



НАЦІОНАЛЬНЕ АГЕНТСТВО
З ПИТАНЬ ЗАПОБІГАННЯ КОРУПЦІЇ
NATIONAL AGENCY ON
CORRUPTION PREVENTION



**Programmatic Cooperation Framework for
Armenia, Azerbaijan, Georgia, Republic of Moldova, Ukraine and Belarus**



**FINDINGS AND RECOMMENDATIONS
OF THE PARTICIPANTS OF THE INTERNATIONAL CONFERENCE
"POLITICAL PARTIES FINANCING IN UKRAINE:
CURRENT LEGISLATION, RECENT DEVELOPMENTS AND PERSPECTIVES"**

On March 15, 2017, the Council of Europe in cooperation with the Verkhovna Rada of Ukraine and the National Agency on Corruption Prevention (NACP), held the International Conference "Political parties financing in Ukraine: current legislation, recent developments and perspectives". More than 100 participants, including international experts (Council of Europe experts, in particular of the Venice Commission, the Group of States Against Corruption, Economic Crime and Cooperation Division, Division on Electoral Assistance and Census, as well as expert of the OSCE Office for Democratic Institutions and Human Rights), members of the Parliament of Ukraine, representatives of state authorities, political parties, expert community and relevant non-governmental organizations.

Participants of the conference,

expressing their commitment to the Council of Europe standards in the field of financing of political parties and pre-election campaign, and the necessity to comply with them, including but not limited to:

- the Convention for the Protection of Human Rights and Fundamental Freedoms and the case law of the European Court of Human Rights (cases regarding Article 11 of the Convention "Freedom of Assembly and Association" and Article 3 of the First Protocol to the Convention "The Right to Free Elections");
- Guidelines and Report on the Financing of Political Parties, adopted by the Venice Commission at its 46th Plenary Meeting (Venice, 9-10 March 2001);
- Recommendation 1516 (2001) of the Parliamentary Assembly of the Council of Europe concerning financing of political parties as of 22 May 2001;

- Recommendation Rec(2003)4 of the Committee of Ministers of the Council of Europe to member states on common rules against corruption in the funding of political parties and electoral campaigns, as of 8 April 2003;
- Guidelines and Interpretative Notes on Political Party Regulation by OSCE/ODIHR and Venice Commission, adopted by the Venice Commission at its 84th Plenary Session (Venice, 15-16 October 2010);
- Code of Good Practice in the field of Political Parties adopted by the Venice Commission at its 77th Plenary Session (Venice, 12-13 December 2008) and Explanatory Report adopted by the Venice Commission at its 78th Plenary Session (Venice, 13-14 March 2009);

emphasizing the importance of the state funding of political parties, the system of political parties reporting introduced by the Law of Ukraine "On Amendments to Some Legislative Acts of Ukraine Concerning Prevention of and Fight Against Political Corruption" No. 731-VIII as of 8 October 2015,

considering the following shortcomings of legislative framework and the application of the current legislation, in particular:

- a low level of public trust in political parties;
- the lack of understanding by society of the need in financing of political parties at the expense of the state budget;
- a complicated procedure of reporting because of the deficiencies in the reporting form (cumbersome and big reporting form for political parties, absence of the electronic form of reporting for political parties);
- the problem of payment of contributions from individuals and legal entities in support of political parties (in particular, because of the lack of the form to be filled in in a large number of branches of Ukrainian banks);
- inconsistency of certain provisions of the electoral legislation and the legislation on financing of political parties;
- a significant number of registered political parties, which are not actually performing statutory activities, and accordingly – a large percentage of submission of the "zero" reports which do not reflect any activity of political parties;
- the difficulty of complying with a new legislation for "small" political parties (in particular, in part of conduct of an independent audit);
- the lack of a definition of the term "statutory activities" at the legislative level, which makes it difficult to define the areas of use of the state funding by political parties;
- the use of the state funding by political parties on political advertising;
- the problem of allocation of the state funding based on the compliance of political parties with the requirement concerning gender balanced representation;
- the problem of delineation of the control and oversight functions between NACP and the Accounting Chamber of Ukraine;
- the problem of execution of NACP protocols on violation of current legislation by inactive political parties - "phantoms";

