

THE USE OF ADMINISTRATIVE RESOURCES AND THE MONITORING OF CAMPAIGN'S IN
France

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The issue of making administration's tools available for elected officials who stand for a new election is one of the most significant electoral law problems. As it has already been said, this is about protecting the principle of equality between the candidates in the run, in order to condition the fairness of the election. However, on the other hand, the officials have to be able to fulfil their functions up to the end of their mandate.

First of all I have to present quickly the french Electoral system. In France we have two series of elections : The national elections and local elections and european elections.
 The national elections are : The presidential election, the election of deputies (Legislative elections) and the election of senators (Senatorial elections)
 The local elections are : municipal elections, cantonal elections (for the departements) and regional elections (for the regions).
 European elections are the election of the french representatives to the european Parliament.
 These elections have different judges :
 For the presidential election and for the parlementaries elections, the judge is the Conseil constitutionnel .
 For the local elections the judge is the administrative judge (Administrative tribunal and Conseil d'Etat for municipal and cantonal elections and the Conseil d'Etat for the regional elections.
 For the european elections the judge is the Conseil d'Etat.

The point of this short report is to present how the legislator as well as the judges deals with this question. Firstly, we will look into the legal framework(I), before turning to the control exercised in this field by the National commission for campaign accounts and political financing financing (II) and by the judge of the election.(III)

I - THE LEGAL FRAMEWORK

Article L.52-8 of the Election code: On the one hand, donations made by legal persons (with the exception of political parties and groups) are forbidden. On the other hand, these legal persons are allowed to provide the candidates with benefits in kind.

Article L-52 Electoral Code :

« Donations made by an individual duly identified to finance the campaign of one or more candidates in the same election may not exceed 4,600 euros. Legal persons, with the exception of political parties or groups cannot participate in the financing of the election campaign of a candidate, or by granting donations in any form whatsoever, or by providing goods, services or other direct or indirect benefits to prices lower than those usually practiced. Donations of more than 150 euros made to a candidate to his campaign must be paid by check, bank

transfer, debit or credit card. The total amount of cash donations to the candidate may not exceed 20% of the amount of authorized expenses if the amount is equal to or greater than 15,000 euros in application of Article L. 52-11. No candidate may receive, directly or indirectly, for any expenditure whatsoever, contributions or material support to a foreign state or a foreign legal entity. Notwithstanding the first paragraph of Article L. 52-1, candidates or lists of candidates may use advertising through the media to solicit donations authorized by this article. Advertising may not contain references other than those required to enable the payment of the gift. The amounts provided in this section are updated each year by decree. They evolve as the price index for household consumption, excluding tobacco. »

State and local authorities are concerned by these rules.

The benefits in kind can take many forms:

- It can be human resources: the official who is a candidate can benefit from the help of his/her collaborators: one can write speeches, another one can organize meetings or distribute flyers or put up posters... However there is a limitation to this help: the collaborators of the candidate cannot help during the working hours; it has to be in the evening or on holydays.

- It can be material means: phone, fax, copier, use of car, various equipments, transport for travel, use of photographs taken by the local authority. These benefits in kind must be substantial to enter into the account. Indeed, the exceptional use of fax by a mayor who is also a candidate to send few documents, for example, is not sanctioned. However, the cost must be paid by the candidate at the market price. It is only when the benefits are significant and regular that they should be incorporated into the campaign account of the candidate.

- Eventually, it can be any kind of meetings and events, during which the candidate can campaign and which are paid by the local authority. They will have to be incorporate into the campaign account.

This issue is a very complex one, since the electoral code prevents promotion of the management or the actions of the local authority which is led by a candidate, during the six months before the elections. This prohibition and the obligation to integrate into the campaign accounts the costs of these events are to be combined. In practice, this is pretty easy when the event is a traditional one, with a small communication impact. However these rules are not always so easily enforceable, as we can see with the campaign of French President Nicolas Sarkozy in 2012. The Campaign account commission, whose organizations and missions will be studied later, estimated that Mr Sarkozy had to incorporate in his campaign expenses the cost of public meetings he had held in the

province as part of its mandate of President, even if some of them were hold before he declared his candidacy. This case is currently under review by the Constitutional council as an example.

How to reconcile in a democracy, the necessity to exercise the electoral mandate until the last second and the ability of being a candidate to be reelected? Should an official be prevented from running for the election? Should he stop his mandate in order to campaign?

