

Regulating Politics: The role of internal and external oversight in Europe

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In many democracies conflicts of interest, lobbying, political finance, and the political influence on administration and justice, seem to carry the greatest risk of corrupting principles and processes of democracy. Year after year, political parties and parliaments—the very institutions entrusted to represent the public interest in political decision-making—take in first place as the most corrupt institutions in the Transparency International Global Corruption Barometer. It has been also recognized that political competition under unregulated conditions would be like ‘inviting two people to participate in the race, with one participant turning up with a bicycle, and the other with a sports car.’¹ Thus, democracies have generally been obliged to control political competition and combat political corruption, creating a framework within which political parties, candidates, and incumbent politicians can operate. The overall picture that emerges from comparative study on public ethics regulations in Europe is that cross-national variation is still considerable² but there seems to be at least few regional developments.

In recent decades there has been a growth in regulations dealing with political parties and elections, lobbying, conflicts of interest, and these institutions are now subject to a greater degree of regulation than in the past. For instance, in 20 out of 25 EU member states there is a regulatory system on party finance confirming that for modern democracy there is no adequate alternative to close regulation of political parties and party funding. Furthermore, as a result of continuous regulatory reforms in Europe regulations are much more comprehensive (including provisions for registration, membership, candidate selection, internal democracy, sources of funding, financial reporting and disclosure, enforcement and sanctions) rigorous and less permissive. With the recent reforms in the UK, Latvia, Croatia, Poland and current discussions taking place in Ireland, Netherlands, and Sweden, it is appropriate to speak of regulatory regimes in making.

Furthermore, as the political environment is fluid and fast moving, the regulatory system must be responsive and flexible enough to deal with emerging issues. Following the experience of other democracies regulations dealing with politics will not escape regular reviews and updates. Moreover, once the process of regulation begins, the experience of every country suggests that there is an irresistible dynamics in the direction of more and more regulations.

Indeed, fighting political corruption is currently perceived as one of the biggest challenges for many democracies and political institutions. This has been the main motivation for numerous regulatory reforms, confirming the argument that the will to

¹ Keith D. Ewing, *Money, Politics, and Law*, Oxford: Oxford University Press, 1992, p. 15.

² This might result from differences in the level of party institutionalization, the distribution of money and wealth, and the principles which the system protects

improve laws often requires the stimulus of scandalous events,³ or an external pressure. In the last few years, the search for legal remedies has been a natural response to political scandals in the Western democracies.⁴ Yet, many European regimes have realised that increased transparency is not a sufficient condition to eliminate political corruption. The recent evaluation of the reforms introduced in the UK has shown that while the new regulatory framework “introduced closer regulation and some improved transparency, it has not finally resolved problems with the system; if anything increased transparency, by revealing the extent of and dependency on donations from a few rich individuals, corporations and trade unions, has increased the negative impact on public confidence. (...) While we endorse a transparent system, transparency does not solve problems, but draws attention to them.”⁵

As a result, although the rules still vary considerably among democracies, pressure to control politics becomes much stronger than a decade ago. What is even more interesting is that politics in many European countries (particularly in post-communist regimes) becomes more externally supervised by the State than internally controlled by political players. Negative view of a politics as generally corrupt and non-transparent continues to dominate among European public opinion and contributes to a growing pressure to increase external oversight over political elite.

In addition, almost all European democracies have been damaged by a wave of corruption scandals, including regimes which were generally perceived as “clean.”⁶ Yet, significant irregularities will continue to emerge, thus confirming a wide-spread feeling that there is a “problem” with the way politics is operating in many European democracies. The following pages present some observations about the regulations and practices governing politics across the European continent. It is argued that, “too much” external oversight may have a chilling effect on the formation and development of political parties, as well as deterring the creation of political parties. On the other hand, when exercising “too little” oversight, transition democracies might be captured by weak and oligarchic parties producing chaotic and ineffective government. This paper also suggests that while internal oversight has an important role to play in regulating politics, an element of independent external oversight is needed for a proper mechanism to regulate politics.

Growing External Supervision

³ Although, western democracies have experienced a number of reforms, including the 1883 Corrupt and Illegal Practices Act in Britain. After the Watergate Affair of the 1970s, the United States entered a period of political finance reforms; also the 1981 Flick Affair led to important changes in the Parties Law in West Germany. For more details on US campaign finance regulations see Craig Donsanto, *From Crisis to Reform: A Historical Perspective in Democracy@Large*

⁴ This can be well illustrated by the introduction of new legislation in the UK (the Political Parties, Elections and Referendums Act 2000)

⁵ House of Commons, Constitutional Affairs Committee, *Party Funding First Report of Session 2006-07*, HC 163-I, Conclusions and recommendations, p. 56

