Report on Effectiveness of Sanctions for Campaign Finance Violations During the 2019 Presidential and Parliamentary Elections

Abbreviations

CEC – Central Election Commission
DEC – District Election Commission
TEC – Territorial Election Commission
SMC – Single-Member Constituency
NAPC – National Agency for Prevention of Corruption
NABU – National Anti-Corruption Bureau of Ukraine
CAO – Code of Administrative Offenses of Ukraine
CCU – Criminal Code of Ukraine

Introduction

The 2019 presidential election was the first national election conducted according to new campaign finance rules introduced by the 2015 Law of Ukraine “On Amendments to Certain Legislative Acts of Ukraine Concerning Prevention of and Fight Against Political Corruption”. Shortly after the presidential election, the new legislation on campaign finance stood a second test in the July 2019 parliamentary elections.

The ability of state institutions to hold violators accountable is considered one of the most important indicators for measuring success of political finance reform launched in 2015. The 2015 political finance law introduced sanctions for violations of political finance rules; but, until now, there has been no real opportunity to evaluate their effectiveness, proportionality and dissuasiveness until 2019.

This report will investigate how provisions on campaign finance violations were enforced in the 2019 nationwide elections. It will provide an overview of the legal framework, present findings from monitoring the political finance law’s implementation during the two elections and include recommendations for electoral stakeholders. The report will address the following issues:

- Campaign finance and reporting rules during the presidential and parliamentary elections;
- Sanctions for campaign finance violations;
- Enforcement of administrative and criminal sanctions for campaign finance violations;
- Legal flaws and lack of institutional capacity from state oversight bodies that hinder effective implementation of provisions governing administrative and criminal liability; and,
- Recommendations for improving the system of sanctions for campaign finance violations.

The report’s author monitored application of campaign finance sanctions throughout the 2019 presidential and parliamentary elections using official data tracking alleged violations of campaign finance rules that carry administrative or criminal responsibility. For administrative violations, protocols drawn by the NAPC and submitted to courts were considered. Similarly, the author identified material on possible criminal violations prepared by the NAPC and submitted tracked information to
the National Police for subsequent submittal to the courts. The report’s author also monitored how courts handled administrative and criminal cases and the decisions they reached.

Recommendations presented in the report are based on findings from analysis of the legal framework regulating liability for campaign finance violations and monitoring application of sanctions in both 2019 nationwide elections.

**Campaign Finance and Reporting Rules During the 2019 Elections**

In 2019, Ukraine administered two elections – the presidential and early parliamentary elections. The campaign finance and reporting legal framework was established by the Law “On Election of the President of Ukraine” and the Law “On Elections of People’s Deputies of Ukraine” which remained effective at the time of the elections. This section will provide a brief overview of campaign finance rules in both types of elections. The campaign finance regulations were similar in the presidential and parliamentary elections and when provisions differ, depending on the type of elections, they will be addressed accordingly.

**Election Fund Creation**

The electoral legislation that went into effect in 2019 stipulates two basic rules for creating election funds. First, all candidates and political parties running for presidential and parliamentary elections are required to open their own election funds. Second, candidates and parties must finance their campaign in presidential and parliamentary elections exclusively through the election funds.

To meet the new legislation’s requirements, candidates and parties must open two types of election funds:

- An accumulative account to collect donations for campaign finance; and,
- Current accounts for campaign finance expenditures in which donations can only be transferred from the accumulative account.¹

**Donation Sources and Spending Limits**

The 2019 electoral legal framework provides for three key types of donations that can be used by candidates and parties to fund election campaigns in national elections, including:

- A candidate’s fund;
- A political party’s fund; and,
- Voluntary donations to election funds by individuals and businesses.

A detailed breakdown of sources of donations for both elections is presented in Table 1.

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¹ An exception applies to parliamentary election candidates in SMCs where parliamentary candidates are allowed to have one current account to collect funds and make payments to their campaigns.
Table 1. Sources of Donations to Election Funds

<table>
<thead>
<tr>
<th>Type of Election Fund</th>
<th>Sources of Donations to Election Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Candidate’s Funds</td>
</tr>
<tr>
<td>2019 Presidential Election</td>
<td></td>
</tr>
<tr>
<td>Election Fund of a Political Party-Nominated Presidential Candidate</td>
<td>Yes</td>
</tr>
<tr>
<td>Election Fund of an Independent Presidential Candidate</td>
<td>Yes</td>
</tr>
<tr>
<td>2019 Parliamentary Elections</td>
<td></td>
</tr>
<tr>
<td>Election Fund of a Political Party-Nominated List in a Single Nationwide Constituency</td>
<td>No</td>
</tr>
<tr>
<td>Election Fund of an MP Candidate in an SMC</td>
<td>Yes</td>
</tr>
</tbody>
</table>

National legislation establishes different spending limits for elections – maximum amounts candidates and parties can raise and spend for their campaigns:

- A presidential candidate’s election fund: No spending limits;
- The election fund of a political party that nominated a list in the nationwide multi-mandate constituency: No more than 90,000 minimum monthly salaries which in 2019 amounted to UAH 375,570,000; and,
- An SMC candidate’s election fund: No more than 4,000 minimum monthly salaries which in 2019 totaled UAH 16,692,000.

Ukrainian law does not limit donations that can be contributed by presidential and parliamentary candidates, although donation amounts are limited by the maximum size of the election fund. The same rules apply to donations received from a political party that nominated a presidential candidate and election fund contributions to a political party in parliamentary elections.

Voluntary donations to all types of election funds by natural and legal entities is limited in presidential and parliamentary elections as outlined in the next section.

Voluntary Donations to the Election Fund

Voluntary Donation Procedure

Procedures for making voluntary donations to election funds in both presidential and parliamentary elections are similar. To make a voluntary donation to any election fund in the 2019 elections, a natural person or a representative of a legal entity must visit a bank or the post office and provide the following documents:
- A payment document stating the donor’s last, first and patronymic names, date of birth; place of residence; tax number; and, the donation amount;
- A written statement confirming the absence of circumstances referred to in paragraphs 1-3 of Article 15 of the Law of Ukraine on Political Parties that create the grounds for refusal of a donation to a political party or a candidate; and,
- As stipulated by election law, an ID or other document confirming the donor is a citizen of Ukraine and his or her tax number.

