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Political Parties and Their Funding in Germany

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In Germany, as in most modern democracies, the funding of political parties is a sensitive issue and even after a changeful history of party funding with many scandals the present model is not perfect. There is a combination of private funding and partial public funding (which must, however, not affect the freedom of the political parties from state influence [*Staatsfreiheit der Parteien*]), flanked by strict rules of financial accountability. Donations are the most controversial element. There is neither a ban on donations from companies nor an absolute limit for donations. Only donations of more than 50 000 € must be reported immediately and will be made public in a timely manner so that it is ensured that the citizens are informed about them before the next elections. Concerning public funding, there is an indirect funding through income tax reductions on membership fees and (limited) on donations, plus a direct public funding (per vote and per contribution), which must not be higher than the revenue from private funding. Since 2017, parties seeking to undermine or abolish the free and democratic constitutional order shall be excluded from the public funding.

In order to ensure transparency, every party must submit for each calendar year a correct and exhaustive audited public statement of accounts. In case of illegal donations or incorrectness of the statement there are sanctions, which are, however, rather soft. The Council of Europe's Group of States against Corruption (GRECO) has criticised the intransparency arising from the fact that party donations up to 50 000 € do not need to be reported immediately but only in the annual statement of accounts, which may be published several months after the elections influenced by them. So there is still room for improvement.

Keywords: political parties, party funding in Germany, freedom of political parties from state influence [*Staatsfreiheit der Parteien*], principle of equal opportunities of the political parties, transparency, private and public party funding; party donations, informal election campaign support as party funding, absolute and relative upper limit of public party funding, financial accountability of political parties, public statement of accounts of a political party.

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Introduction

The funding of political parties is a sensitive issue in most modern democracies. Germany is a highly developed constitutional state with a stable democracy where the rule of law is guaranteed in theory and effectively implemented in practice. However, those who look at Germany to find the perfect model for a fair party funding system that ensures equal opportunities of all political parties may be disappointed: Also the German system has its flaws and deficiencies, and scandals have been numerous in recent history.

1. Constitutional and Legal Basis of Political Parties in Germany

1.1. In order to prevent any abuse of the partial direct public funding of political parties (see *infra*, 4.2), the German Act on Political Parties (Political Parties Act = PPA)¹ includes a restrictive legal definition of ‘political parties’. According to sect. 2 PPA, political parties are associations of citizens with a continuous will to influence the political decision-making at national or state level and to participate in the representation of the people in the German Bundestag or a Land parliament provided that, by their actual overall situation and standing, especially as regards the size and strength of their organization, their membership numbers, and their visibility in public, it is ensured that they pursue this aim seriously. Specialised action groups or local voters’ associations are not considered as parties. A party loses its status if it does not participate in parliamentary elections for six years.

¹ Gesetz über die politischen Parteien (Parteiengesetz) [Act on Political Parties (Political Parties Act)] in the version published on 31/01/1994. Available: www.gesetze-im-internet.de/partg [last viewed 17.06.2019]; see also the illustrative but not in every detail correct and precise English translation at the website of the Bundeswahlleiter [Federal Returning Officer]. Available: www.bundeswahlleiter.de/en/bundestagswahlen/2017/rechtsgrundlagen.html [last viewed 17.06.2019].

1.2. The matters concerning the political parties are mainly regulated in the Political Parties Act. Furthermore, there are some provisions on special aspects in the Federal Elections Act [*Bundeswahlgesetz*], the Federal Constitutional Court Act [*Bundesverfassungsgerichtsgesetz*], the Civil Code [*Bürgerliches Gesetzbuch*] and the Income Tax Act [*Einkommensteuergesetz*]. However, the most important provision is the political parties clause of art. 21 of the German Basic Law [= BL], the German constitution of 1949,² which provides a constitutional basis for the involvement of political parties in the political process. According to art. 21(1) BL, “political parties shall participate in the formation of the political will of the people. They may be freely established. Their internal organisation must conform to democratic principles. They must publicly account for the sources and use of their funds and for their assets.”