⁶ Hopkin, 2004, p. 628

It is a common ground among anti-corruption activists to argue that only a “strong public control” approach towards politics and political parties can be effective. Yet, there is still lack of an agreed answer as to the fundamental question *how far should such a control go?* For instance, in the case of the UK Electoral Commission, the Political Parties, Elections and Referendums Act 2000 states that:

*A person authorised in writing by the Commission may, for the purposes of the carrying out by the Commission of their functions, enter at any reasonable time premises occupied by a supervised organisation or individual and having entered any such premises may- (a) inspect any books, documents or other records relating to the income and expenditure of the organisation or individual, and (b) make copies of, or records of any information contained in, any such books, documents or other records.*⁷

As observed by a leading British scholar these are powers which are not available to the police in a murder investigation, and only the most robust independent body stands these powers and their abuse.⁸ Rigorous external control, although an attractive approach to eliminate political corruption, can have certain disadvantages. The creation of a repressive system, which is not controlled by a non-partisan enforcement agency, might create a new challenge as party’s right to internal autonomy and freedom from interference will be questioned.

And if state supervision cannot be avoided the question is *who should be supervising political associations?* The differences in terms of which body should be monitoring it well illustrate the tension between the interpretation of parties as “civil society groups” and as “public utilities”. The choices available include a state body (e.g. Ministry of Justice), an independent commission, a court, or even an anti-corruption body. Recent comparative research has shown that in 63 percent of the countries that have agencies responsible for the enforcement of political finance, most of them rely on National Electoral Management Bodies. An additional 28 percent of these countries entrust the task to government departments, such as the ministry of the interior, the ministry of labour and administration, the ministry of justice, the tax office, or the attorney general’s office. Other bodies responsible for political finance enforcement might include parliaments, parliamentary speakers, constitutional courts, or tribunals.⁹

⁷ PPERA, Art. 146 (3)

⁸ Keith D. Ewing, *The Cost of Democracy*, Oxford: Hart Publishing 2007

⁹ See *Training in Detection and Enforcement (TIDE) Handbook*, (Washington DC: IFES 2005)

Table 1**Public control of party funding in the EU member states and candidate countries**

Country	<i>What body is responsible for administration and enforcement of the regulations?</i>
Bosnia and Herzegovina	National Electoral Management Body
Bulgaria	National Electoral Management Body/Other (Audit Chamber)
Croatia	Others (Parliament/State Audit Office)
Czech Republic	Government Department
Estonia	National Electoral Management Body
Hungary	Other (National Court of Auditors)
Latvia	Other (Anti-Corruption Agency)
Lithuania	National Electoral Management Body/Government Department/Other (Tax Office)
Macedonia	National Electoral Management Body/Other (Audit Chamber)
Poland	National Electoral Management Body
Romania	National Electoral Management Body
Serbia	National Electoral Management Body/Other (Parliament)
Slovakia	Government Department
Slovenia	Other (Audit Chamber)
Turkey	Other (Constitutional Court)
Selected countries	Government Department: 2 countries National Electoral Management Body: 8 countries Other: 5 countries

The work of the above agencies and the compliance by parties are becoming even more challenging as the laws have become far more extensive and complex in recent years. Financial and operational independence of the regulator seems to be the major challenge in many new democracies - the state must take on this responsibility and, to fulfil it properly. This is particularly true for countries in transition, during which the party in power tends to use the state apparatus to its advantage. Furthermore, if too little enforcement renders political finance rules meaningless, too much enforcement can paralyze the system by rendering it overly rigid.¹⁰

A relatively new area in which the dilemma between parties as civil society bodies and parties as public-utility bodies is present is the regulation of the internal affairs of political parties. Peter Kopecky rightly observes that in many Eastern European regimes “parties are extensively managed by the state, as seen in the increasingly common

¹⁰ Diane R. Davidson, *Enforcing Campaign Finance Laws: What Others Can Learn From Canada*, Election Law Journal 2004

regulation of their activities through public law and the constitution.”¹¹ Some of these regimes have a growing interest in regulating party’s internal rules, particularly these addressing candidate selection process, party organization (e.g. requiring a certain number of local branches to be maintained), statutes, and membership (as a percentage of the population).

