



Party Law in Modern Europe

The Legal Regulation of Political Parties in Post-War Europe

Party Regulation and its Effects on the Polish Party System (1991-2011)

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Introduction¹

The development of a democratic political society – political parties, electoral rules, interparty alliances, and the legislature - is one of the major challenges for any transition regime. Political parties are the best institutions to effectively select and monitor democratically elected governments. In general, in the first stage of democratic transition, most post-Communist countries, including Poland, adopted a more *laissez-faire* stance towards the regulation of political parties. At the beginning of the transition in Poland, political parties were perceived more as private associations and there was barely any legislation to deal with their registration, funding, internal functioning and organizational structure. Liberal regulations, like the one adopted in 1990 were a natural response to the former Communist system, and represented a rejection of its restrictions and a fear of a one-party system that could harass the opposition. By the mid 1990s, however, society started to recognize the importance of political parties in a modern democracy and the problems related to their functioning and funding. A new development in regulating political parties gradually came about as a result of the new Polish Constitution of 1997 and the Law on Political Parties (LPP) of 1997.

The article is divided in four parts. Section one looks at the process of party constitutionalization. Section two summarizes the most important disposition contained in each of the two Polish Party Laws. Section three examines party funding regulations. Section four looks at the possible impact all these regulations may have had (or not) on the Polish party system, either at the systemic or at the party level. The most important findings following from our analysis are summarized in the conclusion.

The “Small” and the 1997 Constitution

The right to associate freely in a political party forms an integral part of the (more generally conceived) freedom of association protected under Article 11 of the European Convention on Human Rights and under Article 22 of the International Covenant on Civil and Political Rights. In Poland, the country with the longest constitutional history in Europe, this right was only constitutionally recognized in 1992 with the so-called “Small Constitution” (Brzezinski and Garlicki, 1995:21).² There (art. 4.1) the constitutional legislator not only

¹ We would like to gratefully acknowledge the support of the European Research Council (ERC starting grant 205660) in the preparation of this paper.

² Neither the May Constitution (1791) - the oldest in the European continent - nor the March Constitution of the Second Polish Republic (1921) contains any mention to “political parties”.

acknowledged their main political function in a democratic society, that is, “to influence the formulation of the policy of the State” (see also OTK 10.IV.2002, K 26/00), but established at the same time two important principles guiding their regulation: namely, a) the principle of voluntariness, and b) the principle of equality (of Polish citizens).

The 1997 Constitution not only echoes all what has been said, adding two further “interpretative” principles – i.e. freedom of functioning and transparency of finance,³ but establishes various important limitations when stating that

political parties [...] whose programs are based upon totalitarian methods and the modes of Nazism, Fascism and Communism, as well as those whose programs or activities sanction racial or national hatred, the application of violence for the purpose of obtaining power or to influence the State policy, or provide for the secrecy of their own structure or membership, shall be prohibited (art. 13).

A careful reading of the disposition contained in both art. 11 and 13 brings up three very straightforward conclusions. First of all, to say the obvious, it seems clear that Poland’s long “authoritarian” experience (from 1926 up to 1989) has constituted a “powerful driving force behind the constitutional [...] proscription of the [...] behaviour of political parties, as well as their programmatic identity” (van Biezen and Borz, forthcoming).⁴ Secondly, and consequently with what has just been said, the Polish Constitution seems to follow the German example when adopting a “militant” model of democracy (see Thiel, 2009) which, “although controversial from the perspective of some normative theories of democracy [...] is [...] justified with a view to protecting the very survival of the democratic system (van Biezen, 2011:204). Thirdly, by placing the above principles (and limitations) in the first chapter of Poland’s Supreme Act, these rules are identified as a constitutional guidance governing all parties’ operations. Moreover, as the Constitution occupies a supreme place in the legal hierarchy, it means that all the remaining normative acts must be in accordance with such constitutional principles, which can neither be revoked nor limited through any domestic law or international convention.

³ See arts. 11.1 and .2, respectively. It is important to note here, however, that even if the Polish Constitution formulates directly the principle of the transparency of finance only with reference to the activities of a political party; it is self-evident that one of the basic activities of any party is to participate in parliamentary, presidential and local government elections. Thus, this constitutional principle is the foundation for public inspection of campaign finance, in which political parties participate either directly or indirectly.

⁴ Similarly to most post-communist democracies, and following the pattern already established by art. 4.2 of the 1992 Constitution, art. 188.4 assigns to the Constitutional Court the competence to judge “the conformity to the Constitution of the purposes or activities of political parties” (Sadurski, 2005:13).

Finally, and in a similar vein to most European Constitutions (van Biezen, 2011:202, 204), the prohibition of political party membership is expressly provided for by the Polish *Lex Suprema* for a number of State offices: namely, (1) judges, in general (art. 178.3); judges of the Constitutional Tribunal (art. 195.3); the President of the Supreme Chamber of Control (art. 205.3); the Commissioner for Citizens' Rights (art. 209.3); members of the National Broadcasting Council (art. 214.2); and the President of the National Bank of Poland (art. 227.4). As we will have the opportunity to see in the following section, such list of incompatibilities "may not be considered to be exhaustive" (OTK 10.IV.2002, K 26/00).

Polish Laws on Political Parties: 1990 vs. 1997

Although dispositions regarding parties' activities, financing or operations may be contained in a number of other acts (e.g. Statute on the Election of the President of the Republic of Poland, 1990; Statute on Elections to Local Self-Governments, 1998; Statute on Elections to the *Sejm* and to the Senate, 2001; Statute on Direct Election of the Village, Town and City Administrator, 2002; and Statute on Elections to the European Parliament, 2004 and recently adopted electoral code),⁵ the bulk of Poland's party regulation has always been found in the so-called "Party Law" (i.e. *Ustawa o Partiach Politycznych*).

Although not the first to do so in post-communist Europe,⁶ the first Polish Party Law was adopted by the so-called "Contract" *Sejm* as early as July (28th) 1990. Based on the philosophy of *laissez-faire*, as mentioned in the introduction, Act 54/1990 simply defined the basic conditions for the establishment, operation and financing of political parties. Thus, and after defining political parties as a "social organization acting under a particular name with the goal of taking part in public life, in particular by exerting influence on shaping state politics and exercising authority" (art. 1), the 1990 Law only recognized their legal status after they were "validated" by the Regional (*Wojewódzki*) Court in Warsaw. In order for the latter to do so, the only requirement was an application including the name, seat and symbol of the party, as well as the composition and manner of appointment of the "representative" body, supported by "at least 15 persons having full capacity to perform acts in law" (art. 4).⁷ The law, after forbidding the creation of partisan organizational units at both "work places or in the Armed Forces" (Art. 2.2),

⁵ See also fn. 14.

