

6. Party Finance, Party Donations and Corruption The German Case¹

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6.1. The Study of Corruption in Germany

Some 30 years ago in Germany corruption was an almost unknown term in politics and political science referring only to the fall of old regimes in ancient times or to the rise of bizarre puppet governments in the postcolonial developing countries. “The Germans spoiled by an extremely honest public administration for more than a century and a half, are sensitive to charges of corruption even today”, Theodor Eschenburg, one of the leading senior scholars of German postwar political science declared in Heidenheimer’s first edition of his famous handbook on corruption (Eschenburg, 1970: 259). In the mid-eighties one of the first German political scientists publishing on corruption, Paul Noack, still maintained: “The Germans have always nurtured a faith that theirs is one of those nations that has proved to be most resistant to corruption” (Noack, 1985: 113).

Those times are gone forever. During the eighties the Flick-scandal shocked German politics, but also a number of local and regional affairs exposed the myth of a civil service clear of corruption. Sociology, political science, history, law and economics started to discover the issue of corruption. A first big volume was by the Austrian researcher Christian Brünner (1981). The monograph of Paul Noack was followed by a reader of Christian Fleck and Helmut Kuzmics titled “Korruption. Zur Soziologie nicht immer abweichenden Verhaltens” (1985). At the end of the eighties I myself published my first short piece of corruption research in the second edition of Heidenheimer’s handbook on political corruption (von Alemann, 1989). In the eighties research on corruption in Germany flourished – as did corruption itself. Arthur Benz and Wolfgang Seibel (1992) published a volume on corruption in the public administration. The Friedrich-Ebert-Stiftung (1995, 1996) organized two conferences on corruption and reform in Germany. An interesting volume of essays appeared in 1995 (Michel and Spengler, 1995), with articles on corruption by intellectuals and novelists. The fight against corruption resulted in numerous concepts, conferences and new legislation. The “Bundeskriminalamt” took the initiative (Vahlenkamp and Krauss, 1995; Mischkowitz, Bruhn and Desch 2000) and Transparency International started their important activities (Pieth and Eigen, 1999; Transparency International, 2001). In the nineties some reform of the legislation on corruption took place in Germany: The party-law was reformed in 1993; the corruption of parliamentarians was implemented; the OECD-convention against corruption in the international economy was ratified. Local and regional

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authorities formulated anti-corruption conventions, established anti-bribery task forces, and supported numerous other activities.

At the beginning of the new century the scandals of illegal party donations to ex-chancellor Helmut Kohl and his CDU party shocked the nation. There is still no general coverage of the scandal by social scientists (von Alemann, 2000). The journalists Hans Leyendecker, Michael Stiller and Heribert Prantl (2000), however, published a volume on the case. The book by Borchert, Leitner and Stolz (2000) appeared too early to deal with the recent scandals.

The scandals involving Kohl and CDU still have not died away. The parliamentary investigatory commission is still at work and plans to deliver its report in the summer of 2002, before the end of the legislature period. The courts are still occupied with parts of the affair, although a few cases have been dismissed after fines were paid especially in Kohl's personal case. No clear case of corruption of functionaries has been proved in court in the CDU case. In the midst of these ongoing investigations, in March 2002, a new party bribe scandal erupted at the beginning of the election campaign. This time it implicated a different party, the SPD.

In several cities, such as Cologne and Wuppertal, local party members are being accused of accepting illegal donations as well as abusing advantages and bribing public and party officials. Public prosecutors are dealing with these cases. There is great excitement in the media and at the election campaign centers, and many citizens are outraged according to new surveys. The largest weekly magazine "DER SPIEGEL" had the headline "Die Schmiergeld-Republik" (The kickback republic) on March 18, 2002.

This article will only cover one aspect of corruption in Germany, concentrating on donations to political parties. What links exist there between party donations and corruption? This is certainly not a new and original question. It has often been asked in German literature (e.g. Landfried, 1994; Römmele, 2000; v. Arnim, 1996). The international literature has also dealt a lot with this question (e.g. Heidenheimer, 2002; Johnston, 2002; Della Porta and Vannucci, 2002; Rose-Ackerman, 1999).

In this article I will attempt neither an in-depth theoretical study nor a cross sectional study of party donations. Instead, I will outline the common German practise of party donations, the problems of current legislation, the scandals of the politics, and the beginnings of reform.