- publication of political parties reports not in the form of open data which prevents the relevant stakeholders from making a quick and effective analysis and processing of the relevant information;
- inadequacy of existing sanctions provided for the violations in the field of political parties reporting;
- submission and registration in the Verkhovna Rada of Ukraine of various inconsistent draft laws aimed to amend current legislation which could result in risks for the reform of political financing in general;

have come to the following conclusions and elaborated the following recommendations:

1. During the conference, it was repeatedly stressed on that the population has the lack of general understanding and perception of the importance of the reform of political financing. In view of the global crisis of confidence in the political systems in the world, the international experts drew out attention to a long period that is necessary to reach all the goals of the reform, since the conversion of legal dispositions into social habits can take several years. It is possible to speed up these processes using the tools of awareness raising campaigns.

Recommendation 1: in order to increase the trust of citizens in the political system in the country it is advisable to continue introducing and implementing the best European practices in the field of preventing political corruption, as well as conducting awareness raising campaigns concerning the public necessity and importance of the reform of political financing.

2. During the conference, experts and representatives of political parties mentioned that the current Reporting form of a political party on the property, income, expenses and financial liabilities is complex, cumbersome and requires improvement. Separate attention was focused on the necessity to have an electronic form of reporting for political parties. In addition, it was noted that the issue of development of electronic reporting system for political parties is currently being discussed in the framework of the Working Group comprising of representatives of NACP, international experts and NGOs representatives. In particular, the Working Group is working on simplification of the existing form of reporting, development of the concept of e-reporting with regard to the problems that emerged during implementation of the provisions of the current legislation in 2016. During the conference, the participants discussed proposals concerning enabling local organisations of political parties to submit reports independently, as well as proposals on repealing the reporting obligation for each local organization having the status of a legal person and for political parties not receiving the state funding (respective provisions are laid down in the registered draft law No. 6067).

Recommendation 2: to refine the current reporting form for political parties and to amend the relevant resolutions of the NACP (in particular, resolution No. 3 dated June 9, 2016 by which the current reporting form was approved). When improving the current reporting form, it is advisable to analyse whether it is necessary to amend the existing legislation and, if situation so requires, to develop and introduce appropriate amendments to the current legislation of Ukraine. To examine in detail the approaches and the concept

of the e-reporting system and to take measures for the implementation of e-reporting form for political parties till 2018 inclusive.

3. Participants of the conference discussed and analyzed three draft laws having been registered in the Verkhovna Rada of Ukraine which provide for amendments to the legislation on prevention of and fight against political corruption (No. 5446, No. 6067, No. 6026). The draft laws are aimed to solve the existing problems, but have different conceptual approaches. None of them contains a comprehensive and systemic approach to solving the existing problems in the sphere of financing of political parties. Thus, certain proposals are aimed to change the conceptual provisions of the new legislation (the proposal for allowing the use of funds of the state funding for pre-election campaigning), individual proposals give rise to new problems (the proposal on exemption of parliamentary parties having chosen not to use the state funding from passing the external audit), some proposals are exceptionally controversial (introduction of financing of the Armed Forces of Ukraine as one of the directions in the statutory activity of political parties). Participants of the conference repeatedly emphasized the need for development of a single consolidated draft law, based on the results of monitoring of implementation of the provisions of the current legislation, for the purpose of finding a real solution to the problems that were identified during 2016.

Recommendation 3: to consolidate the efforts of the members of the Parliament of Ukraine, representatives of the state bodies authorized to exercise control and oversight over financing of political parties and pre-election campaign, representatives of different political parties, public organizations, and international experts with the aim to develop a single comprehensive draft law on amendments to the existing legislation on prevention of and fight against political corruption. In particular, legislative amendments must take into account the results of monitoring of implementation of the provisions of the current legislation.

