/2000): on regulation of parliamentary immunity.
- Constitutional Court (sentence no. 155/2002): on pluralism of the media and information.

### **4. The public debates since 2000**

In the last few years there has been a shift of interest away from political corruption towards themes less compromising for professional politicians, such as conflict of interest, independence of the media, corruption of public prosecutors and the malfunctioning of the court system (see for example Pujas 2000).

More recently, civil society initiatives have drawn new attention to the widespread political corruption in the country by appealing to the memory of *Mani Pulite*.

Against the background of generalised political apathy in the country, these movements argued for the need to defend democratic institutions and in particular the independence of judges and public prosecutors. As a result of the quantity and the variety of citizens mobilised in defence of legality, Spring 2002 has been named '*Primavera dei Movimenti*' (Spring of movements).

## **II. TRANSPARENCY**

### **1. Parties' and candidates' reports on finance**

Clause 8 of Law no.2/1997 sets out the requirements for transparency with respect to the income and expenditure of political parties. A standard form is provided for party accounts. This form includes all the items that should figure in the account (such as costs for press activities; technical tools; office machines; furniture; debts to banks, state subsidies; membership contributions; private contributions; corporate contributions and. etc.). The legal representative (or treasurer) of the party should account for all activities and expenditures. In addition an account of the economic and asset situation of the party and a description of its general management must be included. Such an account should be sent each 31 July to the president of the lower chamber, who sends the account to an auditing committee, composed of five official auditors, nominated by the presidents of the two chambers. The committee should ascertain the regularity of the accounts and their conformity to rules. The president of the lower chamber, with the consent of the president of the senate, communicates the results to the finance ministry. If there are irregularities in the account the finance ministry can refuse party reimbursement. In terms of candidates, they are required to give notice of all electoral contributions and expenses to the competent *collegio regionale di garanzia elettorale* within 120 days of the date of the elections.

### **2. Access to reports**

Clause 8 of Law no.2/1997 also establishes that parties by 30 June each year must publish a complete finance report both in the official gazette and in two newspapers, one of which should be available nationally. Party balance sheets are now public; they are accessible through the official gazette. To give an example, the official figures for Forza Italia in 2000 are as follows: the total income amounted to €38,751,310,509.38 of which €23,149,147,588 came from state subsidies (53%); €1,184,235,669 from membership quotas; €7,053 from private and corporate donations; and the rest from other activities, such as press activities.

Statistics for the period 1995–2000 show that State subsidies amount to 50–80 per cent of funding, peaking in 1996–7. About 30 per cent of party funding came from private and corporate contributions and the rest from party membership quotas.

### **3. Published sources and amounts of donations to parties/campaigns**

The framework for accounts on income and expenditure establishes that donations exceeding €6,500,23 (data refer to general elections 2001) should be reported and be itemised as follows: a) contributions from individuals; b) corporate contributions. Any donation should be notified to the president of the lower chamber.

Members of the public believe that the policies of the major political parties are largely influenced by affluent donors; and that the transparency of donations (the official gazette not reach the general public) is very limited and does not describe the real situation. It is difficult, however, to find reliable data, beyond official statistics.

### **III. FINANCE**

#### **1. Donations**

##### **a) Limits on individual donations to candidates or political parties**

Contributions to each candidate must not exceed €13,000.47 (data refer to general elections of 2001). In 2002, tax relief was applied to donations between €51.65 and €103,291.88. Limits apply only to electoral donations to a candidate, who does not preclude making several donations to different candidates of the same party.

##### **b) Limits on corporate donations to candidates or political parties**

Contributions to each candidate must not exceed €13,000.47. Companies that have securities listed on the Stock Exchange cannot make donations to parties.

Reports on party expenditure are publicly available, even though not always easily accessible. After the general election in 2001, some newspapers published statistics of voluntary contributions in the trimester preceding the election. According to the financial newspaper *MF* (3 July 2001), for instance, Berlusconi's FI (centre-right) received about €2,943,804,324.81 from private contributions. FI is also the party that spent most during the electoral campaign of 2001: 39 billion Lire (about €19,500,000). Rutelli's party (centre-left) received €630,077.41 from private subsidies during the same period. All other parties received more modest donations.

##### **c) Legislation and/or court decisions on lobbying or trading in influence**

Law no. 249/97, clause 2, established the prohibition of a dominant position in the sector of radio and television broadcasting: "The entities to whom television concessions are issued in a national context including for the public service, authorisations for the encrypted transmissions in a national context, or for both purposes, may raise revenue for a share not higher than 30% of the resources of the television sector in a national environment with regard to encrypted and terrestrial broadcasting."

The Italian antitrust authority (*Autorità Garante della Concorrenza e del Mercato*) was established by Law no. 287 on 10 October 1990. It is an independent body that monitors the concentration of economic power and the use of comparative and deceptive advertising (decreto legislativo no.74 of 25 January 1995).