1.3. Under art. 21(1) BL, the political parties have an important constitutional mission: to participate in the formation of the political will of the people. The German constitution considers them as something valuable and necessary in a free and democratic system. It does not share the scepticism towards the political parties which is characteristic for many modern societies (the German society included). As described in detail in an enthusiastic manner in sect. 1 PPA, the political parties play an essential role as intermediary between state and society.

1.4. Though the parties have the legal nature of associations under private law, they enjoy the status of constitutional institutions (but not state institutions). art. 21(1) also guarantees the freedom of political parties: the free establishment, the free determination of the political program, the freedom of political action and even the free organisation of the party (however, in line with democratic principles and standards set in the Political Parties Act). Political parties can only be prohibited in case of active fight against the free and democratic constitutional order and only in a special procedure before the Federal Constitutional Court [*Bundesverfassungsgericht*] (art. 21(2), 4) BL). Finally, there is a principle of equal opportunities of the parties, which derives from the art. 21(1) read together with art. 38(1) phrase 1 BL (here: the principle of equal elections). It requires in particular equal access of all political parties to public facilities, amenities and services.³

2. Changeful History of Party Funding in Germany

Germany has a changeful history of party funding. Even under the Basic Law there have been several legal reforms and adjustments, due to numerous scandals but also to the changing jurisprudence of the Federal Constitutional Court. Three landmark decisions should be highlighted:

In a decision of 1958⁴ the Federal Constitutional Court considered a general public funding of political parties acceptable but provisions allowing the deduction of the expenses for party donations from the taxable base for the calculation of the income tax up to a limit of 5 percent of the annual income unconstitutional because it favoured the influence of citizens with higher income. In a decision of 1966⁵,

² Grundgesetz für die Bundesrepublik Deutschland [Basic Law for the Federal Republic of Germany] of 1949. Available: www.gesetze-im-internet.de/gg/index.html; English translation at: www.gesetze-im-internet.de/englisch_gg/index.html [last viewed 17.06.2019].

³ See for the details sect. 5 PPA.

⁴ Federal Constitutional Court, judgement of 24/06/1958, 2 BvF 1/57, BVerfGE 8, 51(63 ff) [= Decisions of the Federal Constitutional Court, vol. 8, p. 51 ff, cited passage at p. 63 ff].

⁵ Federal Constitutional Court, judgement of 19/07/1966, 2 BvF 1/65, BVerfGE 20, 56.

however, the Court limited any direct public funding to lump sums for election campaign expenses. In a decision of 1992⁶ it explicitly changed its jurisprudence again and accepted a partial general direct public funding as constitutional but formulated an absolute upper limit and a relative upper limit set by the revenue generated by the party itself.

Again and again the Federal Constitutional Court emphasized the principle of the freedom of the political parties from state influence [*Staatsfreiheit der Parteien*].⁷ Even under the conditions of partial public funding the parties must be independent from the state and preserve their character as free associations rooted in the social-political sphere. The public funding must not relieve them from the need to seek financial support by their members and followers.⁸

Nowadays, Germany has a mixed system of private and public funding of political parties, in which both elements are closely connected. Usually, when necessary, details are re-adjusted.

3. Private Funding of Political Parties

The various sources of private party funding are listed in sect. 24(4) No. 1–7 PPA and are submitted to some regulations in sect. 25 and 27 PPA.

