



REGULATION OF POLITICAL FUNDING UNDER ELECTION LAWS OF THE RUSSIAN FEDERATION

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Introduction

Establishing a legal framework for regulation of political funding is a key goal of democratic election law development. Russian experience with elections in the past decade has indicated problem areas in political funding. But this experience has also led to gradual improvements in regulatory controls, including refinements to the Law on Basic Guarantees of Electoral Rights and in proposed drafts for laws governing elections for the State Duma.

The following is an overview of important considerations for further refining of regulation of political funding under election laws of the Russian Federation. This analysis seeks to emphasize practical elements rather than absolute ideals. A search for perfection can sometimes defeat accomplishment of the good and sufficient, especially in this policy area. The goal of regulation of political finance should be to encourage fair and vigorous competition among political participants within a transparent political funding system.

Prohibitions Upon Donations

Most developed political systems recognize certain sources of political funding that must be prohibited or restricted. It is typical internationally, as in Russia, for foreign entities or individuals to be precluded from contributing to candidates or political parties. It is also standard to impose prohibitions upon any use of government funds, personnel, facilities or resources in support of candidates or political parties (unless through a government subsidy provided under law). Further, in the United States, business corporations and labor unions are prohibited from contributing to candidates at the federal level and in many states.

Certain practices are also prohibited under political finance laws. Contributions may often not be accepted in cash, either at all or up to a minimal amount. It is also necessary to prohibit making contributions through an intermediary (contributions in the name of another). These restrictions are aimed at conduct that defeats disclosure of true sources of contributions and facilitates evasion of other contribution limitations (contributions through others are a common means for giving more than permitted under contribution limitations per individual). Similarly, laws often require that 'in-kind' donations of goods and services be treated the same as monetary contributions for purposes of limitations and reporting requirements.

Limitations Upon Donations

Harder questions arise in restricting contributions to candidates or political elements from

sources that are generally permissible. Reasonable limitations upon political campaign funding are viewed as encouraging political competition. The idea of "reasonable" limits provides for restrictions upon receipts to and expenditures by candidates and political parties to prevent large financial interests from wholly buying political outcomes. These limits are viewed as deterring outright corruption of the political process and creating a more level playing field for all candidates and political parties.

However, limits upon donations to candidates or parties or upon overall campaign spending are not reasonable if they are set too low. Overly restrictive political finance limits generally encourage cheating on the rules, discourage full political participation by political organizations and inhibit the free exercise of rights of political speech and action of citizens. These limitations fail if they encourage evasion of the laws through "off-the-books" political donations or campaign spending. Financial support of candidates and political parties should be channeled through a regulated and disclosed finance system, and efforts to avoid that system should be penalized. But it is much more difficult to achieve compliance with the law if restrictions are so severe that they choke political expression and encourage widespread avoidance of laws.

Disclosure

Reporting of financial activity by candidates and political parties is a valued policy goal in the United States and other democracies. It is seen as providing useful information to voters about the sources of support for political participants. But disclosure requirements also serve another important purpose besides voted information. Reporting of financial activity also is necessary to deter violations of the law and permit effective enforcement of the rules. Achieving compliance with political funding restrictions depends heavily upon full reporting of activity by political participants and upon active monitoring by news media, academics and political opponents.

Effective disclosure depends upon keeping political finance activity inside the system. That requires prohibitions and limitations be not so restrictive, and reporting requirements be not so burdensome, so as to drive funding "off-the-books." A political finance system can appear well regulated and fully disclosed even as it is widely ignored.

Thus, a complex and thorough regulatory structure for campaign funding does not replace disclosure. Rather, regulation is dependent upon reporting by political elements and public monitoring of political finance activity in order to be fully followed and enforced.

Conclusion and Recommendations

In nearly six years of election assistance programming in the Russian Federation, the International Foundation for Election Systems (IFES) has encouraged review and refinement of rules governing political funding in Russian elections. IFES hopes to continue assistance in this area, and

is confident further progress can be made for 1999 elections to State Duma.