In the telecommunications sector, anti-trust provisions are systematically violated. In 1998, only one year after Law no. 249/97 was introduced, out of €5,164,568,991, Mediaset raised revenues of about €2,065, 827, 59 from advertising and RAI received over €2,065,827,596 in revenues from TV license bills (*canone TV*) and advertising. The irregularity of the Italian TV system is due to the concentration of three TV channels in the Mediaset group, and three in the RAI group. The fact that politics largely influences the public broadcasting offered by RAI renders the situation at odds with any rules of pluralism of information.

## **2. Public Finance and Media**

### **a) Direct state subsidies to parties**

The state provides subsidies in the form of reimbursement of campaign expenditure. From 2002 onwards, the contribution is calculated as one euro per voter, per year, up to a total of five euros. Parties entitled to campaign reimbursement are all those that receive 1 per cent of the vote. Funding is distributed among parties according to the percentage of votes they obtain.

Parties benefit greatly from these provisions. Even parties that voted against law no.157/99 and initially declared that they would transfer state subsidies to charities (in particular Alleanza Nazionale, of the centre-right coalition), ended up accepting electoral reimbursements. For this reason, they were accused of hypocrisy by their opponents, as they had rejected the argument that state subsidies were necessary. Some studies suggest that most of the parties spend far less in the electoral campaign than they received through reimbursement claimed from the state.

### **a) Indirect state subsidies to parties**

In addition to campaign reimbursement, there are many indirect subsidies to political parties: fiscal discounts apply to the management of the buildings belonging to parties, cultural events and political events organised by the parties, occupation of public spaces for political activities and all legal acts linked to the life of the party. Additionally, Law no.644/2000 extended postal discounts during the 30 days preceding electoral campaigns; and a reduced VAT rate applies for press material (posters, paper, brochures) during electoral campaigns. All parties give clear instructions to their own candidates on how to benefit from these indirect subsidies. Information is easily accessible online.

### **b) Media space and state subsidies**

According to Law no.28 of 22 February 2000, all programmes on political communication (comparative presentation of electoral programs, roundtables, debates, interviews) should give equal space to all political subjects, so as to guarantee fairness and equal access to media. Participation in programmes of political communication is free. The regulations for telecommunications, radio and television broadcasting are supervised by two bodies, which are fully autonomous and independent in their

judgements and evaluations: the “*Commissione parlamentare per l’indirizzo generale e la vigilanza dei servizi radiotelevisivi*,” (Parliamentary Committee for the general supervision of broadcasting services) which is known as ‘Commissione’, and the “*Autorità per le garanzie nelle comunicazioni*” (Authority for equal protection of communications), known as ‘Autorità’ (Law No. 249 of 31 July 1997). National radio stations and TV channels must concede free spaces for campaign messages to all parties and the technical means for producing those messages. Private radio and TV stations may give airtime to political messages for free or for half the price of other advertisements. No political entity is allowed to broadcast more than two messages a day on the same broadcasting unit.

Law no. 28 on *par condicio* is nothing more than a ‘Maginot line’. Indeed, if rules are broadly respected, there are programmes that cannot be defined strictly as programmes of political communication which are often used for a more understated propaganda. News programmes are a good example, as are commercials that broadcast politicians to advertise general consumer goods. This is to say that although rules might not be formally violated, it is possible and easy to violate their spirit by giving greater media exposure to some candidates. To give an example, in the electoral campaign of 2001 the two main actors were the leaders of the main party coalitions, Berlusconi and Rutelli. They were given far more visibility than any other political actor. Whilst RAI channels were more balanced, data on exposure on all Mediaset programmes in the two months preceding the elections reveal a huge gap. Berlusconi appeared for 1,427 minutes, Rutelli for 887 minutes, Fini for 209 minutes and all other party leaders appeared for less than 40 minutes. (For an analysis see Sani & Legnate, in Pasquino 2002)

Law no.28/2000 establishes equal access to political communication for all political entities. The amount needed for the implementation of this law has been calculated as €10,329,138 and is charged to a “*fondo speciale*” (special fund) of the finance ministry. All those political entities that are represented in the Italian parliament, or have at least two representatives elected to the European Parliament, are entitled to benefit from the law.

Additionally, party-owned newspapers have been granted administrative and financial benefits in the name of freedom of speech and opinion. Despite the good intention of fostering freedom of speech, public subsidies have created a new form of economic dependence on the state. Criteria of access to state subsidies are also very easy to meet even for very small political subjects. This has encouraged the multiplication of parties, which drain money from the state.

Moreover, Law no.28/2000 (clause 4) establishes that, starting from the official communication of election day by the President and up until the day of the election, media space is distributed impartially amongst all political entities represented in parliament or in the European Parliament. From the presentation of candidates until the conclusion of the elections all political subjects running for elections are entitled to equal opportunity of media access. Expressions of voting preferences are forbidden on all broadcast stations during electoral campaigns. During electoral campaigns newspaper and magazine editors intending to give space to political communication should provide prior information about this so as to guarantee equal opportunity of participation to all political subjects. Official party newspapers and magazines are exempted from this requirement. Political poll results may not be published during the

15 days before election day. The Commissione and the Autorità are specifically charged with monitoring electoral broadcasts.