Doing research on corruption is tremendously difficult. First of all, one cannot obtain good data because corruption is always concealed. Second, if one does get data, they do not constitute strong evidence. Third if you do happen to have evidence, you are often not able to publish it. After all, it is a characteristic of successful corruption never to be uncovered. Finally, corruption comes in many varieties so that it is difficult to generalize across countries and historical epochs. Despite all these difficulties a student of corruption should not resign himself to this fate. Corruption dreads the light of day. That is exactly why we should talk about it, pull it into the open, and fight it with rational arguments instead of demonizing it as a work of the devil.

With these difficulties in mind, this case study examines official legislative files and the parties' statements. I comment on the scientific literature and on the way the media

covered the different political scandals. I also report on my experience as a participant in the Commission of Independent Experts that is part of the German party law. It is nominated every five years by the German Federal President. I was nominated by the German Federal President with the other four members, in the spring of 2001. Our mission was to think about the reform of the party financing system. The report was released in July 2001 (Bundespräsidialamt, 2001).

It is difficult to determine whether corruption has increased in the last years. Although the Corruption Perception Index of Transparency International (Transparency International, 2001) provides a useful cross country overview, it does not reveal any details about the way corrupt networks operate in individual countries. Therefore, it is still indispensable to examine individual cases closely, here the German case. Only by viewing the relevant political culture and the historical development of a country, can statements about the frequency and the gravity of corruption be made accurately. Depending on the type of political culture, certain kinds of corruption can be exposed, tolerated or not be recognised at all, or not be regarded as corruption. Depending on the perception and the social circumstances the same scandals may be indicators of an improving or a worsening of the situation.

The perception of corruption does not only depend on the occurrence of certain events. The perception is also dependent upon historical or cultural determinants. Certainly both – laws and current and social circumstances – affect perceptions. In the German case a description, of the actual legal situation and a description of the events and problems around the party financing since the fifties are needed to provide a basic assessment of the situation

6.2. What is the legal basis of party finance in Germany?

Political parties are legitimated in Article 21 of the German Basic Law:

“Political parties shall participate in the formation of the political will of the people. They may be freely established. Their internal organization must conform to democratic principles. They must publicly account for their assets and for the sources and use of their funds.”

Since parties are to participate in the formation of the political will, it stands to reason that they ought to get state funds for the execution of this task. But there is controversy over the ways and means of state funding in Germany, as everywhere else in the world. In 1992 the Federal Constitutional Court overruled the much-disputed laws of party finance, which had become more and more convoluted and complicated. This decision initiated yet another reorganization that resulted in an amendment of the party law on January 1st, 1994. The court finally dropped the unrealistic thesis that public funds allocated to parties ought to cover the costs of campaigning for elections only. It is now accepted that the state co-finances the parties' general political activities. However, there are three conditions: The parties' self-financing has to take precedence over state-financing (*priority to self-financing*); public grants may not exceed the total sum of income obtained by the parties themselves (*relative upper limit*); and state grants are limited to the average of public funds from the years 1989 to 1992 (*absolute upper limit*).

According to the new legislation, the parties get DM 1.00 per year for every valid vote in elections to the European Parliament, the German Bundestag and the parliaments of the states (Bundesländer) – on the condition that the parties gain at least 0.5 percent of the vote. As a little bonus for the small parties, the first 5 million votes are remunerated with 1.30 marks each. For every DM 1.00 obtained through membership fees and donations the state grants a further DM 0.50 (up to DM 6000 a year per natural person). The donors (natural persons or corporate bodies) and party members can deduct donations or fees from their tax liabilities, up to the same limit of DM 6000 (double the amount in the case of married persons).

Membership fees are the least controversial of the parties' various sources of income. They are regarded as the most natural and most democratic form of financing a political party, not only in Germany. In contrast, state grants are very much in dispute – in Germany as well as in other countries. However, the stipulation of relative and absolute upper limits to state funding in German party law has drawn a line that is generally accepted. The continuing debate tends to focus on details, such as whether indirect state grants to party foundations and parliamentary groups or tax reductions ought to be taken into account as well. But the biggest controversy – in Germany and elsewhere in the world – is caused by party donations, and this is why the remainder of the paper examines them more closely.

