Campaign finance during the 2019 presidential election:
An assessment

Introduction

In 2015, the Ukrainian parliament, the Verkhovna Rada of Ukraine (Rada) adopted the Political Finance Reform Law substantially amending the existing legal framework governing political and campaign finance in Ukraine. The amendments strengthened the regulatory aspects of the financial activities of political parties and candidates both during and outside an election period by:

- broadening the definition of private donations to cover not only monetary, but also in-kind donations;
- introducing caps on donations to political parties and their election funds from natural and legal persons;
- introducing direct public funding to political parties that passed a certain threshold of votes received in a national election;
- providing reimbursement of actual parliamentary election campaign expenditures to political parties that pass the electoral threshold in regular and early parliamentary elections;
- obliging all political parties to submit to the newly created National Agency for the Prevention of Corruption (NAPC) a detailed financial report on their property, incomes, expenses and financial obligations on a quarterly basis;
- extending the reporting requirement to parties and candidates that participate in national elections – they must now submit interim and final financial reports to the Central Election Commission (CEC) and NAPC;
- introducing a joint mandate for state oversight with campaign finance during national elections shared between the CEC and NAPC;
- tightening sanctions for campaign finance related violations

The law received overall positive response from the Group of States Against Corruption (GRECO), Organization for Security and Cooperation in Europe’s Office for Democratic Institutions and Human Rights (OSCE/ODIHR), and the Venice Commission. However, the law still suffers from some flaws as highlighted both domestically and internationally. These flaws have limited its effectiveness in regulating the role of money in Ukrainian politics in general and in the election campaigns in particular, and they have never been properly addressed by the government.

Following the 2019 presidential election, both domestic and international election observation missions (EOMs) concluded that funding of the presidential election campaign was opaque. They found that supporters of presidential candidates donated office space, paid for fuel and printed campaign materials without funds being declared as third-party donations or donations-in-kind by the respective candidates; some candidates did not declare any expenses for their YouTube campaigns, organized free concerts during the electoral period not labeled as campaign events and/or allegedly made unofficial payments to members of election commissions, observers and media.
Donations to election funds

The Presidential Election Law, as amended by the 2016 Political Finance Reform Law, sets the limits on donations that individuals and companies can give to election funds of candidates to 400 (1,669,200 UAH or approx. 63,400 USD) and 800 minimum salaries (3,338,400 UAH or approx. 126,900 USD), respectively. All donations made by a person or a company to a party or party-nominated candidates during a year must not exceed these ceilings. The ceilings were aimed to foster a level playing field for candidates; however, these caps are among the highest in Europe.

The Law provides an exception to this rule, though: candidates and the parties that nominated them can transfer their own money to the campaign accounts without any limits on the amount or number of transactions. This is contrary to Venice Commission recommendations: a party’s/candidate’s own donations should not exceed a certain legally established value. Several leading candidates, including Petro Poroshenko, Volodymyr Zelenskyi and Yuliya Tymoshenko used this provision to fill up their election funds with either own money or money of the parties that nominated them. This skewed the playing field in favor of candidates with large resources that could de-facto bypass existing donation caps.

Therefore, consideration should be given by the Rada to impose restrictions on the value of permissible donations transferred to election funds not only by private donors but also by candidates themselves or by the parties that nominated the candidates.

The Presidential Election Law also do not properly regulate third party and in-kind donations, although GRECO has repeatedly emphasized the need for such regulation. By third party donations are here meant spending on campaigning by non-contestants in support of a candidate (sometimes without the consent of or informing the candidate), which would constitute a form of in-kind donation.

As noted by international and domestic observers, various NGOs, political parties and supporters financed certain campaign activities of presidential candidates or provided them with in-kind donations in form of offices, campaign materials and campaign event. This runs against the Law that demands all campaign activities to be financed solely through the election fund. Such contributions gave advantage to certain candidates over the others who followed the Law. Furthermore, contestants did not disclose them in their official reports, diminishing overall transparency of the campaign.

