

Summary of the report

„Presidential Elections 2005 – Monitoring of Electoral Campaign Expenses“

1. Introduction

Rules and regulations defining the financing of electoral campaigns which have been in force in Poland for a few years now are quite rigorous; however, the principles of financing presidential campaigns have remained the least defined and still allow for ambiguity.

According to experts as well as the public opinion, these regulations are highly imperfect, and presidential campaigns remain to be financed in a secret, corruption-prone ways. This is why the Stefan Batory Foundation in cooperation with the Public Affairs Institute and voluntary workers from civic organizations have undertaken to conduct the first in Poland monitoring of financing in the presidential electoral campaign. In order to enhance the effectiveness of these actions, collaboration was offered to partners representing the non-governmental sector, state institutions and private institutions.

The monitoring performed by NGOs complemented controlling activities conducted by the State Electoral Commission (SEC), a state institution responsible for organizing the elections and evaluating reports submitted by electoral committees, and the media. The monitoring made it possible not only to verify the legality of campaign financing, but also, we believe, was an effective preventive tool, limiting the level of political corruption. Aware that they are controlled not only by SEC and journalists, but also by NGOs, electoral committees were forced to conduct their financial policy more carefully than before.

Two sectional reports and one final report were prepared within the project framework. The report on the first part of the monitoring was published in October 2005, before the runoff, and contained an analysis of expenses borne by electoral committees taking part in the first round of the elections, from March to September 2005; it pointed out these instances in which the rules and regulations were violated or evaded, or the limits of campaign expenses seemed to have been exceeded. This report also indicated the instances of illegal campaign financing from public means. The second report, published in December 2005, supplemented the first report with data concerning the period from September to October 2005, as well as expenses on the Internet campaign, transportation, salaries, staffing electoral offices and other expenditure in the two electoral rounds.

The final report, published in May 2006, presented an analysis of the campaign financial statements and materials collected during the presidential electoral campaign. Incomes and expenses of electoral committees were discussed in detail; moreover, the role and activity of the State Electoral Commission were analyzed.

The final report was complemented by numerous annexes containing detailed information on the cases of co-financing the parliamentary and presidential campaigns, data on advertisements and campaign meetings, as well as appeals and objections as to the financial statements of electoral committees, all prepared by the monitoring team. The annexes also contain fragments of campaign statements of several electoral committees, fragments of the Election of the President of the Republic of Poland Act, and graphs illustrating incomes and expenses of several chosen electoral committees.

1.1 Purpose of the monitoring

Above all, the monitoring was aimed at informing the public opinion of the cases of violating the regulations, and indicating new corruption threats; moreover, it was to propose such changes in the law which would increase the transparency of financing

the electoral campaigns. The more transparent the system of financing politics, the less susceptible to corruption it becomes. This is why our main purpose was to promote transparency.

As mentioned above, the monitoring was to help support reforms of the law and changes in its practice. It is possible through: 1/ checking the effectiveness of the law concerning the election of the president, safeguarding against corruption practices, and preparing recommendations for better legislative solutions; 2/ finding proofs of individual cases of corruption; 3/ increasing transparency and encouraging the public to exert pressure in order to eliminate any doubtful sources of finances.

The monitoring team also wished to achieve the following tasks:

- work out methods adapted to Polish conditions, which would make public supervision of electoral campaign financing possible;
- increase the scope and practice of public supervision of political parties, and make politicians and political parties aware that their actions are subject to judgment by representatives of the civic society;
- strengthen the idea of partnership between non-governmental organizations, public institutions and private institutions in order to achieve greater openness of public life and counteract political corruption in Poland.

1.2. Monitoring methodology

For the aims of this report, but above all for the purposes of the project, finances of the electoral campaign were defined as means obtained and spent by electoral committees, political parties and other subjects in order to cover the needs of the electoral campaign. It was decided that the campaign finances should also embrace these public means which the candidates and electoral committees draw from the budgets of public institutions for their political advertising and participation in elections¹.

As mentioned already, a comprehensive and methodical monitoring of financing electoral campaign was conducted in Poland for the first time. Until then, only scientific analyses had been put forward, and there was a lack of empirical analyses based on a large scope of data. The monitoring of the 2005 campaign was conducted according to a methodology already tried out in several countries (Latvia, Rumania, Slovakia and Ukraine, among others), and described in detail in a guidebook entitled *Monitoring Election Campaign Finance*, prepared by the Open Society Justice Initiative². This methodology was adapted to legal regulations effective in Poland and the specific character of our electoral campaigns.

Although the parliamentary and presidential elections were conducted at the same time in 2005, the monitoring team decided to monitor only the presidential campaign. This decision resulted from the following reasons:

- Regulations of the presidential electoral law were the first to be amended (in 1999) and they are least protected against abuses, and thus against instances of political corruption. For example: private firms may donate to electoral committees; considerable anonymous contributions are possible through the purchase of "shares"; there are no effective sanctions for violating regulations concerning financing electoral committees.