⁶ Hungary (1989), the extinct Czechoslovakia (January 1990) and Bulgaria (April 1990) clearly preceded it (see Casal Bértoa *et al.*, forthcoming).

⁷ These were considered to be distinct from those parties, neither registered nor enjoying legal status, but permitted to operate legally and openly.

only required both party aims and activities to conform to the Constitution, allowing the Constitutional Tribunal to ban parties aiming “to change the political system [...] by violence” or supportive of “the use of [latter] in public life” (art. 5). Finally, and already introducing the principle of transparency, art. 6 listed the sources from which political parties could legally derive the financial assets necessary for the realization of their goals: namely, membership fees, donations (but not foreign), wills and testaments, income from properties, income from economic activities (but only in the form of cooperatives or participation in enterprises) and income from public donations. Importantly, the decision to prevent direct public funding of political parties was aimed at weakening the already existing political parties and the Polish United Workers Party in particular (Walecki, 2005: 89)

Although the 1990 Law clearly fulfilled its main function - i.e. the initiation of a (more or less inchoate) party system, but mid-90s it was rather obvious that its minimal character was insufficient to regulate the life of political parties in an “increasingly consolidated” democracy. For that reason, and building on the parliamentary consensus formed around the Constitution, Poland’s main legislative forces at the time (i.e. SLD, PSL, UD and UP) decided to go a step with the approval of a new Law which, regulating party activity, organization and finance in detail, fulfilled the soon-to-be constitutional principles of operational freedom, finance transparency and membership incompatibility; while at the same time, respecting the newly established constitutional limits (OTK 16.VII.2003, Pp 1/02).⁸

Originally divided in 8 chapters, and including up to 64 articles (compared to just 8 in the 1990 Law), the 1997 Law contains provisions (1) pertaining to parties as legal subjects (i.e. registration), (2) or as organizations (i.e. internal organization and operation); (3) aimed at confining party membership, activity and/or ideology (i.e. restrictions), (4) laying down sanctions; and, last but not least, (5) regulating party finance (Karvonen, 2007:443). It is to an in-depth examination of these “categories” that we will now turn, starting with how the new legislation conceptualizes its subject.

Definition

Echoing art. 11.1 of Poland’s Supreme Act, the 1997 Law on Political Parties (LPP) considers the latter to be “a voluntary organisation, appearing under a specific name, whose

⁸ Although formally post-constitutional – it was passed almost three months after the Constitutional Act, it entered into force more than two months and a half ahead of the latter.

objective is participation in public life by influencing State policy by democratic methods or exercising public authority” (art. 1.1). When compared with the previous definition (art. 1 of the 1990 Law), pre-constitutional in all respects, the LPP makes two important additions. On the one hand, and in line with both the Polish Constitution as well as the UN Universal Declaration of Human Rights,⁹ adds the word “voluntarily”, making clear that political parties are to be strictly “voluntaristic” organizations. On the other, while stating that influencing State policy is the core function of any political party, it requires the latter to do so only, and we quote, “by democratic means”. In this sense, the new Law clearly departs from the previous regulation which, still very influenced by the “global” political situation, did not contain any explicit reference to “democracy”.¹⁰ Anyway, and before they are granted the necessary legal status for fulfilling such essential function, prospective parties must first fulfil the registration requirements (art. 1.2).

Registration

Political parties acquire legal personality from the moment of their registration in the *Register of Political Parties* (art. 16). The Register, open to public inspection (art. 18.1) and maintained by the Warsaw District (*Okręgowy*) Court (art. 11.1), contains then a record of all political parties active in Poland,¹¹ together with their statutes and any amendments made thereto. Congruent with the abovementioned principle of publicity, anyone can obtain certified copies of the register and of excerpts from the registers and parties’ statutes – for a symbolic fee (art. 18.2 and .3).

A party’s application should include the name, acronym, the address of party’s headquarters, as well as the names, surnames and addresses of members entitled to represent the party and to undertake financial obligations (art. 11.2). The Law also stipulates that approval by the general assembly of the parties’ membership (or their “democratically elected representatives”) is necessary for the ratification of the party statute. In addition to the statute, signatures of at least 1000 supporters (only Polish citizens) are required. Their names, PESEL identification numbers (a form of Polish national identification), addresses and signatures must be clearly listed. The application may also include the graphic symbol of an emblem used by a party. Importantly, the name, acronym, and party symbol must clearly differentiate themselves from those of other existing

⁹ Art. 20.2 states that “No one may be compelled to belong to an association”.

¹⁰ It should not be forgotten that Poland’s first party law was passed, as said above, by a legislature (the so-called “Contract *Sejm*”) dominated (two-thirds) by a communist (or related) elite.

¹¹ At the moment of writing this article, there were 81 parties registered in Poland (PKW, 2012).

parties (art. 11.5). All the above acquire legal protection provided for personal property. Art. 11.6 further states that three representatives of that party must appear before the Court to agree to be legally accountable for the accuracy of the information provided by the party.

If the application has been made in accordance with the legal requirements, the District Court has to register the party without delay. In the event of a violation of any of the abovementioned rules, and after having granted additional time to comply with the registration requirements, the Court must refuse the registration, but the party has the right to appeal against such decision (art. 12).

A political party is only granted legal status once it has been entered into the register, thereby indicating that all of the above stipulations have been fulfilled. The final decision of the Court concerning the entry in the register is published free of charge in “Monitor Sądowy i Gospodarczy” and should be delivered to the National Electoral Commission (art. 15).

Any changes to either the party statute, the address of the party headquarters, or composition of the bodies which are legally empowered to represent the party and to undertake financial transactions must be reported (within fourteen days) to the Court (art. 19). If a party fails to do so, ignoring the Court’s request for clarification in the assigned time, the Court should remove a party’s entry from the Register. Moreover, if a political party makes amendments to its statute that do not comply with provisions of the LPP, the Court may appeal to the Constitutional Tribunal to examine their conformity with the Constitution (arts. 14 and 21, read in conjunction with art. 188.4 of the Constitution).