6.3. Are there legal limitations on party donations?

The party law confirms the parties' right to accept donations. There is no limitation on the amount one is allowed to donate in Germany. This goes for donations made by individuals (natural persons) as well as for donations by corporate bodies (associations or business companies); the latter are inadmissible in some countries. In accordance with the Basic Law's demand for transparency all donations exceeding DM 20,000 have to be publicized annually in a statement of accounts. The statement for the year 1998 shows, for example, the ten biggest individual donors (cf. Fig. 1).

The following kinds of donations are inadmissible and/or illegal according to Articles 23a and 25 of the party law. This means that certain kinds of donations are excluded, namely:

- Donations from (the parties') political foundations, parliamentary parties and groups,
- Donations from charitable and other non-profit organizations,
- Donations from professional associations which are made with the proviso that they be passed on to a political party,
- Donations from foreign countries (exceeding DM 1000) that come from a source other than the assets of a German or EU-citizen,
- Anonymous donations exceeding DM 1000, and

- “Donations which are clearly made in the expectation of some specific economic or political advantage” (German Party Law, Article 25, (1), 6).

Although all these kinds of donations are prohibited, neither the donors nor the parties can be prosecuted in a court of law for making or accepting them. But Article 23a of the party law stipulates certain sanctions against donations obtained illegally. These and donations not publicized in the annual statements of accounts are to be handed over to the Presidium of the German Bundestag, which will transfer them to charitable institutions or other non-profit organizations. Furthermore, the party stands to lose public funds to an amount double the sum illegally obtained or not publicized. Therefore, a party obtaining DM 1 million illegally or without making the donations public has to pay a fine of DM 3 million.

Fig. 1: *The ten biggest donations to German political parties in 1998*

Ehlerding, Karl Hamburg	2 389 375 DM	CDU
Ehlerding, Ingrid Hamburg	959 900 DM	CDU
Verband der Bayerischen Metall- und Elektroindustrie e.V., München	655 000 DM	CSU
Deutsche Bank AG Frankfurt	508 956 DM	CDU
Quandt, Johanna Bad Homburg	500 000 DM	CDU
Klatten, Susanne Bad Homburg	450 000 DM	CDU
Verband der chemischen Industrie e.V. Frankfurt	400 000 DM	CDU
Quandt, Stefan Bad Homburg	350 000 DM	CDU
Adolf Würth & CO. KG Künzelsau	310 000 DM	FDP
Verband der Metallindustrie Baden-Württemberg e.V. Stuttgart/	300 000 DM	CDU
Verband der Metall- und Elektroindustrie NRW e.V. Düsseldorf	300 000 DM	CDU

(according to *Rechenschaftsberichte der Bundestagsparteien* 1998, BT-Drs. 14/2508)

In Germany there is no limit to the amount one is allowed to donate, nor are corporate bodies excluded from donating, as in some other countries. Instead, the limitations imposed by German party law pertain to charitable and other non-profit organizations, professional associations, party foundations and parliamentary groups, to anonymous donors and donations from foreigners. Conversely, German citizens are not prohibited from donating to parties in foreign countries. It is important in the context of fighting bribery of party officials that donations made in the expectation of certain economic or political advantages are not admissible. In other words, it is forbidden to bribe German parties. Reassuring to know.

6.4. What are the problems surrounding party donations?

Donations are to be defined as voluntary payments exceeding the regular membership fees laid down in the party statutes. But handing over money is not the only way of making a donation. Any kind of work going beyond the usual unpaid volunteers' or activist's work for a party is also considered a donation; for example if a company renders certain services to a party without charging for them.

According to the Federal Constitutional Court, donations to parties are not only permissible but even desirable – as a sign of voluntary and societal political commitment. Donations are part of the individual's right to freely engage in party political activities. The parties' self-financing has to take precedence over state-financing. The state remunerates citizens' active participation in party financing – in the case of small donations not exceeding DM 6000 – by granting parties a further 50% of the sum donated.

Small donations by private citizens are not regarded as a big problem in the debate on party finance. The real problems start with major donations. They are not tax deductible and must be publicized if they exceed DM 20,000. Equal opportunity, esteemed very highly in the Basic Law, might be impaired if the state were to “favour those who have a high income, thus also favouring those parties which appeal to high-income segments of the population” (Judgement of the Federal Constitutional Court, 9th April, 1992, in: NJW 1992, p. 2549). This might be considered a good reason to put some limits on major donations, usually made only to certain parties. But the Federal Constitutional Court did not take that stance; instead, equal opportunity is guarded only insofar as major donations (exceeding DM 6000, DM 12,000 in the case of married persons) are not tax deductible.

