

COUNTERING CORRUPTION THROUGH CONTROLLING PARTY AND CAMPAIGN FINANCES – THE EUROPEAN EXPERIENCE: A COMPARATIVE ANALYSIS

By Uwe Johannsen

Introduction

I have chosen to concentrate, in my presentation, on what I see as the essential idea behind this conference, of developing strategies to reduce opportunities for corruption.

The NDI-CALD study has provided useful information about the kinds of reforms that have been introduced in the Asian region. The results are presented in terms of internal and external reforms directed at

- 1) Candidate and Leadership Selection,
- 2) Financial Management and Fundraising, and
- 3) Ethical Standards, Training and Discipline.

The NDI-CALD study found that ... “of the eight countries in the study, Korea and Thailand have the most detailed and stringent national regulations aimed at limiting political corruption and money politics. Malaysia, Cambodia, and the Philippines have relatively weak legislative frameworks governing parties and political finance, and although Indonesia passed several political finance laws in 1999, these regulations are not fully enforced or have been implemented yet. Nepal and Taiwan are in the process of passing legislation”.

I am sure by now that you are all familiar with them.

2. The European Experience

a) Political Financing Scandals

Reform, with regard to combating corruption in European political systems, has been largely scandal-driven and focuses on controlling political party and election

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campaign finances. The approaches by the various countries of Europe are many and varies, but still they may allow us to draw some useful conclusions and it may be useful to compare these with conclusions drawn from the NDI-CALD study.

Almost every single member country of the European community has had its own party finance scandal. To understand what kind of efforts have been made to bring more transparency into party financing, it is necessary to consider these scandals. Examples are drawn from several countries and the community itself.

France

If a posthumously released videotape of a top political fixer is to be believed, president Jacques Chirac's party paid for his successful 1995 campaign with illegal kickbacks from companies that won fixed public-works tenders. Mr. Chirac refuses to bow to demands that he explain himself, in the wake of the tape's publication.

Germany

After the Flick scandal of 1984, the Flick-concern was found to have massive illegal political payments to all the main parties starting in 1981, allegedly in exchange for business favors. The Speaker of the Parliament and two finance ministers resigned. In 2000, Helmut Kohl was forced to resign as honorary chairman of his party following revelations of illegal donations to the CDU during his Chancellorship. The CDU forfeited US\$ 3.5 million in public subsidies because of the scandal. Former chancellor Kohl has seen his reputation as one of Europe's leading postwar statesmen sullied by revelations that he personally accepted \$1 million in secret – and thus illegal – cash donations from sources he still refuses to name.

Italy

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Discovery in 1993 of secret ties between leading politicians, Mafia bosses, and businessmen brought the entire edifice of Italian politics crashing down, destroying the Christian democratic party that had ruled the country since World War II.

Spain

In 1991, the Socialist Party of Spain was gravely damaged by allegations political payments made in 1989 campaign and disguised as consultancy contracts to the FILESA company.

Britain

Prime Minister Tony Blair's squeaky clean image has taken a beating from revelations that his Labour Party in 1997 accepted a British pound 1 million (\$1.46 million) donation from Bernie Ecclestone, the boss of Formula One racing. The Labour government then exempted formula One from a Europe-wide ban on tobacco advertising. Labour was forced to return the money when the gift became known. In Britain, conflict of interest scandals implicated members of Parliament to the point where public faith in government ministers being "generally trusted to tell the truth" was ranked at a mere 11% (with both doctors and teachers rating 84% and television news-readers 72%). While most occupational groups had improved their standing over the previous ten year period, the standing of Ministers and politicians, already very low, fell even further.

British politicians have generally fallen politically due to their misjudgment rather than through being found guilty of crimes. However, in continental Europe, including Belgium, Italy, Austria, France and Spain, political figures are being actively investigated and prosecuted for criminal breaches of trust

b) The Laws on Parties and Party Finances

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As in Asia, each European country has its own legal framework when it comes to regulating parties and party financing.