4. During the second half of 2016, five parliamentary political parties received the state funding to perform their statutory activities. Current legislation does not provide for the definition of "statutory activities" in terms of defining the areas of application by political parties of public money, which results into certain problems for the use of such funds by political parties, in particular, and for execution of the state control by NACP and the Accounting Chamber of Ukraine when examining the proper use of these funds. Participants of the conference paid attention to the fact that possible directions of use of the state funds by political parties must be established at the legislative level. In this regard, it was pointed out that application of the state funds by political parties, for example, on political advertising is ineffective in terms of public interest, especially considering the problem of the lack of clear delimitation of political advertising in the period between elections, and during the election process. Thus, draft law No. 6026 proposes to establish an exhaustive list of activities, which can be funded at the expense of the state budget, with the establishment of the distributed proportion for such funds between the headquarters of a political party and its local branches. This proposal caused a lot of discussions due to its approach of identical legislative regulation for statutory activities for all political parties and distribution of funds between the headquarters of a political party and its local branches, as it will limit the freedom of activity of

associations of citizens. Draft Law No. 5446 foresees the broadening of spheres for the state funds use through providing political parties with the opportunity to use them for pre-election campaign. However, an alternative approach was suggested during discussions, according to which it is necessary to specify which activity shall not be considered as the statutory activity of a political party and, accordingly, on which activities it will be prohibited to use funds from the state budget.

Recommendation 4: to define at the legislative level a clear list of statutory activities of political parties which will be prohibited to fund from the state budget. To develop and implement accordingly the necessary amendments to the Budgetary Code of Ukraine for the purpose of a proper regulation of the issue of a political party as a new subject of use of funds from the state budget.

5. The excessive use of political advertising, particularly, during the election process, is a big problem in Ukraine. Especially, it concerns the use of outside advertising medium and advertising on radio and television. According to the information obtained from the reports of political parties that received public funding, up to 30 percent of the state funds were used for political advertising in 2016. Some of the participants of the conference suggested considering the possibility of imposing a ban or restrictions on political advertising. In addition, it was noted that this issue is not a subject of regulation exclusively of legislation on political financing, but certainly is the subject of regulation of legislation on elections. The issue of use by political parties of political advertising is extremely important for the development of the political system of the state in general, therefore, it requires a comprehensive approach to its reform.

Recommendation 5: the subjects of legislative initiative together with representatives of media community, political parties and relevant NGOs must develop a concept of "political advertising" for the purpose of its further formalization at the legislative level; to revise in details the proposals on restriction or banning political advertising for the purpose of further development of the appropriate legal regulation, to develop and introduce appropriate amendments to the current legislation, as well as to provide for the relevant provisions when drafting and adopting new electoral legislation.

6. Participants of the conference, particularly the representatives of political parties, paid attention to the complex process of payment in banking institutions of contributions in support of a political party. To comply with the requirements of the law, the National Bank of Ukraine brought to the attention of commercial banks the information on the application form to the payment document on cash contribution in support of a political party, approved by resolution of the NACP No. 7 dated June 2, 2016. However, as of today, the issue is still relevant, as branches of banking institutions do not always possess this form.

Recommendation 6: political parties and NGOs during their awareness raising campaigns and activities should draw attention of the population to the binding obligation to submit an application on cash contribution in support of a political party together with the payment document.

7. During the conference, the inconsistency of the provisions of the Law of Ukraine No. 731-VIII "On Amendments to Some Legislative Acts of Ukraine Concerning Prevention

and Fight Against Political Corruption" dated October 8, 2015 and the Law of Ukraine No. 595-VIII "On Local Elections" dated July 14, 2015 was emphasized. Discrepancy concerns the provisions on contributions to election funds and party accounts, as well as the provisions on reporting. In particular, the representative of the Central Election Commission of Ukraine particularly emphasized the existence of this problem.

Recommendation 7: the authorized state bodies, based on the results of a broad public discussion, should take measures for coordination and harmonization of the provisions of the law on prevention of and fight against political corruption in Ukraine and the current electoral legislation in the part concerning regulation of the issue of financing of political parties and pre-election campaign.