¹ Monitoring conducted in the neighboring countries revealed that the use and abuse of public funds in electoral campaigns is a serious problem, especially in countries transforming their political systems.

² *Monitoring Election Campaign Finance*, Open Society Justice Initiative, Budapest 2004, www.osi.org. Translated fragments of this guidebook are published on the project's page www.prezydent2005.org.pl

- In the 1995 and 2000 presidential campaigns, numerous pathological issues were observed, such as: fictional donations; transgressing the limit of contributions and expenses of the campaign; financing committees by state-owned companies and institutions; use of state institutions' means for the campaign; submission of incomplete or false electoral statements.
- Monitoring of electoral campaign financing was to be conducted with the help of civic organizations. It was decided that it was easier to control the presidential campaign, in which only a dozen or so candidates participated, and not several dozen thousand candidates in the parliamentary campaign. Thus the monitoring of the presidential campaign had a greater chance of success than the monitoring of parliamentary elections.

Because of time and organizational limitations, monitoring was focused on the candidates who were particularly important because they commanded large public support; also candidates with considerable financial backing were supervised³. It should be mentioned that monitoring of the 2005 elections was conducted comprehensively on two levels: national (in collaboration with public institutions and specialized advertisement companies, which ensured the professional character of the action), and local (in collaboration with local non-governmental organizations, which helped to complement the data collected at the national level, and helped make the civic supervision practice more general).

On the central level, the monitoring was conducted by employees of the Anti-Corruption Program of the Stefan Batory Foundation, and Dom Mediowy Media Direction OMD, which helped the project *pro publico bono* (for free).

The essential part of the project concerned collaboration with the State Electoral Committee, the state institution responsible for conducting elections and evaluating reports submitted by electoral committees.

Methodologically complex aspects of the monitoring, such as assembling and verification of data, were carried out in collaboration with professional firms. Of particular importance was the support of Dom Mediowy Media Direction which made it possible to monitor electoral committees' expenses on paid advertisements on posters, in the radio, TV, cinemas and in the press.

A representative of the Anti-Corruption Program met with financial representatives of the main candidates' electoral staff, and sent dozens of official letters to financial representatives, advertisement companies, creditors of electoral committees and the State Electoral Commission, asking for detailed information and clarification.

The campaign at a local level was monitored by a group of about 50 volunteers who were trained, and then formed groups of several persons, conducting the monitoring in their towns. The local monitoring groups conducted the monitoring in the form of participatory observation during campaign meetings. Their members talked to representatives of local electoral staffs; they also sent in reports on outdoor advertisement and direct mail they were able to observe.

The first stage of the project was carried out prior to and during the presidential electoral campaign. The monitoring concerned:

