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# THE MEDIA

## AND THE PRESIDENTIAL ELECTIONS IN RUSSIA 2000

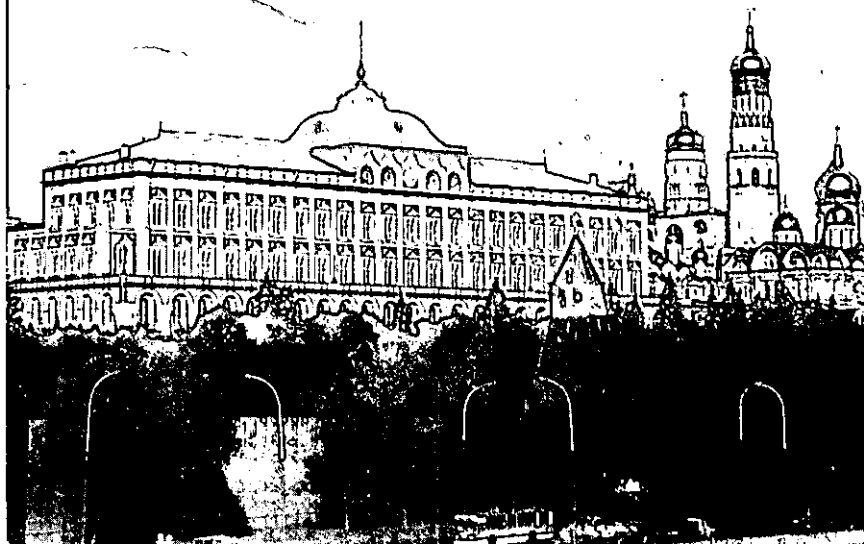
Постановление  
Совета Федерации  
Федерального Собрания Российской Федерации  
от 5 января 2000 г. N 4-СФ

### «О назначении досрочных выборов Президента Российской Федерации»

В связи с прекращением Президентом Российской Федерации Б.Н. Ельциным исполнения своих полномочий до истечения конституционного срока вследствие отставки на основании части 2 статьи 92 Конституции Российской Федерации и в соответствии со статьей 81, пунктом "д" части 1 статьи 102 Конституции Российской Федерации, пунктом 4 статьи 5 Федерального закона от 31 декабря 1999 года N 228-ФЗ "О выборах Президента Российской Федерации" Совет Федерации Федерального Собрания Российской Федерации постановляет:

1. Назначить досрочные выборы Президента Российской Федерации на 26 марта 2000 года.
2. Настоящее постановление вступает в силу со дня его официального опубликования.

Председатель Совета Федерации  
Федерального Собрания  
Российской Федерации  
С.С. СТРОЕВ



International Foundation for Election Systems

# **THE MEDIA AND THE PRESIDENTIAL ELECTIONS IN RUSSIA 2000**

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## CONTENTS

Responsibilities of TV and Radio Broadcasting Companies and Editorial Offices of Periodicals in the Election of the President of the Russian Federation. <i>A. Postnikov</i> .....	5
The Mass Media in Election Campaigns: Rules and Practice <i>M. Fedotov</i> .....	26
Some Controversial Aspects of the Legal Regulation of Election Campaigning under the Federal Law of the Russian Federation "On the Election of the President of the Russian Federation" <i>I. Ivanov</i> .....	38
The "Law on the Presidential Elections of the Russian Federation" in Regulating the Media <i>D. Skillen</i> .....	48
Ethics of the Oldest Profession (The Mass Media During the Elections) <i>S. Kolesnik</i> .....	55
Information Disputes Relating to Election Campaigning Via the Mass Media: The Experience of the Judicial Chamber in the 1999 Election Campaign <i>V. Monakhov</i> .....	64
On Election Commissions Working with the Mass Media in the Course of Campaigning to Elect the President of the Russian Federation <i>S. Bolshakov</i> .....	85

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# **RESPONSIBILITIES OF TV AND RADIO BROADCASTING COMPANIES AND EDITORIAL OFFICES OF PERIODICALS IN THE ELECTION OF THE PRESIDENT OF THE RUSSIAN FEDERATION**

**Guide for executives and staff members of TV and radio  
broadcasting companies and editorial offices of periodicals**

## **Introduction**

This guide covers legal as well as various practical issues related to the participation of TV and radio companies and editorial offices of periodicals in the running of the presidential elections in the Russian Federation. The activity of the electronic and print media during the Presidential elections is regulated by general rules laid down by the laws on the running of election campaigns of all levels and by a special legal regime established by the Federal Law "On the Election of the President of the Russian Federation."