Countries differ greatly in the extent to which political parties are recognized in their constitutions and their laws. In Germany, for example, Article 21 of the Constitution (Art. 21 I, II GG) refers to the role of parties:

(1) The political parties shall participate in the forming of the political will of the people. They may be freely established. Their internal organization shall conform to the democratic principle. They shall publicly account for the sources and use of their funds and for their assets.

(2) Parties which, by reason of their aims or the behavior of their adherents, seek to impair or abolish the free democratic basic order or to endanger the existence of the federal republic of Germany shall be unconstitutional. The federal Constitutional Court shall decide on the question of unconstitutionality.

In contrast to this example of direct constitutional regulation of political parties in Germany, there are other countries where parties have never been recognized by the law. Legally, they are no different from any other voluntary association or club. They are subject to the rules governing such voluntary associations.

For instance, in Belgium, political parties are de facto associations and do not have legal personality; hence their accounts are not subject to any fiscal control. In Ireland, political parties are generally regarded as unincorporated associations or private voluntary organizations and their existence is not regulated by law. The situation is similar in Luxembourg.

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Each country's electoral laws are the next place to look for regulations relating to political parties and candidates. Beside that, in many countries laws mentioning parties are found in several different parts of the statute book.

The need to search in a variety of places – including unexpected ones – for party-related laws is illustrated by the recent situation in Britain:

The restriction on paid political advertising on television is laid down in the Television Act, 1954, s 3 (1), the special restrictions on donations to political parties by trade unions and employers association derive from Trade Union Acts from 1913 onwards. When it comes to donations from companies the Companies Acts from 1967 are important. The legal status of the Conservative party was defined only by the Courts as the by-product of an obscure legal case in which the Conservative Central Office appealed against the inspector of taxes for the right to pay income tax rather than corporation tax on its investment income. The legal definition of “political party” was given in the equally obscure Finance Act, 1975, part 1 (11) (2) which defined the conditions under which exemptions from capital transfer tax (i.e. inheritance tax) could be claimed for bequests to political parties.

c) Regulation of Campaign Spending

Campaign Spending has come to be seen as most contributing to the corruption of political parties and unduly influencing their decisions and this has been the most important area of regulation.

The British government, for example, has implemented a “campaign spending limit”. Under legislation currently before parliament, political parties will be banned from spending more than British pound 20 million (\$29 million) each on a general-election campaign. At the last elections, the Conservatives spend 28

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million (\$48 million) and Labour spent 15 million (\$22 million). Though these figures are minute compared to American expenditures, parties have less need to spend money, since TV and radio broadcasters are obliged to give each major party free airtime during campaigns and paid broadcast advertisements are banned. At the same time, British parties will be obliged under the new law to disclose the identity of large donors, and to refuse money from abroad. This sort of reform, say many political observers, is essential if voters are not to lose faith in their political leaders.

Governments have attempted to regulate and subsidize political funding in a variety of ways and the regulations listed here, which are implemented in full or in part in most European countries.

- a) Beside the limits on expenditures and contributions (as in the British example above), there are also disclosure regulations making it mandatory to name contributors to campaigns and to parties and disclose the amounts contributed by each.
- b) There are also bans against certain types of contribution and against certain type of expenditure
- c) The provision of free or below-cost facilities for parties and candidates (free postage for election literature, free of subsidized facilities to parties for broadcasting on television or radio), is designed to limit the cost of election campaigning.
- d) Public subsidies, i.e. financial payments to parties or candidates from public funds are designed to limit the need for private and corporate contribution.

d) Problems with the Regulation of Political Financing in Europe

It may be useful to examine some of the ways in which the reforms of recent years in Europe have been evaded. An examination of these techniques by which

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the intention of laws have been defeated may be of practical value. The leading German scholar, Karl-Heinz Nassmacher, has summarized the difficulties experienced by reformers in Western nations: Political practice of almost two decades has re-emphasized the general paradox of constitutional reform measures. Implementation of reform legislation breeds the need for more (and more complex) reform legislation. The elaborate restrictions designed to control the flow of money into the political process have encouraged the professional politicians to engage in a creative search for potential loopholes either in the application of the existing law or when drafting necessary amendments.

