

## Political parties and their funding in Germany

### I. The constitutional and legal basis of the political parties in Germany

1. Legal definition (sect. 2 Political Parties Act)
  - associations of citizens with continuous will to influence political decision-making at national or state level and to participate in the representation of the people in the national or a Land parliament - if it is ensured that they pursue this aim seriously
  - no action groups, no local voters' associations, no membership of legal persons
  - status is lost if the party does not participate in parliamentary elections for six years
2. Regulation
  - art. 21 of the Basic Law (German constit. of 1949 = BL)
  - Political Parties Act (= PPA)
  - special clauses in Federal Elections Act, Federal Constitutional Court Act, Civil Code and Income Tax Act
3. Constitutional mission
  - participation in the formation of the political will of the people (Art. 21(1) phrase 1 BL)
  - significant role as *intermediary between state and society* (see sect. 1(2) PPA)
4. Special legal status
  - associations under private law but also *constitutional institutions* (but no state institutions)
  - freedom of political parties: free establishment, determination of political program, political action
    - free organisation (in line with democratic principles and standards set in the Political Parties Act)
    - *prohibition only by the Federal Constitutional Court* [Bundesverfassungsgericht], in case of active fight against the free and democratic constitutional order (art. 21(2, 4) BL)
  - *principle of equal opportunities of the parties* (art. 21(1), 38(1) phrase 1 BL)
    - in particular equal access to public facilities, amenities and services (sect. 5 PPA)

### II. The changeful history of party funding in Germany

- several legal reforms and adjustments, due to numerous scandals but also to the changing jurisprudence of the Federal Constitutional Court
- landmark decisions:
  - 1958<sup>2</sup>: limitation of tax reductions for party donations
  - 1966<sup>3</sup>: limitation of direct public funding to lump sums for election campaign expenses
  - 1992<sup>4</sup>: acceptance of a *partial general direct public funding*, with an *absolute upper limit and a relative upper limit* set by the revenue generated by the party itself
- principle of the *freedom of the political parties from state influence* ["Staatsfreiheit der Parteien"]
  - parties must be independent from state and preserve character as free associations rooted in the social-political sphere
  - public funding must not relieve them from need to seek financial support by their members and followers

### III. Private funding of political parties (sect. 24(4) no. 1 - 7, 25, 27 PPA)

1. Membership fees
2. Regular contributions by elected office-holders
  - CRITICISED by some scholars as unconstitutional; DISPUTE about limits (50 % of remuneration?)
3. Donations (sect. 25 PPA)
  - ban on donations from certain donors such as public corporations, (partly) state-owned enterprises, parliamentary/council factions, political foundations, non-profit/church organisations and professional associations
    - but *no general ban of donations from companies*
  - limit of 1.000 € for donations in cash, or from foreigners from abroad, and of 500 € for anonymous donations
    - but *no absolute limit for donations*
  - donations of more than 10.000 € in total in a year must be listed, indicating the donor's name and address, in the party's statement of accounts; individual donations of more than 50.000 € must be reported immediately to the President of the German Bundestag and will be made public in a parliamentary publication
  - the *problem of informal election campaign support* (by massive canvassing without formal cooperation)
4. Revenues from other activities
  - business activities, shares in companies, organising events, sale of materials and others
  - the example of the gold trade of a right-wing populist party

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<sup>2</sup> Federal Constitutional Court, judgement of 24/06/1958, 2 BvF 1/57, BVerfGE 8, 51 [= Decisions of the Federal Constitutional Court, vol. 8, p. 51 ff.].

<sup>3</sup> Federal Constitutional Court, judgement of 19/07/1966, 2 BvF 1/65, BVerfGE 20, 56.

<sup>4</sup> Federal Constitutional Court, judgement of 09/04/1992, 2 BvE 2/89, BVerfGE 85, 264.