The Federal Law "On Basic Guarantees of Electoral Rights and the Right of Citizens of the Russian Federation to Participate in a Referendum" of September 19, 1997 as amended and supplemented by the Federal Law of March 30, 1999 as well as the new version of the Federal Law "On the Election of the President of the Russian Federation" dated December 31, 1999 contain fairly detailed provisions regulating TV and radio companies and editorial offices of periodicals in election campaigns for the election of the President of the Russian Federation. Compared to earlier legislative acts establishing, in particular, the procedure for the 1996 presidential elections, the above-mentioned federal laws contain many new provisions specifying the responsibilities of TV and radio broadcasting companies and editorial offices of periodicals and imposing restrictions on their activity. These rules guide both the executives of the electronic and print media and journalists covering election campaigns. They are also mandatory for those directly involved in the electoral process (candidates, electoral associations and electoral

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In this text "periodical" means any publication issued at regular intervals, including newspapers.

blocs) – the partners of TV and radio broadcasting companies and editorial offices of periodicals in the election campaign.

Significant changes have taken place in the role played by administrative regulation of the activity of TV and radio broadcasting companies and editorial offices of periodicals in the elections. In the past, the Central Election Commission of the Russian Federation when administering federal elections issued instructions on the provision of air time on the channels of state-run (public) TV and radio broadcasting companies and on the publication of election propaganda materials in periodicals financed by the state. The new election legislation focuses on regulating election campaigning in the media by means of electoral laws. Therefore, it is the laws, rather than instructions of the Central Election Commission of the Russian Federation, that have to be consulted to find answers to the most important questions concerning participation of the mass media in elections.

However, media activity during elections is regulated not only by electoral legislation. At such time, the **Russian Federation Law "On the Mass Media"** of December 27, 1991 remains fully effective, although the activity of the mass media during election campaigns has a number of specific features. Special restrictions and responsibilities established for the mass media for the election period are aimed at guaranteeing fair elections, making possible the substantially extended the list of administrative offences in the sphere of media participation free expression of the citizens' will, and ensuring equal legal conditions for candidates, registered candidates, electoral associations and electoral blocs to conduct their election campaigns .

Legal sanctions may be applied to a TV and radio broadcasting company or to the editorial office of a periodical which violates the rules for participation in election campaigns. Such sanctions primarily include administrative penalties that apply to media officials and journalists under the **RSFSR Code of Administrative Offences**. At present, the amendments and additions introduced to this Code by the Federal Law of January 2, 2000 have in election campaigns and toughened the penalties imposed for such offences.

## **Key Terms and Concepts**

Three categories of terms and concepts are used in this guide.

The first includes the terms and concepts defined in Article 2 of the Federal Law "On Basic Guarantees of Electoral Rights and the Right of Citizens of the Russian Federation to Participate in a Referendum" entitled "Main Terms Used in This Federal Law."

The second includes the terms and concepts defined in the Federal Law "On the Election of the President of the Russian Federation."

The third comprises terms that, though not used in election legislation, help the understanding of some technically complex structures of election legislation. They include, in particular, the concept of "regulated media" introduced here.

**Regulated media** means TV and/or radio broadcasting companies and editorial offices of periodicals having at least one of the following features:

- the given company or periodical is founded (co-founded) by state or municipal bodies, organizations or institutions;
- one year before the election is called, at least 15 percent of the company's or periodical's budget was financed from the funds allocated by federal bodies of state power, bodies of state power of Subjects of the Russian Federation, bodies of local self-government.