Reform legislation has a tendency to create new and unexpected problems. Evidence for this is the unending series of reforms of reforms in a number of countries such as France, Italy and Germany.

These are at least two basic reasons why it has proven so hard to devise satisfactory laws to regulate political finances.

First, the so called loopholes. Although contributions to political parties and to election campaigns are two of the most important and most direct channels through which money may be used to influence politics, they are not the only ones. Restrictions on the financing of parties and elections are likely to prove ineffective if other forms of “politically relevant” financing remain unchecked. Secondly, inadequate enforcement. In a field as controversial and complex as the funding of parties and campaigns, laws require effective supervision and implementation. That means enforcement demands a strong authority endowed with sufficient legal powers to supervise, verify, investigate and if necessary institute legal proceedings. Non-enforcement of the law, however, is too often the norm.

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Germany provides a dramatic example of routine non-enforcement of the law relating to political money. The revelations of the early 1980s surrounding the “Flick Affair” suggested that there had been some 1800 cases of infringements of the law involving all the main parties, some of the most senior political figures and many of the country’s top business corporations, i.e. these cases had been routinely ignored because laws were not enforced.

Writing in 1994, Alexander and Rei Shiratori reported that in Italy a belated investigation had uncovered abuses of many years. “The inquiry called “Operation Clean Hands”, has claimed the lives of seven high ranking officials, including a former minister, who committed suicide after being formally notified that they were under investigation for violating laws on party financing. So far, 1500 politicians – including two former prime ministers – and businessmen have been imprisoned or interrogated and six government ministers and four heads of major political parties have resigned their posts”.

Political corruption has become widespread in France, partly because punishment for wrongdoing is light under French law, and also because for too many years, the justice system was not working.

The issue of the need for enforcement nevertheless poses another dilemma. On the one hand, laws are of little value unless they are enforced. On the other hand, the demands of accountability may prove so onerous that they will themselves add greatly to the costs of campaigning and will deter ordinary citizens from standing for political office.

e) Models of Regulation of Party and Campaign Finances

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Some European countries, such as Spain and France, have adopted a “public model” of party financing, forbidding political parties to accept unlimited money from corporate donors or trade unions. Where the state finances political parties it is naturally free to decide the nature and extent of the aid granted. A great variety of arrangements exist. Some states offer extensive coverage of the cost of election campaigns, parties’ routine functioning and certain specific activities.

In Spain the same principles govern the award of public subsidies. Firstly, there are “electoral” subsidies. The law defines a state contribution to campaign expenses payable not only to political parties but also to federations of parties and groups of electors, in so far as they have won at least one seat. This contribution is proportional to the number of votes polled.

Under the “public model”, parties are given state aid, in the hope that this would lessen their appetite for big private donations. But it has not, and parties can always find ways around laws, especially when they are poorly enforced, so as to collect from corporations on the sly.

Other countries, such as Britain, have adopted a “private model”, where parties need make no disclosure about where they get their money, and are free to collect from business, trade unions and, until recently, even foreigners. In the US, meanwhile, where disclosure rules are the most stringent in the world, the use of political-action committees and “soft money” means there is almost no limit on who can give, or on how much, i.e. private/corporate donation.

The “private model” allows corporations to fund political parties, but imposes transparency requirements to track their relationships. This model assumes that banning corporate donation means creating illegality. “Soft money” as such is not illegal in Europe—just limited and subject to disclosure.

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4. Conclusion from Europe and Asia

Europe states continue to experiment with laws on party financing, but they have demonstrated one thing: legislation may only reshape the rules of the game of influence buying. Reforms that make a democracy that is more responsive to all people, no matter how big their wallets, will require deeper cultural shifts.

Our examination of the different systems established by the various European states regulate political party and campaign shows that, although the chosen techniques often differ considerably, the underlying concerns are the same everywhere, although the purposes of legislation have varied from country to country depending on the particular problems which have acted as the spur to reform.