In some cases, banks and post offices may refuse payment documents for making donations if:

- The payment document is submitted by a donor who has no right to make a voluntary donation to the election fund (see below);
- The person tries to make a voluntary donation that exceeds the maximum amount as stated by law (see below); and,
- The donor fails to submit his or her personally signed statement confirming the absence of circumstances referred to in paragraphs 1-3 of Article 15 of the Law of Ukraine “On Political Parties in Ukraine.”

According to the law, donations can be made only through bank transfer and monetary contributions. In-kind donations to elections accounts are not allowed.

**Persons Not Eligible to Make a Donation**

According to the operational legal framework in the 2019 presidential and parliamentary elections, any natural – individual – or legal entity can make voluntary donations to all election funds, except for the following:

- Foreign nationals and persons who are stateless persons, or those persons not considered as a national by any state under the operation of its law;
- Anonymous individuals or persons using a pseudonym;
- Ukraine citizens under the age of 18;
- Ukraine citizens who are deemed incapacitated by a court decision;
- Natural persons or legal entities with tax debts;
- Individuals and legal entities who concluded public procurement contracts to provide works, goods or services to the State (the Ukrainian national government) and local self-government under the Law “On Public Procurement” during the contract implementation period and one year after the contract’s termination;
- State institutions and local self-governance organizations;
- State-owned and local self-governance-owned enterprises, institutions and organizations;

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2 Except for persons who refused to receive a tax number because of religious belief, possess the mark in their passport and who notified the oversight body.

3 Passport of a Ukrainian citizen, passport of a Ukrainian citizen traveling abroad, a diplomatic passport and a service passport.

4 Except for persons who refused to receive a taxpayer number.

5 Unless the total amount received by an individual or a legal person for the duration of the contract and two years after its termination does not exceed 10 percent of his or her total income during the period.
• Legal entities with more than a 10 percent share of authorized capital or voting rights owned directly or indirectly by state or local self-governance bodies;
• Legal entities in which the owners or controllers are persons authorized to perform State or local government functions under the Law “On Corruption Prevention”;
• Foreign governments and foreign legal entities;
• Legal entities in which the owners or controllers are persons authorized to perform State or local government functions under the Law “On Corruption Prevention”;
• Legal entities in which the owners or controllers are foreign nationals or stateless persons;
• Legal entities with no less than a 10 percent share of authorized capital or voting rights owned directly or indirectly by nonresidents;
• Unregistered civil society organizations;
• Charitable and religious organizations; and,
• Other political parties.

Ceilings on Voluntary Donations

The 2019 legal electoral framework stipulates that the maximum amount of a donation to any election fund cannot exceed the maximum amount of an annual donation to a political party as set out by the “Law on Political Parties”. The Law sets the maximum donation amount from a natural person to a party during one calendar year at 400 minimum monthly salaries for natural persons and 800 minimum monthly salaries for legal entities. The amount of the minimum monthly salary used to calculate the maximum donation amount is established on January 1 of the year when the donation is made.

The donation amount:

• Made by a natural person to one election fund cannot exceed UAH 1,669,200; and,
• Made by a legal entity to one election fund cannot exceed UAH 3,338,400.

Return of Donations of Refusal of Donations

In 2019, managers of the accumulative accounts of election funds were allowed to refuse voluntary donations. They submitted an application for refusal alongside the payment document to the bank where the election fund was opened. The donation then had to be either returned to the donor or, if return of the donation was impossible, transferred to the State Budget.

In the case a donation is made by an unauthorized donor, the manager of the election fund account must refuse the donation by applying to the bank within three days from the day when he or she became aware of the unauthorized donor’s status. Based on the election fund manager’s application, the bank is required to transfer the donated amount to the State budget.

However, electoral legislation articulates different regulations of donations that exceed contribution ceilings in the presidential and parliamentary elections (Table 2).
Table 2. Measures Taken if the Donation Value to the Election Fund Exceeds the Legally Established Maximum

<table>
<thead>
<tr>
<th>Event/Issue</th>
<th>Method Addressing the Issue</th>
</tr>
</thead>
<tbody>
<tr>
<td>Voluntary Donation Exceeds Maximum Amount</td>
<td>Under the Law Governing the Presidential Election</td>
</tr>
<tr>
<td></td>
<td>The bank must return the part of the donated amount that exceeds the maximum limit to the donor, or transfer it to the State budget in the case when a donation return is not possible based on an application and the payment document submitted by the election fund manager to the bank.</td>
</tr>
<tr>
<td></td>
<td>Under the Law Governing Parliamentary Elections</td>
</tr>
<tr>
<td></td>
<td>The bank should transfer the full amount of the donation to the State budget based on an application submitted by the election fund manager.</td>
</tr>
</tbody>
</table>

Use of Money from the Election Fund

According to the 2019 electoral legal framework, candidates and political parties can use money from the election funds only to cover campaign expenditures. The law stipulates that funds received in the accumulative account must be transferred to current accounts from which the candidate or party must finance campaign expenditures. Expenditures directly from the accumulative accounts are prohibited.6

Managers of accumulative election funds and current election funds are authorized to use the funds. Managers of the accumulative account are required to keep records of the receipt and transfers of election funds from the accumulative account to the current accounts. Managers of current accounts must ensure compliance with financial rules and keep accounting records on expenditures from the election fund.

Financial Reporting

The manager of the accumulative election fund of a candidate or political party is obliged to publish and submit a financial report to the relevant State institutions on receipt and spending of election funds.7 According to the financial reporting procedure for parliamentary candidates in SMCs, the financial report must be submitted by the manager of the candidate’s current election fund because candidates have no accumulative accounts.

The national legislation provides for two types of reports:

1. Interim reports submitted before election day and including information on receipt and use of money from the election funds during the campaign period; and,

6 An exception to the rule is made for candidates in SMCs who open a single current account to raise money and make campaign-related payments.

7 In addition to the official ("external") financial reporting, the legal framework governing national elections envisions a procedure for "internal" financial reporting by obliging managers of current accounts to submit financial reports to managers of election funds' accumulative accounts.
2. Final reports submitted after the election including full information on the receipt and use of money from election funds during the campaign period.