Under Clause 2, Article 47 of the Federal Law "On the Election of the President of the Russian Federation" regulated media do not include editorial offices of periodicals founded by bodies of legislative (representative), executive and judicial power and by bodies of local self-government for the sole purpose of publishing their official documents and reports, normative and other acts. These publications are not allowed to provide space for publication of election propaganda materials.

In the Federal Law "On Basic Guarantees of Electoral Rights and the Right of Citizens of the Russian Federation to Participate in a Referendum" the regulated media are listed in Clause 1 of Article 39.

Various kinds of regulated media are indicated in Clauses "a" through "e," Article 47 of the Federal Law "On the Election of the President of the Russian Federation." They include:

**National ("all-Russian") state-run TV and radio broadcasting companies**, i.e. TV and radio broadcasting organizations with a stable reception zone extending to half or more than half of the Subjects of the Russian Federation, which are founded (co-founded) by state bodies, organizations, institutions and/or those which in the year preceding the day of official publication of the decision to call (hold) the elections were financed by not less than 15 percent of their budget from funds allocated by federal bodies of state power or bodies of state power of the Subjects of the Russian Federation;

**Regional state-run TV and radio broadcasting companies**, i.e. TV and radio broadcasting organizations with a stable reception zone extending to less than half of the Subjects of the Russian Federation, which are founded (co-founded) by state bodies, organizations, institutions and/or those which, in the year preceding the day of official publication of the decision to call (hold) the election, were financed by not less than 15 percent of their budget from the funds allocated by federal bodies of state power, bodies of state power of the Subjects of the Russian Federation,

as well as the corresponding divisions of national TV and radio broadcasting companies.

**Editorial offices of national ("all-Russian") state-run periodicals**, i.e. editorial offices of periodicals distributed in the territory of a half or more than a half of the Subjects of the Russian Federation, if these editorial offices or these periodicals are founded (co-founded) by state bodies, organizations, institutions and/or if, in the year preceding the day of official publication of the decision to call (hold) the election, these editorial offices were financed by not less than 15 percent of their budget from funds allocated by federal bodies of state power, bodies of state power of the Subjects of the Russian Federation, save the editorial offices of periodicals indicated in Clause 2, Article 47 of the Law.

**Editorial offices of regional state-run periodicals**, i.e. editorial offices of periodicals distributed in the territory of less than a half of the Subjects of the Russian Federation, if these editorial offices or these periodicals are founded (co-founded) by state bodies, organizations, institutions and/or if, in the year preceding the day of official publication of the decision to call (hold) the election, these editorial offices were financed by not less than 15 percent of their budget from the funds allocated by federal bodies of state power, bodies of state power of the Subjects of the Russian Federation, save the editorial offices of periodicals indicated in Clause 2, Article 47 of the Law.

**Municipal TV and radio broadcasting companies and editorial offices of municipal periodicals**, i.e. TV and radio broadcasting organizations and editorial offices of periodicals, if these organizations, periodicals or their editorial offices are founded (co-founded) by bodies of local self-government and/or if, in the year preceding the day of official publication of the decision to call (hold) the election, these organizations, editorial offices were financed by not less than 15 percent of their budget from the funds allocated by bodies of local self-government, save the editorial offices of periodicals indicated in Clause 2, Article 47 of the Law.

**Non-state-run TV and radio broadcasting companies and editorial offices of periodicals**, i.e. the TV and radio broadcasting organizations and editorial offices of periodicals which do not belong to either state-run or municipal regulated media. Various kinds of these companies and editorial offices (national, regional) are defined in Sub-clauses "f" through "i" of Clause 1, Article 47 of the Law.

**Specialized TV and radio broadcasting companies and editorial offices of specialized periodicals**. This is a special category of TV and radio broadcasting organizations and editorial offices of periodicals which are classified as a separate group with no regard to their founders and sources of their financing but related to the fact that they specialize in cultural, educational, children's, technical, scientific and other similar themes.