- 1.) Declaring all political contributions. A common purpose is to make it compulsory for donations to be transparent so those politicians are deterred from entering into shady deals in exchange for contributions.
- 2) Promoting fairness. The purpose of restricting the amount that politicians are allowed to spend is not only to control the demand for donations, it is also to reduce the political significance of disparities of resources between rich and poor political organizations.
- 3) Controlling the rapid rise in the cost of campaigning. The most effective device seems to be to provide free media coverage to all parties as a substitute for political advertising.
- 4) Promoting various political parties. Proponents of financial subsidies to parties stress that democracy requires strong and competitive parties. If parties are to be able to present themselves to the electors, and if they are able to research

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into alternative policies, they require the finance to employ adequately sized staffs. The best way to ensure that parties have sufficient resources to carry out their democratic functions is to give them subsidies from the public purse.

5) Encouraging grass roots participation. According to this view, the essential characteristic of democratic parties is that they are voluntary organisations that rely on the support and efforts of members. They should depend neither on the state nor on large, private contributors. Their finances should be based on a large number of small subscriptions.

Leaders of democratic parties need to attract followers who will give their support for idealistic reasons. It is therefore important for democratic parties to receive financial donations, but in addition to receive help in the task of electioneering from ordinary members. It follows from the view that a main aim of regulations of political funding should be to encourage wide individual participation through small-scale payments and subscriptions. This objective is of particular importance in a new democracy in which party organizations are weak and need to recruit members.

It is sometimes argued that it is unrealistic to expect political parties in areas of the world where incomes are very low to collect significant funds in membership subscriptions. In these conditions, the only available sources of money are grants from public funds or from foreign donors. But there are strong grounds for objection to this view. There is a special danger in such countries that the organic growth of parties may be stifled by 'gold poisoning' in the form of such grants. If party leaders are able to benefit from financial aid, they will frequently lose their local roots. Well meaning, over-generous, short-term financial subventions, has damaged parties in a considerable number of new democracies.

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6.) Internal party reform and external party legislation in Europe go hand in hand. The "roots" of Democratic Party structures are to be found in many European countries in the constitution. Either the constitution or special party laws demand internal democracy, in a sense is, at least superficially, the norm. Interestingly, it is also a condition for the applicant states of the enlargement of the European Community.

What lessons are there in all this? The NDI_CALD survey concludes, "stringent external legislation, although an attractive approach to combating political corruption, has disadvantages." The main disadvantage refers to be that of enforcement, the difficulty of enforcing agencies to keep tabs on party activities, expenditures, and income. The European experience certainly bears out that conclusion. The many complexities involved in controlling political financing means that any moves to introduce new laws need to be considered with care. Regulations are valueless unless a well-planned, professional and neutral system of implementation is created.

The NDI_CALD study also points out that "laws can also create perverse incentives. In Korea and Thailand, for example parties explained that many donors prefer to remain anonymous, so the public disclosure laws force parties either to reject the needed financial support or to break the law. In fact, many report that legislation, such as cumbersome reporting requirements, has simply driven practices underground. Even in Germany, where it was former chancellor Kohl who introduced strict new anticorruption laws in the 1980s in the wake of earlier scandals, apparently model legislation did not stop the Christian Democratic Party from amassing millions of illegal dollars in secret Swiss bank accounts.

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"The law has made us all criminals, report one MP", quoted in the NDI-CALD study. According to the study, Taiwan has learned that limits on campaign spending and donations reduces transparency and is therefore considering lifting the penalties for breaking these limits... by lifting the penalties of legislation, the government hopes that it will, for the first time obtain an accurate assessment of actual expenditures and contributions. In other words, legislation can often defeat its own intention of promoting greater transparency in political finance.

Japan has an interesting history with regards to this point. In Japan, as in Europe, reform has been driven by the series of scandals in the early 1990s involving payments. As a politicians of the ruling Liberal Democrats (LDP) for their huge election expenses. As a result, the political Funds Control, Law was changed with the intention to make the flow of political donations more transparent. The main idea was to shift responsibility for the raising of political funds from individual politician parties. This measure corresponds with the introduction of government subsidies for political parties, which was another important part of the 1994 political reform package. After a transition period of five years starting from 1 January 1995, donations by corporations, labor unions, or other organizations to individual Diet members were ruled illegal.

