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Legislative Practice Of Countering Illegal Lobbying In Foreign Countries

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ABSTRACT

The article researches into fundamental approaches to legal regulation of lobbyist activity in democratic countries. Analyzing transformation of lobbying into one of the most important socio-political institutions, it reveals the role of lobbying in the democratic process of political decision-making, considering professional features, organizational structures and approaches to the regulation of lobbying activities.

It is concluded that lobbying as an institution takes an important place in the life of modern democratic societies. Legal regulation of lobbying activities helps to minimize risks of corruption between government bodies and civil society institutions.

KEYWORDS

Lobbying, lobbyist activity, group interests, political decision-making, democracy, interest representative, exposure to government policies, corruption risks.

INTRODUCTION

According to expert current opinion, lobbying as an element of political process is present in

the structure of any state, playing a positive role in the democratization of the political

activeness in processes & relationships between government and civil society institutions.

In a broad sense, lobbying is understood as "activities aimed at influencing politicians and officials"[1] , "any attempt by individuals or private interest groups to influence government decisions" [2] .

Lobbying as the most common type of functional representation of interests is an effective means of expressing existing interests in their impact on public policy.

It is believed that the term "lobby" acquired a political meaning in the United States in the first half of the 19th century and denoted a group of people united by common interests (business, regional, professional, etc.), and derivatives of the word "lobby" as "lobbyism" and "lobbying" began to be used for determination of informal influence on the votes of legislators in corridors of parliament (in the lobby) outside the legislative chamber [3] .

Legal registration of lobbying activities also took place in the United States where **Foreign Agents Registration Act (FARA)** was adopted in 1938 [4] and introduced compulsory registration of foreign lobbyists, and **Lobbying regulation Act** [5] adopted in October 1946, established requirements that a lobbyist needs to have a law degree, 8 years of work experience in the federal government bodies, to be registered, to timely (every quarter) submit to the Department of State necessary information (about the customer , the hiring period, the fees).

The next act regulating lobbying at the federal level was the **Law on Disclosure of Lobbying Activities** of January 1, 1996 [6] . It introduced

the concept of a "lobbyist" - a former or current politician who spends more than 20% of his time promoting the interests of one or another pressure group. The law introduced the concept of "lobbying contact" - an oral or written appeal of an individual or organization on certain issues .[7]

The law required both foreign and American lobbyists to register and introduced fines for violating registration procedures.

In 2007, after a corruption scandal involving a well-known lobbyist Jack Abramoff, regulation of lobbying was tightened. The Congress adopted **The Honest Leadership and Open Government Act** of 2007, that limited lobbyists' activities by introducing a ban on lobbying activity of senators (they could do it only 2 years after retirement), the Secretary of State and Minister of defense (they were banned for life from lobbying in the area that they oversaw in the government) [8]

The provision allowing congressmen to accept gifts up to \$50 was suspended, and the circle of persons who can fund their travel was limited.

Fines for violators of these legal regulations were considerably risen (from 50 thousand to 200 thousand USD), along with introduction of up to 5 years imprisonment.

Congressmen, been convicted in connection with bribery, perjury and other crimes in the sphere of illegal lobbying, were deprived of their pension. Similar restrictions were introduced towards highly paid employees of Parliament, with an income of not less than 75% of a congressman salary.

In the United States, where there are about **12.3 thousand lobbyists** in the federal government and their total expenditure

exceeds \$ 3 billion per year, lobbying is recognized as a separate type of activity regulated by both a special regulatory legal act and codes of ethics for officials, rules, guidelines, parliamentary resolutions and other documents[9].

Based on the experience of the US law enforcement, special laws on lobbying have been adopted in more than 20 countries around the world by 2021. Their exact number depends on what criteria to use when attributing a document to law, the depth and content of which varies depending on goals and objectives of legal regulation.

In Canada, lobbying is regulated at two levels: federal and regional.

At the beginning of 2021, there were more than 5,000 lobbyists at the federal level, most of whom were active in the field of industry (1221) and taxation (945).

The Act On the registration of lobbyists was adopted in 1989 which regulated status of subjects of lobbying activities - customers, performers (lobbyists, lobbying firms), established also system of public control over it, measures to prevent illegal lobbying, basis and measures liability for violators. [10] The law gave foundation to the post of **The Commissioner of Lobbying** who can conduct investigations on the observance of the Act on lobbying and the lobbyists' Code of Conduct.