3.1. Membership Fees

Membership fees are still an important source of income of the political parties, for some parties even the most important private source of income.⁹ The big parties (Christian and social democrats) have a large number of members. Some small parties (e.g. greens and leftists) charge higher membership fees. While the number of party members has declined for most parties, the membership fees have risen in the recent years.¹⁰

3.2. Regular Contributions by Elected Office-Holders

A part of the income of political parties is generated by regular money payments made by holders of an elected public office (in particular members of parliament and mayors) in addition to their membership fees. This source of income is expressly recognized in sect. 24(4) No. 2 and sect. 27(1) phrase 2 PPA. While some scholars have criticised this practice as unconstitutional in the past (“public funding through the back door”), according to the prevailing opinion there are no constitutional objections. There is only a discussion if the contributions by elected office-holders need to be limited to a maximum of 50 percent of the remuneration

⁶ Federal Constitutional Court, judgement of 09/04/1992, 2 BvE 2/89, BVerfGE 85, 264 (see headnote 2).

⁷ See, for example, Federal Constitutional Court, judgement of 19/07/1966, 2 BvF 1/65, BVerfGE 20, 56(102); judgement of 14/07/1986, 2 BvE 2/84, 2 BvR 442/84, BVerfGE 70, 40(95 ff); judgement of 09/04/1992, 2 BvE 2/89, BVerfGE 85, 264 (headnote 2, 287 ff); judgement of 06/12/2001, 2 BvE 3/94, BVerfGE 104, 287(302).

⁸ Federal Constitutional Court, judgement of 09/04/1992, 2 BvE 2/89, BVerfGE 85, 264 (headnotes 1 and 2, p. 287).

⁹ See the data for the year 2014 in the diagrams of *Niedermayer, O. Einnahmen und Ausgaben der Parteien, contribution for the Bundeszentrale für politische Bildung, 12/07/2017*. Available: www.bpb.de/politik/grundfragen/parteien-in-deutschland/zahlen-und-fakten/42237/einnahmen-und-ausgaben [last viewed 17.06.2019].

¹⁰ See the report of *Zschäpitz, H. Besonders eine Partei langt bei den Mitgliedsbeiträgen zu*. In: *Welt, 21/09/2017*. Available: www.welt.de/wirtschaft/article168881711/Besonders-eine-Partei-langt-bei-den-Mitgliedsbeitraegen-zu.html [last viewed 17.06.2019].

received from the state.¹¹ However, with regard to the fact that the dimension of the parliamentary allowances has been criticised heavily for many years in the German public and, thus, this is a politically sensitive topic with the potential to endanger the acceptance of parliamentary democracy in Germany, it would be very difficult to explain a diversion of 50 percent of the tax payers money provided by the state to finance the professional work of the office-holders to political groups such as the political parties. The limits of this diversion must be defined much stricter.

3.3. Donations

Donations are the most controversial element of party funding in Germany. There have been numerous party donation scandals in the past¹² and in the present¹³. Sect. 25 PPA limits the right of political parties to accept donations and sets procedural rules aiming to provide transparency. There is a ban on donations from certain donors such as public corporations, state-owned enterprises and partly (by more than 25 percent) state-owned enterprises, parliamentary factions, factions of municipal councils, non-profit, charity and church organisations and professional organisations – but no ban on donations from companies. Donations in cash and donations of foreigners who are not European Union citizens are limited to an amount of 1000 €, anonymous donations even to an amount of 500 €. However, despite vivid debates in the past, there is *no absolute limit for donations*, not even a limit for donations from companies. Donations of more than 300 000 € are not rare and usually foster conservative or liberal parties.

Donations of more than 10,000 € in total in a year must be listed, indicating the donor's name and address and the total amount, in the party's annual statement of accounts. Individual donations of more than 50 000 € must be reported immediately to the President of the German Bundestag and are made public in a timely manner in a parliamentary publication and at the website of the Bundestag.¹⁴ In case of illegal donations, the parties must forward them immediately to the President of the German Bundestag (sect. 25(4) PPA).

