



Party Law in Modern Europe

The Legal Regulation of Political Parties in Post-War Europe

Party Regulation in Italy and its effects

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The Legal Regulation of Political Parties

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Party Regulation in Italy and its effects

Introduction¹

Political pluralism is the fundamental principle around which the newly established Italian democracy formed after the II World War. The Italian Constitution introduced universal suffrage, established proportional representation as the electoral system, gave central power to the Parliament and established the freedom of association in political parties. The dividing line with the fascist period, which had eliminated free elections, marginalized the Parliament, outlawed all opposition parties, and introduced a majoritarian system, could not be clearer. However, although recognizing political parties, and differently from the German Basic Law adopted only one year later, the Italian Constitution did not realize the ‘militant democracy’ ideal (Ceccanti and Clementi 2008). In fact, it has not constitutionalized the political parties’ ends and activities. Moreover, the Italian Constitution has not established, in a clear and undisputed formulation, the duty for political parties to conform to democratic methods in their internal organization, and it does not explicitly require the drafting of secondary legislation on political parties. Indeed, no further regulation of political parties has been established in Italy, except the one on their public financing.

In this paper we will discuss the combination of those two elements, i.e. the absence of a party regulation and the public funding system, in the light of a comparative analysis of party regulation in Europe. Scholars have observed how changes in the legal status of political parties have taken place as an effect of the introduction of party finance regulation. We will show how Italy remains exceptional in this respect, as the introduction of a system of public funding to political parties has not implied any change in the legal status of political parties, which remained overall *legibus soluti*. Moreover, we argue how this combination, the absence of party regulation and the specific features of the system of public funding in particular, have encouraged a

¹ This paper forms part of a larger research project on the legal regulation of political parties in post-war European democracies. Financial support from the European Research Council (ERC_Stg07_205660) is gratefully acknowledged.

large number of political parties to remain alive, in turn contributing to the fragmentation of the party system.

This paper is structured as follows. First, we describe the position of political parties in the Constitution. Starting from the debate on political parties in the Constitutional Assembly (1946-1947) we will analyze the status of political parties in Italy emphasizing in particular their freedom from legislative constraints. Afterwards we will discuss the regulation of public funding to political parties and its major developments since the establishment of a party finance law in 1974. Most importantly, we will show how despite the outcome of a popular referendum public subsidies have been increasing, simultaneously to a gradual lowering of the thresholds determining access to public funding. In the final section of this paper we shed light on the recent developments taking place in the field of party regulation in Italy. Drawing on a comparative experience of the introduction of party laws, we argue that it is likely that a law on political parties is going to be established in Italy in the short future.

The place of political parties in the Italian Constitution

In order to fully appreciate the legal status of political parties in Italy, it is crucial to start from the country's fundamental law.² Not only within the Constitutional Assembly the most detailed debate can be found around whether and to what extent parties should be regulated, but also the Constitutional provisions on political parties – in particular art. 49 of the Constitution – are of crucial importance for an understanding of what has impeded the Italian legislator to establish a regulation of political parties so far, and the terms on which a party law could be brought forward in Italy in the future (Grasso 2010).

The Italian Constitution refers to political parties in three articles. In art. 49, it establishes the right of all citizens “to associate freely in political parties in order to contribute by democratic means to the determination of national policy” (art. 49); in art. 98 it prescribes the incompatibility of party membership with activity in the judiciary, in the armed forces and in diplomatic and in consular representation organs abroad (art. 98); in the XII Transitory and Final Provision it prohibits the

² For a comparative analysis of party constitutionalization in Europe, see Van Biezen 2011.

reconstruction of the Fascist party. While the two latter articles found an immediate consensus among the political forces participating to the Constitutional Assembly, the process leading to the final formulation of art. 49 was far more complex and politically loaded. As Merlini argued, all political forces agreed that the Constitution should have included references to political parties, but the positions on how this should have happened differed substantially (Merlini 2007, 6).

Several were the decisions that the Constitutional Assembly had to take on the role, the legal position, and the functioning of political parties in the newly reestablished democracy. Should they be considered as organs of the state? Should they acquire legal personality? Should their functions be laid down in the Constitution? Should limitations be prescribed on political parties' ideological foundations, activities, or on their internal organizational functioning? Finally, should there be a reference to a secondary legislation in relation to political parties? The answers to all these questions ultimately turned out to be negative.