The Lobbyist Code of Conduct (1997) divides lobbyists into three categories:

Paid consultants on government relations who are required to register every transaction with a client.

Employees of corporations, or in-house lobbyists. The law requires a corporation to be

registered as a lobbyist if the time spent lobbying by its employees exceeds 20% of the working time of a full-time employee. [11] In the business environment and in scientific literature, they are called GR-managers and corresponding departments in organizations are called GR-departments.

Employees of non-profit organizations. The law requires a non-profit organization to register as a lobbyist if the time spent lobbying by its employees exceeds 20% of the working time of a full-time employee.

Violation of the federal registration procedure for a lobbyist is subject to a fine of up to 50 thousand Canadian dollars and imprisonment up to 6 months, for providing false information (or forged documents) - a fine of up to 200 thousand Canadian dollars and imprisonment up to 2 years.

European countries that adopted lobbying laws include Germany (Bundestag Regulations. Register of Interest Groups and their Representatives, 1972), Lithuania (Law on Lobbying, 2000), Poland (Law on Lobbying in the Legislative Process, 2005), Macedonia (Law on Lobbying, 2008), Slovenia (Law on Integrity and Prevention of Corruption, 2010), Austria (Law on Transparency in Lobbying and Representation of Interests, 2012), Netherlands (Law on lobbying registration, 2012), the United Kingdom (Lobbying, Non-Party Campaigning and Trade Union Governance Act, 2014), Montenegro (Lobbying Act, 2014), Ireland (Lobbying Regulation Act, 2015) and others.

Continental (European) lobbying system is characterized by the fact that it has no institutionalized forms. [12] A vivid

confirmation of this is the practice of lobbying in Germany.

In Germany, the authorities have developed consultations with representatives of large commercial organizations. Unions and associations (**Vsrbande und Vsreine**) are considered "classical" lobbyists in the FRG [13]. On the basis of regulations of executive authorities, representatives of these organizations are "assigned" to ministries and other state structures on a permanent basis.

Today, more than 100 German firms, industrial unions and scientific foundations have about 300 "own" employees participating in consultations in the adoption of public-power decisions, including in drafting laws in almost all federal and state ministries. Under the President of the Bundestag, an open registration list of unions and associations that wish to receive information and influence the work of parliament is maintained. Their total number is over 2000.

Members of the Bundestag can simultaneously be on the staff of commercial organizations as consultants or lawyers, or lead industry unions and associations, and be on the boards of directors of corporations. Deputies are obliged to report their activities and income to the chamber. If, during the discussion of the draft law in the parliamentary commission, a conflict of interest arises, the interested deputy resigns for the duration of the discussion. If a parliamentarian does not do this, he will be held liable under the Bundestag Rules of Procedure, including criminal prosecution[14].

Due to strong and stable positions of the government and the Federal Chancellor, the executive branch has become the object of lobbying there. Direct interaction between

them in the form of consultation, creation of various kinds of advisory bodies under federal departments (most of them are concentrated under the ministries of economy and labor), allowed interest groups to participate in the process of political will-formation. The result of this cooperation is obvious: about three quarters of the adopted federal laws are based on projects prepared by the government.

Thus, the "image" of the lobby ("interest groups") that developed in the FRG - their organizational power, possession of vast information resources - serves to bring national and group interests closer together.[15]

Of course, not all is good in the field of lobbying and in the FRG. There are also scandals related to this field of activity. In the course of one trial, one of the politicians noted with indignation that unions (interest groups) "are seizing power into their own hands and the state is turning into a notary who only certifies the results of backroom deals." [16]

In other words, it is hardly justifiable to idealize or belittle the role of lobbyism. Not being a universal institution that can help avoid negative phenomena in politics, lobbyism has a number of advantages that allow it to work in the interests of democracy under appropriate conditions.

The most important and significant legal act regulating lobbying in Germany can be considered the "Uniform Regulation on Federal Ministries". [17] According to this document, ministries have the right to involve departmental experts, consultants and other representatives of "interested professional circles" when drafting laws. This Regulation gives the heads of a ministry the right to organize, on a temporary or

permanent basis, various advisory bodies to solve their internal tasks in the process of drafting laws.

