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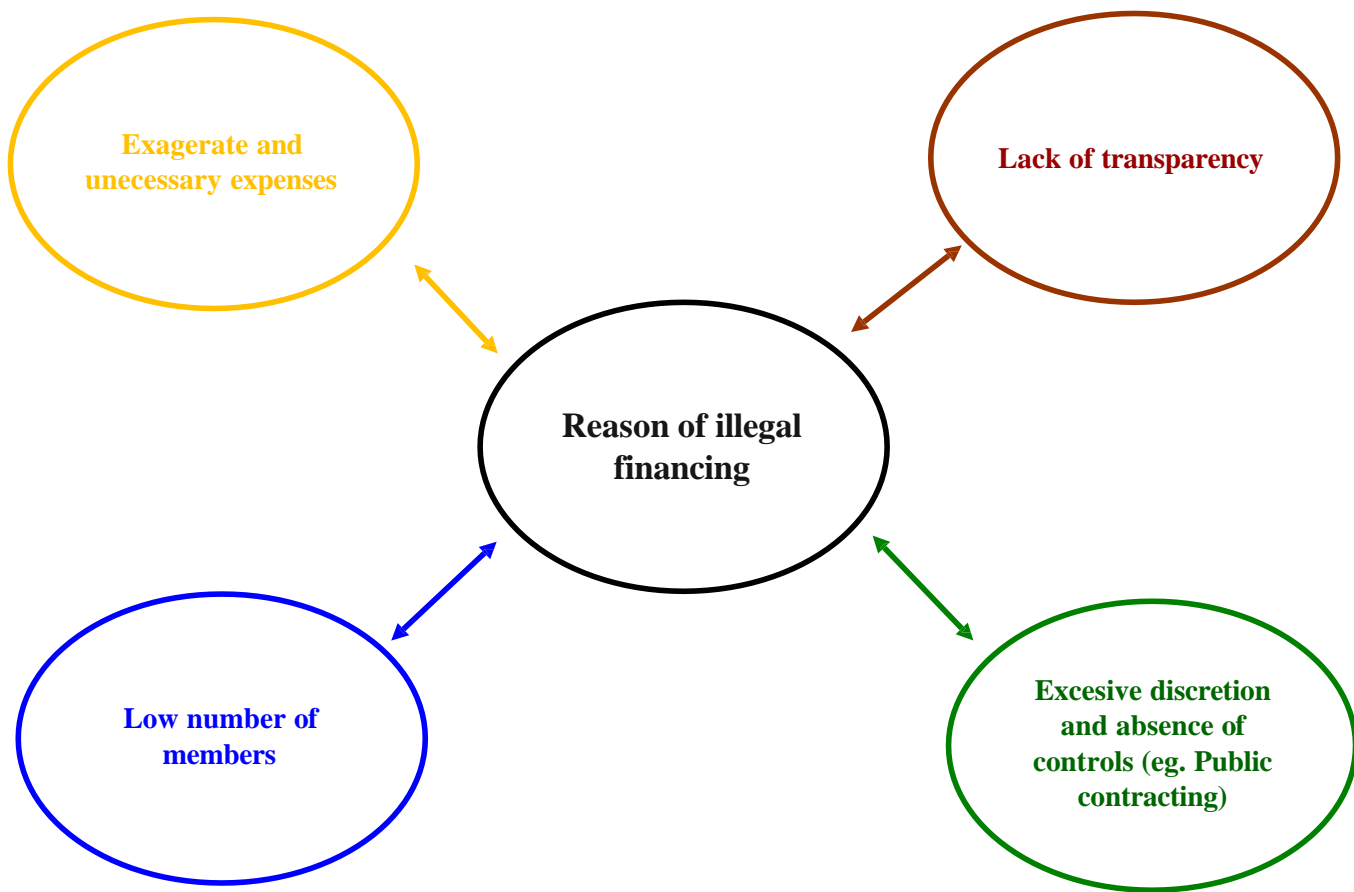
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Este trabajo se enmarca en el Proyecto de Investigación «Nuevos instrumentos jurídicos en la lucha contra la corrupción pública: propuestas desde el derecho penal y el derecho constitucional» (DER2015-71176-R), financiado por el Ministerio de Economía y Competitividad y cofinanciado por el Fondo Europeo de Desarrollo Regional (FEDER) correspondiente al marco financiero plurianual 2014-2020