Looking at major donations we have to ask: What motivates the donors? Are their reasons the same as those of private citizens donating small amounts – favouring a certain party and a sense of political responsibility? The report of the parliamentary committee investigating the so-called “Flick affair” may help to answer that question. For years the Flick company supported the German parties with clandestine money – mainly the middle-class bourgeois parties CDU/CSU and FDP, but also the SPD, although to a smaller extent. The investigating committee's majority – consisting of CDU/CSU and FDP members – included in its report a passage headed “Motives for Donating to Parties”. It says:

“Party donations are based on the donors' free decisions. Motives may vary. At the outset one has to presume altruism, because even though donations may be deducted from tax liabilities, donors relinquish some of their assets.”

However, further down in this passage the committee concedes that self-interest is also a possible motive:

“Apart from altruistic reasons there are also selfish motives. There may, at first, be no more than the wish to enhance self-esteem by doing a good deed; but the culmination might be the desire to create a political climate favorable to one's own interests” (German Bundestag, DS 10/5079, February 21st, 1986, p. 274).

Common sense as well as some basic assumptions of political science tell us that major donations exceeding DM 100,000 and unselfishness simply do not go together – whether you start from the traditional “cui bono”, i.e. the belief that interest predominates, or from an assumption of rational choice which posits that individual choices are made along the lines of a cost/benefit calculation. Nor does wanting to do “good deeds” in the manner of Boy Scouts seem a very convincing purpose for major donations. As the main impetus behind the donation of large sums to parties remains the – euphemistically phrased – “desire to create a climate favorable to one’s own interests”, or, as the Flick company put it, “cultivating the political landscape in Bonn”.

However, this raises the question, whether there is a conflict with Art. 25 of the party law which prohibits “donations clearly made in the expectation of some specific economic or political advantage”? Not according to those who are involved. Their reasoning is that there is no “specific”, but only a “general”, political advantages from “cultivating the landscape” – an assertion made especially by donors who gave to more than one party. They even claim superior civic virtue, since – so they say – their donations were to promote the beneficial work of political parties in general. A closer look at the parties’ statements of accounts, however, shows that this kind of political commitment was distributed quite selectively: The Daimler group (or the Deutsche Bank) gave DM 230,000 (DM 210,000 respectively) to the CDU in 1998; DM 171,000 (DM 100,000) were given to the CSU, the FDP received DM 160,000 (151,000); DM 225,000 (DM 210,000) went to the SPD. The smaller parties got nothing. So, in the election year of 1998 the parties in power CDU/CSU and FDP received four-fifths of all major donations; the opposition party SPD was given about one fifth. Obviously, there was no equal distribution of funds; not to mention that the small parties, the Greens and the PDS, were left completely empty-handed.

It is even more difficult to ascribe party donations to some vague desire to do something for the political system in general if they are clandestine donations and therefore illegal. On the contrary, one has to assume that such donations, unpublicized in the statements of accounts and indicative of a certain criminal impetus, were made in the expectation of certain political or economic favors. It is almost impossible to imagine that someone might donate several thousand marks – or even millions, like a certain couple, Mr. and Mrs. Ehlerding in 1998 (see figure 1 above) – without expecting any kind of economic or political advantage.

If the donation is made to one of the parties in power, the situation becomes even more precarious. Giving any money to office holders in government is of course illegal as an act of bribery or acceptance of advantage, that is, corruption. The term “corruption” may justifiably be used if the facts of the case comply with the following definition written down in the German Criminal Code:

An act of bribery is committed when an office holder is offered, promised, or granted an advantage (not only money) in return for an action which has already been carried out or is to be expected. Moreover, a civil servant risks punishment should he derive advantage by linking an official duty with a service in return, even though he fulfills his duty correctly. Consequently, civil service bribery is graded according to its severity as follows:

(1) Accepting advantage (*Vorteilsnahme*) is punishable if a civil servant demands advantages, accepts the promise of advantage, or accepts advantage for an otherwise official duty which is left at his

discretion. Conversely, someone commits an offense if he offers an advantage to a civil servant (*Vorteilsgewährung*). This offense of simple bribery can be punished with a maximum imprisonment of two years.