It should be noted that in Germany direct interaction between interest groups and public administration bodies takes place in the form of consultations as a rule. Various conferences, councils, committees and commissions operate under almost all federal departments, but most are still under the ministries of economy and labor.

Advisory bodies under government agencies do not have a specific legal status; they do not require any unified administrative procedure for creation and abolition, which makes them a convenient and practical form for contacts of interest groups with the state apparatus.

In turn, for the government, ministries and other administrative structures, importance of these groups is determined by their organizational power and vast information resources that they have at their disposal. The use of this potential significantly facilitates preparation and practical application of laws and decrees, thereby significantly increasing the efficiency of administrative activities.

Legislators in Germany proceed from the fact that promotion of interests of various social groups as a system of organized formalization, expression and representation of certain interests through legislative and executive institutions of power is an integral and most important element of a democratic country. There must be a continuous and free communication exchange between civil society and the state. Without such an exchange, majority of the country's citizens

may find themselves isolated and alienated, deprived of the opportunity to exert any effective influence on the process of developing and adopting decisions that affect their vital interests. In turn, state authorities would be threatened by the loss of feedback from society, loss of necessary ability to adjust their activities in accordance with dynamics of social needs.[eighteen]

In Austria and Holland, they took the path of creating a corresponding structure, a special institution - the "socio-economic council", which, having a very clear legal status, plays the role of a kind of alternative parliament. It can act as an advisory advisory body, or it can have a decisive vote in the legislative process.[19]

French approach radically differs L Xia from the American and German. Lobbying in France on the basis of the Rules of the National Assembly of the French Republic counting familiarize illegal . Here the Socio-Economic and Environmental Council, provided for by the 1958 Constitution, operates . The Council consists of representatives of professional groups and is called upon to give opinions to the government on all draft laws of an economic and social nature. [20]

In accordance **with the French Law "On the financial transparency of political life"** (the norms are included in the Electoral Code), each parliamentarian must submit a declaration of his property status within 15 days after taking office and no later than one month before the expiration of the mandate. The Bureau of the National Assembly evaluates changes in the property status of the deputies on the basis of declarations and changes submitted by the deputies.[21]

In 2009, a Code of Conduct for Representatives of Interests in the French National Assembly and a Code of Conduct for Interest Groups in the Senate were adopted, which regulate various aspects of lobbying in the chambers of parliament.

In 1947, the Italian Constitution established the National Council of Economy and Labor, also formed on a corporate basis and being an advisory body to parliament and government (Article 99 of the Constitution of the Italian Republic).[22] He has the right to initiate legislation and can participate in the development of legislation on economic and social issues in accordance with the principles and within the limits established by law.

In the UK, in comparison with many other countries, special attention is paid to ensuring traditional mechanisms for taking into account public opinion - for example, the right to appeal, through which, by and large, private interests can be promoted.

According to the famous English lawyer P. Green, Great Britain does not have a formal structure of lobbyists, as in the United States.[23] . As a rule, those who were previously associated with parliament, for example, former deputies, are employed in this area. And today's members of parliament can act in all sorts of advisors.

Formalization of contacts between public institutions and authorities is based on legal and ethical requirements for the actions (inaction) of officials who come into contact with public institutions, as well as prohibitions on a number of their actions.

A special place in the system of regulation of the promotion of private interests is occupied by codes of conduct for members of

parliament, ministers, employees and reports of the Committee on Public Life Standards, which is formally part of the structure of the Administration of the Cabinet of Ministers.[24] .

It is possible that institutional conditions for the work of bodies, focused on a broad dialogue with society, legal and ethical requirements for the behavior of officials, make it possible to do without formalization of lobbying. In addition, the UK relies on self-regulation of activities of public institutions to promote interests. Lobbyists are united in associations and alliances of political consultants who develop codes of conduct for representatives of their professional community and try to independently exercise control in this area.

British parliamentarians are required to register their financial interests (work or other activity in the private sector) on a regular basis. Maintenance of the register is entrusted to the Committee on the interests of members of parliament.

It should be noted that today in European countries the issue of improving relations between the subjects of lobbying activity in the process of decision-making in the interests of certain socio-economic groups is being increasingly discussed.

In the publication Legislative Toolkit on Lobbying Activities, subjects of lobbying activities include:

Individual lobbyists - any individual who lobbies for their own business interests;

Lobbyist-consultant - any natural or legal person engaged in lobbying in the framework

of their business activities in the interests of a third party;

Full-time lobbyists - individuals hired by third parties or similarly authorized and engaged in lobbying the interests of these third parties from time to time or on an ongoing basis.