Finally, the agencies responsible for external oversight must do their job regardless of who is in power. Otherwise, efforts to enforce rules and fight corruption and lawlessness might have the opposite effect. In the absence of the rule of law, an unaccountable government might choose selective and partisan implementation of restrictive regulations. Such a choice can reduce electoral competition and lead to long periods of one-party domination. Given this risk of abuse, designers of regulations effecting political life must simultaneously seek to encourage transparency and accountability and protect political actors (mainly opposition) from possible harassment or invasion of privacy. This is particularly true for countries in transition, during which the party in power tends to use the state apparatus to its advantage. In these regimes, where external oversight is highly partisan, certain mechanisms such as public disclosure may be abused rather than used as an instrument of transparency. Strict registration requirements and financial disclosure can allow an authoritarian regime to eliminate opposition politicians and weaken opposition parties by undermining the support of their sympathizers or allied interest groups. One should not forget that for a democracy to function, a vibrant opposition, able to participate in free and fair elections, needs to exist.¹²

Institutionalization of Internal Control

For Dahl *polyarchy* is a political order distinguished by the presence of seven institutions, all of which must exist for a government to be classified as a democracy. Among them is “associational autonomy” – the right of citizens to form relatively independent associations or organizations, including independent political parties and interest groups.¹³ The fundamental question is how the oversight of these associations should be organized in order to protect this “associational autonomy”. Politics and political parties will attract corrupt individuals as any other organization does. In any case where money and power are so intimately connected, internal mechanisms for financial control are essential. Politicians and political parties themselves may take an initiative to introduce some forms of self-regulations (e.g. codes of conduct), either as a result of an ethical commitment to particular principles or an obligation to its members. Thus, it should be stressed that political actors, when facing a universal struggle against political corruption, require a certain degree of autonomy to introduce preventive measures. Many parties realise that if they do not put more emphasis on their internal control mechanisms, more scandals might come out which will increase public pressure for external oversight. As a result, further restrictions will be imposed, leading eventually to total supervision over their basic financial transactions and actions.

¹¹ Petr Kopecky, *Political Parties and the State in Post-Communist Europe: The Nature of Symbiosis*, Journal of Communist Studies and Transition Politics, Vol. 22, No. 3 September 2006, pp. 269-270

¹² Marcin Walecki, *Ukraine: the authoritarian abuse of disclosure*, in *TI Global Corruption Report 2004*, p. 41

¹³ Robert A. Dahl, *Democracy and its Critics*, (Yale University Press 1989), p. 221

Another question is how to encourage political class to adopt procedures to eliminate dishonest individuals and prevent misconducts? In general, a number of European countries, particularly these with public funding systems, encourage political parties to comply with requirements for financial reporting and professional bookkeeping. The argument is that maintenance of proper accounting records helps to ensure that a party is not unnecessarily exposed to avoidable financial risk, and that published financial information is reliable; accurate bookkeeping can contribute to the safeguarding of assets, including the prevention and detection of fraud. The supporters of stronger control argue that detailed and persistent control mechanisms can provide a crucial foundation for efforts to contain the abuses that are always liable to occur, regardless of the sophistication of legal frameworks and external supervision. As observed by Anderson - with the best of intentions, most people make mistakes and any organization needs some controls to minimize the effects of these endemic human failings.¹⁴

The growth of financial restrictions and disclosure obligations forces many political parties (or even candidates) to appoint specific officials — “compliance agents”—who have the following responsibilities: (1) keeping complete and accurate records of financial activities, (2) submitting reports about financial activity to the relevant bodies, (3) approving all contributions for compliance with legal restrictions; and (4) following accepted accounting procedures in performing record-keeping and reporting duties.¹⁵ Party agents often oversee compliance with these requirements and institute action (using intra-party disciplinary codes and codes of conduct) when necessary. The new requirements for internal control might impose serious and continuing duties on party leadership to monitor donations. With the growth in regulations on the deterrence of money laundering in some regimes parties are also obliged to report suspicious financial transactions to the relevant authorities. Furthermore, should the political party be held responsible for every unlawful action related to its funding? If so it would risk being penalized for actions over which they had little or no control (for example, in the case of political provocation, whereby a supporter of one political party makes an illegal donation or buys votes *on behalf of* another party that he wants to be penalized).¹⁶

Self-regulations and internal control certainly have an important role to play in regulating politics. However, as suggested by Ewing there are at least three serious problems suggesting that internal control is unlikely to be enough on its own.¹⁷ Firstly, what one political group has agreed to be bound by will not necessarily be matched by the others. Secondly, the way these rules and procedures are practically applied will be determined by the parties themselves; so a party can take a narrow view of what the rules are. Finally, what would be the sanctions for breach of the rules voluntarily adopted and who