The place that political parties acquired in the Italian Constitution has often been observed as an intermediary solution between the German and the French fundamental laws: whereas the German Basic Law actually incorporated political parties in the state ('Inkorporation'), and the French one refers to political parties merely as electoral subjects ('Ignorierung'), the Italian Assembly chose for an in-between solution ('Legalisierung'), which allows "for the maximum expansion of freedom of association in political parties" (Ridola, 1982, 73-74). Political parties are recognized as intermediary associations between the society and the institutions. It is worthwhile citing art. 49 at length:

'All citizens shall have the right to associate freely in political parties in order to contribute by democratic means to the determination of national policy' (Constitution art. 49).

The citizens, the subjects of the article 49, may freely associate in political parties (the societal level) whose ends are those of 'determining national politics' (the political-institutional level) (Ceccanti 2008). Table 1 shows the critical differences between the constitutional recognition of political parties in Italy and in the almost contemporary German Basic Law.

[Table 1 about here]

First, differently from the German Basic Law established in 1949, political parties are not considered as belonging to the state-apparatus. This also emerges from the different position of the ‘party article’ in the two constitutional charts: among the state organs in the case of the Basic Law (that follows the ‘Basic Rights’), and in the first part on the ‘Citizens’ Rights’ in the Italian Constitution. Secondly, the Italian Constitution does not prescribe political parties’ ideological foundations, with the relevant exception of the reconstruction of the Fascist party disposed in the XII Transitory and Final Provisions. Third, no limitations are imposed on the political parties’ activities, with the exception of the external activities of political parties endangering democratic competition. The acceptance of the democratic formula is therefore the only limitation that political parties face.

With respect to the two latter aspects, it has been observed how the ‘militant democracy’ idea, whose ‘cradle’ is to be found in the German model (Thiel 2009, 8), has never been realized in Italy, neither in the country’s Constitution nor in its wider legal system (Ceccanti and Clementi 2008). Overall, the main goal of article 49 is to recognize the political freedoms that the Fascist regime had banned and to guarantee the pluralist vocation of the Constitutional chart (Ceccanti 2008).

Another important difference relates to the parties’ internal organization. While the Basic Law is unequivocal in prescribing an internal democratic functioning, the Italian Constitution’s failed to establish, in a clear and undisputed formulation, prescriptions on parties’ internal organizational structure. In the Italian Constitution, moreover, there is no explicit reference to secondary legislation on political parties, and there is no reference to the political parties’ financial responsibility.

It was mainly the opposition of the Italian Communist party (PCI) in the Constitutional Assembly that made proposals for more stringent prescriptions on political parties to fail.³ At the origin of the Communists’ rejection, stands the fact that those two provisions touched upon sensitive points for that party. On the one hand, limitations on the political parties’ ends potentially endangered the PCI because of its ideological linkages with the Soviet Union. On the other hand, the party representatives feared limitations on the internal organization, which could potentially constrain the Communist internal model based on ‘democratic centralism’.

³ For a detailed reconstruction of the debate on political parties in the Constitutional Assembly, Merlini 2008 and 2009.

All in all, art. 49 of the Italian Constitution has been observed as being essentially the result of a non-agreement between the major political forces taking part to the Constitutional Assembly (Merlini 2007, 2009). Not surprising therefore are the definitions of art. 49 that can be found among constitutionalists and political scientists: “inadequate” (Pasquino 1992), “handicapped” (Elia 2009), “norm with no prescriptive significance” (Del Pennino and Compagna 2005), “incomplete, weak and contradictory” (Merlini 2009), etc.

Particularly ambiguous is the phrasing around the ‘democratic method’. For decades, the Italian jurisprudence has remained divided on the interpretation of the ‘democratic method’ referred to in art. 49. Should this prescription apply to the external activity of political parties only – therefore limiting the political parties’ external activity to the respect of the democratic order – or should it instead apply to the internal organizational structure of political parties? Notwithstanding the presence of some prestigious voices,⁴ it is the second interpretation that has prevailed. Political parties are free to decide on their internal functioning. Consequently, also the interpretation prevailed that no further legislation had to be established in the field of political parties.

Not differently than in most countries, political parties in Italy are considered as private associations. What instead differs from most countries is that political parties have no legal personality.⁵ Political parties are regulated by those articles of the Civil Code containing provisions on the ‘Associations with no legal personality’ (arts. 36-38).⁶ Under art. 36, “(t)he internal organization and administration of associations that are not recognized as legal entities are governed by agreements between the members. [...]” (Civil Code, art. 36). Hence, the parties’ internal organization is entirely determined by internal agreement, political parties are not required to register

⁴ The ‘democratic method’ to be applied to the internal organization of political parties was the position the constitutionalist Piero Calamandrei, who complained that the final wording of art. 49 made the reference to the ‘democratic method’ totally evanescent. Similarly to Michels’s well-known argument, Calamandrei maintained how “(a) democracy cannot be defined in these terms if the very political parties are not democratic themselves” (P. Calamandrei, cited in Grasso, 2010, 9).