Detailed information on rules for submitting financial reports in presidential and parliamentary elections are presented in Table 3.

**Table 3. Rules for Submitting Financial Reports on Receipt and Use of Money from the Election Funds**

<table>
<thead>
<tr>
<th>Type of Report Submitted</th>
<th>Who is Responsible?</th>
</tr>
</thead>
<tbody>
<tr>
<td>Interim Financial Report</td>
<td>Manager of an accumulative election fund account for a presidential candidate</td>
</tr>
<tr>
<td></td>
<td>Manager of an accumulative election fund account of a political party nominating a candidate list in the nationwide constituency</td>
</tr>
<tr>
<td></td>
<td>Manager of the election fund’s current account of an SMC parliamentary candidate</td>
</tr>
<tr>
<td>Final Financial Report</td>
<td>Submitted to the party*, the CEC, or the NAPC no later than on the fifteenth day after election day.</td>
</tr>
<tr>
<td></td>
<td>Submitted to the party, CEC, and NAPC no later than eight days before election day.</td>
</tr>
<tr>
<td></td>
<td>Submitted to the party* and DEC no later than on the seventh day after election day.</td>
</tr>
</tbody>
</table>

* An independent (self-nominated) presidential or parliamentary candidate in a SMC does not submit his or her financial report to the party.

**Administrative Sanctions for Campaign Finance Violations in the Presidential and Parliamentary Elections**

Ukrainian law provides for two types of sanctions – administrative and criminal – for violation of campaign finance rules. This section provides a brief overview of administrative sanctions for violations of campaign finance requirements, including:

- Types of violations and sanctions for such violations;
- Enforcement for campaign finance violations during the 2019 presidential and parliamentary elections;
- Legislative flaws that prevented effective application of administrative sanctions; and,
- Ineffective operations of oversight agencies in charge of prosecuting administrative offenses.

**Administrative Sanctions for Violating Campaign Finance and Reporting Requirements**

CAO provides for the three types of violations of campaign finance requirements:

- Violation of procedure for financial and material support for campaigning (Article 212-15);
• Violation of procedure for acceptance of financial and material support for campaigning (Article 212-15); and,
• Violation of procedure for filing the financial report on receipt and use of election funds (Article 212-21).

Violation of Procedure for Providing Financial and Material Support for Campaigning

Considering provisions of Article 212-15, violations related to financial support for campaigns could include:

• Providing non-monetary, or in-kind, support for campaigning. That is, making donations in the form of goods, intangible assets or products; or by providing free services or at a reduced rate; providing advantages and privileges, including intangible benefits; or, by financing campaign events);
• Cash donations;
• Transferring donations to the current accounts of the election fund (except for SMC parliamentary candidates);
• Donating to political parties by persons ineligible to make contributions (see Section 1.3. of this report for the list of such donors);
• Donations without submittal of the payment document and statement to the bank or post office, or in absence of the donor’s tax code (see Section 1.3. of this report for the list of required documents for making donations);
• Donating to a candidate or political party election fund that exceeds the legally established annual maximum for the individual or business during the year (see Section 1.3 of this report for further details on donation restrictions imposed on individuals and companies.  

A voluntary donation in violation of the procedure for providing support for election campaigning cannot be confiscated based on Article 212-15, since the law applies only to donations in support of a political party made or received in violation to the law.

Violation of the Procedure for Receipt of Financial and Material Support for Campaigning

The violations related to financial support for campaigning could include:

• Accepting non-monetary (in-kind) support for campaigning;
• Receiving cash donations;
• Failure to comply with rules that require returning voluntary donations made by unauthorized donors if the amount exceeds the maximum limit specified in the law (see Section 1.4. of this report for details of the measures to be taken if the donation was made in violation of the law).  

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8 Providing support for campaigning in a “significant” amount (that is, if the donation value by at least two times exceeds the maximum permitted donation to a political party during a calendar year) or if the contribution was made by an unauthorized donor could be violations of Article 212-15 of the CAO only if made unintentionally. Intentional violation of these rules entail criminal liability under Article 159-1 of the CCU. All other violations, whether intentional or not, are covered by Article 212-15 of the CAO.

9 This violation is covered by Article 212-15 of the CAO in case it was committed unintentionally. Intentional acceptance of illegal support for campaigning entails criminal liability under Article 159-1 of the CCU.
While identifying violations related to financial support for campaigning, the NAPC, the CEC and the courts should take into consideration that a candidate, a political party and an election fund manager are not legally obliged to perform permissibility checks of all voluntary donations transferred to their election fund accounts. Monitoring falls within the NAPC and the CEC mandates. Therefore, the manager should refuse a voluntary donation only if he or she was informed that such a donation was illegal. If the election fund manager did not know a person was ineligible to make a donation or that such a donation was made in violation of maximum legal limits, he or she cannot be held legally responsible.

An election fund manager can be held responsible for violation of the general procedure for receiving campaign support. However, in some cases – in the event of receiving cash donations or in-kind contributions in the form of goods or services – a candidate, a candidate’s representatives and a representative of a political party might also be held liable for such violations.

**Violation of Procedure for Filing Financial Reports on From Election Funds**

Violations of the procedure for filing a financial report on receipt and use of money from an electoral fund could include:

- Not submitting a report to regulatory bodies or failure to submit a report to all regulators identified in relevant provisions of electoral legislation (the CEC and NAPC);
- Submitting a report after the deadline established by electoral legislation;
- Submitting a report that does not comply with the reporting form(s) provided by the CEC;
- Submitting a report with no enclosed transcript(s) or explanatory note;
- Submitting an incomplete report; and,
- Submitting a report with inaccurate data;\(^\text{10}\) and,
- Submitting a report in violation of other legal provisions or CEC regulations.\(^\text{11}\)

Electoral fund managers, obliged to submit financial reports under the electoral law, can be held liable for violation of the common procedure for filing a financial report on the receipt and money expenditure from the election fund.