In that spirit, IFES urges consideration be given to the following recommendations:



1. Legislative measures must be taken to impose substantial restriction on the use of cash in the conduct of election campaigns by candidates, election associations, and election blocs. The presence of cash as an important factor of campaign finance may block the entire system of campaign finance regulation and interfere with the efforts made by the Central Election Commission to monitor relevant financial flows. The use in election campaigning of cash funds which are not officially accounted for is, as a rule, a manifestation of corruption in the political sphere and one of the channels through which criminal circles influence politics. Therefore, steps should be taken to establish differentiated responsibility for these offences (including criminal responsibility for the most serious manifestation of corruptions in this sphere). Of course, the effectiveness of these measures will depend on the effectiveness of the law-enforcement bodies.
2. The low maximum level of spending established for candidates, electoral association and blocs may induce them to make use of illegal sources of campaign funding. It may be necessary to raise maximum contribution and spending levels under the revised Federal Law on the Election of Deputies of the State Duma.
3. The current Russian laws (like the laws of many other countries) do not contain provisions which allow state bodies to monitor the sources from which the political parties receive money, including money received in the period between election campaigns. It is advisable to adopt rules under which political parties would be obliged to make a public disclosure of financial donation accepted by them, when these donations exceed a definite sum. A state body must be designated which will be responsible to check the completeness and accuracy of such disclosures and make its findings public. Also, it should be taken into consideration that there is a high probability of political parties' resistance to the introduction of this regulation.
4. It would be timely, particularly when updating the Federal Law on the Election of Deputies of the State Duma, to introduce criteria in accordance with which political parties and political movements can receive the financial support from the state depending on their real political weight. As demonstrated by the experience of the countries that use public funding of political parties, the receipt of subsidies depends on whether the party wins a definite number of seats in parliament. It is desirable that the law should specify the timetable for receipt of such subsidies.
5. Another issue is the regulation of independent funding provided by natural persons and legal entities for the election campaign of a candidate, election association (bloc). Independent funding implies a situation where a candidate, and an election association, election bloc formally do not coordinate the actions of organizations and individuals investing money into activities which facilitate the election of candidates. Such activities may include payments

for advertising messages on TV and for publications in the press which call for supporting a definite political course, criticize the main rivals of the candidate being supports, etc.

If lawmakers opt for banning such funding - in fact this is provided for by the updated version of the Federal Law on the Election of Deputies of the State Duma - it is necessary to determine concretely what kind of activities is banned as facilitating the election of a candidate. Does it mean direct calls for election or indirect support? Banning of all kinds of indirect support may come in conflict with the constitutional guarantees of the freedom of speech, restrict the lawful rights of the mass media (such failed restriction can be clearly seen in the United States experience). In any case, when imposing a ban on independent funding it is necessary to establish legal responsibility of organizations and natural persons for such activity.

6. Improvement of procedures for financial reporting of candidates, election associations and blocs, measures to ensure openness and accessibility of current information concerning the sources of funds and spending of finances of election funds will facilitate control over relevant financial operation both on the part of election commissions and election participants themselves, as well as mass media. The amount and content of such information format and timetable for its submission shall be granted legislatively.

Here special attention shall be paid to the following tasks:

-  Financial reports of candidates, election association (blocs) must be submitted to election commissions both after the elections and before the day of elections;
 -  It is necessary to establish mechanisms that could provide for the analysis of information contained in the reports submitted by the candidates, election association (blocs) after the elections. The most effective mechanism is the one, when all information about financial operations done for the accounts of election funds submitted by the banks, and information contained in the reports of the candidates and election associations (blocs) will be accessible in the electronic format, and it will be possible to withdraw it from a common database.
7. It is suggested to improve the acting system of sanctions for campaign finance regulations violations. Sanctions must be more universal and provide for the use of differentiated sanctions depending on the level of violation. Some violations deserve severe punishment, but many inadvertent mistakes or reporting errors do not deserve a harsh political or economic penalty.