In 2017 a new problem has evolved: A private association has massively supported a certain party by canvassing, in particular by advertising in the media, and, thus, influenced the outcome of the elections – but without any formal

¹¹ See the recent analysis of the *Wissenschaftliche Dienste* [Research Services] of the German Bundestag, *Zulässigkeit und Durchsetzbarkeit von Mandatsträgerbeiträgen* [Admissibility and enforceability of contributions by elected office-holders], 17/06/2016. Available: www.bundestag.de/blob/436786/7ed47fbbde5ead78c5ddff11ec78be3a/wd-3-155-16-pdf-data.pdf [last viewed 17.06.2019], with further references. See also *Kühr, H.* *Legalität und Legitimität von Mandatsträgerbeiträgen* [Legality and legitimacy of contributions by elected office-holders], 2014 (with a proposal for a more detailed regulation).

¹² In the most spectacular scandal even the former Federal Chancellor *Helmut Kohl* was involved, see *Aleman, U. von.* *Party Finance, Party Donations and Corruption. The German Case.* In: *Transparency International* (ed.). *La Pietra Meeting Papers, Prohibiting Bribe Payments to Foreign Political Parties*, 2001, p. 23 ff. Available: www.phil-fak.uni-duesseldorf.de/fileadmin/Redaktion/Institute/Sozialwissenschaften/Politikwissenschaft/Dokumente/Alemann/01_alemann_party-finance-n-corrupt-exchange.pdf [last viewed 17.06.2019].

¹³ See on illegal donations received in 2017 by a radical right-wing populist party the reports of *Spiegel Online*, 19/11/2018. Available: www.spiegel.de/international/germany/alternative-for-germany-party-hit-by-donation-scandal-a-1239203.html [last viewed 17.06.2019], and *Deutsche Welle*, 20/11/2018. Available: www.dw.com/en/afd-donor-scandal-weidel-under-official-investigation/a-46384979 [last viewed 17.06.2019].

¹⁴ Cf. for 2018 the special website at www.bundestag.de/parlament/praesidium/parteienfinanzierung/fundstellen50000/2018 [last viewed 17.06.2019].

cooperation or contact. The origins of the financial resources of this association are unclear. It is now discussed if such activities should be considered as concealed party donations. For future elections, new regulations will be necessary.

3.4. Revenues from Other Activities

§ 24(4) lists other potential sources of private party funding, such as business activities, shares in companies, other assets, organising events, the sale of materials and publications and others. These sources are not unimportant since the total amount of all revenue generated by the party itself represents the relative upper limit for the complementing partial general direct public funding of the party (cf. *supra*, 2., and *infra*, 4.2). A right-wing populist party used a shortcoming in the law and started to trade in gold, with little profit but a high turnover. As a sign of protest, subsequently a German satire party started to sell 100 € bills for 80 €. After an amendment of the Political Parties Act, nowadays not the turnover but the profit is taken into account (cf. sect. 19a(4) phrase 2 PPA) and business activities with no or little profit are not attractive anymore.

4. Partial Public Funding of Political Parties

4.1. Indirect Public Funding through Income Tax Reductions on Membership Fees and Donations

The state supports the political parties indirectly by the way of tax reductions. The Federal Constitutional Court has formulated requirements with regard to the principal of equal opportunities of political parties: The tax reductions must not favour parties that are attracting tax payers with higher income and there must not be tax deductions for donations by companies or other legal persons.¹⁵

The current system allows in sect. 34g of the Income Tax Act for a 50 percent tax reduction, up to an upper limit of 825 €, for the expenses for membership fees and donations. Furthermore, it allows in sect. 10b(2) Income Tax Act for a deduction of higher expenses, up to 1 650 €, from the taxable base. There is still the problem that this last mechanism favours tax payers with a higher income, due to the system of progressive income taxation in Germany. However, with regard to the rather low upper limit, the distortion is not significant.

4.2. Direct Public Funding

The direct public funding of the political parties for their activities in general is regulated in a complicated manner in sect. 18 et seq. PPA. Every year, the President of the German Bundestag will determine the funds and allocate them to the eligible parties based on their annual statement of accounts (see *infra*, 5.2.). In this capacity, he acts as a public authority; his decisions can be challenged before the administrative courts. There is an annually adjusted limit for the financing of all parties in total (absolute upper limit). For 2019 it has been set at 190 million € (cf. sect. 18(2) PPA). Furthermore, there is the already mentioned limit for the funding of the individual party, as required in the jurisprudence of the Federal Constitutional Court (the relative upper limit): The amount of direct public funding must not exceed the revenue generated by the party itself in the way of private funding (cf. sect. 18(5) PPA).