Internal organization (i.e. structure) and democratic procedures

In clear contrast to its legislative predecessor, which contained none, the 1997 LPP regulates in detail a party’s internal structure and its statutes. According to art. 9 of the 1997, the latter has to determine its’ aims, structure and principles of activity, especially: a) the name or acronym and the address of party’s headquarters; b) the procedures for recruiting and removing members; c) the rights and duties of its members; d) the political party’s organs, especially organs which represent party publicly and are entitled to undertake financial obligations, their competencies as well as the duration of their term of office; e) the electoral system for political party’s organs and the mechanisms for filling vacancies; f) the method of contracting financial obligations and collecting financial resources as well as the manner in which reports concerning party financial activities are created and accepted; g) the methods of creation and liquidation of

territorial units of a political party; h) the methods of introducing changes to the political party's charter; i) the procedures of dissolving the political party as well as the methods of joining another political party or parties.

The LPP states, in particular, that the rights and obligations of party members must be clearly formulated. Furthermore, the statute of a party must be adopted by the general assembly of party members or a meeting of its representatives, elected according to democratic rules. The Political Party Act in art. 8 stipulates that a political party “formulates its structures and principles of activity in accordance with the principles of democracy” and requires that party structures are transparent. Furthermore the Act requires “the appointment of all party organs by means of free election and the adoption of resolutions by a majority of votes”.

In 2000, the Warsaw Regional Court had doubts regarding the constitutionality of the statute of the Christian Democratic Party of the Third Polish Republic (*Chrześcijańska Demokracja III RP*; the political party associated with Lech Wałęsa). These doubts concerned a provision of the party statute granting the Chairman of the Party unrestricted competence to appoint and dismiss the party's regional administration chairmen. The Court appealed to the Constitutional Tribunal to examine the statute's conformity with the Constitution. The Constitutional Tribunal held that the Polish Constitution limited the possibilities and scale of intervention of the public authorities, including the legislature, in the internal structures and operations of political parties (OTK 8.III.2000, Pp 1/99). The Tribunal emphasized that “any limitations on exercising the freedom to create, and functioning of, political parties may only stem directly from the Constitution. Statutory provisions may not constitute a source of such limitations; at most, they may clarify such restrictions” (OTK 8.III.2000, Pp 1/99).

Although the Tribunal observed that “doubts arise as regards the conformity with democratic principles of the manner for shaping the party's internal structures, which to a noticeable degree depart from the principles of electing all party organs and, instead, vest the party Chairman with special creative rights”, nevertheless, the Tribunal confirmed that, “no clear and unambiguous inconsistency arises between the reviewed provision and Article 11 of the Constitution”

Restrictions...

a) ... on membership

As mentioned earlier, the 1997 Constitution clearly stipulates that a political party is an organization “associating Polish citizens”. According to art. 2 of the LPP, only “citizens of the Republic of Poland who have reached the age of 18 years” may join a political party as members. Furthermore, in Poland, many categories of persons holding public office are subject to statutory rules prohibiting them from belonging to a political party. Aside from the principle of political neutrality of the Armed Forces,¹² which has its roots in pre-war tradition, the current prohibitions regarding party membership may be explained as a reaction to experiences under Communist rule when State institutions and officials of the United Polish Workers’ Party were obliged to serve a totalitarian regime.¹³ The neutrality of the Armed Forces suggests that they must be removed from the sphere of direct influence of political parties. As further observed by the Constitutional Tribunal “there is widespread concern in society that the involvement of personnel employed in sensitive areas of the State with political parties could pose a threat to the young and insecure democratic system, which could facilitate exploitation of the State for particular party interests.”

Together with the constitutional provisions mentioned in section 1 stipulating the incompatibility of party membership with certain public offices (e.g. the judiciary, the presidency of the Supreme Chamber of Control or the National Bank, or the Commission for Citizens’ Rights and the Media National Council), many other ordinary statutes contain similar prohibitions against political party membership (art. 2.2). Such statutory prohibitions are currently in force in respect of: public prosecutors; police officers; state security officers; border guards; penitentiary officers; public service fire-fighters; members of municipal police forces; chairmen and other permanent members of self-government boards of appeal (administrative appeals in cases falling within the competence of local self-government); Vice-Presidents and directorates-general of the Supreme Chamber of Control; customs officers and Customs Inspection officers (the so-called customs police); the Data Protection Commissioner; the Public Interest Commissioner (the public prosecutor in lustration proceedings concerning prior co-operation of important office holders with communist secret services); the chairman and other employees of the National Election Office; and, last but not least, members of the Civil Service corps as defined in art. 153 of the Constitution (employed as civil servants in ministries and other

¹² According to the Article 26.2 of the 1997 Constitution “The Armed Forces shall observe neutrality regarding political matters and shall be subject to civil and democratic control.”

¹³ See the Constitutional Tribunal ruling of 10th April 2002, K 26/00

government authorities). Finally, art. 58 of the LPP adds additional restrictions on the chairman and permanent members of the local government repeal college stating that they “may not belong to any political party nor perform any political activities.”

b) ...on party ideology and/or activities

The LPP also introduces a number of direct and indirect restrictions on party activity. In relation to the former, art. 6 stipulates that political parties shall not conduct any duties, reserved by law to the organs of public authorities nor supersede those organs in realization of their duties. In this sense, and by demanding a clear separation from the state, the Polish Party Law attempts to distance itself “from the past regime, in which the Communist part[y] exercised a more or less complete control rule of the institutions of the state” (van Biezen, 2011:204). In a similar vein, art. 7 forbids parties to organize or possess any units on the premises of work places.

Art. 14 of the LPP requires “the compliance with the Constitution of the purposes and rules of operation of a political party set out [not only] in its constitution [... but also] in its programme”. Indirectly, then, the law contains a double-sided prohibition: thus, while on the one hand it forbids the formation of Nazi, fascist or communist parties, on the other, and more generally, it bans any kind of racist, nationalist or violent party.

Sanctions: registration denial, judicial dissolution

In Poland, the responsibility for the prohibition of political parties on the basis of the already studied restrictions belongs, as we already know, to the *judicial authorities* and, in particular, to the Constitutional Tribunal (art. 42 LPP), namely, the most appropriate judicial body as it offers all guarantees of due process, openness and a fair trial.¹⁴

According to the Law, there are two forms of review performed by the Constitutional Tribunal: *preliminary* review and *subsequent* review. *Preliminary* review involves the examination of a political party’s purposes and its political programmes, to ensure that such purposes are not unconstitutional. *Preliminary* review is applied when the Warsaw Regional Court (maintaining the records of political parties) examines a motion for the registration of a political party into the official records or when a political party applies to register amendments to its articles.

¹⁴ As referred in art. 43 of the LPP, the procedure for examining these cases is defined in arts. 55-58 of the 1997 Constitutional Tribunal Act.

