

Case Study on controlling campaign spending – the case of the Nicolas Sarkozy’s 2012 presidential election campaign overspending-

Source: IIIDEM project – 2021.

Political context and legal background

The president is elected for a five-year term under a two-round system. If no candidate receives more than 50 per cent of valid votes cast in the first round, a second round is held two weeks later between the two frontrunners. For the first round of the 2012 presidential election, the law established the campaign expenditure ceiling for each candidate at EUR 16.8 million, while the total limit for each of the two candidates at the second round was EUR 22.5 million.

Public funding for the presidential campaign consists of both direct and indirect support. While the state covers the costs associated with the official campaign, such as debates and programmes on radio and television, direct mail and the printing and displaying of official campaign posters, the reimbursement of candidates’ electoral expenses is dependent upon a decision by the oversight body (the National Commission on Campaign Accounts and Political Party Financing – CNCCFP) that the candidate has complied with all legal obligations. The reimbursement is set at the lowest amount of the 3 following elements: the candidate’s self-financing, the total amount of electoral expenses as decided by the CNCCFP and 47.5 % of the spending limit for candidates receiving more than 5 % of the votes cast.

Administrative review and investigation of the Sarkozy’s presidential campaign account by the CNCCFP

According to the law, the presidential candidates lodged their campaign accounts with the CNCCFP within the legal deadline set at July 6th, 2012. Throughout the election campaign, the commission received nearly thirty complaints/ notifications sent by voters, local elected officials and parliamentarians, mainly targeting the then-president, Nicolas Sarkozy. With these complaints often accompanied by a significant number of supporting documents, the authors wanted to bring the commission’s attention to the possible electoral nature of some presidential activities carried out by Mr. Sarkozy. The CNCCFP also received and followed a number of media reports raising suspicions about the Sarkozy campaign’s observance of the spending limit – not least due to its grandiose nature. The Commission took into account these external red flags when conducting its own control.

All this information was communicated to the CNCCFP rapporteurs in charge of reviewing Mr. Sarkozy’s campaign account and to the candidate’s campaign team. During the control phase, the CNCCFP rapporteurs held meetings with the campaign team and asked for further information/ to be provided with missing supporting documentation through administrative/ adversarial proceedings on the basis of both the campaign account submitted by the candidate and the elements of information contained in the complaints/ notifications and media reports.

At the conclusion of its investigation in December 2012, the CNCCFP rejected Nicolas Sarkozy’s campaign account on the basis that he had exceeded the campaign spending limit by EUR 363,615 (some 1.6% more than the spending limit) after having reintegrated in the campaign account a total

amount of EUR 1,567,425 of additional campaign expenditure. The CNCCFP decides to include in Mr. Sarkozy's campaign account three different types of expenses:

- spending linked to the official presidential activity of Mr. Sarkozy but of electoral nature that should have been reimbursed to the State. The commission concluded that the candidate had benefited from a contribution from a legal entity, which is illegal;
- undeclared spending of activities that had happened before the official launch of Mr. Sarkozy's campaign but during the election campaign and that should have been accounted for;
- split spending paid for by Mr. Sarkozy's political party (then UMP) between the presidential and parliamentary elections and whose cost had either not been reflected and declared in the candidate's campaign account or under evaluated to remain under the spending limit;

All in all, the Commission reached the conclusion that a total of EUR 1,567,425 of expenses had not been declared (7.35% of expenses declared).¹ To do so, the Commission had different sources of information at its disposal:

- figures declared in the candidate's campaign account;
- complaints/ notifications from individuals;
- media monitoring unit findings (critical to follow the electoral activities and meetings/ events held by presidential candidates);
- coordination meetings with the other institutional stakeholders.

Appeal of the CNCCFP's decision and decision issued by the Constitutional Council

Sarkozy challenged the decision at the Constitutional Council, which confirmed in July 2013 the rejection of the campaign account.² The Constitutional Council revised the total amount of overspending after the inclusion of additional spending that had been declared as expenses on preparation of the election or for the following parliamentary elections (expenses for the organization of political meetings and public conferences, printing of leaflets, services of public relations agencies and candidate's website) for a total amount of EUR 466.118, i.e. 2.1% of the spending limit. As a result, Mr. Sarkozy lost his right to public reimbursement of EUR 10.6 million.

Criminal investigation and prosecution

In February 2016, Nicolas Sarkozy was placed under formal investigation on preliminary charges of illegal overspending during the 2012 presidential election campaign. In February 2017 the investigating judge ordered that Sarkozy stand trial for knowingly authorizing his 2012 campaign to exceed the spending limit by at least EUR 23 million - spending some EUR 43 million - almost double the permitted amount for the second round.

¹ See the CNCCFP's decision: https://www.conseil-constitutionnel.fr/sites/default/files/as/root/bank_mm/decisions/2013156pdr/decision_cnccfp.pdf

² See the Constitutional Council's decision: <https://www.conseil-constitutionnel.fr/en/decision/2013/2013156PDR.htm>

The case became known as the “Bygmalion Affair”, named after the PR company, that allegedly issued false invoices and billed EUR 18.5 million of campaign spending to the President’s political party instead of to his campaign. On 30 September 2021, he was found guilty of illegal campaign financing and was handed a one-year prison sentence by a Paris court. The judge and the judge said he could serve the sentence at home with an electronic tag. Nicolas Sarkozy appealed the sentence, a move that in effect suspends it.