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by

**Mr Christophe PALLEZ**  
**Secretary General of the *Questure* of the National Assembly of France**

on

**“The material conditions of the exercise of parliamentary office: what monitoring and what transparency are needed in order to reply to society’s expectations?”**

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Mr. François Fillon, one of the main candidates for the presidential election which will take place in France on April 23 and May 7, 2017, is under judicial investigation for the misuse of public funds. He is specifically accused of having employed his wife as a parliamentary assistant when he was an M.P. She was thus paid through the budget of the National Assembly but, according to the accusations of the press against the former Prime Minister, she did not actually carry out the professional activities of a parliamentary assistant.

This case, which has attracted intense media coverage and which has had a considerable impact on the electoral campaign, has brought to the forefront of the political stage, the rules concerning the employment of parliamentary assistants. The possibility for an M.P. to employ his/her partner, children or parents in conditions judged too liberal and opaque has particularly been criticized. This concerns the issue of transparency in the employment of assistants.

There is another issue – that of monitoring. Why does the National Assembly provide money to M.P.s in order to employ assistants yet does not monitor the actual work carried out in return for such payment?

Indeed transparency and monitoring are issues which are not limited to the subject of parliamentary assistants. There is an undercurrent of mistrust in public opinion regarding politicians which, allied with a form of anti-parliamentarianism in France as old as Parliament itself, leads to the same questions being asked concerning all the material means granted to the representatives of the people.

### **1. The employment of assistants by an M.P. at the French National Assembly: what transparency and what monitoring is there?**

French M.P.s have access to 9618 € in credits earmarked for the payment of their assistants. This is referred to as the “assistant allowance”. It is, in principal, calculated to cover three assistants but it may be used freely by each M.P. to pay anything from one to five such assistants.

For the M.P.s (numbering around ten out of 577) who have chosen to directly manage this credit, it is transferred to them every month with an additional 50%. The M.P., in this case, directly pays his/her assistants’ salaries as well as taking care of their social contributions. He/she must retransfer to the National Assembly the amounts not used for the employment of assistants.

The vast majority of M.P.s chooses to hand over the management of their assistants to a department of the National Assembly – The Financial and Social Management Department. This department carries out the payment of the assistants using the “assistant allowance”. However, the National Assembly handles, above and beyond the “assistant allowance”, the payment of all social and fiscal employer contributions ensuing from this employment, as well as certain additional advantages. If the entire allowance is not used, the remaining amount remains on the budget of the National

Assembly or may be granted by the M.P. to his/her political group for the payment of employees of said group.

This delegated management is carried out on the basis of instructions given by the M.P. at the moment of the employment of the assistant. In fact, the M.P. plays the role of employer: he/she recruits and lays off, as well as setting down the salary and working conditions of his/her staff. The M.P. establishes, as he/she wishes, the functions, the timetable (within the limits of the Labour Code) and the place of work.

Each M.P. freely chooses his/her assistants. In particular, he/she may recruit, without any limit on the number, one or several members of his/her family as assistants. Nonetheless, the gross salary of an assistant who is a member of the M.P.'s family must not exceed half of the monthly "assistant allowance" for a full-time employee.

The existence of such so-called 'family' jobs, is a recurrent contentious issue and it has taken on huge proportions in the wake of the revelations concerning Mr. Fillon and other M.P.s, in particular a minister who was forced to resign following the disclosure of the fact that he had employed his two daughters when they were, first of all, high school pupils and later, students.

In its first reply to these contentious issues, the *Bureau* of the National Assembly decided to publish on the internet site of the Assembly, the list of the assistants of each M.P., without giving any more information than their first and last names. Thus, the existence of a family link could only be deduced, either rightly or wrongly, by examining the similarity of last names.