Thus, the Warsaw Regional Court is the initiator of the constitutional review and the proceedings before the Constitutional Tribunal are auxiliary to the main proceedings, whose fate will be decided by the Court's ruling. At the same time, a *preliminary* review has an abstract character, similar to an examination of the conformity of normative acts to the Constitution: it is the duty of the Court to interpret the articles, programme and other documents, on which the party's activities are to be based, to analyze these with reference to the party's purposes or principles of activity and, finally, to assess these in the light of constitutional standards. The purpose of a preliminary review is to prevent the official registration of a party which does not fulfil the legal criteria, or to prevent the registration of amendments to articles of a party where such amendments do not meet such criteria.

On the other hand, the activities of a political party are the subject of *subsequent* reviews, in accordance with Articles 57 and 58 of the Constitutional Tribunal Act, with provisions of the Criminal Procedure Code being applied as appropriate. Declaration that a political party is unlawful may only be done as a result of *subsequent* review. The provisions of the Constitution constitute the substantive legal grounds for evaluating the constitutionality of the purposes or activities of political parties.

The Court examines applications concerning non-conformity to the Constitution of the purposes of political parties specified in their articles or programme on the basis and in the procedure provided for examination of applications concerning the conformity of normative acts to the Constitution. The burden of proving non-conformity to the Constitution rests with the applicant, who therefore must present or give notice of evidence indicating such non-conformity. The law states that the Tribunal may, in order to collect and record evidence, charge the Public Prosecutor-General with conducting an investigation to a specified extent concerning conformity of the activities of the political party to the Constitution.

Furthermore, one should stress that if the Constitutional Tribunal gives an opinion stating that there is a discrepancy between the purposes and activities of a political party and the Constitution, the Warsaw Regional Court should immediately remove the political party from the register. In such a case, as well as in the event of voluntary dissolution,¹⁵ an administrator (liquidator) is nominated, either by the Courts or by the party (respectively). When the act of

¹⁵ According to art. 45, a political party can also voluntarily dissolve. In such event, the resolution on the party's self-dissolution has to be immediately submitted to the court by "the party's competent governing body" (art. 46).

liquidation is finished, the court decides on removal of the political party from the register. The ruling of the court is conclusive. In the case that costs of liquidation cannot be met by the party they are covered by the State. But, as we will have the opportunity to see in the next section, these are not the only “costs” borne by the “poor taxpayer”.

Party Finance Reforms: from “Exclusively-Private” to “Mostly-Public”

Although the current system of regulating party funding is contained in numerous laws, the LPP is the most comprehensive and detailed.¹⁶ In general, the funding of political parties consists of membership fees, donations, legacies, bequests, revenues from assets and allocations from the State budget (i.e. subsidies and subventions). A political party is prohibited from engaging in any commercial activities or organizing public collections. The financial resources of a political party (except for those deriving from membership fees which remain in territorial units in order to pay for their current activities) may be accrued only in bank accounts (arst. 24).

Funds may be transferred to a political party solely by natural persons.¹⁷ Regulations concerning foreign contributions are limited in a qualitative manner: namely, political donations cannot be accepted from any foreign sources including funds transferred by non-citizens of Poland residing abroad or by foreigners residing in Poland. Other important limitation to private contributions derives from the fact that the total value of contributions made by an individual to one political party, excluding membership fees which do not exceed in the year one minimum monthly wage, may not exceed in a year 15-times the minimum monthly wage, valid on the day preceding the payment. The same threshold applies to an individual’s contributions transferred to the Election Fund of one political party. Furthermore, the law prescribes that a single transfer which exceeds the minimum monthly wage may be paid to a political party by cheque, bank transfer or bank card only (art. 25).

As a result of serious concerns with the dominance of private money in the political process,¹⁸ the 1997 LPP introduced a system of considerable direct public financing. According to the current regulation, a political party whose election committee has participated in elections, or a political party that is a member of a coalition as well as the election committee of electors, has itself

¹⁶ Important to note, these laws differ from each other with regard to timeframe for the submission of various financial reports, the issue of donations in-kind, donations from legal entities, etc.

¹⁷ Entities such as corporations, foundations, trade unions or associations are not allowed to make contributions to political parties.

¹⁸ See Ludwik Dorn, ‘Finansowanie działalności politycznej w Polsce. Obecna praktyka i jej reforma’, in Marcin Walecki (ed.) *Finansowanie polityki. Wybory, pieniądze, partie polityczne* (Warsaw: Wydawnictwo Sejmowe, 2000), pp. 141-178.

the right to a subsidy (called *subject allocation*) from the state budget for each mandate of a Deputy or Senator gained. The amount of the *subject allocation* is established by dividing the expenditure shown in the election reports of committees, which have at least one seat (mandate), by 560.¹⁹ The *subject allocation* is given to the amount shown in an election report (not exceeding expenditure limits). The *subject allocation* that is given to a member of an election coalition is divided proportionately among the parties that form the coalition, and is determined in an agreement while the election coalition is created. The allocation is paid 6 months after the announcement of the validity of the elections.²⁰

In addition, political parties that have formed their own election committee in the elections to the Sejm and have gained at least 3 per cent of valid votes in those elections, or are members of an election committee in the elections to the Sejm and have gained in those elections at least 6 per cent of valid votes, receive a state subvention for their statutory activities.

Interestingly enough, the LPP makes such public funding conditional on a number of reporting requirements. Indeed, and even if mainly formalistic, the current regulation contains two forms of routine financial reports for parties, namely “information”²¹ and “report”²², based on calendar years.²³ The National Electoral Commission publishes the reports which are submitted to it by political parties on its website. In addition, the political parties’ yearly financial reports on the subvention received and the expenditure charged to the subvention are published, together with an opinion and report of an expert auditor, by the National Electoral Commission in the Official Journal of Poland (“Monitor Polski”) within 14 days following its submission to the commission. The same rule applies to the political parties’ yearly reports on sources of funds and on expenses charged to the Election Fund. The publication requirements for reports of political parties do not extend to source documents which are attached to those reports. These documents

¹⁹ The number 560 is obtained by adding the nominal number of members of the Sejm [460] and of the Senate [100].

²⁰ It is also granted to each mandate of a Deputy or a Senator gained in repeat elections to the Sejm and to the Senate, as well as in by-elections.

²¹ A political party must prepare a yearly financial statement of the subvention received from the state budget and the expenditures covered by this subvention, called “information”. The party submits, the ‘information’, covering a calendar year no later than March 31st of the following year, together with the opinion of an appointed auditor, to the National Electoral Commission.

²² No later than March 31st each year, every registered party is required to submit to the National Electoral Commission an annual “report”, covering the sources of the party’s funding (including bank loans, with the specification of conditions set forth to the political party and to the Election Fund by a lending institution) and expenses paid from the Election Fund in the previous calendar year. An opinion and an auditor’s statement are included in the party’s “report”.