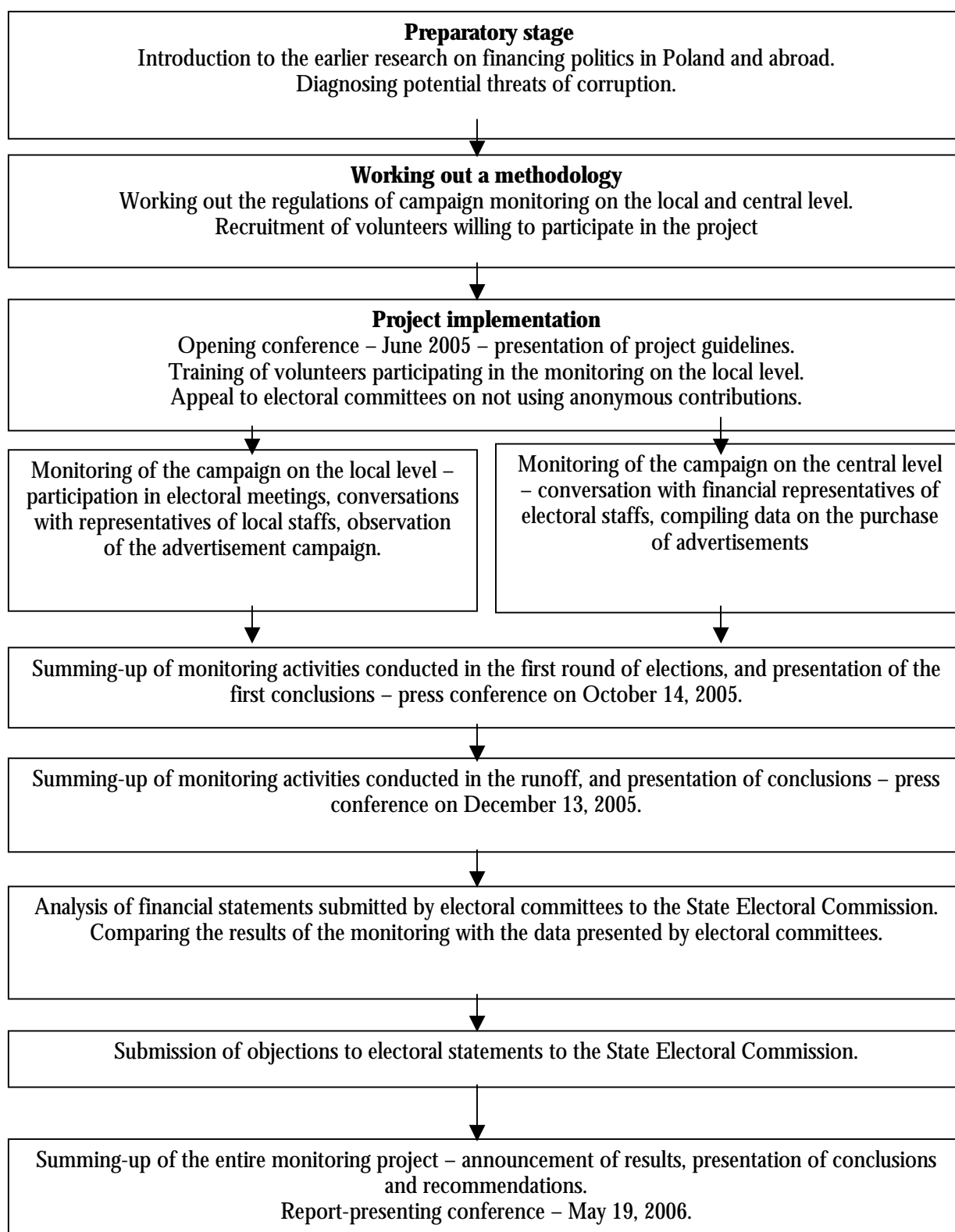
- expenses of electoral committees on advertisement; attention was focused on paid advertisement in the national media (radio, TV, press) and billboards; expenses on the meetings with voters (observation monitoring); expenses on direct mail, production of leaflets, Internet advertising etc;

³ The monitoring thus included the campaigns of: Henryka Bochniarz, Marek Borowski, Włodzimierz Cimoszewicz, Maciej Giertych, Lech Kaczyński, Andrzej Lepper and Donald Tusk.

- organization of public collections;
- use of public functions and budgets of public institutions for the electoral campaign; following the activities of public persons during the campaign, and particularly their contacts and involvement in the work of central and local electoral staffs.

The other stage of the monitoring, conducted after the elections, concerned mostly the analysis of electoral reports submitted by electoral committees to the State Electoral Commission. Conclusions drawn after the first stage of the monitoring and the data collected were then compared with the data given in the official reports of electoral committees.

Campaign monitoring project stages



2. Main conclusions and recommendations

2.1. Electoral committees are guilty of numerous infringements of the legally binding regulations concerning the financing of the 2005 presidential electoral campaign. The

infringements discovered concerned both the funds-gathering and expenditure phases. The most serious were:

1. In the electoral committees' funds-gathering phase:
 - Incorrect accounting and, probably, conducting public collections; e.g. according to the statement submitted by one of the candidates (Henryka Bochniarz), two persons collecting in one place during six days were able to raise the maximum sum allowed by the law, i.e. PLN 1,380,000 (about € 350,000) which is highly unlikely in Polish conditions;
 - Use of public means for financing the electoral campaign; e.g. deputies' offices were commonly used for the needs of local campaign staffs of various candidates;
 - Financing the presidential electoral campaign by a political party before the electoral committee was officially registered; e.g. in spring 2005, PiS political party paid for Lech Kaczyński's TV spots.
2. In the campaign and expenditure phases:
 - Conducting the presidential electoral campaign by subjects other than the presidential candidate's electoral committee, and particularly by political parties and committees participating in the parliamentary elections (the phenomenon called "mixing of campaign expenditures"); e.g. in some TV spots of the parliamentary campaign of a party, a major part was devoted to its presidential candidate; this concerned e.g. Donald Tusk and Jarosław Kalinowski;
 - Violating the limit of campaign expenditure by the electoral staffs of Lech Kaczyński and Donald Tusk;
 - Lowering or hiding campaign expenditure; in their statements, the candidates did not include costs of hiring offices for local staffs (all but Włodzimierz Cimoszewicz) and the central staff, costs of phone conversations (Lech Kaczyński and Andrzej Lepper), transport (Andrzej Lepper's staff indicated here the sum of PLN 800, i.e. less than € 200), etc.
 - Violating the restrictions concerning the time of paid TV ads; all major candidates violated this restriction by appearing in TV spots advertising the parliamentary campaign, which was held at the same time;
 - No marking of electoral materials; e.g. the billboards of one of the candidates (Andrzej Lepper) did not inform to whom the posters belonged;
 - Omitting rebates and substantial donations in the list of campaign expenditures.