The parliament should consider explicitly regulating third party and in-kind donations during an election period, for instance by obliging anyone who intend to give such donations to be registered by the CEC and/or their donations to be disclosed in the official report. NAPC should update its regulation of donations in-kind and clarify how the parties and candidates must report on them in an election.

The law sets a rather complicated procedure for granting donations to election funds. A potential donor is obliged to visit a bank and complete a paper form certifying her right to make a donation. Such procedure is overly demanding, compared to legal requirements and procedures in other countries, and may discourage potential small donors from contributing to election funds. It also prevents candidates from effective fundraising using new technologies such as crowdsourcing etc.

The financial reports of presidential candidates have demonstrated that the absolute majority of them rely on their own funds or large donations: virtually none of them was able to launch effective fundraising campaign, resulting in their continued dependence on big private donors/oligarchs.
To simplify the procedure for making donations to election funds, the parliament should consider allowing contributing funds through online banking or other means that allow to properly identify the donor.

**Candidates’ spending**

There are no spending limits in presidential election. The absence of a ceiling creates an incentive for candidates to increase their campaign expenditures from one election to another. Both the Venice Commission and ODIHR have repeatedly recommended setting a ceiling on campaign expenses to prevent excessive use of funds and create a level playing field. Failure to address this recommendation has led political parties and candidates to become increasingly dependent on wealthy donors, which poses a risk of political corruption. Research from UNDP and others indicate that increased spending and contributions by wealthy donors can have an adverse impact on the representation of women in elected office; the more campaigning costs, the fewer women have the resources to compete on a level playing field with men.

According to the official financial reports, candidates significantly increased the amount of expenditures compared to the previous 2014 presidential election. In 2014, no candidate raised and spent more than UAH 100 million during the entire campaign (that encompassed only one round); in 2019, five candidates spent more than UAH 100 million (excluding the run-off). However, similar to the 2014 election, most of the funds were spent on advertisement, predominantly on TV and billboards. Abundance of political advertisement not only played into hands of wealthy candidates, but also prevented rational and issue-oriented debates between candidates.

The Rada should consider the possibility of either introducing campaign spending limits or imposing restrictions on costly types of campaigning, such as TV and/or radio advertising during an election.

The Presidential Election Law stipulates that candidates can fund their campaigning activities only through dedicated bank accounts. In reality, many candidates paid for various campaign-related expenses through other channels, most likely using cash. Such unofficial payments to election commission members, observers, agitators and media have been noted by observers in all elections in Ukraine and were again reported during the presidential election. This leaves large sums of money outside of official reports and beyond state control, decreases the overall transparency and skews the playing field in favor of candidates with ties to big private donors.

Furthermore, candidates are prevented from paying their supporters to conduct campaigning activities in their favor under the existing law. This provision is aimed at countering vote buying practices that have been used under the guise of official contracts with agitators; however, an outright ban might push these payments into the “grey zone.” The CEC attempted to relax existing regulations by allowing candidates to pay individuals or companies that could reimburse expenses of agitators. This regulation was met with mixed reactions from electoral stakeholders, and to resolve the deeper issue, the legal framework must be changed.

Consideration should be given to regulating unofficial payment made by candidates and bringing them under effective state control.
Financial reporting

The amended Presidential Election Law required that candidates in the 2019 presidential election had to submit not only post-election campaign finance reports but also pre-election financial reports. The 2019 presidential election is the first election where pre-election financial reports are required. These reports must specify all information on donors, donations, and expenses and must be fully published (except for personal data) on the websites of the CEC and National Agency for Prevention of Corruption (NAPC). Preliminary reports must be published before election day. Extended scope of election reporting is a significant improvement over previous election, which enables civil society, observers, media and the public to access general information about the candidates’ income and spending.