²³ Political parties are also subject to tax control. Moreover, in case of criminal proceedings the Public Prosecution Service (during investigations) and the courts (in cases pending before them) have full access to accounting records of these entities.

however, constitute public information within the meaning of the Act on Access to Public Information of 2001 and are therefore available to anyone, without a need to show a legal or actual interest.

After the submission of a report the National Electoral Commission decides within four months whether to accept it – with or without reservations – or to reject it. In the event of doubts concerning the accuracy of the information, the National Electoral Commission may ask the political party concerned to remove defects or submit explanation within a specified time limit. A report can be rejected in case of infringement of certain financing regulations such as utilization of the subvention for purposes not connected with the party's statutory activities and the receipt of financial resources from illicit sources. In case of rejection of a report, a complaint to the Supreme Court may be submitted within seven days by the party concerned. The Supreme Court, by bench of 7 judges, examines the complaint and issues a ruling within 60 days following the delivery of a complaint. If the Supreme Court upholds the complaint the National Electoral Commission should immediately issue a resolution accepting the information in question.²⁴

In clear improvement to the previous system, both the Political Parties Act and the Statute on Elections to the Sejm and to the Senate contain a large number of provisions foreseeing administrative and criminal sanctions in case of infringements of the “funding charter” of the LPP by political parties. These sanctions are not mutually exclusive. Whereas administrative sanctions are imposed on political parties, criminal liability for infringements of PPA regulations in the area of political financing is restricted to natural persons. Most of the criminal sanctions apply to any person within or outside a political party. Among the administrative sanctions the most important includes the reduction of the subsidy, the loss of the right to subvention or the removal of the party from the Register²⁵ if: 1) it does not submit the information within the time limit; or 2) the information submitted is rejected by the National Electoral Commission; or 3) the Supreme Court has decided to reject party's complaint.

When it comes to the criminal sanctions stipulated by the LPP arts. 49a to 49g penalise violations by any person of specific LPP regulations regarding the funding, the expenditure and the reporting obligations of political parties, with fines from 1,000 up to 100,000 PLN (250 up to

²⁴ Statistics from the period 2001-2005 show that while most parties fulfilled their “reporting” obligations, some parties did it late (7 in 2005), incompletely (12) or not at all (12) (see GRECO Evaluation Report, 2008 : 21)

²⁵ The removal is decided upon by the District Court in Warsaw, on the motion of the Commission.

25,000 EUR), restriction of liberty or imprisonment of up to two years. Yet, as observed by practitioners the difficulty of using criminal sanctions effectively follows from the fact that a large number of prosecutors are reluctant to regard many of the political party finance offences as being suitable for criminal law.

On the Consequences of Party Regulation for Party System Development

Huntington (1968) was the first scholar to suggest a relationship between the two variables here studied: namely, party regulation and party system development. According to him, “certain forms of corruption (e.g. illegal donations) can strengthen a parliamentary party and in turn this institutionalized party can develop rules [...] to protect the integrity of the political process from weaker parties” (quoted in Roper, 2002a: 179). Unfortunately, after Huntington’s classic work, this issue was neglected until Katz and Mair (1995) decided to focus on it. In what has come to be known as the “cartel party thesis”, both authors suggest a change in the role played by political parties in modern democracies. Thus, rather than private organizations closely link to civil society, parties are now considered to be “public agencies” increasingly entrenched with the institutions of the State (van Biezen, 2004; Kopecký and van Biezen, 2007). This will obviously have important consequences for the party system, the most important of which is the attempt of the existing political parties to monopolize the resources of state by increasing the level of party regulation in general, as well as the number of legal requirements either for party formation or for the access to public-owned media or state subsidies (Katz and Mair, 1995; Scarrow, 2006; Rashkova and van Biezen, 2011).

One of the ways, perhaps the most important, in which existing parties have tried - collusively - to reduce “the impact of those seeking to challenge the political status quo” (Scarrow, 2006:629), guaranteeing at the same time their dominance at the systemic level, is by the introduction of public subsidies available for those parties with a certain level of electoral support. The idea, then, is that by raising financial barriers to the establishment of new parties, public funding can contribute to the cartelization and, therefore, freezing of the party system (Katz and Mair, 1995:15, van Biezen, 2004). In empirical terms, scholars have found that in systems where public funding is available not only the “vote shares of parties between elections” stabilize (Birnie, 2005:932), but both party replacement and fragmentation decreases (Booth and Robbins, 2010:641-

642).²⁶ Interestingly enough, the latter effect is also dependent on the type/level of funding available: namely, the more difficult the access (i.e. high payout threshold), the lower the number of parties (i.e. ENP) in the system, and *vice versa* (van Biezen, 2000:337; Spirova, 2007:161). More recently, Booth and Robbins found “evidence that when parties cannot receive state fund, and concomitantly face restrictions on fund-raising in the private realm, the costs for parties are high and result in a reduction in the ENP in elections – and not just the stability of these parties” (2010:644).

Comparative political theory has also pointed out other manners in which party regulation can affect, either negatively or positively, the party system. These include, more generally, the amount of detail with which political parties are being regulated and, more specifically, the precise rules regulating party dissolution and/or registration. Indeed, and together with funding legislation, the latter constitutes one of the most studied effects of party regulation on party system formation and development. In particular, both Hug (2001) and Tavits discovered, on the one hand, that “a monetary deposit for registering a party” can, by increasing the costs of entry, “significantly discourage the emergence of new parties and help to keep existing party systems stable” (2006:109; 2007:127). On the other, and contrarily to the logic expectations (Roper, 2002:181; Rashkova, 2010:36), they also found a positively relationship between “the number of signatures required for party registration” and the number of new party entries (2006:110-111). The logic being that “the signature requirement creates a false sense of security for the new party elites about their perception of viability” (2007:128).

Together with the requirements for party creation, dispositions regulating the party dissolution can have a relevant impact at the party system level (Bale, 2003). Thus, and as it has been argued elsewhere (Casal Bértoa *et al.* 2012), the banning of a “relevant” party may not only increase the level of electoral volatility, but totally change the patterns of government formation (e.g. Turkey, Basque Country, etc.).