¹⁵ Federal Constitutional Court, judgement of 09/04/1992, 2 BvE 2/89, BVerfGE 85, 264(313, 315).

Concerning the allocation criteria, the success of the party in the parliamentary elections (on the European, national and Land level) and the revenues from membership fees, office-holder contributions and donations are decisive (the income from other sources of private funding is only relevant for the calculation for the relative upper limit).

4.2.1. Funding Per Vote

According to sect. 18(3, 4) PPA each party shall receive an annual amount of 0.83 € per vote for the respective party list (1.00 € for the first 4 million votes). However, this only applies if the party gained at least 0.5 percent of the votes at the last European or national elections or 1.0 percent at a Land election. Promising money per vote (and not per percentage of votes), the Political Parties Act nowadays motivates the parties to strive for a higher election turnout: They may receive higher funding even with a lower percentage of votes if in total more citizens have voted for them. In times of disenchantment with politics and low citizens participation at the election this may be helpful to stabilise a vivid democracy. Concerning the threshold of 0.5 percent of the votes, this obstacle is not as harmless as it appears: Most of the parties that participated in the federal elections in 2017 did not fulfil this requirement.¹⁶

4.2.2. Funding Per Contribution

In addition to the funding per vote each party shall receive an annual amount of 0.45 € for each euro acquired as membership fee, office-holder contribution or lawfully (!) obtained donation. However, in this context, only donations of natural persons and only donated amounts of up to 3 300 € per person will be taken into account. Donations of larger amounts are legal but will not result in higher direct public funding.

4.3. Since 2017: Exclusion of Parties Seeking to Undermine or Abolish the Free and Democratic Constitutional Order

Under art. 21(2) BL political parties actively seeking to undermine or abolish the free and democratic constitutional order shall be unconstitutional and may be prohibited by the Federal Constitutional Court. In reaction to a controversial judgement of January 2017 denying the prohibition of a right-wing extremist party because it assessed this party too unimportant to be considered as a threat,¹⁷ art. 21 BL has been amended. Under the new art. 21(3, 4) BL such parties, even if not prohibited, shall be excluded from public funding by decision of the Federal Constitutional Court. According to sect. 46a of the Federal Constitutional Court Act, the Court shall declare the party excluded for the duration of six years. Thus, the fight of the extremist parties against the free and democratic constitutional order is at least not financed by the state anymore. In case of such an exclusion also the favourable fiscal treatment of the party and of payments made to it will cease.

¹⁶ See the official final result, as published by the Bundeswahlleiter. Available: www.bundeswahlleiter.de/en/info/presse/mitteilungen/bundestagswahl-2017/34_17_endgueltiges_ergebnis.html [last viewed 17.06.2019].

¹⁷ Cf. Federal Constitutional Court, judgement of 17/01/2017, 2 BvB 1/13, BVerfGE 144, 20. English translation available: www.bundesverfassungsgericht.de/SharedDocs/Entscheidungen/EN/2017/01/bs20170117_2bvb000113en.html [last viewed 17.06.2019].

5. Financial Accountability of Political Parties

The German party funding law is not limited to the regulation of the various sources of private and public party funding. It places special emphasis on the financial accountability of the parties, with complicated rules and procedures that are difficult to understand even for the expert and, thus, have led to numerous attempts of the parties to evade them.