## Concept

Irregular financing	Illegal financing	Corrupt financing
<p>This type of financing is used by the political parties for obtaining economic support of not orthodox form, but without breaching any law.</p> <p>The irregular financing does not involve, therefore, any type of juridical responsibility, though it can imply moral and ethical responsibility and, in last term, political responsibility.</p>	<p>The illegal financing takes place when you infringe the law about financing of political parties (in the Spanish case, Organic Act 8/2007, of the 4<sup>th</sup> July)</p> <p>This behaviour can involve, depending on the case, administrative or penal sanctions.</p>	<p>The corrupt financing takes place when the person who receives the donation in name of the political party promises to take directly a decision or to influence in other people for them take a decision in the sense wanted by the donor.</p> <p>The necessary element for the corrupt financing is the <i>quid pro quo</i>, this is, the exchange of presentations between the donor and who receives the donation.</p>

## Reasons of illegal financing



## Crime of illegal financing of political parties

### Is it necessary to criminalise the illegal financing?

- 1 • The existence of an autonomous protected legal right (the normal development of the functions attributed constitutionally to the political parties without any external interference)
- 2 • The complexity of the criminal proceeding for the punishment of these kind of conducts because the current criminal types are not sufficiently clear to apply.
- 3 • The existence of legislative blackholes and the lack of dissuasive effect of the administrative sanctions.

### Basic type

#### Illegal passive financing

**Active subject**

- Whoever receives donations or contributions aimed at a political party, federation, coalition or group of electors.
- These contributions or donations can be received directly by the political party – the person in charge of its economic - financial management (art. 14 bis Organic Act 8/2007) or by an intermediary.
- The qualification like active subject does not limit itself, exclusively, to whom receives materially these contributions or donations, but this category includes to everyone who, having capacity of decision on the functioning of the party, consents in incorporating them into the mass of goods of this one.

**Conduct**

- To receives donations or contributions aimed at a political party, federation, coalition or group of electors.
- Material disposition, on the part of the donee, on the contributions or private donations delivered to that one.
- Result crime
- The conducts of requesting or accepting an illegal donation are not punishable by the Criminal Code, except as an imperfect forms of execution - unfinished and finished attempt, respectively-.

#### Illegal active financing

The natural person or the legal entity, of Spanish or foreign nationality, who give donations or contributions aimed at a political party, federation, coalition or group of electors, personally or through an intermediary.

To give donations or contributions aimed at a political party, federation, coalition or group of electors.

The offer or promise of an illegal donation are not punishable by the Criminal Code, except as an imperfect forms of execution - unfinished and finished attempt, respectively-.

### Aggravated basic type

#### Aggravation because of the quantity

**Aggravating element**

- Anonymous, finalists or revocable donations for an amount exceeding 500,000€.
- Donations coming from legal entities and from entities without juridical personality for an amount exceeding 500,000€.
- Donations coming from the same person for an amount exceeding 550,000€ per year.
- Donations coming from legal foreign natural persons exceeding these quantities.

**Punishment**

- A prison sentence of six months to four years and a fine of three to five times the value or excess.

#### Aggravation for financing of foreign origin

Donations coming from Governments and organisms, entities or foreign public companies or of related companies direct or indirectly with the same ones exceeding the amount of 100,000€.

### Aggravated qualified type

#### Particular gravity

**Aggravating element**

- The deeds outlined in the preceding Section are of particular gravity.

**Particular gravity?**

- Predominant doctrine: economic relevancy of the donation realized, respect of the limits indicated in art.304 bis. 2 Criminal Code.
- Some authors refer to other interpretative criteria such as: the hierarchic position that the person who receives the donation holds in the political party; the terms and conditions in which the donation is realized, etc.

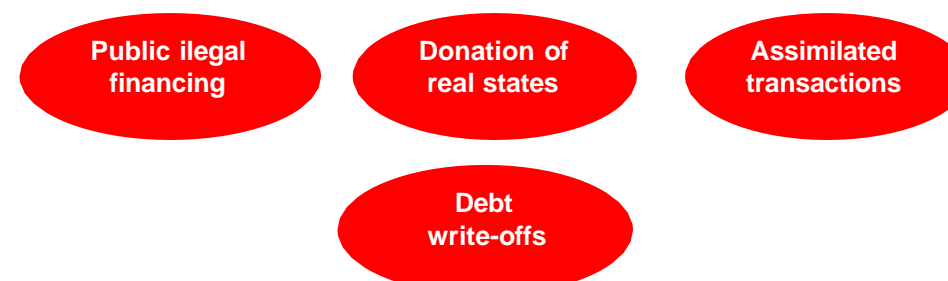
**Punishment**

- The penalty shall be imposed in its upper half and up to the highest degree (prison sentence from 4 to 6 years).