**Administrative Liability for Campaign Finance Violations**

This section outlines an analysis of official data on administrative liability for campaign finance violations in the 2019 national elections. According to the 2019 legal framework, the NAPC is required

\(^{10}\) Providing inaccurate data within the financial report may qualify as a violation of Article 212-21 of the CAO in case it was committed unintentionally. Providing reports containing false or misleading information entails criminal liability under Article 159-1 of the CCU. All other reporting violations – intended or not – fall under Article 212-21 of the CAO.

\(^{11}\) Submittal of the report not signed by the authorized manager of the electoral fund; failure to complete the reporting form; submission of a report containing additional categories and unanticipated data; non-compliance with requirements for submitting paper and electronic versions of the report; a discrepancy between the report submitted on paper and its electronic version; and, non-compliance with requirements for hiding personal data in the scanned copy of the report.
to compile administrative protocols on identified administrative offenses and submit them to the courts. The CEC is also mandated to inform law enforcement agencies of the signs of such offenses.\(^\text{12}\)

The report provides information on the following:

- Number of written records, or protocols, of administrative offenses submitted to the courts following the 2019 national electoral cycles;
- Types of violations for which the protocols have been filed;
- Results of court consideration of administrative offense cases.

### Violation of Campaign Finance Rules During the 2019 Presidential Election

During the 2019 presidential election, based on official information received from the NAPC and analysis of court cases in the Unified State Register of Court Decisions, the NAPC identified **135 cases** of campaign finance violations that fall under administrative liability.

The NAPC compiled and sent to the courts for further consideration:

- One hundred and thirty-four administrative protocols documenting administrative offenses foreseen by Article 212-15 – violation of the procedure for making and receiving campaign finance; and,
- One administrative protocol documenting an administrative offense provided by Article 212-21 – violation of the procedure for filing financial reports on receipt and use of election funds.

While these official documents do not indicate specific provisions governing the procedure for making and receiving donations as having been violated, according to the NAPC press statement, the vast majority of offenses were related to donations to election funds made by donors with tax debts.\(^\text{13}\)

At the time this report was drafted, the authors reviewed final court decisions, among other materials, in 113 administrative cases on administrative offenses covered by Article 212-15. These cases constitute 84 percent of the number of known cases related to violations of campaign finance rules.

Based on the analysis of the 113 cases, it was revealed that:

- Fifty-four cases were dismissed due to expiration of the term for holding a person liable for committing an administrative offense. In 23 cases, courts ruled the accused guilty; but, due to requirements of the CAO’s Article 38, closed the case and did not impose sanctions. Thirty-one cases were closed based on Article 38 without specifying guilt;
- 30 cases were closed by the court because there was no sign of offense or the alleged violation was not, in fact, a violation; and,
- In 29 cases, a person was found guilty and a fine was imposed on the perpetrator.

The fact that only in 26 percent of cases those who were accused were found guilty (and held liable by imposing administrative fines) makes it clear that during the 2019 presidential election campaign

\(^\text{12}\) Before the 2019 presidential election, the CEC and NAPC created a joint working group to ensure information-sharing, including detected indications of offenses. Through the working group, the CEC informed the NAPC about suspected violations of campaign finance rules during the presidential and parliamentary elections.

state agencies, including the NAPC, and the courts demonstrated a lack of capacity in detecting, documenting, and bringing to justice those who violated campaign finance regulations. Based on analysis of the sanctions imposed by courts on those who were found guilty of committing offenses under Article 212-15, it is worth mentioning that:

- In 83 percent of cases, courts imposed a fine on offenders; and,
- In 17 percent of cases, the courts issued warnings to perpetrators.

During the 2019 presidential election, fines for violations of campaign finance provisions were imposed in 24 cases and the same number of persons was found guilty. In 23 cases the courts imposed the lowest fines possible amounting to UAH 1,190 to regular citizens and UAH 1,700 to public officials. Only in one case did the court impose a fine above the lowest possible level – UAH 1,445 was imposed on one citizen. Total fines imposed on all offenders totaled UAH 29,835.\(^{14}\)

Our analysis of court decisions concludes that courts neither properly considered the negative effects of each offense, nor the individual nature of liability; but, imposed the mildest sanctions possible.

In eight cases of alleged administrative offense under Article 212-15, the courts ruled to confiscate the voluntary donation that was given or received in violation of election law. The value of confiscated donations, as determined by courts of first instance, totaled UAH 1,866,300.

In four out of those eight cases, the decision of the court of first instance was challenged to a court of appeal. In three cases the courts of appeals revoked the decision of the first instance court, while only in one case did the court of appeal uphold the decision of the first instance court. Courts of appeals revoked decisions of first instance courts on confiscation of voluntary donations totaling UAH 1,297,500. Therefore, only five decisions issued by the court of first instance totaling UAH 568,800 moved forward for administration. This constitutes only 30 percent of the total amount initially supposed confiscated.

In five cases, persons found guilty of committing an administrative offense as set out in Articles 212-15 received an administrative fine or a warning.

The NAPC detected only one case of violation of the financial reporting requirements under Article 212-21. A court eventually imposed a fine of UAH 5,100 on the guilty person.

A presidential candidate’s representative was prosecuted under Article 188-46 – the NAPC documented the offense – that establishes administrative liability for ignoring legitimate requirements and orders of the NAPC related to exercising campaign finance oversight powers. However, the court eventually dismissed NAPC claims and ruled that the person’s inaction had no signs of an administrative offense.

**Campaign Finance Violations During the 2019 Parliamentary Elections**

According to official data, the NAPC detected 103 administrative offenses related to violations of campaign finance rules during the 2019 parliamentary elections.

The NAPC compiled and forwarded to courts for further consideration:

\(^{14}\) In one case, the court of appeal revoked the decision of the court of first instance to impose a fine of UAH 1,190.
• Seventy-one administrative protocols documenting administrative offenses foreseen by Article 212-15 – violation of the procedure for making and receiving donations for campaign finance; and;
• Thirty-two administrative protocols documenting administrative offenses in Article 212-21 – violation of the procedure for filing financial reports on the receipt and use of money from election funds.

**Court Practice Under Article 212-15.** As part of preparation of this report, we reviewed copies of 50 administrative cases of offenses of Article 212-15 which amounts to more than 70 percent of all cases.

