

Case Study 2: Enforcement in Portugal

Edited, translated transcript of the presentation by **Judge Rui Moura Ramos**,
Vice-President of the Portuguese Constitutional Court

The Portuguese situation has a certain number of characteristics that derive from the fact that we are a young democracy. We have only been a democracy for the past 30 years; before that there were no political parties, hence the fact that some questions that arise in France do not in Portugal. We don't have to ask ourselves what is a political party?

For a political party to exist it must register with the constitutional court. It needs 7,500 signatures. We have about 25 political parties at present for a country of about 10 million inhabitants. Until 1993 the statutes of the parties posed no problems, but since that year we have had a succession of laws, we are up to the fourth law, trying to legislate for political party and campaign financing.

The law of 1993, which was the first law on political party funding, established public funding and made a distinction between financing the party and financing a campaign. The constitutional court regulates political party funding whereas the national electoral agency regulates campaign funding. This created a dichotomy which has some flaws because the activity of the political parties is obviously aimed at running electoral campaigns. Campaigns depend on two different entities, hence some loopholes have developed.

The system then evolved, with a tendency to become stricter in terms of public and private donations. The law of 1995 and 1998 limited and regulated private and public funding. In terms of funding of parties, the first law required that a party had to present accounts to the constitutional court, but they did not have to present consolidated accounts showing the global transactions of the party. The constitutional court then submitted the accounts to an auditing firm that might detect flaws even though the legislation did not compel the parties to give comprehensive accounts. A new law compelled the parties to give consolidated accounts.

This is an important problem because parties usually organise themselves as an entity with national headquarters but with a series of local sections, youth sections, women's sections and so on. So the parties tended to present the headquarters' accounts, but what were the missing elements? This issue has not been fully resolved, and it is very difficult to know whether the accounts actually correspond to the reality of funding and spending by the parties.

Concerning public funding there was also an evolution because in the beginning public funding was limited to the parties that were represented in parliament, which gave way to the accusation that the system merely defended those parties that were already inside the system and prevented new parties from emerging if

the population wanted them to. Now the law has changed and parties can get public subsidies. State subsidies are available to all parties, depending first on the percentage of votes they get during the elections. The case of a French party existing with just three members would not arise in Portugal because you need a minimum of 50,000 votes.

With the recent laws, funding by private companies is now prohibited. Only personal donations are allowed, and donations by foundations. Of course now we have the case where foundations are increasingly important. We have a case of a foundation that is playing an important role in replacing the activities of one party in regional government, and this issue will no doubt gain importance in the near future. Now the law requires all bank balances to be made public. The question is then, are all of the bank accounts all known?

With this in mind, parliament passed a new law that will apply from 1 Jan 2005, which reshuffles the system. It will no longer be the national electoral agency and the constitutional court that regulate funding, but only the constitutional court. The law creates a new entity which will assess the accounts of political parties and electoral campaigns. This is a prior assessment where the new body will go through the accounts, pick out any aspects that might lead to concern and then submit them to the constitutional court for it to rule on. They will point out what spending might be illegal – both party and campaign spending – for the constitutional court to rule on.

In the present legal system we have only a formal check and hence it is difficult to know whether this check corresponds to the material truth. The new law states that all suppliers must declare any services or goods acquired by a party if the financial value exceeds one minimum salary. The supplier is required to declare what they have supplied to the party; the party must declare what they have spent the money on, hence a cross examination is made. This allows us to move from the disappointment of a formal examination which does not tell us whether the statement corresponds to the reality.

I don't know if this will make things better. It is too soon to know whether it will make political life better or worse, but at least it will render this financial check more effective. Before we did not know how much was spent by the parties and how much provided by suppliers (i.e. the person who sells services, placards, equipment; not donors). It will create more bureaucracy and more monitoring work but it is an attempt to ensure that financial statements made by the parties correspond to reality.

These accounts must be submitted to the newly created entity. This system also reinforces the ceiling for private donations, and reinforces the sanctions, whether civil or penal and also the financial sanctions for the parties.

Case study 2: Portugal (continued)

Edited transcript of the presentation by **Luís de Sousa, CIES – Centro de Investigação e Estudos de Sociologia, ISCTE, Portugal**

In Portugal, the successive waves of reform on political financing regulation were not responses to particular scandals, or a major public demand for reform. Instead, it could be understood as an anticipatory measure, as political elites were aware of what was going on in neighbouring Spain, France and Italy.

Why hasn't party financing been a sensitive issue in Portugal as it was in Spain or Italy?

