Campaign finance during the 2019 parliamentary elections: An assessment

Introduction

The March 31 presidential election in Ukraine was the first national election held after the passage of the 2015 Political Finance Reform Law. The law significantly changed the rules for how parties and candidates raise, spend, and report money for their campaigning and how state bodies control this money. As previously stated by IFES, the 2019 presidential election was marked by an overall increase in the transparency of campaign finance; however, several issues, such as the dependence of candidates on big private donors, excessive cost of campaigning and weak state oversight, continued to skew the playing field in favor of wealthy competitors and undermine trust in elected institutions.

On May 21, newly elected President Volodymyr Zelenskyy dissolved the Verkhovna Rada (Ukraine’s unicameral parliament) and announced snap parliamentary elections for July 21. The electoral framework for campaign finance in the parliamentary and presidential elections is similar, though some rules related to donations, expenditures, reporting and oversight differ. This paper looks at how the new campaign finance rules were applied during the parliamentary election campaign and identifies key achievements and challenges related to their implementation. This paper also outlines recommendations to key stakeholders in the area of political finance.

Donations to Election Funds

According to the Parliamentary Election Law, as amended by the Political Finance Reform Law, parties and candidates participating in an election can raise and spend funds for campaigning activities through dedicated accounts for their election funds only. Both individuals and companies can donate money to election funds. The ceiling for donations for an individual is 400 minimum salaries (UAH 1,669,200 or USD approx. 66,800), while a company can contribute up to 800 minimum salaries (UAH 3,338,400 or approx. USD 133,600). Furthermore, all donations made by a person or a company to a party or a party-nominated candidate cannot exceed these ceilings in a calendar year. Donations from state and public institutions, state and communal owned enterprises, foreign individuals and companies, anonymous persons, as well as some other sources, are forbidden.

The law permits parties and candidates to transfer money to their own election funds in amounts exceeding the above-mentioned caps. In the case of parties, this may not constitute a problem, as donations to ordinary accounts of a party are limited by 400 minimum salaries for individuals and 800 minimum salaries for companies, respectively. However, candidates in single-member constituencies (SMCs) can transfer much larger amounts to their election funds that are limited only by the existing spending cap of 4,000 minimum salaries (UAH 16,692,000 or approx. USD 668,000). This loophole effectively undermines the ceiling on donations and unduly favors more affluent candidates. It has been repeatedly criticized by the Council of Europe’s Group of States against Corruption (GRECO), the European Commission for Democracy Through Law (Venice Commission) and the OSCE Office For Democratic Institutions and Human Rights (OSCE/ODIHR).

To address this gap, the election laws should limit the amount a candidate can contribute to their own election funds by bringing these limits in line with the general donation limits.

A trend noted during the presidential election campaign continued in the parliamentary elections: parties that competed for the parliamentary seats almost exclusively used their own party funds for
the elections, indicating that direct donations to their election funds from individuals and companies were more or less absent. However, this does not necessarily mean that donations were not made to ordinary political party accounts. None of the five parties that crossed the five-percent threshold for participation in seat distribution in parliament appears to have received a single donation to their election funds. Part of the explanation is the early and unexpected start of the election campaign, the short campaign period and absence of fundraising activities (among the five parties that entered parliament, only Holos published the bank account requisites on its official website). However, this is also testimony of the unnecessarily burdensome procedure for making a donation, as potential donors are obliged to come to a bank in person and sign a statement. Women candidates face greater difficulties with implementing effective fundraising campaigns as they are far less integrated into existing financial networks than men.

As IFES has previously recommended, the procedure for making donations to campaign funds should be simplified and allow for donations through online banking or other online instruments that allow for proper identification of the donor.

The expenditure limit for political parties during parliamentary elections is UAH 375.57 million (approx. USD 15.02 million). The final campaign finance reports submitted by parties indicate they raised comparatively modest amounts of money during the campaign period. The Servant of the People party, which secured most seats in the Rada, raised the largest sum, with UAH 114.65 million (approx. USD 4.59 million), still well below the spending limit. Overall, the 22 competing parties raised a total of UAH 908 million (approx. USD 36 million), according to their official financial reports. While the short duration of the parliamentary campaign obviously limited the ability of parties to do more fundraising, it is also likely that the official figures do not cover all money raised and spent by the parties on elections. As noted by international observers, public associations affiliated with major parties and candidates often incurred campaign expenses by paying for campaign materials and ads, organizing campaign events, sponsoring social and infrastructure projects, and other activities. Spending by a non-political parties or candidates in favor of a certain party or candidate constitutes a form of in-kind donation and is not regulated by law. This loophole allows parties and candidates to lower their officially reported incomes and expenditures and avoid full disclosure.