⁵ In most European countries political parties are legally prescribed to have legal personality. Alternatively, legislation may allow for political parties to acquire legal personality if they wish to do so.

⁶ The difference with the regulation of the trade unions in the Italian Constitution should be noted here. Under art.39, they are explicitly recognized of juridical personality and to be subject to registration and public control of their internal organization.

(not even as private associations), and they are not subject to publicity of rights, duties and obligations, and most importantly, liabilities under law.

All in all, the Italian Constitution left political parties as substantially unregulated, or, as it has been argued, in a “condition of juridical semi-clandestinity”, “isolated in a nebulous pre-judicial sphere”.⁷ It is a shared opinion that this lack of regulation determined a series of unsolved problems that have influenced for years on the evolution of the Italian democracy (Merlini 2007). Before evaluating those effects, we will first examine the evolution and the specific characteristics of the system of public funding of political parties.

The system of public funding of political parties

The “incomplete” or “inadequate” wording of article 49 has left ample margins for ambiguity, and the Italian parties have been acting within such margins. One of the few aspects in the life of political parties that are instead regulated is provided by the system of public funding. Public financing remains the most important source of revenues for political parties (Tarli Barbieri 2007, Pacini 2009). Italy, in this respect, follows a similar trend of state dependency as most contemporary democracies (Van Biezen and Kopecky 2007; Pizzimenti and Ignazi 2011). As we will see, the system for public funding adopted in Italy has favoured certain aspects of the party system, especially fragmentation, by a series of incentives which have allowed a large number of small political parties to remain active.

The regulation of public funding was introduced in 1974 after a period of scandals related to political corruption: its goal was to make party revenues transparent and to guarantee equal opportunities and freedom of action to political parties (Musumeci 1999; Ridola 2000; Bianco 2001). The system of public funding has been subject to continuous changes, of a: a) technical nature, adapting the funding system to the mechanisms of the electoral systems; b) political nature, by the will of parties to reinforce the channel of state contributions. A number of key features of the development of the party funding system can be underlined. First, the incremental nature of reforms: since 1974 the public funding regulation has been implemented by

⁷ Both cit. in Grasso, 2010, 655.

introducing amendments to the standing legislation, while a comprehensive reform through a consolidated legislation has never taken place. Second, the party finance reforms have almost always enjoyed broad support within the political class, even by the creation of unusual parliamentary alliances, and have always been approved very quickly (even within a few hours, see Di Donfrancesco 2002) and often accompanied by very poor parliamentary debate, which is evidence of the compact position of parties in this respect. Given this consistent behaviour of politicians, the public opinion has perceived public funding as a means of fostering the ambiguity and the opacity of the system, rather than as a channel providing for greater transparency in the political parties' financial management.⁸

The 1974 party finance law envisaged two avenues of public funding: a *regular contribution*, consisting of the ordinary payment of an annual amount to parties achieving parliamentary representation, and a *reimbursement of election expenses*.

From 1974 to 1993, both funding systems were applied. The majority of public funding in this period took the form of ordinary contribution, supplemented in election times by the system of election reimbursement. In this period, public funding of political parties contributed to the crystallization of the party system configuration: the largest part of public funding is done via the ordinary contribution to parliamentary groups (mainly according to their numbers), thereby “cementing” the party system (Bianco 2001).

Since 1993, as the consequence of the 1993 referendum, only the reimbursement of election expenses is in force.⁹ The current model of public funding, introduced with Law 157/1999, provides for reimbursement of election expenditures for the Chamber of Deputies, the Senate, the European Parliament and the regional councils. Despite the differences in the eligibility criteria, in the amount of money at disposal,¹⁰ and in the system of allocation of the different funds, the mechanisms of how the four funds operate are identical: a reimbursement fund is set up for the election of each assembly,

⁸ Two referenda took place against public funding for parties. The first, in 1978, failed for a small margin of votes (56.6 per cent voted for maintaining direct public funding), while in the second, which took place in the ‘critical’ 1993 corruption scandal crisis, 90.30 per cent voted in favour of the abrogation of the ordinary contributions to parties.

⁹ Regular contribution was ‘covertly’ reintroduced for the years 1997-1998, by giving taxpayers the option of earmarking 4 per cent of their income tax for the funding of the party system.