5.1. Striving for Transparency: Constitutional Obligation to Publicly Account for Sources and Use of Funds and for Assets

Art. 21(1) phrase 4 BL obliges the political parties to publicly account for their sources and the use of their funds and for their assets. Thus, the German constitution thrives for transparency, as a precondition for a fair and undistorted democratic process. In particular, any entanglement of political and economic interests shall be disclosed. Besides, the internal organisation of the parties shall be protected against undemocratic influences (by oligarchs etc.) as they are widespread in the East European democracies.

5.2. Current Concretisation of Accountability in the Political Parties Act

The accountability of the political parties is concretised in detailed provisions in sect. 23 et seq. PPA, with even a special part on penal provisions and procedures in case of inaccurate accounting in sect. 31a et seq. PPA.

Every party is obliged to submit for each calendar year a correct and exhaustive public statement of accounts (sect. 19a, 23 et seq. PPA). This statement must be audited by a certified auditor and accompanied by an audit report and, if the audit does not give any reason for objections, an auditor's certificate (sect. 23(2), 30 PPA). The annual public statement of accounts must be submitted to the President of the German Bundestag until September of the following year. If it is submitted late, there will be no funding per contribution. If it is not submitted until the end of the year, there will be no direct funding at all (sect. 19a(2) PPA).

The President of the German Bundestag will scrutinise the party's statement of accounts thoroughly regarding its form, content and correctness (cf. sect. 23a PPA). Often the statements of accounts prove to be deficient.

For the case of illegal donations or incorrectness of the statement of accounts the Political Parties Act provides for sanctions (cf. sect. 31a et seq.). Parties must reimburse funds wrongly granted to them due to wrongfully listed contributions or donations. In case of donations of more than 10 000 € that have not been stated correctly or other inaccuracies in the statement of accounts, twice the corresponding amount will be reduced from their public funding. In case of illegally accepted donations that have not been immediately forwarded to the President of the German Bundestag, the parties lose triple the corresponding amount. Furthermore, there is criminal liability in case of (intentionally) incorrect statements or undue splitting of donations for the accounting.

Summary

The German party funding system may appear well-elaborated and well-engineered after its many reforms and adjustments but there are still deficiencies. Since there is no absolute limit for donations, not even for those from companies, financially privileged citizens and big companies can distort the free competition

between the political parties by individual donations of very high amounts which create an unjustifiable significant advantage. The donors may not profit from corresponding tax advantages but they still can exert influence. Furthermore, the sanctions in case of accepting illegal donations or not informing correctly and in time about bigger donations are rather soft. To reduce triple the corresponding amount in case of not listed donations of more than 10 000 € and five times the corresponding amount in case of donations of more than 50 000 € not reported to the President of the German Bundestag would provide for a better motivation of the parties to respect the law. Finally, there is still a lack of transparency – at least of transparency at the right time: Since the parties do not need to submit their annual statement of accounts before September of the following year they are not obliged to disclose donations of amounts between 10 000 € and 50 000 € during the important time of the electoral campaign. However, what is the use of knowing one year after the elections about the donors of the party?

In 2009, the Council of Europe's Group of States against Corruption (GRECO), an institutionalised working and expert group with representatives of 48 European countries, published an Evaluation Report on Germany on Transparency of Party Funding, in which it submitted a number of recommendations for achieving more transparency.¹⁸ In a new document of 2017 GRECO criticised that some recommendations had not been and some others had not been satisfactorily implemented.¹⁹ GRECO proposes to lower all the presented thresholds for party donations (cf supra, 3.3). The group urges in particular to lower the 50 000 € threshold for the immediate reporting and disclosure of donations. Furthermore, it presses for enhancing the transparency of direct donations to parliamentarians and election candidates who are members of political parties, and for (further) increasing of the resources available to the President of the German Bundestag for supervising party funding. These recommendations of a prominent monitoring group of the Council of Europe document that in the eyes of the experts in Europe the German party funding system is still far from perfect.

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¹⁸ GRECO. Third Evaluation Round: Evaluation Report on Germany on Transparency of Party Funding, 2009, No. 123. Available: <https://rm.coe.int/16806c6362> [last viewed 17.06.2019].

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