In European countries **control of lobbying activities is carried out by various bodies.**

This may be **one specially authorized body:** Public Service Commission Standards Authority and the monitoring of compliance with integrity (Ireland); Ethics Commission for Senior Officials (Lithuania); State Commission for the Prevention of Corruption (Macedonia); Agency for the Prevention of Corruption (Montenegro); Commission for the Prevention of Corruption (Slovenia).

One or more institutions that deal with lobbying: Parliament (France, Germany, Netherlands).

Executive bodies: Australia (Office of the Prime Minister and Cabinet), Austria (Ministry of Justice), Hungary, Poland (public authorities).

Regarding institutionalization of lobbying activities in the EU countries, it should be noted that legal regulation of lobbying activities is carried out at the supranational level. So-called advisory and consultative institutions and mechanisms have become widespread in the EU.

In particular, **expert councils are** involved in development of draft acts and their approval. According to preliminary estimates, the European Commission has about 1,800 expert committees which include 80 thousand people. The easiest access to the European Commission belongs to European federations that unite commercial organizations by

industry, in second place - European transnational corporations, in third - national companies and associations [25].

Intergroups are also involved in the rule-making work of the European Parliament - specialized associations of European parliamentarians who have common interests in various fields. Within the framework of consultative meetings (forums summits, round-tables etc.) there are held regular meetings of European officials with representatives of civil society and business. [26]

The largest European and multinational corporations organize their own permanent missions in Strasbourg or Brussels [27].

Summing up, we note that scientists and experts have different notions about the essence of lobbying and its impact on the system of democracy in the state. A number of authors believe that lobbying is one of the leading institutions of market-type democracy. [28] The most important features of this democracy, without which it cannot exist, are openness, flexibility, high dynamism of power institutions. Based on the fact that the mechanisms of non-formalized interaction between citizens groups and the authorities are still largely secretive and chaotic, there is a high risk of corruption.

Supporters of legitimization of lobbying activities believe that it is characterized by a number of common features:

Firstly, lobbying as a mechanism for promoting interests of various social groups exists in all social formations.

Secondly, lobbying activities are carried out in specific interests.

Thirdly, lobbyists act as mediators between citizens, organizations and government bodies (legislative and executive authorities).

Fourth, lobbying provides citizen groups with the opportunity to indirectly participate in the adoption and implementation of legal and political decisions, which is very important, since most of these groups may not have their representatives in parliament or government bodies.

An Important trend of lobbying is that lobbyists are using three types of organizational forms:

- 1) Lobbying with the help of individual firms specializing in provision of lobbying services;
- 2) Lobbyists leverage organizational capacity of conventional campaigns and associations of which staff members they are;
- 3) Creation of professional associations of lobbyists.

Other specialists are very wary of lobbying in the socio-political system. In their opinion, it erodes foundations of people and turns democratic institutions into instruments of influence on the power of certain groups of interests.[29]. Moreover, it is argued that in a number of transitional states, mechanism for promoting private interests has actually merged with corruption, and they propose to consider lobbying as a form of its formal manifestation.

Summing up, we can state that in countries where democratic traditions are strong and the rule of law is ensured, lobbying is legally

regulated and controlled by specially authorized bodies.

The peculiarity of the continental (European) system of legal regulation of lobbying is that there are no uniform laws regulating lobbying activity in European countries as a rule, it is regulated by different normative acts that regulate spheres of activity directly or indirectly related to lobbying.

In countries where lobbying is institutionalized, in addition to purely legal mechanisms, other mechanisms for promoting private interests are also used. Promotion of interests of business and non-governmental organizations is carried out on the basis of regulatory legal acts and through various channels of influence on the adoption of public-power decisions.

These channels are formalized as:

- 1) Regular consultations between government officials and public institutions;
- 2) Functioning of expert councils at the authorities;
- 3) Organization of public examinations on a broad social basis;
- 4) Adaptation of the right to appeal and the principle of transparency of power to the actual promotion of private interests.

These mechanisms are similar to lobbying in their social and legal nature. Systematic regulation of the dialogue between business, NGOs and the state means that several different mechanisms of “lobbying” have been established and none of them is considered exclusive. The above mentioned provides lobbying subjects the opportunity to choose channels of influence on public-power decisions, sets flexibility and potential for

development of legal mechanisms for promoting private interests.