Data from the Pavia Media Monitoring Center reveal that up to the 2001 political elections, Mediaset (Berlusconi is its major shareholder) channels gave great visibility to the centre-right parties, for example during the news. RAI, the public TV service, (even if generally more balanced) had a tendency to privilege representatives of the centre-left coalition. This shows that there are ways of circumventing the Law no. 28/2000, which concerns programmes of political communication only.

However, one must assume that a greater media exposure of the government and its representatives is inevitable. Indeed, data referring to the second half of 2001 reveal that on RAI channels, government representatives had 30.4% visibility, non-government representatives of the rightwing coalition 21.3%, representatives of the leftwing coalition 31.5%, Rifondazione Comunista 7.7%, other parties 4% and representatives of state institutions 5%. Prime Minister Berlusconi holds the overall record for visibility. (Pavia Media Monitoring Center - Osservatorio di Pavia - Media Research).

However, data from the 2001 general election suggests that television campaigning has declined since the 1994 and the 1996 general elections. Moreover, the impact of political broadcasting on voters seems to be less significant than in the past (for an analysis see Marletti 2002).

### **c) Provisions against the influencing of elections through abuse of power and government resources**

In the 30 days prior to a general election, local administrations, public institutions and their representatives are not allowed to promote debates, or publish material in support of a political party or its candidates (Law no.515/99 and no.28/2000). However, it is particularly difficult to control and prevent the presence of institutions and their representatives in an electoral campaign. This is especially evident in local elections when the party that rules a municipality attempts to be re-elected.

### **3. Limits on Expenditure**

According to Law no.515/93, the amount each candidate may spend on a campaign must not exceed the sum of €41,316.55 plus €0.051 for any citizen inscribed in a single seat constituency and €0,005 per each citizen inscribed in a multiple seat constituency. These figures are adjusted every year according to the data on current gross prices in the country as indicated by ISTAT (National institute for statistics). Concerning the last general elections, an evaluation by the home affairs ministry of 23 February 2001 established a maximum spending of €52,001.89 per candidate plus €0,065 for any citizen inscribed in a single seat constituency, and €0.006 per each citizen inscribed in a multiple seat constituency. The accounting of electoral expenses

does not include expenses for travelling, telephone bills and postal expenses. These can be calculated as a forfeit of up to 30% of total of expenses.

#### **IV. OVERSIGHT, SANCTIONS AND ENFORCEMENT**

##### **1. Oversight institutions**

The *Collegio di garanzia elettorale* is a regional committee that monitors campaign expenses and party finance. Each collegio reports to the National Audit Authority. Members are magistrates or university law professors, who can ask the Authority and the state offices of finance for any information that may be useful in checking the regularity of party accounts for income and expenditure.

The Authority can impose sanctions. Fines of between €30,000 and €100,000 can be issued for breaking the law on campaign publicity. The competent court is the TAR (Administrative Court).

Regulatory institutions assiduously monitor party finance and the National Audit Office imposed a series of sanctions against most political entities after the elections in 1994 (the first elections regulated by Law 515/93). Two parties were accused of exceeding the spending limits (Forza Italia and Christian Democratic Centre) and 8 political subjects were fined for not revealing the sources of their funds: Left Democratic Party, Rifondazione Comunista, Polo delle Libertà, La Rete, Alleanza Nazionale, Progressive Alliance, Lega Nord, Popular Party.

The financial newspaper *Sole 24 ore* published a note on 5 September 2002 the report of the National Audit Authority (Corte dei Conti), which remarks that the party balance sheets of all parties were found to conform to the law.

##### **2. Independence of prosecutors and judges**

The independence of judges and public prosecutors is one of the key assets of Italian democracy.

However, magistrates have been the target of serious attacks, with the accusation of making political use of judiciary power. In particular, Premier Silvio Berlusconi and his supporters have for many years made these accusations with increasing force as their political power has increased. Public opinion is divided on this issue, and if the “*Primavera dei Movimenti*” is a signal of solidarity with magistrates, a large sector of the population is either indifferent about this issue or supports Berlusconi’s accusations. This is another aspect of the ‘Italian anomaly’, which surprises external observers: “A senior British judge, Lord Justice Simon Brown, took a rather different view in 1996. The case involved an unsuccessful attempt by Mr Berlusconi to stop Italian magistrates getting their hands on some documents seized by the Serious Fraud Office in Britain. The magistrates needed these documents as evidence in a case of illegal party financing, whereas Mr Berlusconi claimed the alleged offence was political. It was a misuse of language, Lord Justice Brown said. It is, indeed,

somewhat ironical that the applicants here are seeking to be regarded as political offenders in respect of offences committed in part whilst Mr. Berlusconi himself was actually in office ... I just cannot see corrupt political contributors ... as “political prisoners”. (*The Economist* 26 April 2001)

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