## IV. The partial public funding of political parties

1. Indirect public funding by income tax reductions for membership fees and donations
  - must not cause unequal opportunities
    - no favouring of parties attracting tax payers with higher income
    - no tax deductions for donations by legal persons
  - a) 50 % tax reduction, up to 825 €, for the expenses for membership fees and donations (sect. 34g Income Tax Act)
  - b) Deduction of higher expenses, up to 1650 €, from the taxable base (sect. 10b(2) Income Tax Act)
    - problem: favours tax payers with higher income, due to the progressive taxation in Germany
2. Direct public funding (sect. 18 et seq. PPA)
  - absolute upper limit (annually adjusted): 190 million € in 2019
  - relative upper limit: the amount of the whole revenue generated by the party itself
  - allocation criteria: success in parliamentary elections (on EU, national and Land level) and revenues from membership fees, office-holder contributions and donations
  - annual determination and allocation of funds by the *President of the German Bundestag* (acting as public authority) on the basis of the party's statement of account (sect. 19a PPA)
  - a) Funding per vote: 0.83 € per vote for the party list (1.00 € for the first 4 millions)
    - if party gained at least 0.5 % at the last European or national elections or 1.0 % at a Land election
  - b) Funding per contribution: 0.45 € for each € acquired as membership fee, office-holder contribution or lawfully obtained (!) donation (of up to 3300 €) by a natural person
3. Since 2017: Exclusion of parties seeking to undermine or abolish the free and democratic constitutional order (art. 21(3) BL, sect. 18(7) phrase 2 PPA)
  - only by decision of the Federal Constit. Court, for a period of 6 years (art. 21(4) BL, sect. 46a Federal Constit. Court Act)

## V. The financial accountability of the political parties

1. Thriving for *transparency*: the constitutional obligation to publicly account for sources and use of funds and for assets (art. 21(1) phrase 4 BL)
2. The current concretisation of the accountability in the Political Parties Act
  - a) Obligation to submit a correct and exhaustive *annual public statement of accounts* with auditor's certificate until September of the following year (detailed regulation in sect. 19a, 23 et seq. PPA)
    - no funding per contribution/at all if not submitted until September/the end of the following year
  - b) Scrutiny of the statement of accounts by the President of the German Bundestag (sect. 23a PPA)
  - c) Sanctions in case of illegal donations or incorrectness of the statement of accounts (sect. 31a et seq. PPA)
    - party must reimburse funds wrongly granted due to wrongfully listed contributions or donations
    - party loses twice the corresponding amount in case of donations of more than 10.000 € not correctly stated or other inaccuracies in the statement of accounts
    - party loses triple the corresponding amount in case of illegally accepted donations
    - criminal liability in case of incorrect statements or undue splitting of donations for the accounting

## VI. Conclusion

- Council of Europe's Group of States against Corruption (GRECO) urges for more transparency<sup>5</sup>

### Excerpt from art. 21 of the Basic Law for the Federal Republic of Germany

(1) Political parties shall participate in the formation of the political will of the people. They may be freely established. ... They must publicly account for the sources and use of their funds and for their assets. ...

(3) Parties that, by reason of their aims or the behaviour of their adherents, seek to undermine or abolish the free democratic basic order or to endanger the existence of the Federal Republic of Germany shall be excluded from state financing. If such exclusion is determined, any favourable fiscal treatment of these parties and of payments made to those parties shall cease.

(4) The Federal Constitutional Court shall rule ... on exclusion from state financing according to sect. 3. ...

### Further reading

*Deutsche Welle (editor)*: DW exclusive: How German companies donate secret money to political parties, 2017, [www.dw.com/en/dw-exclusive-how-german-companies-donate-secret-money-to-political-parties/a-40610200](http://www.dw.com/en/dw-exclusive-how-german-companies-donate-secret-money-to-political-parties/a-40610200)

*Law Library of Congress (editor)*: Campaign Finance: Germany, last updated 2015, [www.loc.gov/law/help/campaign-finance/germany.php](http://www.loc.gov/law/help/campaign-finance/germany.php)

*German Bundestag (editor)*: State funding of political parties in Germany, last revised 2012, [www.bundestag.de/blob/189744/554b4eaa7746b48ef31612792a9cf461/party\\_funding\\_05-data.pdf](http://www.bundestag.de/blob/189744/554b4eaa7746b48ef31612792a9cf461/party_funding_05-data.pdf)

See also the website of the *Bundeswahlleiter* [Federal Returning Officer] with detailed information on elections and political parties in Germany, [www.bundeswahlleiter.de](http://www.bundeswahlleiter.de).

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<sup>5</sup> GRECO, Addendum to the Second Compliance Report on Germany. Incriminations - Transparency of Party Funding, 2018, no. 28 ff., [www.coe.int/en/web/portal/-/anti-corruption-group-says-that-germany-still-lags-in-efforts-to-make-party-financing-more-transparent](http://www.coe.int/en/web/portal/-/anti-corruption-group-says-that-germany-still-lags-in-efforts-to-make-party-financing-more-transparent).