¹⁰ The size of each fund is determined by multiplying 1 Euro per elector, for 5 years.

and the money is distributed proportionally to those parties that reach a specific threshold. The characteristics of the current model of party funding can be summarized as follows:

- a) To compensate the political parties' loss of revenue due to the abrogation of the ordinary contributions, the amount reimbursed to parties for the election expenditures has increased exponentially. In the space of 15 years, six to eightfold, depending on the type of elections (Pacini 2009, 187).¹¹
- b) Since the 1999 amendments, a progressive lowering of the payoff thresholds took place, resulting in an increase of the eligible parties.
- c) No correlation exists between the costs incurred by the parties during election campaigns and the sums that are afterwards "reimbursed". Reimbursements in fact are not paid out on the basis of sums of money spent during an election campaign, but on the basis of having achieved a minimum threshold. This transformed the reimbursement of expenses into a disguised form of ordinary contributions.
- d) Since 1999, the reimbursement is no longer provided as a lump sum, as it used to be, but it is divided into annual instalments, allowing parties to have a fix income for the five years following elections. As elections are quite frequent, this produces *de facto* a continuous channel of ordinary funding for political parties due to the continuous replenishment of the reimbursement funds after elections. This also introduces the second effect of the current system, namely the phenomenon of "crystallization" (Pacini 2009): some parties survive financially because they continue to receive public funding, even though they are in practice politically extinct (such as the case of the party 'La Margherita', which continues to receive reimbursements despite having merged into the Democratic Party).

A system of privileges without constraints

Another crucial characteristic of the system of party funding in Italy is the lack of balance between public resources at the parties' disposal and obligations and responsibilities that accompany their obtainment.¹² The Venice Commission

¹¹ This increase seems to have been halted starting with 2007 with the introduction of the first measures limiting public spending.

¹² Criticisms on this point have recently been raised by a number of constitutionalists. See Barbera (2006, 2008), Grasso (2010), Massari (2006). Already in the 1960s, Elia argued how

guidelines,¹³ aimed at developing common principles and good practices for states in the development of regulations on political parties, place particular emphasis on this specific aspect:

“Political parties may obtain certain legal privileges, [...], that are not available to other associations. This is particularly true in the area of political finance and access to media resources during election campaigns. As a result of having privileges not granted to other associations, it is appropriate to place certain obligations on political parties due to their acquired legal status. This may take the form of imposing reporting requirements or transparency in financial arrangements. Legislation should provide specific details on the relevant rights and responsibilities that accompany the obtainment of legal status as a political party” (Guidelines on Political Party Regulation, .23, p. 11).

The underlying logic behind such recommendations is the basic principle of *do ut des*: political parties benefiting of public funding should become subject to a number of specific rules. There must be a balance, in other words, between privileges and constraints.

Scholars have observed how overall, changes in the legal status of political parties have taken place as an effect of the spread of party finance regulation: “Many of these regulations and party laws were first introduced or were substantially extended in the wake of the introduction of public funding for parties, with the distribution of state subventions inevitably demanding the introduction of a more codified system of party registration and control” (Mair 2005, 19). Similarly, Scarrow: “The introduction of either party finance regulations or subsidies has often been accompanied by new legal definitions of political parties [...]. This legal language defines what a party is, and may even establish rules for getting onto a public registry of political parties, thus clarifying which organizations are covered by the new subsidies and finance rules” (Scarrow, 2011, 21). Indeed, the very promulgation of laws on political parties in Europe does often closely follow, when it does not coincide, with the introduction of public subsidies to political parties. Germany is the most often cited example, having established a law on political parties (1967) relatively soon after the introduction of their public financing of political parties (1959). Besides the case of Germany, we could mention the cases of Finland (where public funding of political parties was

any law introducing public financing has a number of “logical implications”, among which the subordination of political parties to state regulation (L. Elia 1966, as cited in Grasso 2010, 657).

¹³ ‘Guidelines on Political Party Regulation’ by OSCE/ODIHR and Venice Commission. Adopted by the Venice Commission at its 84th Plenary Session (Venice, 15-16 October 2010).

introduced in 1967 and the party law was enacted in 1969), and the cases of Austria, Bulgaria, Croatia, Czech Republic, Estonia, Hungary, Lithuania, Romania, Slovenia, Ukraine and the European Union itself,¹⁴ where a single Act both prescribes provisions on public financing of political parties and provides a legal definition of political parties. It is worth mentioning how the *do ut des* logic has applied even to the French case (n.b., one of the historically most liberal traditions in opposing state control over political parties' life), as the party finance law enacted in 1988 gives for the first time a legislative status to the parties, granting them political personality (Dorget, 2004).¹⁵

Italy remains exceptional in this perspective. Not only is it among the few European countries where political parties are not required to have legal personality, but it is also exceptional for not having established any specific constraints, neither substantial nor merely formal, that political parties are obliged to respect for benefiting of public funding.