(2) Corruptibility (passive bribery, *Bestechlichkeit*) of a civil servant occurs if he demands advantage, or accepts advantage for a breach of duty – even if the action will not be carried out. Conversely, offering a bribe to a civil servant (*Bestechung*) is also punishable. This severe type of bribery is generally sanctioned with imprisonment of between three months and five years.

This is what constitutes corruption according to German Criminal Code. It is hard to imagine that donors giving millions to a party are simply generous without expecting some concrete benefits. If they violate existing laws in their manner of donating, it is rather obvious to suspect that they definitely count on some advantage.

6.5. Was there a link between party donations and corruption in the past?

Among the many scandals of finance and corruption that have hit the Federal Republic since its beginnings some cases featuring Franz-Josef Strauß, long-time leader of the CSU and Bavarian prime minister, stand out with special clarity. The main aspect of these cases, however, was not so much the financing of the CSU as a party, but rather the accumulation of personal power and advantages. Two other cases are more systemic in character: party donations via “Staatsbürgerliche Vereinigungen” and the so-called Flick affair.

Between the mid-fifties and the eighties certain non-profit organizations were founded, mostly under the name “Staatsbürgerliche Vereinigung”. Their only purpose was turning over money to the parties. Donors from the fields of industry and commerce could fully deduct donations made to the “Staatsbürgerliche Vereinigungen” from their tax liabilities. Furthermore, their names did not appear in the annual statements of accounts. The money – more than 200 million at all – went almost exclusively to the bourgeois middle-class parties, i.e. CDU/CSU and FDP. The practice of channelling donations through “Staatsbürgerliche Vereinigungen” and other roundabout ways of financing parties were disclosed at the beginning of the eighties, after the judgment of the Federal Constitutional Court and amendments to the party law had made them illegal. The courts and the public prosecutor’s office started proceedings in about 1800 cases – usually the charge was tax evasion, not bribery. Very few cases ended with convictions; most resulted in simple notifications of penalty or a stay of the proceedings.

At the same time – the beginning of the eighties – the nation was severely shaken by the Flick affair. Eberhard von Brauchitsch, the top executive manager in the Flick company had paid over DM 25 million to the parties represented in the German Bundestag – usually in the form of cash stashed into plain envelopes. This practice – justified by von Brauchitsch as a way of “cultivating the political landscape” – was uncovered because a conscientious accountant kept lists of the sums paid and these records were found in a house search. Most of the money, about 15 million, went to the CDU/CSU; the FDP, a small party close to the fields of industry and commerce,

received about 6.5 million. In spite of being the governing party, the SPD got only about 4.5 million, probably because as a social democratic party it was viewed with some distrust.

Apart from this large-scale cultivation of the political landscape, the Flick company was also accused of corruption in a narrower sense. The firm had sold a block of Daimler-Benz shares and would have had to pay about a billion DM in taxes on the proceeds of this sale. However, if the profit was reinvested in a way benefiting the national economy, the minister of economy might grant a tax exemption. The FDP's two ministers of economy, Friderichs and Lambsdorff, did just that. Because they both received large sums from the coffers of the Flick company, they were charged with acceptance of advantage. But like von Brauchitsch they were only found guilty of tax evasion. One of the court's reasons for this finding was that there had been no "conspiracy to defraud".

The Flick affair alerted the German public to the possibility of politicians being corrupted by party donations. The investigating committee of the German Bundestag revealed a whole network of illicit party financing. Consequently, party laws were reformed and all parties promised to mend their ways. But a new scandal involving the financing practices of the CDU/CSU, uncovered in the autumn of 1999, clearly showed that at least the CDU had not learned its lesson. On the bright side, however, it should be noted that this time only one party was involved, whereas the Flick affair implicated all the parties represented in the Bundestag (except the Greens). Two years later in March 2002 this illusion was shattered when SPD politicians in some big cities of North-Rhine-Westphalia were charged with having manipulated major donations to the party and forgoing the necessary publications of these donations in the annual reports.