Before the first round, all 44 presidential candidates (including five that had withdrawn) filed their pre-election reports to the CEC and NAPC covering the period until March 18 in a timely manner. As required by law, Volodymyr Zelenskyy and Petro Poroshenko filed an additional pre-election report before the second-round vote. Given that there is no requirement in the legal framework that candidates who entered the second round must file a post-election report after the first round, the second-round report covers only the limited period from April 7 to 13. However, it is common that most campaign expenses are made in the last days of the campaign (in this case, March 19 to 29), which are not covered by any interim financial report. Thus, voters did not have access to any information about the spending of the second-round candidates in the last days of the first-round campaign. Although the candidates’ campaigns possess information about income and expenditure during this period, they are not under a legal obligation to disclose it: this period is covered in the final report that is submitted and published only after the election. This limits the effectiveness of the pre-election finance reports.

The Presidential Election Law should provide that pre-election reports for the second round should also cover the period of the last days of the first-round campaign. Alternatively, regular reporting of donations to election funds could be considered. In this case, candidates would report on each donation they received within a defined time period, allowing citizens to access information on their income on regular basis.

Civil society and media lacked day-to-day access to information about candidates’ incomes and expenditures, as the CEC has ruled that this information falls under the bank secrecy clause. The public has access to this information, but only after the reports are published, i.e. shortly before election day (which leaves no time for the public to analyze the published information) or after the election (when the analysis has a limited effect). Consequently, voters do not have the opportunity to make a fully informed choice when they go to the polls.

The election laws, including the Presidential Election Law, should be amended to state that all information contained in the financial reports/election fund bank accounts that are subject to publication by the CEC and NAPC can be provided to any stakeholder upon request prior to the official publication, and that such information should not be covered by the bank secrecy clause.

According to the Presidential Election Law, candidates should submit their financial report in both paper and electronic version, with the latter published on the CEC and NAPC websites. To allow simpler access to analysis of campaign reports, the CEC changed the format of published reports (to XML files) that is easier transformed into open data format. The CEC proactive position should be
assessed positively, and the CEC should be encouraged to continue improving its way of publishing reports.

To increase overall transparency of campaign finance and broaden access to financial information for the public, changes to the election and political party law establishing integral electronic reporting system for parties and candidates should be considered.

Public oversight

According to the changes brought by the Political Finance Reform Law, both the pre- and post-election financial reports must be analyzed by the campaign finance oversight bodies, the CEC and the NAPC, which are obliged to publish the result of this analysis on their websites. The Presidential Election Law does not delineate responsibilities regarding such analysis between the CEC and the NAPC leading to potentially confusing shared mandate. In addition, the Law provides extremely little time, one day, for both institutions to analyze interim financial reports. This creates a challenge for a deeper and more meaningful analysis of campaign reports.

Immediately after the start of the election period, the CEC and NAPC established a joint working group aimed to coordinate their efforts related to control of campaign finance during the election. The fact that the CEC and NAPC combined their efforts to evaluate campaign finance reports is a welcome development. Moreover, both institutions were able to collect and analyze candidates’ reports in time, fulfilling their legally required obligations.

The election laws should clearly delineate the oversight mandates of the CEC and NAPC to avoid duplication of efforts and ensure effective campaign finance oversight. In the mid-term, the Rada should take steps to strengthen the independence, accountability and resources of the NAPC to make its role as the main political finance regulator more effective and transparent.

The Law gives a rather broad mandate to the CEC and NAPC to control the legality of the source of income and spending of candidates and their general compliance with campaign finance rules. Yet, both institutions decided to focus almost exclusively on analyzing officially reported information.

The international EOMs concluded from the published reports that both campaign finance oversight bodies refrain from accepting a mandate aimed at detecting any circumvention of transparency rules, including the misuse of state resources, and also noted that the bodies lack investigatory powers. Their analyses of financial reports were mainly technical in accordance with the established procedures. They found that the reports of 17 first-round candidates revealed signs of campaign finance violations such as accepting donations from persons with tax debts or providing incomplete financial information.

The NAPC and CEC should improve the quality of analysis of the financial reports with an increased focus on major violations, such as shadow financing and unreported expenses, that could seriously undermine the fairness of the election.