8. Participants of the conference also emphasized the problem of the lack of clear delineation of control and oversight functions of NACP and the Accounting Chamber of Ukraine at the legislative level. Pursuant to the Law of Ukraine No. 731-VIII "On Amendments to Some Legislative Acts of Ukraine Concerning Prevention and Fight Against Political Corruption" dated October 8, 2015, both bodies have control and oversight powers in the sphere of political financing, but they are not clearly split.

Recommendation 8: at the legislative level to provide for more clear delineation of control and oversight functions and powers of the NACP and the Accounting Chamber of Ukraine in the sphere of political financing and combating political corruption.

9. As of January 18, 2017, according to the data provided by the Ministry of Justice of Ukraine, 352 political parties have been registered in Ukraine. According to the data contained on the official web site of NACP, 235 political parties submitted their reports for the 4th quarter of 2016. Participants of the conference stressed on the existence of the tendency of not-submitting the reports by more than 100 political parties in previous quarters as well. Among the political parties that submitted reports, more than 75% submitted the so-called "zero" reports. In this regard, participants of the conference pointed out the petty sanctions prescribed by the current legislation for non-submission of a report. This fact, in its turn, does not encourage political parties to adhere to the requirements of the legislation on financial reporting. In particular, this problem is related to the existence of a considerable number of inactive political parties-"phantoms", which among other things makes it impossible to draw up a protocol on violation of legal requirements regarding the financial reporting, since such protocol shall be drawn in the presence of a representative of a political party.

Recommendation 9: the authorized public bodies, based on the results of a broad public discussion, should revise (i) the sanctions prescribed by the current legislation for non-submission/ repeated non-submission within a certain time period of time of reports by political parties; (ii) the possibility to introduce mechanisms for drawing up a protocol on violation of legislation on funding of political parties in the absence of a representative of a political party, with a possibility of its further appeal within administrative or court proceedings; (iii) the possibility to introduce a graduated scale of sanctions for non-submission of financial reports, including the possibility to annul the registration certificate of a political party in accordance with a specially developed procedure.

10. Participants of the conference emphasized on the problem for certain political parties to undergo external independent financial audit. Law of Ukraine No. 2365-III "On Political Parties in Ukraine" dated April 5, 2001 (as amended in 2015) provides for stringent requirements towards audit firms eligible to conduct such an audit. The official web site of NACP contains a list of 12 audit firms eligible to conduct such an audit, part of which has already refused to work with political parties. This audit is rather expensive, whereas only a few audit firms in Ukraine meet the eligibility criteria. This is a real problem for political parties. At the same time, representatives of political parties indicated on a very short period provided for the conduct of an audit.

Recommendation 10: to improve the current legislation with regard to the duty of political parties on undergoing the external independent financial audit by optimizing the requirements to audit firms which are eligible to conduct the independent financial auditing of political parties.

11. During the conference, the participants discussed the issue of the allocation of funds from the state budget upon the results of political parties' compliance with the requirements on gender balanced representation. As of today, one of the political parties has received such funds, but this fact has posed some questions, including, for example, why the indicated party still receives state funding, if it no longer complies with the "gender" requirement. Draft Law No. 5446 offers to authorize NACP to take a decision on allocation of such funds on a quarterly basis. Thus, it will require the Verkhovna Rada of Ukraine to make the relevant amendments to the Law on State Budget of Ukraine for the appropriate year on a quarterly basis. Such an idea was criticised in view of the impossibility of its implementation within the current country's annual budget planning. In addition, the participants of the conference drew attention to the fact that it is highly possible that the next convocation of the Verkhovna Rada of Ukraine will not face this type of problem.

Recommendation 11: in the process of preparation and discussion of the comprehensive draft law aimed to improve the current legislation on prevention of and fight against political corruption, a special attention must be paid to the issue of mechanisms for allocation of additional funds from the state budget upon the results of compliance with the requirements on gender balanced representation.ⁱ

ⁱ *The content of this document and the recommendations contained herein have been developed based on cooperation and do not necessarily reflect the views of the organizers of the conference*