This step towards transparency does not represent a sudden break with the tradition of confidentiality in the field of the employment of assistants – since 2014, the law indeed requires parliamentarians to provide a list of their assistants in their declaration of interests and activities, which they must transmit to the High Authority for Transparency in Public Life. For each assistant on this list, the M.P. is required to state whether he/she has other (paid) professional activities at the same time as their work with the M.P. This information is made public by the High Authority but is not frequently updated.

In the eyes of public opinion, such publications are considered necessary but insufficient. The prohibition of 'family' jobs, as in other parliaments (Germany, the European Parliament, soon in the House of Commons) is being demanded. Those who defend this practice claim that it is not its principle which is reprehensible but the abuses to which it may lead and that the solution would lie in the monitoring of the way in which the employment of an assistant is implemented and in particular, of the actual nature of the work carried out in return for payment.

Such a form of monitoring would impose a number of huge practical and organizational problems which we can all imagine: should we ask M.P.s for reports on the activities of their assistants? Must we require accounts concerning the time

actually spent working? Should we carry out inspections in the offices of M.P.s to check up on the presence and the work of their assistants? And who should do all this?

This last question is linked to another fundamental one – that of the freedom of the exercise of the office of M.P. which can be defined in the following way: subject to the rules laid down by the Constitution, the laws and the internal regulations of the Assembly, a parliamentarian may freely decide upon the way in which he/she carries out his/her office, the place(s) in which he/she so carries it out, the time that he/she gives over to this office, the distribution of the material means at his/her disposal...

The intrusion of criminal justice in the exercise of parliamentary office which would consist of carrying out an inquiry into the authenticity of the work of an assistant by an M.P. has been severely criticized by certain legal experts who see it as a serious attack upon the separation of powers. Other legal experts have underlined that the forms of immunity which protect parliamentarians against certain legal procedures which could be obstacles to the exercise of their office, are strictly defined and do not exonerate parliamentarians from having to justify infringements of the law. There is also a debate concerning whether or not funds allocated to a parliamentarian to pay his/her assistants are public funds and whether a parliamentarian could be prosecuted for the misuse of public funds, as this infringement can only be attributed, according to the Criminal Code, to “a person who holds public authority or who has a public service remit”.

It has also been said that if justice has to deal with such issues it is because the assemblies themselves do not monitor the employment of assistants enough. This is certainly the case for the National Assembly which considers that the relationships between an M.P. and his/her assistants are those of an employer and his/her employees and are covered by the Labour Code. The National Assembly thus restricts its intervention to recording the contracts, established according to templates and to paying the salaries in compliance with the details of the amounts and the workload set down in the contract.

This position concerning the strict respect of the free exercise of parliamentary office and the absence of monitoring on behalf of the departments of the parliament in charge of the employment of assistants, has already been called into question regarding the use of other material means provided to parliamentarians.

## **2. The other material means provided to parliamentarians in the exercise of their office at the French National Assembly: what transparency and what monitoring is there?**

From the point of view of the monitoring of their use, the material means provided by the French National Assembly to M.P.s can be classified in three categories:

1<sup>st</sup> category: means which are provided directly and free of charge to M.P.s (offices at the Assembly, office telephonic and computer equipment, parliamentary documents, transport with official cars etc.)

In these cases, the M.P only receives services in kind and receives no pecuniary payment. Monitoring does not pose a problem. It exists in itself.

2<sup>nd</sup> category, means which are provided in the form of a drawing right on a budgetary line of “allowance” as the “assistant allowance” states which is the case, for example, for the “computer allowance” (computer equipment for the constituency office of the M.P.).

We also speak of “envelopes” and of “packages” to describe the sums allocated to an M.P. for his/her transport expenses between the constituency and the National Assembly, for cell phone and landline telephone expenses in the constituency office, as well as for the cost of mail sent in the framework of his/her position. In certain cases, the service is paid for directly by the Assembly according to the instructions given by the M.P. (e.g. a plane ticket bought by the Transport Department). In other cases, reimbursement is carried out upon the provision of documents (taxi or hotel bill, invoice for computer equipment etc.).