Sanctions

The Political Finance Reform Law introduced sanctions for failure to comply with the campaign finance requirements, but they can hardly be considered proportionate, effective, or dissuasive. Most campaign finance violations are only subject to the issuance of a warning to the candidate in question or to an administrative fine ranging from UAH 5,100 – 6,800 (equivalent of USD 192-256). Similarly,
different types of sanctions are not harmonized among each other, as administrative and criminal sanctions often cover similar violations and fines related to criminal responsibility are sometimes smaller than administrative ones.

Therefore, the Criminal Code and Code of Administrative Offences should be changed to introduce effective, proportionate and dissuasive sanctions for political/campaign finance violations.

In addition, sanctions are difficult to impose, as this can be done only by courts. Several provisions related to proceeding of administrative cases limits the likelihood of application of sanctions significantly, including short three-month statutes of limitations (after this period expires, the court cannot consider the case) and requirement to administrative protocols to be signed by suspected offender (who often easily evade this procedures).

Investigation of criminal cases related to campaign finance violation should be handled by the police that often lacks expertise or resources to pursue them thoroughly. As a result, although the NAPC submitted materials for investigation of possible criminal offenses by managers of election funds of five candidates in early April, no results have been reported by the police so far.

Consideration should be given to simplifying the rules for proceeding of administrative offenses related to campaign finance and improving the capacity of the police to investigate campaign finance violations.

Conclusions

The 2019 presidential election has seen an overall increase in transparency of campaign finance compared to the previous national campaigns, particularly due to the 2015 legal changes that were applied on a national scale for the first time in this election. However, numerous challenges related to integrity of financing of election campaign remain, including continued dependence of candidates on wealthy donors, excessive cost of campaigning, insufficient access of the public to information about candidates’ financing, weak state control and lack of sanctions applied against offenders. Together, these challenges distorted the level playing field among candidates with different access to resources, violated voters’ right to an informed choice and undermined trust in elected institutions.

To address these challenges, a number of steps could and should be taken:

1) To Verkhovna Rada:
   - impose restriction on the value of candidate/party own donation to the election funds and expand the limitations applicable to the private donations by natural and legal persons to political parties;
   - explicitly regulate third party and in-kind donations during election period in the law to allow proper identification of donors and disclosure of such donations;
   - allow making contribution to election funds online or through other means that allow to properly identify the donor;
   - consider the possibility of either introducing campaign spending limits or imposing restrictions on costly types of campaigning, such as TV and/or radio advertising during an election;
   - regulate in the law unofficial payments made by candidates to bring them under effective state control;
• extend the reporting periods for the interim and final reports to cover donations and expenses on the last days of the first-round campaign;
• consider possibility of introducing regular reporting on donations to candidates’ election funds during election period;
• amend the election laws to provide that all information related to election fund bank accounts that are subject to publication by the CEC and NAPC can be provided to any stakeholder upon request prior to the official publication of the reports;
• introduce single electronic reporting system for parties and candidates;
• clearly delineate the oversight mandates of the CEC and NAPC to avoid duplication of efforts and ensure effective campaign finance oversight;
• take steps to strengthen the independence, accountability and resources of the NAPC whose role as political finance regulator remains insufficient;
• simplify the rules for documenting and proceeding administrative offenses related to campaign finance; and
• introduce effective, proportionate and dissuasive sanctions for political/campaign finance violations through changes to the Criminal Code and Code of Administrative Offences.

2) To CEC and NAPC
• further improve the quality of analysis of the financial reports with to focus on major violations, such as shadow financing and unreported expenses;
• ensure adequate training of the staff in charge of campaign finance oversight/report analysis and identification of campaign finance violations;
• ensure effective coordination and communication between their own members of staff and with other state institutions to supervise campaign finance, ahead of the 2019 parliamentary elections;
• issue and distribute to the future electoral contestants clear and accessible guidelines on campaign finance rules applicable to the 2019 parliamentary elections; and
• start developing electronic reporting form for political parties and candidates;

3) To National Police:
• strengthen professionalism and capacity of the police officers to investigate campaign finance violations through training and awareness rising.