The next parliament should introduce amendments to the election laws that explicitly regulate if and how campaign activities can be financed by third parties and through in-kind donations.

The NAPC should update its methodology to include valuation of in-kind donations to ensure proper regulation of such donations to parties’ and candidates’ election funds.

**Party and Candidate Expenditures**

The Parliamentary Election Law sets spending limits of 90,000 minimum salaries for parties (UAH 375.57 million or approx. USD 15.02 million) and 4,000 salaries for single member district (SMD) candidates (UAH 16,692,00 or approx. USD 668,000). In contrast, there are no expenditure caps in presidential elections. Although caps on campaign expenditures are recommended by the Venice Commission and OSCE/ODIHR, they are higher in Ukraine compared to neighboring countries.

In the 2019 parliamentary elections, parties again predominately used their campaign expenses to purchase paid political advertisement in media. As indicated by CHESNO Civil Movement, 81 percent of party expenditures were used to purchase ads in broadcast media, with 75 percent alone spent on purchasing ads on television. Another 12 percent was spent on outdoor advertisement. An abundance of advertisement in media, predominantly on television, drives up the general spending levels and gives undue advantage to parties and candidates with links to wealthy donors. Furthermore, advertising as a means of campaigning does not present voters with meaningful information and suppresses other communication formats, such as debates or canvassing, which can be more valuable for voters.
IFES reiterates its recommendation that considerations should be given to legally restricting costly types of campaigning, such as television and/or outdoor advertising during an election.

Continuing a trend noted in the 2019 presidential election, many parties and candidates spent significant amounts of money advertising on Facebook and other social networks. They often did so through pages that were not formally related to them. According to analyses by CHESNO Civil Movement, not all such campaign expenditures were reflected in contestants’ financial reports. The use of social networks for campaigning will undoubtedly expand in the coming years, but neither online media nor social networks are in any way regulated by Ukrainian legislation, which renders state oversight ineffective. The lack of legal regulation of social media also hampers contestants’ ability to conceive and implement effective digital campaign strategies.

Thus, parliament should adequately regulate the use of social networks and other online tools for campaign purposes in the legislation.

As noted earlier, observers noted many instances where money spent on campaigning was not channeled through election fund accounts in the parliamentary elections. This reportedly included unofficial payments to election commission members, observers and supporters as well as to media. Furthermore, both domestic and international observers saw numerous cases of vote buying, where a contestant provided goods or services to voters free or at discounted prices. Cash payments and direct and indirect vote buying are forbidden by the law. However, the persistence of such illicit practices in Ukraine’s elections indicates a lack of willingness or capability of election administration and law enforcement to effectively counter them. While some legal provisions, such as those concerning liability for vote buying, should be strengthened, others could be made more explicit to allow proper regulation and enforcement.

Therefore, parliament should consider improving the legal regulation of payments that currently bypass election funds to bring them under effective state control.

### Financial Reporting

Parties and candidates are obliged to report all incomes and expenditure on their election fund accounts. There is both an interim and a final financial report. Parties submit their financial reports to the Central Election Commission (CEC) and the National Agency for Prevention of Corruption (NAPC), while SMD candidates submit them to respective district election commissions (DECs). All reports are subsequently published on the CEC and NAPC websites. The reports must contain detailed information about each donation and transaction in the election fund, as well as each expenditure incurred. The deadline for submitting interim reports is five days before election day for parties and eight days before election day for candidates, while the deadline for submitting final report is fifteen days after election day for parties and seven days after election day for candidates.

Overall, 93 percent of all money raised by political parties for campaigning were transferred to the election fund accounts from the party’s ordinary account. This meant that neither voters nor regulators knew the origin of the funds that financed the party’s election campaign at the time the final reports were submitted, as this information would only be available after the publication of the party’s quarterly financial reports. Party reports for the second and third quarter of 2019 will only become available in early August and November, respectively, long after election day. As a result, voters had very little information about who financed the campaign of a given party, including those that made it to parliament. It also prevented the CEC from tracking potential illegal donations during the election period.

To remedy the lack of transparency about the origin of funds spent on campaigning, parliament should consider to requiring the regular reporting of donations made to both a political party’s ordinary and campaign accounts.
The transparency of campaign finance was undermined by the late opening of campaign accounts by some contestants, either because they were unprepared for the snap elections or experienced problems with their banks. Certain political parties and candidates began raising and spending campaign money before they had opened a bank account, in contravention of law. As a result, such funds were not reported on and escaped state oversight. The legal provision that forbids incurring campaign-related expenses prior to the opening of an election fund may be overly restrictive and may have contributed to making a significant amount of money unaccountable. In addition, the provision could disfavor women and other groups facing discrimination, as these groups largely have fewer opportunities to raise enough money for their campaign during a short election period.