Here the traditional means of monitoring are used (bills, invoices etc.). This can require the use of considerable human and technical resources (computer tools now allow the day-to-day use of “envelopes’ to be followed) to avoid unjustified payments and the overrunning of the allowances allocated to each M.P.

3<sup>rd</sup> category, the means provided in the form of a fixed allowance, transferred each month to the M.P.s to cover the expenses linked to their office which are not included by the first two categories. This is referred to as the Representative Allowance for Expenses Pertaining to the Exercise of Office (IRFM) which represents a monthly amount net of social contributions of 5372 €.

The use of this allowance was, for a long time, left to the absolute discretion of M.P.s, given that the expenses pertaining to the exercise of office could be of any type. However, this led to certain extraordinary episodes when, for example, it was revealed that an M.P. had used it to pay for his holidays. The press specifically denounced the acquisition of constituency premises using the allowance. This was clearly an expense linked to the exercise of office but was also personal enrichment when the M.P. came to the end of his term and yet kept the real estate as part of his own personal resources.

It is for this reason that, in February 2015, the *Bureau* of the National Assembly established five categories of expenses pertaining to office which could be covered by the IRFM: expenses linked to the constituency office (to its rental and to its operation but not to its acquisition) and to the accommodation of the M.P.; transport expenses for the M.P. (including the acquisition and the use of a vehicle) and his/her assistants; communication expenses; expenses linked to representation and to receptions; expenses for the training of the M.P. and of his/her assistants.

These measures far from satisfied the critics. This can be shown by quoting the headline of the front page of a widely circulated weekly magazine: “The Hidden Money of M.P.s” and the title of the article: “the 6000 Euros in pocket money of M.P.s”.

In fact, it was decided not to set up any monitoring instrument for these rules which would have consisted in checking each of the expenses paid for by the allowance in order to be sure that, upon the provision of an invoice, bill etc. that it actually was covered by one of the defined categories. Such a system, based on the British model, appeared excessively heavy in terms of operational costs and also uselessly intrusive in the exercise of office.

The option which was applied is that of the moral commitment of parliamentarians to comply with the rules. In fact, each M.P. is obliged, once a year, to send to the *Bureau* a declaration on his/her honour that he/she has used the IRFM during the previous year in compliance with the rules set down by the *Bureau*.

The President of the Assembly may, after having consulted the *Bureau*, refer a case to the Commissioner for Ethics of the National Assembly requesting clarification regarding the situation of an M.P. The Commissioner will then send a report to the said M.P. This procedure of spot-checking is, in particular, used when the press reveals an unlawful use of the allowance.

In this area, transparency can represent an alternative to monitoring. This is the thinking of the M.P.s who took the initiative of publishing on their internet site a report on the expenses which they have paid with the IRFM. The organization *Transparency International* would like all M.P.s to be obliged to do so.

However, the requirement of transparency can be extended to all the material means made available, whether they be part of one category or another of expenses. It must first deal with the precise amounts of credits and envelopes and the detailed rules concerning their use. The press considers that the information given on the public site of the National Assembly is too general and conceals a part of the reality of the “privileges” which parliamentarians have. The parliamentary assemblies are accused of “blocking the information on the allowances allocated to M.P.s to work” and of replying to questions through “silence, slowness and concealment”. Journalists however manage to gain the clarification they seek when such details appear explicitly on the internet site reserved for M.P.s and their assistants. Opacity is scarcely possible in the era of open data.

The media, but also associations or institutes specialized in the fight against “the waste of public money”, also insist on obtaining individual and personal information of the use by M.P.s of the funds which are allocated to them. Thus, frequently, parliamentarians receive questionnaires asking them, for example, to state if they have a car with chauffeur provided by their assembly and the use they make of it. The members, who are permanently exposed to the more and more inquisitorial look of the media and of social networks, have remarked bitterly upon the fact that despite the growth in transparency, they have not gained in popularity.