II- THE CONTROL BY THENATIONAL COMMISSION FOR CAMPAIGN ACCOUNTS AND POLITICAL FINANCING

- Presentation

The legislation aims to promote equality of candidates by establishing an election expenses limit in electoral districts which has a population of, at least, 9.000. Candidates who obtain at least 5% of the votes (3% concerning the election of representatives of the European Parliament and territorial French Polynesia) may be entitled to reimbursement by the State for all expenses incurred for the election that have been financed by their personal funds, subject to a ceiling equal to half the election expenses limit. The corresponding drawback is, for the candidates, the duty to respect financial transparency by entering their entire expenditure and revenue, and providing the requisite justification.

In order to contribute to more ethical politics, donations from individuals are restricted and donations from legal bodies (companies, groups and corporate entities), other than political parties, are prohibited.

The Commission, which was created in 1990 is an independent administrative authority and consists of 9 members (3 from the Cour des comptes, 3 from the Conseil d'Etat , 3 from the Cour de cassation).

They are named by government decree on the respective proposals of the Vice President of the Conseil d'Etat, the First President of the Cour de Cassation and the First President of the Cour des Comptes.

The Commission elects one of its members President, who appoints a Vice President.

The nine members are appointed for five years and cannot be removed during that period.

The Commission checks the campaign accounts and fixes the maximum amount of the reimbursement to be paid by the State. If an essential formality is not satisfied, the

campaign account may be rejected. In such a case, the candidate can't claim any refund and runs a significant risk of being barred from standing for election by judges of election, to whom electoral matters must be referred by the Commission. This Commission also has the obligation to publish a brief summary of the campaign accounts, and to make a report on the outcome of its control.

The campaign account must identify all the receipts and trace its origin. All funds paid shall be deposited into a specific bank account, opened for this purpose by a proxy (natural person or campaign finance organization).

At the time when the campaign account is deposited, all receipts must have been actually received and all expenses must have been paid.

No deficit shall be incurred.

All debt-write off by a supplier or a provider will cause the account to be rejected (it will be considered as a prohibited grant from a legal body).

All the supporting documents relating to the expenditure and revenue have to be provided in support of the account.

Campaign expenditure are limited, depending on the kind of election and, if need be, of the population of the electoral district.

The global expenditure for elections, in an authorized funding period, must show up in the campaign account, except for expenses arising from the official campaign. These expenses must go through the single fiscal agent's bank account, except for in-kind funding and expenditure actually and directly paid by the party.

All operations of the campaign account must be performed by a proxy or by an association of funding.

- Powers of the Commission

After examining campaign accounts, the Commission deliberates and reaches a collegial decision.

It may:

- approve the campaign account

- approve the accounts after amendment, in particular in cases where the candidate's spending includes items that are not of an electoral nature;
- reject accounts in the case of failure to comply with a substantive formality required by law (failure to have accounts audited, donations received from a corporation or other juridical person, debit balance on account, spending limit exceeded, etc.).

The Commission can also take official note of the candidate's failure to lodge an account or to lodge it within the required time.

III-THE CONTROL BY THE JUDGE OF ELECTION

Rejection of accounts, failure to lodge accounts or failure to lodge them by the deadline deprives candidates of any entitlement they may have had to reimbursement and entails, except in the case of a presidential election, the automatic submission of the case to the court competent for the election, which may be the Conseil Constitutionnel, the Conseil d'État or the Administrative Tribunal.

The election judge may first consider that the Commission was wrong to dismiss the campaign account.

In this case, no action is decided. But it can also confirm the decision of the Commission. In this case, it may declare ineligible the candidate whose account was rejected. This decision is not automatic. The judge may consider that there was no fraud and will not declare the ineligibility.

If the disqualification of the elected candidate is decided, the election will be canceled and there will be a new election.

If the election judge affirmed the dismissal of the campaign account of a candidate, it will not benefit of reimbursement of expenditure by the State.

In conclusion : It appears that the problem of the use of administrative resources during electoral campaigns is fully treated by the French law. The dispositions of the electoral Code, the jurisprudence, the mechanism of control by the National Commission and by the judge, the sanctions seem to be excellent instruments against the abuse.

But, in practice, it's very difficult to do one clear distinction between the use of administrative resources for the campaign of a candidate and the use of these resources by the incumbents of an electoral mandate.