The question on whether political parties should acquire legal personality was among the issues that had been discussed and then dismissed by the Constitutional Assembly. The issue occasionally reappeared in a (limited) number of law proposals and parliamentary debates,¹⁶ with no further legislative intervention. Indeed, when the Regulation (EU) 2004/2003 set the legal requirement for political parties at the EU level and the conditions concerning their funding, Italy (together with Denmark and Austria) voted against. The opinions of the two Commissions of the two chambers of the Italian Parliament expressed two main concerns. First, they feared whether party registration procedures would have not made political parties too much subject of *ex ante* or *ex post* control. Most importantly, however, concerns were expressed on the

¹⁴ Regulation (EU) 2004/2003 on the regulations governing political parties at European level and the rules regarding their funding.

¹⁵ The French party finance law states as follows: “The political parties and bodies are formed and perform their activities freely. *They have legal personality*. They have the right to litigate. They have the right to acquire, for free or for a fee, movable or immovable goods: they are able to perform all the deeds compliant to their mission and especially to create and manage the journals and training institutes according to the law provisions in force (Law no. 88-227, of March 11, 1988 on financial transparency in political life, art. 7).

¹⁶ The first law proposal for the establishment of legal personality to political parties was presented to the Senate in 1958 by Sturzo. In his relation, Sturzo maintained how “although citizens should maintain their freedom of political activity, it is necessary that political parties are legally recognizable, and in the condition to assume their responsibilities facing the law”. The discussion on the legal personality in Parliament was brought forward by a number of Republican and Liberals in the mid-1970s with the introduction of public funding of political parties.

very issue of acquisition of legal status by the European political parties, as “political parties in the Italian jurisdiction are not considered as legal entities, but they fall under the category of the non-legally recognized associations”.¹⁷

Party regulation and party system fragmentation

There are of course a multiplicity of cultural, institutional and political variables shaping the format and the functioning of party systems. The status of party regulation in Italy is therefore by no means the single determinant of systemic effects. There seem, nonetheless, to be specific features of the way in which political parties are regulated that have at the very least contributed to the evolution of the Italian party system by favoring its fragmentation.

As previously mentioned, the Italian Republic formed under the vocation of political pluralism, and under a constitutional compromise that preferred to avoid constraining the political parties’ formation and activity. The underlying opinion was the one of political integration in the institutional framework of all issues, values and ideologies present at the social level (Ceccanti and Clementi 2009; Barbera 2008). In this pluralist framework, the Constitutional Assembly has not opted for a regulation of the political parties’ ideological foundations and activities, it has not imposed upon political parties any specific criteria they had to fulfill, and has more generally left political parties *legibus soluti*. With the adoption of a highly proportional electoral system (1948-1993), the nearly absence of restrictions upon political parties favored the presence of a high number of political parties, a feature that has characterized the Italian party system for decades. Indeed, Sartori famously classified Italy, together with the French Fourth Republic and the German Weimar Republic as a case of ‘polarized pluralism’ (Sartori 1966), characterized by a high number of political parties and by ideological distance between the two left-right extremes due to the presence at the two opposite poles the Italian Communist Party and the Italian Social Movement (Sartori 1966). The infamous governmental instability, the veto powers of smaller political parties, and the poor medium-long period planning that resulted, made the reduction of the number of political parties represented into Parliament to be the stated goal of all electoral system reforms that have taken place in Italy after the

¹⁷ Commission of constitutional Affairs and EU Affairs of the Chamber of deputies, and Commission of constitutional Affairs of the Senate, as cited in Grasso 2010, 625.

collapse of the ‘first Republic’ in 1993.¹⁸ However, as we will specify hereafter, this did not reflect in the introduction of a system of public finance favoring party aggregation. Indeed, the public funding regulation saw a progressive lowering of the threshold for accessing public funds and a widening of the potential beneficiaries, becoming increasingly more inclusive to smaller parties and therefore further encouraging the fragmentation of the party system. The elements of the public funding system that have favored party system fragmentation further can be schematically summarized as follows:

a) Eligibility for funding. Starting in the 1990s, there has been a gradual lowering of the thresholds determining access to public funding. Prior to 2002, the funding regulations allowed reimbursement for parties that obtained over 4 per cent of the proportional votes. Since 2002 reimbursement was extended to all parties achieving at least 1 per cent of the vote.¹⁹ Hence, poorly selective electoral systems that favoured party fragmentation were paired by reimbursement systems that were even more permissive (Table 2). The result was the gradual proliferation of beneficiaries: in 2010, 98 political formations benefited from at least one of the four funds covering election expenditures.