Based on the analysis of these cases, it was noted that:

• Twenty were dismissed due to expiration of the term for holding a person liable for committing an administrative offense. In three cases, the courts found the accused guilty but closed the case without imposing any sanctions, based on the requirements of Article 38 of the CA and the remaining 17 cases the court closed them without explaining whether the accused person was guilty or not;
• Twenty were dismissed by the court without a sign of offense; and,
• In 10 cases did the court find a person guilty and subject to administrative fine.

Our analysis of the above figures indicates the process of bringing those suspected of violating procedure to justice for making and receiving donations for campaigning in the 2019 parliamentary elections remains ineffective.

In nine of 10 analyzed cases, those who were found guilty were subject to a fine. In all such cases, the lowest possible fine was imposed. Following consideration of this category of cases by the courts of first instance, those who were found guilty were subject to fines totaling UAH 11,730. However, the court of second instance in two cases revoked decisions of courts of first instance to impose a fine of UAH 1,190. Of all analyzed cases, only seven court rulings have been applied for the total amount of UAH 9,350.

In one case, a person found guilty was issued a warning. In none of the cases of voluntary donations given or received in violation of the parliamentary election law was the donation confiscated.

**Court Practice Under Article 212-21.** While preparing this report, the authors reviewed materials of 12 cases addressing administrative offenses in Article 212-21 of the CAO. This is 38 percent of total case material.

Based on case analysis, it was revealed that:

• Eight cases were dismissed due to expiration of the term in which a person can be held liable for committing an administrative offense – a statute of limitations;\(^{15}\)
• One case was closed by the court that found no signs of offense or determined the alleged violation was not factual; and,
• In only three cases, the alleged offender was found guilty and sentenced to a fine.

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\(^{15}\) In three cases, the accused was found guilty; but, the case was closed based on requirements of Article 38 of the CAO without any sanctions being imposed. In the remaining 17 cases, the case was closed without explanation.
The data suggests that during the 2019 parliamentary elections (as was the case during the 2019 presidential election), the State was ineffective at detecting and documenting offenses and bringing to account those who violated financial reporting rules.

In three cases where the court ruled that the accused guilty, only one fine was imposed – the lowest possible sanction at UAH 5,100. In the other cases, those found guilty received administrative warnings.

**Court Practice Under Article 188-46.** There were five cases during the 2019 parliamentary elections when individuals were accused of ignoring orders from the NAPC which were issued in accordance with its mandate to exercise campaign finance oversight. The NAPC compiled administrative protocols on the offenses in Article 188-46 of the CAO against those five individuals.

Three of these cases were analyzed for the purpose of this report. Out of the three, two cases were closed because no sign of administrative offense was identified. In one case, the court found an individual to be guilty and imposed the lowest possible fine of UAH 1,700.

**Legal Flaws Hampering Effective Sanctions Enforcement for Campaign Finance Violations During the 2019 Elections**

Research for this report concludes the system of sanctions aimed to prevent campaign finance violations proved to be ineffective during the 2019 presidential and parliamentary elections. Out of 238 cases of detected offenses forwarded to courts for consideration, 75 percent of the cases were closed by the courts with no sanctions while only in 25 percent of cases were the accused found guilty and subject to various administrative sanctions. Even when courts did impose fines on perpetrators, the financial sanctions were minimal. And, subsequently, courts of appeals revoked 20 percent of decisions of first instance courts imposing fines.

Reasons for uneven enforcement of campaign violations are:

- Flaws in the legal framework establishing administrative liability for violations in a specific area of the law and the procedures in bring offenders to account; and,
- Flaws in operations of State agencies tasked to impose sanctions on those who commit offenses.

The following section of the report covers these legal loopholes.

**Flaws in Article 212-15**

1. Article 212-15 fail to specify which “procedures for making a donation” are covered.

This makes it difficult to understand which particular actions are prohibited under these articles. It is difficult to delineate which actions are subject to liability under Article 212-15 of the CAO and which are subject to sanctions under Article 159-1 of the CCU (see below for details).

2. Lack of clear delineation between actions covered by Articles 212-15 of the CAO and actions covered by Article 159-1 of the CCU.

Our analysis of Article 212-15 of the CAO and Article 159-1 of the CCU suggests there are four types of misconduct which fall under both the CAO and the CCU, making it difficult to understand which sanctions – administrative or criminal – apply:
• Provision or acceptance of financial and material support for election campaigning by a person who is not eligible to do so; and,
• Provision or acceptance of significant financial and material support for election campaigning.\(^{16}\)

In our assessment of Article 159-1 of the CCU delineation between criminal and administrative liability should be based on guilt:

• If the offense was due to negligence, it should be subject to administrative sanctions as called for in Article 212-15 of the CAO; and,
• If the offense was committed intentionally, it should be subject to criminal sanctions under Article 159-1 of the CCU.

An analysis of court decisions issued in 2019 demonstrates how the lack of clarity on the form of guilt in both articles allowed judges to manipulate the legal provisions by stating in the court decisions that Article 212-15 of the CAO covers only intentional offenses when, in fact, these articles should apply to offenses committed due to negligence. Based on interpretation of Article 212-15 of the CAO, the judges concluded the actions committed by individuals did not contain signs of administrative offense covered by these articles and, as a result, closed the administrative cases.

3. The law regulating administrative offenses does not take into account that it is almost impossible to violate the procedure for receiving donations.

Article 212-15 can be interpreted in such a way that representatives of political parties are subject to administrative sanctions for violations of the procedure for accepting donations.

It may seem there are two separate procedures – one for making and one for accepting donations. In fact, election fund managers are not engaged in accepting donations. All donations are transferred to election funds and fund managers do not confirm acceptance of donations. We should understand that in almost all cases when the procedures for making or accepting donations allegedly were violated, in fact, only the procedure for making a donation was violated rather than the procedure for its acceptance.

4. Unjustified confiscation of donations.

Most violations covered by Article 212-15 can be committed due to negligence rather than willful intention. In 2019, the most common violation was making a donation by individuals with tax debts. In most cases, the donors were not aware of such a debt when they made the donation.