Since January 1st 2000, Diet members can only receive limited funds from individual donors (up to 1.5 million-yen p.a.), but can receive unlimited support from local party chapters and party headquarters. Many LDP Diet members transformed their personal support groups into local party chapters, some politicians even founding several new local party chapters with one constituency so as to provide interested corporate donors with facilities to continue making contributions.

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The European experience seems to suggest that spending limits may be more effective than attempts to limit donations.

As the scandal - driven reform process in Europe demonstrate the public and the mass media play an important role as watchdogs when it comes to political donations and party financing. The much-publicized scandals mobilized the public to demand reform. Freedom of the press and the diversity of established politically interested newspapers, magazines and radio and TV were the prerequisites.

One of the training seminars, conducted by our Foundation in Germany is on "strategies against corruption". It sums up that in order to combat corruption, a free, independent media and free press was essential. Access to information and a critical use of it, is a precondition for public media, which monitor the accountability of rulers and stand for the fight against corruption. Beside laws on the free access to information and effective laws defining defamation and slander in order to protect the press and public, it is also necessary, to end political censorship and achieve higher professional standards for journalists. There must be an end to government discrimination and interference in the case of criticism of the government or the governing professional standards and the independence and accountability of its employees.

For reforms to be on the public agenda, the media has to be free and active. This is a necessary "Pre-reform agenda.

7.) Interrelations between internal party reforms and external party regulations.

What are the major lessons learned in Europe? Empirical evidence and personal testimony from party executives shows clearly that external pressures on the

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parties exerted from more stringent legislation or even the advocated presentation of reform bills without implementation, critical media and public opinion, are mostly originating, provoking or triggering internal party reforms. Party scandals, negative public image and poor election results in turn have encouraged reformers in the parties to challenge their leadership, build constituencies for change and push for bolder adjustments of traditional mechanisms and procedures. These reform processes have certainly not been smooth transitions because of vested interests and ensuing power struggles. But rewards were highly significant and more than obvious. Increasing membership, recruitment of highly qualified candidates, rising opinion polls, positive media coverage, excellent election results and changes of government, largely compensated reform parties. A concrete example is the Dutch VVD, which has tripled its voters and is now ruling the Netherlands on a clear reform agenda. Anti-reform parties, sticking to traditional un-transparent practices and unwilling to tackle problems of corruption, were severely penalized by the electorate and in some cases, even vanished from the scene, like the Christian Democrats in Italy.

The numerous advantages of enhancing internal democracy, accountability and transparency are becoming more and more visible in European party systems. The forerunners among the reform parties have acknowledged that political parties are forced to implement profound internal structural reforms with the aim to modernize, professionalize and adjust to changing environments and new challenges. This necessity is seen as a question of long term survival and ultimately political success. The critics of traditional parties sustain that business corporations, organizations of civil society and even state bureaucracies experienced major process of structural adjustment and modernization in the past decades, whereas many political parties are still maintaining their old fashioned style of leadership, financing and organization. This behavior is seen as incompatible with the needs of modern democratic government, parliamentary

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opposition and advanced political competition demanding pluralistic societies. It is argued that political parties are forced to establish modern, professional and highly performing structures and to eliminate old practices of corruption, lack of transparency and authoritarianism if they are to aspire the political leadership of modern nations.

The financial stability of political parties as well as the necessary reduction of democratically dubious or completely unacceptable types of fund raising and spending will certainly be among the key issues of Asia's democratic development in the years and decades ahead. Some of the new developments mentioned above, trends which signal a growing demand for more transparency and legitimacy for financial transactions in the political sphere will probably make it more difficult to continue the traditional forms of financial abuse. As demonstrated, this is not solely an Asian but universal problem of political parties worldwide. Asia, of course, has the right to make her own mistakes and conduct experiments, and in fact, is quite surprising how close the democratic institutions and aspirations in this region actually are to international standards. It is therefore highly recommendable to exchange experiences and learn from each other, within the region and outside.

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