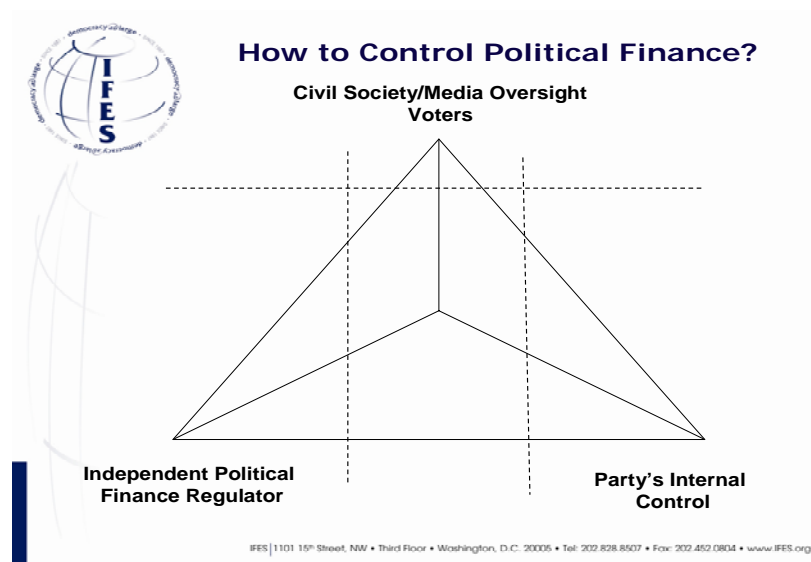
¹⁴ Anderson, R.J. *The External Audit*. Toronto: Cropp Clark Pitman, 1977 p. 143

¹⁵ Some systems foresee that all funds should be channeled through the agent and that all expenditures must be authorized by the agent. In addition, the agent must check incoming donations and expenses to ensure that they are in conformity with the rules.

¹⁶ According to the Council of Europe recommendations, a political party as a whole should not be held responsible for the individual behavior of its members, including candidates, who are not authorized by the party but who engage in party activities. This could include illegal fund-raising activities or expenditures by an individual candidate.

¹⁷ Keith D. Ewing, *The Cost of Democracy*, Oxford: Hart Publishing 2007, p. 57

is to enforce them. Thus, internal oversight should be perceived as a precursor to and a companion of State regulation.



Conclusions

The scope of regulations over political process is bound to remain a subject of debate for at least the next decade. Yet, for modern democracy, especially for questions about how to organize effective oversight, it is important to stress the complementarity of external and internal control. This complementarity is not always recognized. As observed in many Central Eastern European countries one of these two dimensions (internal control) is frequently neglected in favor of the other. As stressed by Janda, “If governments have no oversight over what parties and politicians can and cannot do, nations risk ruthless politics with little or no public accountability. Yet if governments enact strict laws specifying how politics should be conducted, campaigns organized and conducted, regimes can discourage or prevent political entities from participating in public affairs.”¹⁸ Over-complex legislation, already evident in some regimes, can also act as a disincentive to general political participation.¹⁹ A series of interviews showed that many perspective candidates declined to participate in elections (and politics in general) because of complex registration requirements, financial restrictions, reporting obligations and harsh sanctions. Known and understood laws and procedures are self-executing for the vast majority of actors. However, if individuals find it difficult to comply with laws, they

¹⁸ Kenneth Janda, *Political Parties and Democracy in Theoretical and Practical Perspectives*, Adopting Party Law, NDI 2005, p. 3

¹⁹ Public disengagement and untested regulations might be another factor influencing future of democratic systems. When one considers the different ways that people can have an impact on public decisions, donating money to a political party is nowadays perceived as one of least effective tools. In a recent survey, almost 60 per cent of respondents’ believe that voting at an election is important, while only 13 per cent consider joining a political party to be effective. Only 6 per cent suggest donating money to a political party. See “*Parties for the Public Good*” by Fiona Mactaggart, Geoff Mulgan and Rushanara Ali, The Young Foundation, October 2006

might reconsider their involvement in the political process either as a member, candidate, or a donor.

One should also stress that ‘Intensive state regulation may curtail the organizational autonomy of parties to such an extent that parties become annexed to the institutions of the state.’²⁰ If the partisan state supervision continues to grow, opposition political parties in some regimes will be taken “captive” by the state for their alleged misconduct. Strict registration requirements, full transparency and scrupulous reporting, growing supervision over parties’ conduct, and systemic decline in private funding from members and small donors – all of it indicates that parties might already have become captives in many transition democracies. “Domestication” of formerly autonomous parties by the state becomes a reality. This is a real threat if the wrongly understood anti-corruption remains the tool for certain regimes, to limit the scope of political competition. The European experience shows that combating political corruption scandals purely by means of introducing stricter regulations on political life is doomed to failure. In all regimes fight against political corruption needs to be placed in the wider context of misappropriating procedures relating, for example, to town planning ventures, commercial development, public procurement, public service provision, use of local semi-public corporations or semi-public non-profit-making organizations, etc.²¹ Not to mention other fundamental issues such as access to information and freedom of media.

²⁰ Ingrid Van Biezen, *Political Parties as Public Utilities*, Party Politics, Vol. 10, No. 6 2004 p. 716

²¹ van Ruymbeke Council of Europe, “Trading in Influence and Illegal Financing of Political Parties” 1998, p. 84