**Consideration should be given to allowing electoral contestants to raise and spend money for campaign purposes before the official start of the election period, provided they are properly reflected in financial reports.**

While all 22 parties that contested proportional seats submitted their interim and final reports on time, only slightly more than a half of all SMD candidates did so, according to an analysis by Civil Network OPORA. This figure may reflect both the failure of candidates to submit reports to DECs, and the failure of DECs to submit the obtained reports to the CEC, as required by law. In any case, weak compliance with submission requirements led to decreased transparency of campaign finance in SMDs and weakened public oversight over the finances of SMD candidates.

**Steps should be taken to foster better reporting discipline by SMD candidates and DECs, including introducing stronger sanctions for non-compliance, improving the capacity of DECs to engage with candidates and collect their reports, and improving the system used for reporting.**

Continuing a welcome practice from the presidential election, the CEC published the financial reports of parties and candidates in XML format. This marks an important step forward, as it simplifies the analysis of the data contained in the reports and its transfer into an open data format. It is especially valuable for NGOs and media, which can now present the data from the reports in more accessible and audience-friendly ways. However, the use of XML format is only a temporary ad-hoc solution, as it does not enjoy all the advantages of a fully digitalized reporting system.

**As soon as possible and well in advance of the next nationwide election, parliament should introduce legal provisions for establishing an electronic system for continuous party and candidate financial reporting that is integrated with all relevant registers and databases.**

**State Oversight**

According to the law, both the CEC and the NAPC perform oversight of campaign finance during parliamentary elections. However, unlike in presidential elections, only the CEC analyses financial reports obtained from political parties. Capitalizing on the cooperation established before the presidential election with the NAPC, the CEC received information from the NAPC about illegal donations to election funds and incorporated it in its analysis. By taking such proactive position, the CEC bridged some of the gaps created by a legal framework that fails to clearly divide the finance oversight mandate between the two bodies.

Yet, as noted in the presidential election, the CEC analysis was mostly formalistic and did not look beyond information contained in the parties’ official reports, despite CSOs and the media reporting instances of illegal donation schemes and unreported expenditures. By choosing not to track money raised or spent beyond those officially reported, the CEC limited the value of its analysis. Overall, it found only minor violations in three party reports, such as receiving donations from persons with tax debt (which is forbidden by the law).

**The CEC should improve the quality of its analysis of parties’ financial reports by also focusing on major violations that may undermine the integrity of the elections, such as tampering with donation limits and not disclosing incurred expenses.**
Parliament should take steps to reinforce the impartiality, integrity and professionalism of the NAPC and its ability to effectively perform its political finance oversight mandate.

DECs are supposed to receive and analyze financial reports of SMD candidates. As noted in the 2014 parliamentary elections, DEC members usually do not perform analysis by themselves - claiming a lack of the required qualifications to do so. Instead, this analysis is outsourced to external lawyers, a practice that is encouraged by the CEC. Nevertheless, the quality of the analysis of SMD financial reports was extremely low and many DECs did not perform the analysis at all. The DEC reports submitted to the CEC demonstrate a formalistic approach and lack of substantial analysis. This rendered the state control over SMD candidates’ campaign finance almost meaningless.

The legal provisions for state oversight of campaign finance in single-member constituencies should be overhauled, either through providing DECs with enough resources and capacities to perform the analysis or through replacing the responsibility for the analysis.

The Parliamentary Election Law stipulates that the CEC and DECs must make their respective analyses of the financial reports of contestants public on the CEC’s website. Preliminary financial reports are to be published no later than two days before election day. This extremely short period does not provide voters with enough time to review the results of the analyses before going to the polling station.

The deadlines for publishing interim financial reports and the results of the analyses of these reports should be set earlier to allow more time for their public scrutiny.

Sanctions

The Parliamentary Election Law establishes different sanctions for failure to comply with campaign finance rules and envisage both administrative and criminal liability. However, the sanctions cannot be considered proportionate, effective or dissuasive. Violating the rules on donations and submitting false information in campaign financial reports can result in both administrative and criminal sanctions. However, administrative sanctions are mild with fines ranging from UAH 5,100 – 6,800 (equivalent of USD 204-272), and criminal sanctions are either too weak or too harsh for respective offences.

Some violations, such as spending money for campaigning not from election funds or exceeding spending limits, can only result in a warning by the CEC, which has no tangible effect on perpetrators. Moreover, different types of sanctions are often not harmonized with each other and it is sometimes hard to establish which type of liability applies.

Sanctions for campaign finance related offences should be strengthened and harmonized to make them capable of effectively discouraging and preventing violations.