[Table 2 about here]

b) Surplus of revenue. Probably the most relevant feature of the current system of party funding in Italy is the transformation of the reimbursement of expenditures into a disguised form of ordinary contributions. As previously discussed, the amount of money available for parties in the respective reimbursement funds are distributed among the eligible parties according to election results, independently from the political parties’ actual expenses. Figure 1 shows the established expenditures of

¹⁸ With limited success. Despite changes in the electoral system in fact the number of parties and party system fragmentation actually increased in the period from 1996 to 2008 (Chiaromonte 2007).

¹⁹ The new rules were applied retroactively to the previous (2001) election results, thereby making also the parties having achieved 1 per cent of the votes in the political elections of 2001 eligible for funding (Pacini 2009, 201).

political parties for election campaigns from 1994 to 2008, and the reimbursement that they received.²⁰

[Figure 1 about here]

As can be seen, since 2001, when the amount of the funds was heightened, a growing discrepancy has formed between the established expenditures (marked with the blue line) and the associated reimbursements (marked with the red line). This phenomenon is more evident in the general elections, where the cost for the (single) election campaign is “reimbursed” by two existing funds (one for the Chamber and one for the Senate). In the following table, based on the expenses and reimbursements for the 2008 parliamentary elections, we show how the surplus of revenues is relevant for most of the political forces. However, considering the low eligibility thresholds, this also facilitates the survival of even smaller parties.

[Table 3 about here]

c) “Crystallization” of funded subjects. A further effect of the Italian model of election reimbursements based on the annual instalments system is that it entitles to public funding also party alliances (often of smaller political parties) that fold soon after the political elections. Despite their folding, they continue to receive public funding. This phenomenon of “crystallization” appears, in the Italian experience as very harmful to the extent that the purely “financial” survival of parties that no longer exist (one can think for instance of the complex constellation of parties that gave birth to the PDL and the PD for the general elections of 2008) is objectively a factor going against the prospects of rationalization and streamlining of the political system (thereby acting towards limiting fragmentation).

²⁰ Law 515/1993 stipulates that following the elections, the Court of Auditors must check and audit the amount of the expenses that the parties have declared to have incurred during the election campaign. Based on the provided documentation, the Court of Auditors proceeds to ascertain the aforementioned expenditure to check that they do not exceed the limits set by the law.

Adding to these elements described above, the political parties' financial irresponsibility. Indeed, financial responsibility end up broadening the beneficiary base of public contributions, too; this is in no way reduced by the requirements, as lax as they may be, imposed on parties by the law.²¹ In fact, to obtain the reimbursements to which they are entitled, parties must:

- i)* request to access the reimbursement upon submission of the electoral lists, although it is now a current practice that parties that have not applied for reimbursement before elections are “reintroduced” by provisions contained in decree laws, adopted specifically after each election (national or regional);
- ii)* present the annual report to the Presidency of the Chamber of Deputies; however, this report is subject only to formal control from a Committee of 5 auditors nominated by the Presidents of the Chambers. Furthermore, even if certain irregularities are found, parties are allowed to complete and correct the already submitted data, without this resulting in a loss of reimbursement, but only in a temporary suspension. This, as proven by practice, is a trend that is well established among parties, who at first do not submit their annual report or submit it with widespread irregularities (Bracalini 2012).

All in all, it is clear how the conditions governing public funding fail the minimal standards of transparency and control and how the absence of regulation of political parties moved well beyond the pluralist vocation of the Italian Constitution and how

Towards a ‘soft’ legislation?

It is in this framework, that the debate on the establishment of party law has intensified in the last years. Seven are the law proposals for a regulation of political parties that are currently under examination by the Commission of constitutional Affairs of the Chamber of Deputies.²² The common features of the different law proposals on party regulation share are essentially three: the attribution of legal personality to political parties and the creation of a Party Register; greater

²¹ Among the Italian political parties, only the Partito Democratico (PD) has its financial accounts reviewed by certified accountants (Agostini 2009).

²² Commissione Affari Costituzionali della Camera dei Deputati, cfr. Dossier AC0629.

transparency in public funding of political parties; the approval of a legislation implementing art. 49 of the Constitution.