That violations are usually committed due to negligence and, therefore, do not negatively impact public interest, there is no need for confiscating a donation from a contributor. If such a violation was committed, a more reasonable approach would be to return the donation to the donor rather than to confiscate the donation. However, the 2019 election legal framework set out a different approach to address this issue (see paragraph 1.4 of this report for more detail).

Confiscating an illegal donation contravenes Articles 24 and 29 of the CAO that provide clear conditions under which a confiscation is allowable. According to these articles, funds that illegally

\(^{16}\) If the amount exceeds the maximum donation value for one person year two or more times over a year’s time.
contributed we cannot be confiscated which renders the confiscation procedure unjustifiable as set by Article 212-15.

5. Lack of effective sanctions for repeated violations of the campaign finance procedure.

One of the key objectives of political finance reform is to deter future violations. This goal could be achieved through establishing stricter sanctions for repeated violations. However, such sanctions are not envisioned in the CAO. Therefore, it is no surprise that the same offenders have repeatedly violated the same rules.

**The Flaws of Article 212-21**

1. Sanctions provided in Articles 212-21 of the CAO and in Article 159-1 of the CCU are inconsistent and disproportionate.

Under Article 212-21 of the CAO, a relatively minor offense such as the failure of a political party to file the quarterly financial report is subject to a fine of UAH 5,100-6,800 and will be specifically incurred by a representative of that political party. On the other hand, including deliberately false information into the party’s quarterly financial report will constitute a criminal offense under Article 159-1 of the CCU and subject to a light fine of UAH 1,700-5,100.

2. Article 212-21 of the CAO provides for minor fines for violations and fails to establish sanctions for repeated violations.

As a result, sanction enforcement does not have a preventative effect on violators because, often, the same person repeatedly commits the same offense multiple times.

**Flaws Related to Documenting and Prosecuting Administrative Offenses**

1. Flawed procedure for documenting an administrative offense under Article 212-21 of the CAO.

One of the procedural flaws in the current legal framework that prevents the NAPC from effective oversight is a requirement of Article 256 of the CAO that requires compilation of each administrative protocol documenting the offense (including the offense covered by Article 212-21 of the CAO) is in the presence of and should be signed by the person accused of the offense. This requirement is hard to meet because offenders prefer not to appear at the NAPC or sign the protocol articulating the offense. However, if a protocol is not signed by a suspected offender, courts usually do not consider it, refuse to open a case and the suspect evades responsibility. As a result, the NAPC usually documents only 20-30 percent of the number of detected offenses.

2. Tight deadlines for imposing administrative sanctions.

The deadline for imposing sanctions in this category of cases is too short and leaves no time for the NAPC and the courts to implement required proceedings and impose sanctions. In 2019, sanctions could not be imposed later than three months from the day when the violation was detected.

Our own estimates suggest that almost 45 percent of all cases opened under Article 212-15 of the CAO and almost 70 percent of cases initiated pursuant to Article 212-21 of the CAO are closed due to expiry of the deadline for imposing sanctions, undermine NAPC and CEC efforts in campaign finance oversight. After the 2019 parliamentary elections the sanction timeframe was extended from three to six months; but, they still remain too short to ensure effective enforcement of campaign finance oversight rules.
3. Issues related to identifying territorial court jurisdiction.

A comprehensive analysis of the court practice related to enforcement of Articles 212-15 and 212-21 of the CAO suggests that a significant number of administrative cases initiated by the NAPC are returned by courts for allegedly not falling under the courts’ jurisdiction. It often appears that a court receiving documents believe these cases do not fall under their jurisdiction and return documents to the NAPC. While the case is going back and forth between different State institutions, the deadline for imposing administrative sanctions expires and the case is closed.

All these issues fall under provisions of Article 276 of the CAO whereby administrative cases must be considered by the court with jurisdiction at the “place where the offense was committed”. It can be difficult to establish the place where the offense was committed. For example, regarding violation of the procedure for filing a financial report, identifying the place where the procedure was violated can be challenging: This place can be the same as the place of residence of the person who was supposed to file a report, the NAPC’s location (as reports are filed with the NAPC) or another place such as the political party office where the financial report was drafted.

### Flaws in State Agency Operations Prosecuting Campaign Finance Violations During the 2019 National Elections

Not all problems related to enforcement of administrative sanctions for campaign finance violations are rooted in the flawed legal framework. This section of the report covers problems in State agency operations during the 2019 national elections that hindered effective administrative prosecution of campaign finance violations.

1. Lack of effective cooperation between the CEC and NAPC.

Election law in Ukraine says the NAPC and the CEC are in charge of exercising State oversight over rules governing campaign finance in the 2019 parliamentary and presidential elections. Election laws, do not create mechanisms to ensure coordination of their efforts, nor do they provide for clear criteria in delineating responsibilities.

Although the CEC had all the instruments to identify cases of campaign finance violations related to reporting on receipt and use of money from election funds, it was not entitled to document the offenses covered by Articles 212-15 and 212-21 of the CAO. Lack of authority hindered effectiveness of campaign finance oversight.

Prior to the 2019 presidential election, the CEC and NAPC set up a joint working group tasked to coordinate the efforts of both institutions in exercising public campaign finance oversight. The creation of this working group facilitated more effective coordination of effort between the CEC and the NAPC. However, a number of issues such as prompt access to information, delineation of responsibilities on analysis of interim and final campaign finance reports and notification of law enforcement agencies on detected offenses have yet to be addressed.

2. Low quality of administrative protocols.

Thirty to 40 percent of all cases related to campaign finance violations during the 2019 presidential and parliamentary elections were closed by courts due to absence of evidence of offense or absence of specific elements of offense. This demonstrates the low overall quality of the administrative protocols compiled by the NAPC.
3. Deliberate delays in consideration of the administrative cases.

Deliberate delays in consideration of administrative cases by courts was widespread, according to monitoring. The courts deliberately delayed so they could close cases after expiration of the three-month period for imposing administrative sanctions. Almost 45 percent of all the cases under Article 212-15 of the CAO and almost 67 percent under Article 212-21 of the CAO were closed due to expiring deadlines.

4. Biased consideration of cases by courts of general jurisdiction.

The courts often distorted facts, misinterpreted legal provisions or made unjust decisions in favor of those accused of administrative offenses.