The legal framework is inadequate for application of sanctions. Both administrative and criminal sanctions can be imposed only by courts. The CEC and DECs are deprived of the right to draw administrative protocols and submit them to courts; instead, they can only refer information about identified violations to the NAPC or the police for further investigation. In presidential elections, the NAPC analyzes campaign finance reports and can submit protocols about administrative violations to courts during the election period. In parliamentary elections, the NAPC does not have a similar mandate.

In addition, the procedures for preparing administrative protocols are unnecessarily burdensome, as it requires signature of an alleged perpetrator. The statutes of limitations after which courts cannot consider cases are short (only three months). This leaves parties and candidates who violate the rules of campaign finance virtually unaccountable for their violations.

The police are responsible for investigating reported cases of campaign finance violations, but they lack resources and qualifications to perform this task effectively. Twelve cases, which the NAPC submitted to the police in May for investigations alleging that several presidential candidates in the
2019 presidential election committed a crime, have so far not produced any results. Similarly, no information is available about police inquiries into campaign finance violations during the recent parliamentary elections.

**Procedures for applying sanctions for campaign finance violations during election period should be simplified.** The CEC and DECs should have the right to draw administrative protocols, bottlenecks in proceedings for administrative offences should be removed, and the capacity of the police to investigate violations of campaign finance rules should be further developed.

**Conclusions**

The 2019 parliamentary elections saw some improvements in the transparency of campaign finance, compared to the previous parliamentary elections in 2014; however, parties used different legal loopholes to avoid full disclosure of the sources of their income. The dependence of certain political parties and candidates on wealthy donors continued to be an issue. Contestants again spent an abundance of their financing on political advertisement, especially on television. State control with campaign finance was relatively weak, impaired by a flawed legal framework and oversight bodies’ lack of resources and capacity, especially at the regional level. Sanctions for campaign finance violations were not enforced, which undermined the efficacy of the rules.

Certain steps should be taken by relevant institutions to address these issues.

The recommendations made throughout this report are collated below. The recommendations are offered to the attention of relevant Ukrainian stakeholders, including the Verkhovna Rada, the Central Election Commission, the National Agency for Prevention of Corruption and National Police.

**Donations to Election Funds**

1) The election laws should limit the amount a candidate can contribute to their own election funds by bringing these limits in line with the general donation limits.

2) The procedure for making donations to campaign funds should be simplified and allow for donations through online banking or other online instruments that allow for proper identification of the donor.

3) The next parliament should introduce amendments to the election laws that explicitly regulate if and how campaign activities can be financed by third parties and through in-kind donations.

4) The NAPC should update its methodology to include valuation of in-kind donations to ensure proper regulation of such donations to parties’ and candidates’ election funds.

**Party and Candidate Expenditures**

5) Considerations should be given to legally restricting costly types of campaigning, such as television and/or outdoor advertising during an election.

6) Parliament should adequately regulate the use of social networks and other online tools for campaign purposes in the legislation.

7) Parliament should consider improving the legal regulation of payments that currently bypass election funds to bring them under effective state control.
Financial Reporting

8) To remedy the lack of transparency about the origin of funds spent on campaigning, parliament should consider to requiring the regular reporting of donations made to both a political party’s ordinary and campaign accounts.

9) Consideration should be given to allowing electoral contestants to raise and spend money for campaign purposes before the official start of the election period, provided they are properly reflected in financial reports.

10) Steps should be taken to foster better reporting discipline by SMD candidates and DECs, including introducing stronger sanctions for non-compliance, improving the capacity of DECs to engage with candidates and collect their reports, and improving the system used for reporting.

11) As soon as possible and well in advance of the next nationwide election, parliament should introduce legal provisions for establishing an electronic system for continuous party and candidate financial reporting that is integrated with all relevant registers and databases.

State Oversight

12) The CEC should improve the quality of its analysis of parties’ financial reports by also focusing on major violations that may undermine the integrity of the elections, such as tampering with donation limits and not disclosing incurred expenses.

13) Parliament should take steps to reinforce the impartiality, integrity and professionalism of the NAPC and its ability to effectively perform its political finance oversight mandate.

14) The legal provisions for state oversight of campaign finance in single-member constituencies should be overhauled, either through providing DECs with enough resources and capacities to perform the analysis or through replacing the responsibility for the analysis.

15) The deadlines for publishing interim financial reports and the results of the analyses of these reports should be set earlier to allow more time for their public scrutiny.

Sanctions

16) Sanctions for campaign finance related offences should be strengthened and harmonized to make them capable of effectively discouraging and preventing violations.

17) Procedures for applying sanctions for campaign finance violations during election period should be simplified. The CEC and DECs should have the right to draw administrative protocols, bottlenecks in proceedings for administrative offences should be removed, and the capacity of the police to investigate violations of campaign finance rules should be further developed.

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