6.6. What are the problems with party donations involving the CDU?

The CDU finance scandal is a convoluted mess that it is difficult to sort out what actually happened. In a TV broadcast Helmut Kohl, the CDU's former party leader and former Chancellor of the Federal Republic, admitted several violations of the party law. He acknowledged that clandestine accounts – some of them in foreign countries – existed and that he personally received about DM 2 million in donations not publicized in the statements of account. Since then he has refused to disclose the donors' names, so that on January 1, 2000 the public prosecutor's office in Bonn started investigations against him on the suspicion of fraud. The CDU advised Kohl to resign from his position as honorary party chairman, so he did.

His successor as chairman of the party, Wolfgang Schäuble, and former CDU treasurer, Brigitte Baumeister, told contradictory stories about a donation of DM 100,000 made by arms industry lobbyist Karlheinz Schreiber; and Schäuble stepped down from his office as party leader. Apart from that, there is a debate about whether or not a payment of over 1 million made by the CDU's parliamentary group to the party was legal according to the party law. And to top it all off, there is another financial scandal in the State of Hesse. The Hessian CDU hoarded many millions in bank accounts in Switzerland and Liechtenstein and used the money – circumventing public

accountability – to finance election campaigns and other operations. These different elements of the current financial scandal involving the CDU mainly touch the democratic principles within the party itself – since the top leaders faked the party finances and violated the principle of public accountability

The whole affair started with the charge of corruption. On November 4, 1999 the district court at Augsburg issued a warrant for the arrest of Walter Leisler Kiep, the CDU's former treasurer. He is accused of having received DM 1 million from the Thyssen company in 1991 in connection with the sale of tanks to Saudi Arabia. The warrant is suspended while Kiep is free on bail. Apparently businessman and lobbyist Karlheinz Schreiber handed over the money to Kiep and the CDU's expert on taxes and finance, Weyrauch, in a car park in Switzerland. According to Kiep, the money was a "donation" which he paid into one of the CDU's special accounts. Secretary-general Angela Merkel claims that the CDU never received the money. Soon after, former secretary-general Heiner Geißler corroborated that the CDU indeed had clandestine accounts. This is the first official admission of the party's dubious financial transactions.

On December 2, 1999 the German Bundestag decided to appoint a committee of investigation. At that point, most of the information later available to the public was still unknown. According to German law, investigating committees of the parliament have rights similar to those of a court of law. They may question witnesses under oath, and they have access to official files. Usually committees of investigation are an instrument used by the opposition to uncover instances of misconduct by the government. This time the roles were reversed, because the governmental majority of SPD and Greens initiated the investigation. Its purpose was uncovering the misconduct of the former government made up of the CDU/CSU and the FDP, and the misconduct of the parties themselves. The committee was instructed to investigate questions involving:

1. "the sale and shipment of 36 German tanks of the "Fuchs" type, some from the Bundeswehr's assets, to Saudi Arabia in the year 1991,
2. the privatization and restructuring of the Leuna oil refinery and the sale of the Minol chain of gas stations,
3. the consignment of planes to airlines in Canada and Thailand by the Deutsche Airbus GmbH at the end of the 80's/beginning of the 90's,
4. the shipment of MBB helicopters to the Canadian coast guard in the second half of the 80's".

Later the field of investigation was broadened – further violations against public accountability (perpetrated by the CDU but also the SPD) came to light and to be looked into as well.

The most interesting thing about the original instructions to the investigating committee is the fact that they only address problems in connection with the economic relations between Germany and other states. Points 3 and 4, the sale of planes to Canada and Thailand by the Deutsche Airbus GmbH and the shipment of MBB helicopters to Canada, went almost unnoticed by the German public. The first two points – the Thyssen company's sale of tanks to Saudi-Arabia and the purchase of the Leuna oil refinery and the Minol chain of gas stations – were discussed all the more.

During the Gulf war in 1991 Saudi Arabia urgently demanded German tanks of the “Fuchs” type, built by Thyssen-Henschel, to be used against the enemy’s deployment of chemical arms. Germany refuses, on principle, to ship arms into crisis areas (Spannungsgebiete), but after some deliberation, the government issued a certificate of exemption and consigned a number of the tanks from the Bundeswehr’s assets to Saudi Arabia. The Saudis are said to have paid almost DM 446.4 million to Thyssen. This exorbitant price included DM 220 million of bribe money, part of which allegedly went to arms-industry-lobbyist Karlheinz Schreiber. The secretary of state (beamteter Staatssekretär) in the ministry of defence’s, Holger Pfahls, CSU, is said to have pocketed 3.8, maybe up to 17 million marks. He has evaded court proceedings by going undercover, possibly in Asia. This, of course, strengthens the suspicion of bribery.