Finally, Biezen and Rashkova (2011), building on Katz and Mair’s original thesis, have recently found that “increasing party regulation [has] a negative effect on the number of new party entries”, but only after controlling for post-communist countries (2011:7, 16).²⁷

Table 2. Polish Party System Indicators (1989-2012)

Electoral	Electoral	Number of	Total Number	Number of	Small Party
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²⁶ For the opposite argument, see Casas-Zamora (2006: 44-45; 218-219), Koole (1996:517), Roper (2002:181) or Tavits (2007:127). Other scholars have found “no effect” at all (Grzymała-Busse, 2007:200; Rashkova, 2010:36; Roper and Ikstens, 2008:2-3; Scarrow, 2006:635; Tavits, 2006:109).

²⁷ For a similar argument, see Gherghina *et al.* (2011).

Year	Volatility	New Parties*	of Parties	Winning Parties	Vote Share
1991	-	-	23	29	20.6
1993	34.8	4	15	8	28.1
1997	19.2	4	10	6	12.8
2001	49.3	4	8	7	4.2
2005	38.4	3	11	7	11.4
2007	24.6	0	7	5	4.3
2011	7.7	4	8	6	4.4

* Mergers and electoral coalitions excluded.

Sources: Own calculations and Markowski (2008:1059).

In order to test the relationship between party regulation and party system formation and development in Poland, and following Birnir (2005) and Scarrow (2006), table 2 above displays five different systemic indicators: namely, the level of electoral volatility (i.e. Pedersen's Index), the number of new parties entering the system, the number of parties winning at least 0.5 per cent of the vote, the "raw" number of parties winning legislative seats and, finally, the share of parties winning less than 5 per cent of the vote.

According to both Casal Bértoa *et al.* (forthcoming) as well as van Biezen and Rashkova (2010:26-27), the amount of party regulation (both in terms of magnitude and range)²⁸ have increased exponentially since the first Party Law in 1990. However, and contrary to what scholars have hypothesized, political formations have continued to appear in the Polish political scene. In fact, between the moment of the "great leap forward" in terms of the amount of party regulation (i.e. adoption of the 1997 LPP) and the present, the number of new parties entering the party system has reached the not inconsiderable number of fifteen. Some of them even with rather good electoral results, despite being formed just few months ahead of elections: namely, the Movement for the Reconstruction of Poland (in 1997), Civic Platform as well as Law and Justice (in 2001) or Palikot's Movement (in 2011). All in all, and even if it is true that the total number of political parties in the Polish party system has declined - according to some scholars (e.g. Gwiazda, 2009), fruit of the increasing level of systemic institutionalization - the number of new political formations with the capacity of shocking the party system has remained more or less the same all these years (see table 2, column 3), discarding any possible relationship between the latter phenomenon (i.e. party creation) and the amount of party regulation.

²⁸ While "magnitude" refers to the aggregated frequency of regulatory provisions for all regulatory categories, range tries to simply capture the number of regulated categories. For more details see Casal Bértoa *et al.* (forthcoming).

In relation to the specific content of party regulation, and taking into consideration that, in contrast to other Eastern European countries (e.g. Latvia, Slovakia or Ukraine), no deposit fee is required in any of the Party Laws, another way in which party legislation may have influenced the Polish party system refers to the number of minimum signatures need to officially registered a party: namely, 15 between 1990 and 1996; 1,000 from 1997 afterwards. When looking at the total number of parties in the system (either at electoral – column 3 – or parliamentary – column 4 – level), it is possible to observe an important decrease from the 1991-1996 (19 parties) to the period inaugurated with the 1997 elections (9 and 6 parties, respectively). On the other hand, while the number of registered parties kept growing from 222 in July 1993 to 325 in June 1997, the 1997 requirement clearly reduced the number of (re)-registered parties to under 80 by the end of the century (Kubiak and Wiatr, 2000:183-187). Although this could lead us to think of an important “registration” effect, the truth is that most of the initially registered parties “were entirely quiescent” or “small enough to accommodate all members on a sofa” (Sandford, 2002:193). In a similar vein, if we exclude the first free and fair 1991 elections, when the number of parties acquire gigantic levels – mainly due to the “liberal electoral formula (Hare)” and the lack of “threshold requirement” (see Bakke and Sitter, 2005:252; Chan, 2001:75), the differences between the two regulations are not so big: electorally, 15 parties in 1993 against 10/11 in 1997/2005; legislatively, 8 in comparison to 7/6 in most other cases. Moreover, and bearing in mind our previous remarks, the abovementioned increase in the “costs of entry” has not functioned as a deterrence for the continuous formation of new political parties.

Taking into account that no political parties have been banned/dissolved in Poland since the re-inauguration of democracy in 1989,²⁹ we pass now to examine the possible systemic effects of party funding regulations.³⁰ The basic expectation is that, if as Katz and Mair (1995) hypothesized public funding guarantees both the survival and supremacy of already existing parties, assuring the stability of the structure of inter-party competition, all the indicators displayed in table 2 should

²⁹ In fact, only two judgments have been made so far in respect of constitutionality of political parties and both concerned with the details of the statute of two different parties, namely, the already mentioned Christian Democratic Party of the Third Polish Republic (OTK 8.III.2000, Pp 1/99) and the Self-Defense of the Republic of Poland (OTK 16.VII.2003, Pp 1/02) (see also Garlicki, 2003:272).

³⁰ This is not to say that parties have not been stricked off from the Register due to financial reporting infractions (see GRECO report). Still, they refer to minor political parties deprived of any influence in the party system. complaints to the Supreme Court were for the most part rejected (e.g. all ten complaints submitted in 2005), and each year a number of applications to strike off a party from the register were submitted to court (e.g. 17 applications in 2005).

experience a significant decrease (i.e. indicating the “freezing out” of smaller parties) after the introduction of public subsidies (in 1993) or a notable increase (as small party activity will be stimulated) after the decrease in the payout threshold in 1997 (from 5% to 3%) or the stricter regulations introduced by the 2001 legal reform.³¹ Although the former did happen, but mainly for the abovementioned reasons (linked to the electoral system), the latter did not. On the contrary, as Szczerbiak has recently remarked, “the prospect of party funding may, ironically, in some ways have actually reduced barriers to entry” (2008:313; see also Lewis, 1998).

On the Consequences of Party Regulation for Party System Development

In contrast to the theoretical expectations, our previous analyses clearly show no connection between party system development and public subsidies, neither with its presence nor its type. The question is then: does this really mean that party funding regulations have no impact on the party system at all? In our understanding such “expected” effect takes place at the party, rather than the systemic, level. Our intuition³² is that while parties relying only on private funding will have it difficult to survive, publicly subsidized political forces will be able to survive as partisan organizations even in the event of important losses of electoral support.