Most constitutionalists seem nowadays to converge on the need for the establishment of a party law in Italy.²³ The question whether the “democratic means” prescribed in art. 49 of the Constitution should apply to the internal organizational activities of political parties has dominated the debates of constitutionalists since the times of the Constitutional Assembly. While a negative opinion has prevailed for decades, therefore limiting the interpretation of the “democratic means” to the acceptance of democratic competition, an increasing number of scholars consider now the regulation of intra-party rules as constitutionally legitimate. The fact that the citizens are the subject of art. 49 of the Constitution, it is argued, means that necessary conditions need to be established that enable the citizens to effectively participate to the determination of national politics through political parties. “Without any intervention in this field”, as Barbera argued, “it is not possible to grant the citizens the right to “determine national politics” (Barbera 2009). At the same time, constitutionalists also share the opinion that a regulation on political parties “needs to be limited”, and that not a single model of internal party democracy should be prescribed, but rather general principles should be established that favor the creation of ‘democratic methods’ – in plural, so to respect the political history and the political ends of all political parties in respect of the Constitutional chart (see a.o. Merlini 2009).

A number of further conditions seem to favor the adoption of a law on political parties in Italy. First, the absence of regulation on political parties and the improper use of public resources which reveals from the recurrent financial scandals have caused a growing level of mistrust in political parties among Italian citizens. On the theme of party regulation citizens’ initiatives have recently formed demanding for rules enforcing transparency both in the political parties’ economic management and in their internal organization.²⁴ The recent (early February 2012) public statements by the major political forces in the Parliament urging the establishment of a party law seem to well indicate the political parties’ awareness that regulatory measures should be promptly implemented in order to prevent even further public disenchantment.

²³ Among others, Elia (2007) , Barbera 2008, Bin (2007), Grasso (2010), Pinelli (2006), Massari (2006), Merlini 2008 & 2009), Martines (2011).

²⁴ References are to the most recent opinion polls (91 per cent of the interviewees declared to have little or very little trust in political parties), ISPO data, 22/02/2012; and to the citizens’ initiatives of ‘Giustizia e Liberta’ and ‘Il Fatto Quotidiano’.

A second factor relates to a long-term legal evolution of party regulation that has been taking place in Europe. Over the last decades the number of countries that adopted a law on political parties has increased significantly, and increasingly more defined are the legal contours of political parties in Europe (Van Biezen 2008, Bértoa *et al.* 2012). The establishment of specific provisions regulating political parties is moreover stimulated – and controlled – by a number of institutions and organizations operating at the European level.²⁵ It is very likely that the legislative isomorphism that has been characterizing a growing number of European countries will also affect Italy.

A third aspect favoring the establishment of a law on political parties originates instead in the current systemic condition of the country. It has been argued that party laws in Europe have been established under specific conditions of the political systems. Pinelli mentions “phases of large consensus between political forces, when it is necessary to legitimate or (re)legitimate the political system” (Pinelli 2006, 772). As an example, Pinelli refers to Germany, Spain and Portugal, which share having adopted a party law in critical moments of their political and institutional development.²⁶ Similarly, a recent large(r) N analysis shows a straightforward interconnection between the democratization wave in Eastern Europe and the establishment of a law regulating political parties. The necessity to control the creation and activity of the parties starting to proliferate in the new democratic environment determined the adoption of a party law in all Eastern European countries (Bértoa *et al.* 2012, 5-6).²⁷ In this light, the current ‘emergency’ or ‘technical’ government, in force with the support of (almost) all the parliamentary parties, may be the opportunity for introducing some type of regulation of political parties in order to reverse the trend of a long-during legitimacy crisis in which the Italian political parties are invested.

²⁵ The Group of States against Corruption (GRECO) visited Italy in October 2011 and will release its evaluation report on Transparency and Party Funding in March 2012.

²⁶ Germany, adopted its 1967 party law under the ‘Grosse Koalition’, while Spain and Portugal, which approved their party law in the mid-1970s, simultaneously to the approval of their new Constitution.

²⁷ In most cases, with the sole exception of Latvia and Serbia, party laws were introduced in the years immediately following the democratic transition (Bértoa *et al.* 2012).