**Criminal Liability for Campaign Finance Violations**

Campaign finance violations can be subject to administrative sanctions and result in criminal liability. This section of the report covers issues related to criminal liability for campaign finance violations:

- Types of violations and sanctions;
- Enforcement of the sanctions during the 2019 presidential and parliamentary elections;
- Legal flaws preventing effective criminal prosecution of those who committed campaign finance violations; and,
- Operational flaws within oversight institutions tasked to hold violators liable.

**Criminal Liability for Campaign Finance Violations**

The CCU addresses three types of campaign finance violations that fall under criminal law:

- Inclusion of deliberately false information into financial reports on receipt and use of money from election funds (Article 159-1);
- Deliberate significant financial or material support for election campaigning from a person who is not entitled to provide such support (Article 159-1); and,
- Deliberate acceptance of significant financial or material support for election campaigning from a person who is not entitled to provide such support (Article 159-1).

**Inclusion of Deliberately False information Into Election Fund Financial Reports**

Under Article 159-1, inclusion of deliberately false information into a financial report on receipt and use of money from election funds means that one of the authorized regulatory agencies – the NAPC, the CEC, a District Election Commission or a Territorial Election Commission – or a political party (depending on the type of report and election) received a report which includes false information and the person charged with preparing or filing the report was aware of the false nature of the information at the time when the report was submitted.

Article 159-1 fails to specify the data which can be deemed false and criminal liability can apply to any information included in the report such as donation information like sources and donation status.

Criminal penalties for the violations can be imposed on election fund managers who, under Ukrainian election law, are required to file reports to any of the regulatory agencies listed above and to a political
party nominating a candidate. Grounds to hold an election fund manager liable under Article 159-1 is whether the alleged violation was intentional.\footnote{Committing the offense unintentionally and other violations of filing reports on receipt and use of the election funds (regardless of the intent) is subject to administrative liability under Article 212-21.}

**Significant Financial or Material Support for Election Campaigning by a Person not Entitled to Provide Such Support**

The list of persons who are not allowed to make donations to election funds in national elections includes natural and legal entities mentioned in Article 15.1 of the Law on Political Parties (the full list of unauthorized donors is specified in Section 1.3 of this report).

In national elections, significant financial support provided for election campaigning means that an individual or business transferred to one election fund a voluntary donation, the amount of which is equal to or exceeds:

- 800 minimum monthly salaries for an individual (UAH 3,338,400); and,
- 1,600 minimum monthly salaries for a business (UAH 6,676,800).

The following persons can be held liable for committing violations:

- Individuals not allowed to make donations to election funds;
- Individuals who are allowed to make donations to election funds if they make single or multiple donations, the amount of which is deemed significant; and,
- Individuals making a significant donation on behalf of a legal entity that is not allowed to make donations to election funds.

A natural person can be held liable under Article 159-1 if his or her donation was made intentionally.\footnote{Committing an offense due to negligence and other forms of violations of delivery and acceptance of financial support for election and referendum campaigning (regardless of the intent) is subject to administrative liability under Article 212-15.}

**Accepting Significant Financial or Material Support for Election Campaigning From a Person Who is not Entitled to Provide Such Support**

Given that there is no procedure for accepting donations, deliberate acceptance of significant financial or material support for election campaigning from a person who is not entitled to provide such support means the election fund manager intentionally refused to return a donation made by an unauthorized person; or, if the donation amount exceeded the legally established maximum (the procedure for refusal of such donations is explained in Section 1.4 of this report).

Similar to the case with administrative liability under Article 212-15 of the CAO, the current legal framework does not require a candidate, a political party or an election fund manager to monitor whether donations transferred to the election funds comply with legal requirements. Therefore, administrative or criminal liability for failure to refuse donations can occur only in a case when the election fund manager was aware the donor was not allowed to make a donation or if the donation exceeded the legally established maximum limit.

The election fund manager can be held liable for such violations under Article 159-1 in the case he or she accepted a donation from an unauthorized donor or if a donation exceeded the maximum allowed
amount. Intent is a mandatory element of the crime; if it is missing, then the person in question cannot be held liable for committing the offense covered in Article 159-1 of the CCU.

**Criminal Liability for Campaign Finance Violations**

If the NAPC or CEC receives information on the actions that carry signs of a criminal offence, they must notify law enforcement. Since the National Police is charged with investigating crimes under Article 159-1 of the CCU, information on actions with criminal evidence must be forwarded by the CEC and the NAPC to the National Police. The police are tasked to conduct an investigation and, once an investigation is completed, forward the criminal case to court.

While exercising campaign finance oversight for compliance with reporting requirements and regulations during the 2019 presidential and parliamentary elections, the NAPC and CEC detected a small number of cases when actions had signs of criminal offences falling under Article 159-1 or Article 367 – official negligence – of the CCU.

In 2019, the NAPC forwarded to the National Police 18 files identifying criminal offences under Article 159-1 and Article 367 of the CCU – 15 of which were related to the presidential election and three related to the parliamentary elections.

According to information available to the NAPC, the National Police initiated criminal proceedings based on eight files delivered by the NAPC while information about another 10 files submitted to the National Police is still unknown. It is unclear if the National Police has taken steps to consider the materials received from the NAPC.

According to information published by the State Justice Administration, the courts received and considered two criminal cases in 2019 that fall under Article 159-1 of the CCU. In one case the accused was found guilty of committing a criminal offense and the second case was closed.

Unfortunately, it was impossible for the author of this report to obtain detailed information on criminal liability for campaign finance violations in the 2019 presidential and parliamentary elections. None of the court decisions in were found in the Unified State Register of Court Decisions.

**Legal Flaws Hindering Effective Criminal Prosecution of Campaign Finance Violations in the 2019 Elections**

While the above information is not complete, it suggests the State is less effective in criminal prosecution of those who violate campaign finance rules as compared to administrative prosecutions. The NAPC and CEC identified a negligible number of criminal campaign finance offenses while the National Police failed to properly investigate information received from the campaign finance oversight agencies and forward the investigated criminal cases to the courts.