The one million given to the former treasurer of the CDU, Walter Leisler Kiep – handed over in a Swiss car park, as mentioned before – comes from the same source, as do the DM 100,000 given to Schäuble. The Ministry of Defence’s former secretary of state (parlamentarische Staatssekretärin) Agnes Hürland-Büning, CDU, is said to have received millions as an “advisor” to the Thyssen company after her resignation from office. This is where the Thyssen affair meets the Leuna scandal.

During the time of the German Democratic Republic the chemical combine at Leuna employed up to 27,000 people. After reunification it turned out that the antiquated plant was very unprofitable. However, Chancellor Kohl gave a guarantee that it would not be dismantled, and a buyer had to be found. In consultation with President Mitterrand of France, Elf Aquitaine – then still a state-operated business – agreed to buy Leuna, including the chain of 930 Minol gas stations, and to put the plant back on its feet. The deal concerning the gas stations were to be managed in alliance with Thyssen. The German industry lobbyist Dieter Holzer was involved in the negotiations between Elf Aquitaine and Thyssen. And again, Mrs. Hürland-Büning acted as a well-paid consultant to the Thyssen company. It is extremely difficult to see through all the ramifications of the whole case. The public prosecutors suspect that at least DM 100 million went into various pockets in Germany, but they cannot prove it yet (Scheuch and Scheuch, 2000: 80). It is said that André Guelfi, heavily involved in the affair and searched for with an international arrest warrant, claimed in 1999 that 85 million went to “a German party as commission” (ibid.: 81).

In Germany, as in France, the public prosecutors investigate suspicions of fraud, embezzlement, tax evasion and laundering money; but in Germany corruption, that is, acceptance of advantage or bribery, has not been part of the investigation. The Generalbundesanwalt (chief federal prosecutor) examined court material sent to him from Switzerland in the Leuna case. But he did not find evidence of corruption concerning German individuals.

6.7. What are the problems with party donations concerning the SPD?

Recently, the SPD has also been touched by scandals involving party financing. The scandal involving the SPD was only unfolding as this chapter was being written; thus it is impossible to know how it will develop. However, although it only touches local and

regional party officials in some parts of Germany, the affair has already received international news coverage:

“SPD expels two local officials.

The social Democrat party of Chancellor Gerhard Schroeder has expelled two local officials implicated in the funding scandal that has engulfed the SPD branch in Cologne, western Germany.

The treasurer and secretary of the Cologne SPD were expelled due to their involvement in handling Euros 260.000 in illegal party donations in the 1990s. A third central figure, Norbert Ruther, former head of the local party, was yesterday questioned about the scandal for the first time by public prosecutors.

The SPD national leadership, concerned over the scandal’s broader political impact, has attempted to limit the affair to Cologne. In the setback, however, a regional SPD lawmaker admitted receiving a fake receipt linked to the illegal donations “ (Financial Times, March 13, 2002).

Public prosecutors are investigating whether a private company for waste utilization in Cologne paid bribes to local officials. These party functionaries turned the donations into small segments to avoid publication in the annual record on party finance. However, two managers have been imprisoned on remand for depositing 15 Mio. € in Switzerland allegedly as commissions, but maybe as kickbacks originating from the development, construction and implementation of plants for waste utilization in the Rhineland. It is too early to draw conclusions from this new scandal. But it is no surprise that many observers foresee severe effects on the outcome of the next general election in Germany in fall 2002.