Table 3. Party Funding and Party Continuity (1991-2011)

% of votes	1991	1993	1997	2001	2005	2007	2011
≥5.0	PD/SLD/WAK/ PC/PSL KPN/KLD/PL/S	<i>SLD/PSL/</i> <i>PD/UP/</i> <i>KPN/BBWR</i>	<i>AWS/SLD</i> <i>PD/PSL</i> <i>ROP</i>	<i>SLD-UP</i> <i>PO/PiS</i> <i>SO/LPR</i>	<i>PiS/PO</i> <i>SO/SLD</i> <i>LPR/PSL</i>	<i>PO/PiS</i> <i>LiD</i> <i>PSL</i>	<i>PO/PiS</i> <i>RP/PSL</i> <i>SLD</i>
<5.0 ≥3.0	PPPP	<i>O/S/PC</i> <i>KLD/UPR</i>	<i>UP</i>	<i>AWSP</i> <i>PD</i>	<i>SDPL</i>		
<3.0 ≥0.5	<i>DC/UPR/SP/SD</i> <i>PCD/ZP/PPEZ</i> <i>PWSN/PPE</i> <i>X/RDS</i>	<i>SO/X</i> <i>RdR/PL</i>	<i>KPEiR</i> <i>UPR</i> <i>KPEiRRP</i> <i>BdP</i>		<i>PD/UPR</i> <i>RPRP</i> <i>PPP</i>	<i>SO/LPR</i> <i>PPP</i>	<i>PJN/KNP</i> <i>PPP</i>

Source: EED (2012)

Although a first look at table 3, which distinguishes between parties receiving public subsidies (in italics) and those which do not, could lead us to reject such “organizational” effect as some Polish parties have managed to survive in spite of relying almost exclusively on private funds (e.g. UPR, PPP and SO), while others fell into oblivion despite having received an important

³¹ With the exception of the electoral volatility, which suffered a huge increase in 2001, most indicators kept running contrary to the theoretical expectations. Moreover, a great amount of such volatility at the electoral level can be explained, rather than by the introduction of stricter funding regulations, by the great level of party switching of Polish political elites (Markowski and Czeńnik, 2002).

³² Interesting enough, and perhaps with the exception of Spirova (2007), no works following this “causal” path could be found in the literature.

amount of public funds (e.g. ROP, KPN and BBWR); the truth is that these constitute “the exception”. Indeed, a closer examination of the links between public funding and party survival in the table above reveals that while most of the political forces deprived of public subsidies were forced to dissolve (up to 19), colligate (4) or merge (1) immediately or after the next elections; most publicly funded parties have continued to play a prominent role within the party system (e.g. PSL, SLD, PO and PiS).³³ Moreover, while “historically” important forces as AWSP (after 2001), PD (after 2005), SO or LPR (both after 2005) disappeared from the political scene as soon as they failed to reach the payout threshold, parties like UP (after 1997), PD (after 2001) or SdPL (after 2005) managed to overcome their “journey in the desert”, at least momentarily, thanks to the financial generosity of the State.³⁴

In this context, it seems clear to state that while state party funding in Poland has not been able to prevent the creation of new political forces challenging an already “inchoate” *status quo*, public subsidies have helped certain party organizations to endure, especially in the case of electoral backlash, while condemning into oblivion to all those parties deprived of it.

On the other hand, and taking into consideration the substantial differences between the funding of and resources controlled by the post-Communist parties and the post-Solidarity movements at the early stage of democratic transition in Poland, early funding regulations were designed to lessen the influence of plutocratic funding and to promote effective political equality. Looking at the last two decades of regulating political parties in general and party funding in particular one could make the following observations.

Firstly, the party funding regulations of 1997-2001 contributed to the disappearance of striking contrast between the funding of post-communist parties (SdRP/SLD, PSL, SD) and the post-solidarity parties (UP, UW, AWS, PiS and PO). As a result of restrictions on parties’ economic activities (considerably limiting their ability to rent out party properties)³⁵, severe financial sanctions, and an allocation formula for public funding (linked to a party’s electoral performance) the supremacy of the former regime parties in terms of political resources has completely diminished. While in the first decade of democratic transition the income and expenditure of the Polish Peasant Party (PSL) was on average 25.5 times higher than that of

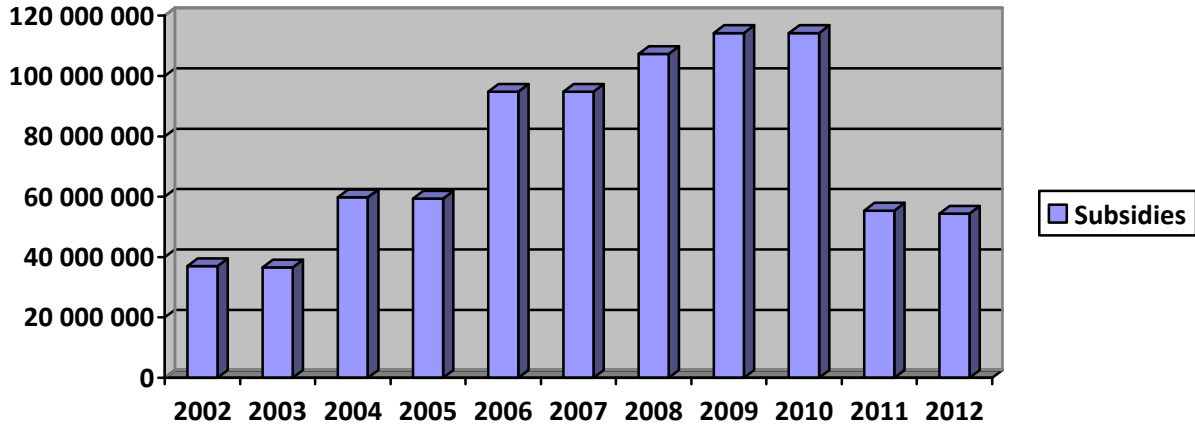
³³ Even if deprived of state support between 1990 and 1993, as “post-communist successors”, both SLD and PSL had important economic “private” assets inherited from the previous political regime (Szczerbiak, 2001).

³⁴ Both UP and SdPL even managed to return to parliament and form their own parliamentary group in 2001 and 2007, respectively.

³⁵ Article 24 sections 3 and 5

Labour Union (UP) (Walecki, 2005: 263) by 2005 the post-communist parties (SLD and PSL) could not balance their accounts.

Figure 1. Statutory (direct) subsidies to political parties in Poland



Secondly, Polish public funding system is quite generous, even with the regulatory reduction of the amounts of subsidies.³⁶ In total since 2002 political parties have received over 827,000,000 PLN for their statutory activities. Moreover, according to parties financial reports the importance of private funding has drastically declined while public funding became dominant. For example, public funding accounted for only 4.75 per cent of the total income of the PSL in 1997 and 4.44 per cent in 1998. In the case of the Freedom Union public funding accounted for 11.63 per cent in 1998. In the period of 2005-2011, public funds constituted from 55 to 90% of revenues of the major political parties.