1. Low exposure, weak tradition of investigative journalism and a worrying concentration of national media. At the local level, where PF controls are weaker and most illicit transactions take place, exposure is even less likely, since most local media survive on subsidies and advertising by local authorities.
2. Low culture of disclosure by the parties themselves. Weak internal debate on party financing issues; parties have been unaccountable for the past 20 years and reformers don't feel free to talk about financing internally.
3. Low investigation. Party financing has not been a priority of police investigations, unless accompanied by suspected embezzlement or illicit income. We had a case recently involving a local authority in northern Portugal where there were 11 or 13 possible allegations that contributions to the mayoral campaign were inducements of corruption. These were discarded immediately when no evidence was produced, while those allegations involving abuse of state resources were prosecuted.
4. Low civil society engagement. There is no watchdog NGO dealing with ethical issues. There was a failed attempt to introduce TI in Portugal. There are few academics interested in this issue, so many areas related to party financing and ethics in political life are un-researched.

Recent comparative studies on political attitudes show two important features:

1. Portuguese believe that parties are necessary for democracy, but place strong doubts on their capacity to represent citizens' interests and problems, on the innovation and differentiation of their political projects and (normative) performance.
2. A large number of respondents said they had never contributed to political parties, so we spent the second half of the 1970s and the whole of the 1980s without "knowing" who paid for parties. Everyone seemed to be saying that they didn't pay. According to the office of the high commissioner against corruption (dissolved in 1992), however, some of the money was coming from slush funds created in private and public companies, in ministries, and from businessmen and companies outside of Portugal. The 1993 report on

political party financing also mentions that both the communist party and other parties had received money from foreign foundations and agencies in violation of the 1974/79 rules on political financing. Although many of these practices had to do with the transition to democracy and efforts to institutionalise parties, the lack of proper monitoring and enforcement has helped to consolidate a culture of disregard for PF laws.

When it comes to regulations, the main concerns, as Luís de Sousa and Judge Ramos mentioned, include:

1. Non-consolidated party accounts. Most of the local and district branch accounts were not disclosed so the constitutional court was just receiving accounts from the party HQ, which means we knew little about local activities and para-party foundations.
2. Systems of internal party auditing. The new law imposes some requirements of internal accountability under statutes to be approved by the constitutional court, but the focus is still on formality and it is too early to see what changes the 2003 will bring in terms of internal party accountability.
3. Supporting evidence. Under the 1993 mixed regime where parties had to provide evidence of contributions and several times they were not presented, the argument was that they weren't obliged to ask companies to seek shareholder approval to be able to disclose such information. We also had problems with bank accounts not being updated. We see these problems reflected in the decisions of the constitutional court.

Despite the reform, there are some ongoing areas of concern:

1. Lack of control of donations to candidates. By law, candidates are not entitled to personal expenses during elections, since parties are the sole bearers of campaign expenditure (except for presidential candidates). In practice, however, candidates remain exempt of any sort of control in regards to their ability to raise fighting funds and incur personal expenses during elections. This dimension of political financing is particularly important during local elections, where the candidate heading an electoral list is regarded as the main protagonist. Local elections are very personalised, in spite of parties remaining the formal mechanisms of competition/representation. The candidate's capacity to raise and spend money is quintessential to the promotion of his/her image before the electorate. One of the major deficiencies of the current regulation is that of not considering candidates as centrepieces to the maze of political financing in Portugal.
2. The neutrality of public entities and the parity between candidatures. Mayors can qualify as candidates for the general elections or seek local re-election while in office. Should we force them to suspend their mandate? There have been so many cases of abuse of neutrality of public entities and

misuse of public resources and facilities reported to the national electoral commission – this issue takes up most of the complaints that go to the NEC in the aftermath of elections – that the NEC has tried to alert legislators about this problem. Unfortunately, the issue was not addressed during the 2003 reform.

3. There are also reforms parties have to introduce internally. Reformers have devoted a good deal of time and efforts looking at standards imposed externally, but it is also necessary to address self-restriction and internal party control.

4. There should also be control on post electoral fundraising and clearance of accounts. This is done, for instance, during victory celebration parties or dinners, where the winning political party(ies) clear many of their remaining accounts that weren't disclosed when the election accounts were submitted to the monitoring body.

5. Conflicts of interest. There is still a long way to go in terms of conflict of interest and asset disclosure, especially for ministers, senior public officials, young members of cabinet and appointed public officials. For some of them the only obligation they have of disclosure of interests is a declaration they submit to the head of their department without being subject to independent scrutiny or monitoring.