6.8. What has to be done?

Perhaps the wide-ranging nature of party funding scandals will produce a coalition for reform in Germany. The pressure on the parties for reform comes from at least five different agencies and actors. They have all been important in the past, but several of them could be made more effective:

- Since the SPIEGEL-affair in 1961 *investigative journalism* has become well-established in Germany. Certain changes in press laws might strengthen it even further – commercialization and the emergence of new media did not. The polarizing influence of party politics – if journalists from the left find any scandals on the right, journalists from the right have to look on the left – cannot be ignored and besides seems unavoidable. Maybe it is not exactly detrimental, either.
- Parliamentary *committees of investigation* are an important instrument of control. Reforms concerning investigative committees have been demanded for years, but so far none has been implemented. In any event, they are part of the political arena and can never replace courts of law. This is why criminal behavior, like corruption, should be dealt with in the courts. The main function of parliaments is to implement legislation. There has to be a thorough review of jurisdiction concerning the whole area of party finance at home and abroad.
- The *public prosecutors and the courts* have to be made more independent. There was some talk of the Bavarian ministry of justice exerting political influence on the public prosecutors’ offices in Augsburg in connection with the CDU scandal

involving party financing. And nowhere in Germany there was adequate preparation in the various proceedings in the Elf Aquitaine/Leuna case.

- The investigative possibilities of *academics* are limited compared to those of journalists and the courts. But students of political science, law, sociology, economics, history or psychology can apply themselves to the development of concepts for reforms, comparative research, and analyses of causes and consequences.
- *Legislation* has to provide a solid background not only for the activities of the political parties and their finance regulations, but also for the activities of all other actors in the game mentioned above.

If all the criminal practices that were discovered are punishable under existing law, we have to ask whether it is necessary to change any laws at all. Is it sufficient to make everything public “as brutally as possible” (*brutalstmöglich* – minister president Koch, Hesse), to effect a purifying catharsis? In the debates about party donations some observers call for stricter laws and more serious sanctions to enforce the law – like Transparency International. The following measures are among those demanded by some segments of the German public:

- prohibiting donations from corporate bodies,
- limiting the amount of money one is allowed to donate,
- prohibiting donations made in cash,
- limiting donations to parties, not donations to individual members of parliament,
- introducing public accountability for donations below the current limit of DM 20,000,
- tighter sanctions against violations of the party law:
 - more serious financial consequences,
 - introducing penal sanctions (fines, prison sentences),
 - loss of eligibility for public office,
 - loss of the right to hold public offices,
 - cuts in politicians’ retirement provisions.

The Commission of Independent Experts did not go as far in their recommendations concerning party financing, as some, especially TI, had suggested. However in its report of 18 July, 2001 (Bundespräsidialamt, 2001) the commission did suggest a number of important alterations in current legislation. All in all the Commission recommended 80 individual measures. The 10 most important ones are:

- Introducing a special penalty procedure for false statements,
- Forbidding donations from firms which are publicly owned,

- Current publishing of large donations,
- The whole executive committee of the parties should be responsible for donations, not only the treasurer,
- Forbidding donations as cash payments,
- Forbidding any transfer of funds between political party organizations and parliamentary groups,
- Changing the statement to the double entry book keeping as in industry,
- Tightening the auditing laws for chartered accountants,
- Forbidding the clearing of earnings with losses,
- A regular report of political financing reports of all indirect forms of political financing are to be handed in.

Of course, these recommendations by the Reform Commission are only a compromise. Some members of the committee would have appreciated less minced words. But more radical suggestions – such as the ones by Transparency International – would have never won a majority in the German Bundestag. This is due to a conundrum. When it comes to political finance German political parties are in charge of regulating themselves. After all, parliament consists of their own members. It does not come as a surprise that almost all parties agree on these issues, contrary to the usual political battles. Some pundits argue that this does not provide any incentives to craft a savvy bill.

However, if a reform bill like the one being discussed in parliament was signed into law during this term, an important goal would have been achieved. Most of the described misdemeanors would not be treated as peccadilloes anymore, just punished by fines. Instead, all mentioned manipulations would have to be regarded as real crime. This holds true for donations to the CDU by former CDU leaders Kohl and Schäuble, by the Federal Treasurer of the CDU, Kiep, and his cronies, as well as by the CDU in Hessen. Any illegal donation that has not been written down in the files would trigger criminal prosecution, backed by severe punishments. Also, card-carrying members of the SPD in the cities of Northrhine-Westphalia could be put on trial if it turned out that they have not disclosed donations properly.

Not only would the culprits be threatened by fines and prison sentences, which would hopefully deter them sufficiently. More importantly, prosecutors would have the right to investigate both independently and preemptively. Currently, they are not capable of doing this. They even have to resort to secondary punishable offences, such as tax evasion or fraudulent conventions, to file lawsuits. For all these problems of party donations, there is hope that scandals and the ongoing debate might amount to a catharsis effect.

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