Thirdly, the allocation formula for public funding of political parties, based largely on the number of seats in parliament and valid votes, means that election results play a fundamental role in terms of distribution of funds and parties' fundraising strategies. It is in the interest of political pluralism to condition the provision of public funding support on attaining lower threshold than the electoral threshold. Moreover, regulations should ensure that the allocation formula does not provide one party with disproportionate amount of funding. After the 1997 Parliamentary Elections almost \$4,117,647 was allocated to the successful election committees. The two main parties, the AWS and the SLD, received almost 80 per cent of this total sum. In 2005-2011 the

³⁶ Both in 2001 and in 2010 the parliament amended law on political parties in order to reduce statutory subsidies.

biggest share of public subventions was allocated to Civic Platform and Law and Justice, yet the total percentage was significantly lower than a decade ago.

Table 1. Election results and allocation of state statutory subventions to political parties (2001-2011)

Indicators / Elections	2001	2005	2007	2011
Percentage of votes cast for the 2 biggest parties	60.96%	53.72%	51.13%	73.62%
Percentage of seats won by the 2 biggest parties	79.35%	61.09%	61.96%	81.52%
Percentage of public funds (statutory subvention) received by the 2 main beneficiaries	(2002) 50.66%	(2006) 47.1%	(2008) 49.13%	(2012) 62.9%

Fourthly, the system of public funding for political parties in Poland is not a matching fund system. It is not linked to any form of popular funding and income from membership subscriptions or small donations has no impact on the allocation of public funding. This is the major shortcoming as the current funding regime does not encourage political parties in Poland to engage in active and permanent fundraising but actually disproportionally sanctions minor mistakes related to private funding. Thus, political parties, instead of engaging in grass-roots initiatives, recruiting new members/donors, and collecting small donations, display a high level of dependence on public funds. This has contributed substantially to a weak grounding of parties in civil society and orientated them towards the state for additional financial resources at the expense of seeking private funding. The recent evidence shows that multiple matching fund systems can increase the extent to which parties and candidates rely on small donors financially. (Malbin 2012: 16-17)

Furthermore, the importance of electoral rules and indirect state subsidies for the consolidation of political parties should not be underestimated. Since 1993 the electoral system has eliminated independent candidates³⁷ and created restrictions for newly emerged political parties to register candidates and use substantial indirect subsidies, mainly free broadcasting. Firstly, the Election Code (as the election laws before) stipulates that only those electoral committees which have their lists of candidates registered in more than half of the constituencies (i.e. in at least 21 out of 41 constituencies) could register their lists without supporting signatures in the rest of the constituencies.³⁸ Secondly, the Election Code provides for free broadcasting of

³⁷ Independent candidates cannot stand alone in the *Sejm* elections but only in list-sharing with other candidates in a multi-member constituency.

³⁸ Only six political party election committees and one election committee of a coalition registered candidate lists in all of the 41 constituencies for 2007 elections. In 2011 only seven electoral committees registered nationwide candidate lists for the *Sejm* (PO, PiS, PSL, SLD, the Palikot Movement (RP), PJN and the Polish Labour Party (PPP). No coalitions were registered for 2011 elections.

campaign materials prepared by electoral committees on public television and radio.³⁹ Only those electoral committees that registered lists of candidates in at least half of the constituencies are entitled to free broadcasts nationwide. Given the average commercial cost per minute of advertising on TV and Radio respectively, a financial equivalent of this subsidy amounts to tens of millions of PLN (Walecki, 2005: 142).

The Polish case might demonstrate an interesting exception to the cartel party model (Katz and Mair: 1995), according to which once parties have access to public funds, they become dependent on it and are not interested in changing this state of affairs. In Poland, the dominant party - the ruling Civic Platform and the main beneficiary of public funding system, - since its' formation, has advocated in its' party platform for abolishing of public funding of political parties. In 2008 Civic Platform submitted a draft of an act that was designed to abolish public funding and change return to the practices of the early 1990s.⁴⁰

Conclusions

Samuel Huntington argued that “a primary criterion for democracy is equitable and open competition for votes between political parties without government harassment or restriction of opposition groups” (Huntington 1993: 17). Creating and protecting multiparty democracy required Poland to put in place new political party regulations which would safeguard political pluralism⁴¹ and would contribute to the development of modern multiparty system. In early 1990s political party regulations aimed to facilitate a pluralistic political environment, execute the old regime parties' withdrawal from the state, and the conversion of *the Party* into *parties*.

Late 1990s and new regulations resulted from growing demand for leveling playing field, greater accountability and transparency of political parties and their operations. While the amount of party regulation has increased exponentially since 1997, Markowski argues that the Polish party system does not seem to be either overregulated or under regulated by the state (Markowski 2009: 72). Yet this paper illustrated that the evolution of party regulations was particularly complex, rapid and was lacking stability. Since the fall of Communism in 1989, the political party and campaign finance regulations have been changed over 15 times, not to mention many

³⁹ In the case of the *Sejm* candidates, 15 to 30 hours of national coverage and 10 to 15 hours of regional coverage on *TVP* and *Polskie Radio*, respectively. For the candidates to the *Senat*, 5 to 10 hours of national coverage and 3 to 6 hours of regional coverage on *TVP* and *Polskie Radio*, respectively.

⁴⁰ Draft of an Act on abolishing the financing of political parties from the state budget (Sejm publication no. 764 - A of 21 July 2008).

⁴¹ As observed by Sartori “Political pluralism points to „the diversification of power” and (...) to the existence of a “plurality of groups that are both independent and noninclusive.” Sartori p. 14

unsuccessful attempts. In fact these changes have been so deep that they have had profound consequences for political parties and, indirectly, have reshaped the party system (Walecki, 2005: 47-48).

High level of instability of party regulations reflected the rapid political and economic transformation as well as the process of *Europeanization*. The process of Europeanization understood as the standardization of domestic party regulations with European democratic standards was particularly evident in the case of party funding regulations. During the accession of CEE candidates the Union moved beyond the general political accession criteria and developed a specific conditionality regarding anti-corruption and party financing as early as 1999 with Poland being one of the first countries to be effected by these requirements (Walecki:2007, 11). Nevertheless some of these frequent changes and numerous proposals were also the result of political whim. Politicians were quicker than academics to understand that party regulations can reshape party system, if not directly...at least indirectly.

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