Such ineffectiveness can be explained by the flawed legal framework and poor operations of regulatory, oversight agencies.

**The primary legal flaws include:**

1. Sanctions for two different crimes in the same article of the CCU.

Article 159-1 provides sanctioning of the most serious violations of financial reporting requirements. Part 2 of the same article relates to crimes that severely violate the current campaign finance regulations in national and local elections and referendums.
Description of two different crimes in one article is a serious violation of legal drafting requirements. It has negative practical effects; citizens and law enforcement agencies may falsely interpret the criminal prohibition; and, based on qualification criteria, exert bias when classifying criminal liability.

1. There is a discrepancy between Article 212-15 of the CAO and Article 159-1.2 of the CCU (this discrepancy is covered in detail in Section 2.3 of this report).

2. The criminal law ignores the fact that it is almost impossible to violate the procedure for accepting donations (this issue is analyzed in Section 2.3 of this report).

3. A repeated violation of campaign finance rules does not include more serious criminal penalties.

4. Similar to the CAO, Article 159-1 of the CCU fails to provide for more severe penalties for repeating the crimes covered in the article which does not prevent similar crimes in the future.

5. The sanctions in Article 212-21 of the CAO and Article 159-1.1 of the CCU are not adequate and display inconsistency in terms of the approach laid down in the two codes (this issue is reviewed in Section 2.3 of this report).

Under Article 159-1 of the CCU, a court is required to sentence the guilty person to correction works at the place of employment and prohibit him or her from occupying a public position or conduct certain activities for a three-year term. This will result in the person’s termination of employment. If the guilty person is a public office holder, one sanction excludes the possibility of imposing the other.

State Agencies’ Operations Designed to Prosecute Campaign Finance Violations in the 2019 Elections

Under Article 216 of the Code of Criminal Proceedings, investigation of the crimes covered by Article 159-1 of the CCU must be initiated by the National Police. Despite that during 2019 both the CEC and NAPC forwarded 18 files to the National Police containing information on criminal offenses that fall under Article 159-1 of the CCU, as of beginning of 2020 only one sentence was issued against a person who committed an offense under this article. All other files are still pending with National Police investigators.

Low effectiveness from the National Police can be explained by lack of awareness, knowledge and capacity relating to political finance legislation. In addition, investigators might be afraid of possible adverse effects to their careers if they decide to conduct thorough investigations since the crimes falling under Article 159-1 of the CCU are mostly committed by representatives of influential political parties. As a result, the National Police fails to investigate crimes falling under Article 159-1 of the CCU and does not cooperate with the NAPC or the CEC.

To address this issue, National Anti-Corruption Bureau (NABU) should be empowered to investigate offenses under Article 159-1 of the CCU instead of the National Police. Currently, NABU is viewed as the most effective body among all anti-corruption agencies. NABU detectives proved themselves to be professional lawyers capable of investigating offense in a comprehensive and unbiased manner despite external influences.

Recommendations for Strengthening the System of Sanctions for Campaign Finance Violations

This report concludes that prosecution of those who violate political finance rules remain problematic in a number of aspects identified during the 2019 presidential and parliamentary elections. Drawing on the findings stemming from this analysis the report outlines a set of recommendations aimed to
improve oversight efforts in combating impunity for violations of campaign finance legal requirements.

Recommendations

Legal Framework

Article 212-15 of the CAO:

- Should clearly specify what constitutes an administrative prosecution of violations related to making or accepting donations;
- Should specify that negligence and the unintentional nature of a committed violation can be considered grounds for bringing a person to administrative liability;
- Should remove the possibility of confiscating a donation from the list of sanctions that can be imposed under Article 212-15 of the CAO; and,
- Should be amended to provide more severe sanctions for repeated violations of campaign finance regulations.

Article 159-1 of the CCU ad Article 212-21 of the CAO:

- The criminal and administrative fines under Article 159-1 of the CCU and Article 212-21 of the CAO should be harmonized. The upper limit of the administrative fine should be below the lower level of the fine under the criminal law and fines under the CCU should not be lower than fines under the CAO as they are now; and,
- Fines for administrative offenses falling under Article 212-21 of the CAO and crimes described in Article 159-1 of the CCU should be significantly increased and repeated offenses under these articles should be subject to more severe sanctions.

Article 256 of the CAO:

- Should be amended to allow for compiling administrative protocols for offenses foreseen in Article 212-21 of the CAO in absence of the perpetrator – the election fund manager.

Articles 212-15 and 212-21 of the CAO:

- Deadlines for filing administrative penalties provided by these articles should be extended from six months to one year from the day when the violation was detected.

Article 276 of the CAO and Articles 212-15 and Article 212-21:

- Article 276 of the CAO should provide that administrative offenses under Article 212-21 of the CAO be considered by the court of territorial jurisdiction that expands to the area where the agency that compiled the administrative protocol is located. Cases under Article 212-15 of the CAO should be considered by the court with jurisdiction that expands to the perpetrator’s factual residence or registered place of residence.

Article 159-1 of the CCU:

- Should be structured so that criminal liability for violation of financial reporting procedures by political parties and election fund managers; and,
- Should be amended to exclude correction works from the list of sanctions that can be imposed under that article.
Other Changes to the Legal Framework:

- Criminal investigation of offenses under Article 159-1 of the CCU should be conducted by the National Anti-Corruption Bureau rather than by the police. The Law on Higher Anti-Corruption Court should be amended to allow the Higher Anti-Corruption Court to consider criminal cases under Article 159-1;
- The CEC should be empowered to compile protocols of administrative offenses related to campaign finance violations; and,
- The mandates of the CEC and the NAPC with respect to campaign finance oversight should be clearly delineated in the legal framework.

Campaign Finance Oversight Agencies and Other Stakeholders:

- The CEC and NAPC should establish and maintain cooperation to ensure effective campaign finance oversight;
- The NAPC should strengthen the knowledge and skills of its staff and ensure better quality of administrative protocols compiled by its officials;
- The NAPC should establish permanent monitoring of criminal violations submitted to the National Police;
- The National Police should strengthen its investigators’ capacity to effectively investigate campaign finance violations; and,
- Civil society should monitor court hearings related to campaign finance-related criminal and administrative cases.

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