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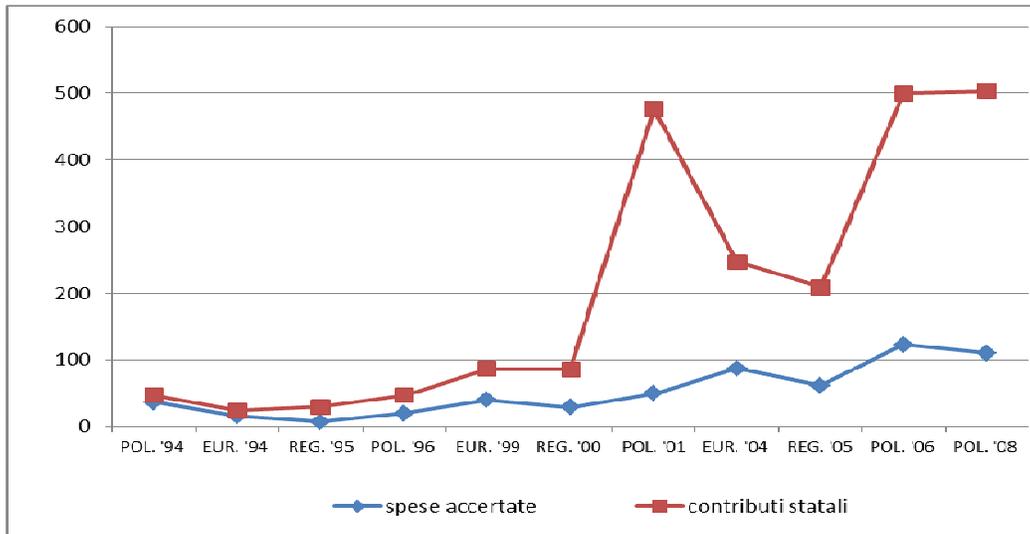
Table 1. The constitutional recognition of political parties in Italy and in Germany

Core aspects of party constitutionalization	Germany	Italy
The place of the 'party article' in the Constitution	'The Federation and the <i>Länder</i> '	'Citizens' Rights'
Limitation of the parties' ideological foundations	Yes "Parties which, by reason of their aims or the behavior of their adherents, seek to impair or destroy the free democratic basic order or to endanger the existence of the Federal Republic of Germany are unconstitutional" (art. 21.2)	No* * Except for the reconstruction of the Fascist party (XII Final and Transitory provisions).
Limitation of the parties' activity	Yes Same as above	No** ** Except for those activities breaching the democratic constitutional order
Limitation of the parties' internal organization	Yes "Their internal organization must conform to democratic principles" (art. 21.1)	No
Reference to secondary legislation	Yes "Details shall be regulated by federal laws" (art. 21.3)	No
Provisions on financial responsibility	Yes "They must publicly account for their assets and for the sources and use of their funds as well as assets" (art. 21.1)	No

Table 2. Parliamentary representation and public funding thresholds

Body	Electoral system threshold	Funding access threshold
Chamber of Deputies	Within a coalition that obtains at least 10% of the votes: 2% at national level, even if it obtains seats on the most voted list among those below 2%. Outside a coalition: 4% at national level.	1% of the national level vote
Senate	In all Regions, within a coalition that obtains at least 20% of the votes: 3%. Outside a coalition: 8%	5% of the regional level vote; or 1 elected representative
European Parliament	4% at national level	1 elected representative
Regional Councils	Different in Regions having their own electoral law. In regions that have not legislated, 3% at regional level at least unless the list is connected with a candidate for President having obtained more than 5% at regional level.	1 elected representative

Figure 1. Established expenditure and election reimbursements (in millions Euro)*



* Report of the Court of Auditors. POL. = political elections; EUR. = European elections; REG = Regional elections.

Table 3. Established expenditure and election reimbursement to political parties (2008)

Political Parties	Chamber of Deputies	Senate	Total	Established expenditure	Difference
Il Popolo della Libertà	89.294.814	101.012.933	190.307.747	53.662.277	136.645.470
Partito Democratico	79.388.484	86.696.054	166.084.538	18.472.869	147.611.669
Lega Nord	19.547.222	18.586.811	38.134.033	2.939.988	35.194.045
Unione di Centro	13.530.608	10.332.211	23.862.819	20.864.206	2.998.613
Italia dei Valori (Lista Di Pietro)	10.467.175	9.482.596	19.949.771	3.440.085	16.509.686
Sinistra Arcobaleno	7.347.732	1.213.466	8.561.198	8.187.267	373.931
La Destra – Fiamma Tricolore	5.714.998	0	5.714.998	1.849.014	3.865.984
Movimento per l'Autonomia	2.650.966	1.750.627	4.401.592	863.248	3.538.344
Partito Socialista	2.295.755	0	2.295.755	3.387.147	-1.091.392
Sudtiroler Volkspartei	742.555	1.977.638	2.720.193	530.307	2.189.886
Autonomie Liberté Democratie	371.277	186.551	557.828	102.699	455.129
Movimento Associativo Italiani all'Estero	235.095	214.980	450.075	0	450.075
Associazioni Italiane in Sudamerica	173.881	180.242	354.123	35.282	318.841
Vallee d'Aoste		206.453	206.453	126.874	79.579

* Report by the Court of Auditors.