REFERENCES

1. Webster's New Collegiate Dictionary, www.merriam-webster.com
2. Encyclopedia Britannica, www.britannica.com
3. Michael D. Ramsey, The Constitution's Text in Foreign Affairs. Harvard University Press, 2007
4. Political and Civic Leadership, A Reference Handbook: Political science. Cram101 Textbook Reviews, 2016.
5. Zyablyuk N.G. Lobbying and the US judicial system. - M.: Institute of the USA and Canada RAS, 2002.
6. Pavroz A.V. Institute of lobbying in modern democratic societies // Political expertise: POLITEX. - 2014. - T. 10, No. 3.
7. Belousov AB Modern practice of lobbying in the USA // Scientific Yearbook of the Institute of Philosophy and Law of the Ural Branch of the Russian Academy of Sciences. - 2013. - T. 13, no. 2.
8. Blokhin PD On controversial issues in the understanding of the institution of amicus curiae and its possible appearance in the Russian constitutional legal proceedings // Comparative constitutional review. - 2015. - No. 1.
9. See: Bogdanovskaya I.Yu. Lobbying and Law: the US Experience // Modern Law. 2007. No. 2. P. 104-106;
10. Pchelintsev S.V. Legal regulation of lobbying activity: Canadian approaches // Issues of state and municipal management. 2008. No. 3. P. 74-81
11. Vasilenko AI Legal regulation of lobbying in Canada // Bulletin of the Perm University. Legal sciences. - 2014. - No. 2 (24).
12. Lobbying Act, <http://laws.justice.gc.ca>
13. Lehman, Wilhelm (2003). "Lobbying in the European Union: current rules and practices" // Retrieved September 14, 2011.
14. Kleinfeld R., Zimmer A., Willems U. Lobbying. Strukturen . Akteure . Strategien . CWV Fachverlage GmbH. Wiesbaden, 2007. S. 92, 93 usw .
15. See: §1, 6, 8 1. Anlage Geschäftsordnung des Deutschen Bundestages (§1, 6, 8 application Regulation Bundestag Germany) http://www.bundestag.de/parlament/funktion/gesetze/go_btg/anlage1.html
16. S.P. Peregudov Political representation of interests: the experience of the West and the problems of Russia // Polis. 1993. No. 14.
17. Political support of business: Textbook / Ed . Yu.S. Hemp. - M.: Publishing house MAI, 1995.
18. Geiger, Andreas: EU Lobbying handbook, A guide to modern participation in Brussels, 244 pages, // Helios Media GmbH, 2006
19. Pier Luigi Petrillo, Democracies under Pressures. Lobbies and Parliaments in a comparative public law, Giuffrè 2011 (www.giuffre.it)
20. Joos, Klemens: Convincing Political Stakeholders - Successful Lobbying Through Process Competence in the Complex Decision-Making System of the European Union.
21. Ardant F. France: State system: Per. with French. - M.: Jurid. lit., 1994

22. Green P. Winning PR tactics. - London, 1994.
23. See: Ethics of Public Policy. From the experience of the UK Public Sphere Standards Committee. 2nd ed., Add. and rev. M., 2005. S. 23, 25, 29 and others;
24. The moral code of a civil servant of Great Britain (translated from English by E.A. Dushina, foreword to the publication by A.V. Obolonsky) // Questions of state and municipal management. 2007. No. 1.
25. Pier Luigi Petrillo, Democracies under Pressures. Lobbies and Parliaments in a comparative public law, Giuffrè 2011 (www.giuffre.it)
26. Joos, Klemens : Lobbying in the new Europe. Successful representation of interests after the Treaty of Lisbon, 244 pages, // Wiley VCH 2011
27. Heiko Kretschmer / Hans- Jörg Schmedes : Enhancing Transparency in EU Lobbying? How the European Commission's Lack of Courage and Determination Impedes Substantial Progress, Internationale Politik und Gesellschaft 1/2010,
28. See: A.V. Boree. Regulation of corporate lobbying in the European Union // Adviser to the President. 2008. March.
29. See: Bryantsev I.I., Baranova L.K. Corruption as a form of shadow lobbying // Power. 2008. No. 3.