## BLACKHOLES

### Object

Any illegal financing implies the capture of the will of the political party by third parties. But the legislator has limited the criminalisation to the illegal private donations. **It remains out of the Criminal Code:**



This option allows that the economic world still keeps its capacity of influence of the economic world on the public sector.

### Active subject

It is known that the political parties have a network of organizations satellites (foundations, associations, etc.) whose resources are formed, principally, by public subsidies. These organizations are forced to destine 70% of their incomes to their institutional purpose and the rest of them must destine to increase their reservations (art. 27.1 Act 50/2002).

The reality is that **these organizations are used to finance, in a undercover and illegal form, the ordinary expenses of the political parties (eg. Palau case).**

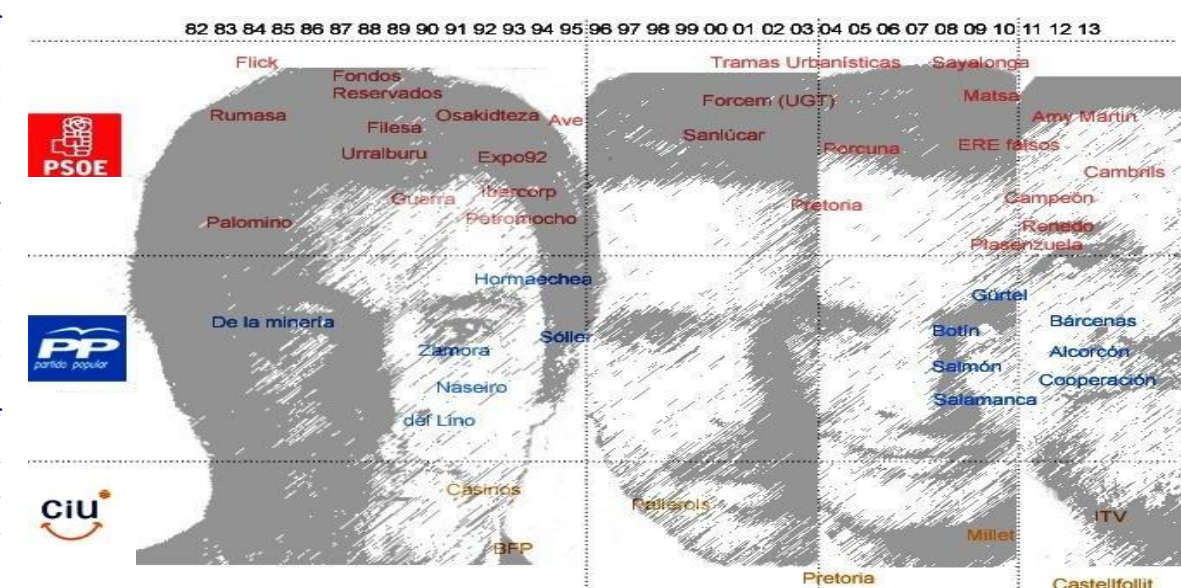
## Illegal financing of political parties in Spain

Political parties are the expression of political pluralism; they contribute to the formation and expression of the will of the people and are a fundamental instrument for political participation (art. 6 Spanish Constitution). The corruption in their financing is a world phenomenon that, in case of Spain, it has almost concerned all the political parties. It is one of the areas in which more corrupt activity is observed in Spain (Greco, 2009).

However, the regulation of the financing of the political parties has not been an object of special attention in the frame of the fight against the public corruption. A good example of this is the fact that of all the international instruments against the corruption only the United Nations Convention against Corruption adopted by the UN General Assembly Resolution 58/4 on 31 October 2003 contains a disposition in this regard :

*Art. 7.3. Each State Party shall also consider taking appropriate legislative and administrative measures, consistent with the objectives of this Convention and in accordance with the fundamental principles of its domestic law, to enhance transparency in the funding of candidatures for elected public office and, where applicable, the funding of political parties.*

The European Commission noticed in 2014, in its Report on the Fight against the Corruption, on the deficiencies in the supervision of the income and expenses of the political parties. To that effect, the member States were advising to sanction their illegal financing.



## Sources of funding