2.2. The regulation of many issues concerning the financing of the presidential electoral campaign is highly imperfect. Particularly the imprecise wording and many legal loopholes in the regulations of the Elections of the President of the Republic of Poland Act of September 27, 1990 enable electoral committees to consciously conduct "creative" financial dealings and skillfully evade the restrictions and limitations set forth in the Act.

Such negative practices are fostered mostly by these factors:

- No ceiling (no limit) on financing the electoral campaign by political parties;
- Wrong regulation on loans, and their use to circumvent the limit of donations;
- No limit on the value of material (in-kind) donations;

- Unclear regulations concerning the principle of granting credits and loans, and responsibility for liabilities;
- No regulations concerning dealing with financial liabilities of committees after they are dissolved;
- No regulations concerning submitting material status statements by all candidates for the president of the Republic of Poland;
- Easy circumvention of the limit of private individuals' donations.

2.3. The complex evaluation of statements submitted by representatives of electoral committees conducted within the framework of the monitoring, and of opinions of chartered auditors, leads to the conclusion that:

- Most statements submitted were not accompanied by complete documentation confirming income and expenditures (contracts, invoices etc.);
- Some statements were prepared in an unreliable way (e.g. with many mistakes in the classification of incomes);
- Some opinions by chartered auditors were drawn up only superficially, with substantial and accounting mistakes.

Practice shows that the statutory time limit for submitting written and documented objections to the statements of electoral committees (7 days from the date on which they are published) is definitely too short.

2.4. The most important conclusion to be drawn from the monitoring of the presidential election campaign in Poland is that there is an urgent need for comprehensive amendment of the September 27, 1990 Act on the Election of the President of the Republic of Poland, in order to ensure its internal coherence, high quality and effective solutions. Regulations concerning financing the presidential electoral campaign have to be cohesive with other electoral law acts. Experience of other countries should be taken into account; moreover, the Act on the Election of the President of the Republic of Poland should be in the greatest possible measure adapted to the contemporary reality of electoral campaigns in Poland.

Any changes in the Act on the Election of the President of the Republic of Poland, as far as they concern financing electoral campaigns, should take the following into consideration:

- Elimination of public collections;
- Elimination of the possibility of financing the electoral committees by legal persons;
- Introduction of a ceiling (limit) to material (in-kind) donations;
- Regulation of loans and liabilities as far as they concern legal and natural persons participating in the electoral campaign (it should be forbidden to submit an electoral campaign financial statement containing unpaid-off credits and debts);
- Introduction of a possibility of co-financing the committee by the candidate (so-called candidate's own expenses).

Practices allowing for financing the electoral campaign by political parties only, huge expenses on media campaigns (based mostly on the image and not issues) warp considerably the principle of equal chances of all candidates. Moreover, they adversely influence the level of public discussion, and thus are unfavorable for Polish democracy. Hence the need to introduce the following legal changes:

- Introduction of a limit of financing electoral campaigns by political parties (not more than 50 per cent of the limit of campaign expenditure);
- Ban on purchasing paid advertisements in the radio and TV;
- Introduction of a limit of expenditure on outdoor advertising (posters, billboards etc.), analogous to the binding limit on expenditure on the purchase of paid advertisement in the radio and TV;
- Detailed regulation of the institution of the candidates' material status and income statements.

2.5. Observations conducted during the 2005 presidential electoral campaign (and an analysis of the 2000 campaign) have led to the formulation of a number of conclusions and recommendations connected with the functioning of the State Electoral Commission, which is empowered to control the finances of presidential electoral campaigns:

- It is necessary to strengthen the position of the SEC in the state structure, and its role in formulating the electoral law;
- Effective struggle against abuses in campaign financing requires SEC's collaboration with other State bodies;
- SEC should be more independent financially, and the outlay on the development of the organizational structure of the State Electoral Office should increase;
- SEC should organize its own team of chartered auditors, trained specially to control electoral committees' finances.

The SEC should be given new effective tools for controlling financing of electoral campaigns, in this, enabling it to conduct supervision in "real time" through:

- Introduction of an obligation to submit and publish at least two financial statements by each electoral committee (one shortly before elections, and another, comprehensive one, after elections);
- Possibility of preventive control during the electoral campaign;
- Opportunity of instant informing the SEC on the infringements and abuses observed, also by the way of Internet reporting, already tried out in some other countries;
- Introduction of a complete catalogue of financial and penal sanctions (against an illegal donator, financial representative, candidate, head of staff and every person participating in illegal financial transactions), up to the de-registering of the electoral committee.