**Election campaigning (election propaganda)** means any activity by citizens of the Russian Federation, candidates, electoral associations, electoral blocs and public associations intended to induce or inducing voters to take part in the election and to vote for various candidates (lists of candidates) or against them (Article 2 of the Federal Law "On Basic Guarantees of Electoral Rights and the Right of Citizens of the Russian Federation to Participate in a Referendum.") Accordingly, such citizens of the Russian Federation, candidates, electoral associations, electoral blocs and public associations are **election campaigners**.

## Questions and Answers

### 1. What legislative acts establish additional responsibilities for editorial offices of periodicals and TV and radio broadcasting companies during elections?

During elections at various levels (such as federal, regional, or local) periodicals and TV and radio broadcasting companies are charged with a whole range of additional responsibilities essential for holding open, free and democratic elections.

1.1. The general responsibilities of editorial offices and TV and radio broadcasting companies that apply to all elections held in the Russian Federation are laid down in **the Federal Law "On Basic Guarantees of Electoral Rights and the Right of Citizens of the Russian Federation to Participate in a Referendum"** dated September 19, 1997, as amended and supplemented by the Federal Law of March 30, 1999. The said Federal Law prevails over other electoral laws.

1.2. The responsibilities of editorial offices of periodicals and TV and radio broadcasting companies with regard to the presidential elections are set forth more concretely in **the Federal Law "On the Election of the President of the Russian Federation"** of December 31, 1999.

1.3. The responsibilities of the editorial offices of periodicals and TV and radio broadcasting companies in elections held in the Subjects of the Russian Federation (such as elections of the chief executive of a Subject of the Russian Federation, deputies of legislative bodies of state power, heads of municipalities, other elected officials of local self-government, and deputies of representative bodies of local self-government) are established by laws of the Subjects of the Russian Federation adopted in accordance with the Federal Law "On Basic Guarantees of Electoral Rights and the Right of Citizens of the Russian Federation to Participate in a Referendum."

**2. What editorial offices of periodicals and what TV and radio broadcasting companies are charged with additional election-related responsibilities? How are such responsibilities differentiated?**

2.1. There are many responsibilities of editorial offices of periodicals and TV and radio broadcasting companies that apply equally to all print and electronic media at the time of elections: in particular, this is the duty to prevent misuse of press freedom, to comply with the prescribed periods for election campaigning, to observe rules established for publication of the results of opinion polls, etc.

2.2. At the same time, the regulated media are burdened with the maximum volume of responsibilities related to election campaigning.

In particular, the regulated media are obliged to provide equal conditions for registered candidates to conduct their election campaigns, to grant them free air time and free space on the pages of publications, to publish resolutions of election commissions and information concerning financial transactions performed via special electoral fund accounts of candidates.

2.3. The scope of responsibilities borne by state-run, municipal<sup>1</sup> and non-state-run TV and radio broadcasting companies and editorial offices of periodicals in the election of the President of the Russian Federation is not the same. Under the Federal Law "On the Election of the President of the Russian Federation" the state-run and municipal TV and radio broadcasting companies and state-run and municipal editorial offices of periodicals must guarantee registered candidates equal terms and conditions for election campaigning and presentation of their election programs to voters (Clause 2, Article 48 of the Federal Law).

Non-state-run TV and radio broadcasting organizations and editorial offices of non-state-run periodicals may provide air-time or space to registered candidates for a charge (Clause 3, Article 48 of the Federal Law). The relevant procedures are regulated by the Federal Law.

**3. How are TV and radio broadcasting companies or editorial offices of periodicals classified as a national ("all-Russian") or regional state-run regulated media?**

3.1. Clause 3, Article 47 of the Federal Law "On the Election of the President of the Russian Federation" states that the list of all-Russian state-run TV and radio broadcasting companies and all-Russian state-run periodicals is published by the Central Election Commission of the Russian Federation on the basis of information submitted by the

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<sup>1</sup> The definition of the media as "state-run" (or public) and "municipal" is rather tentative because both state-run and municipal media may include organizations that are not owned by the state or municipalities but are partially financed from the respective budgets.

appropriate federal bodies of executive power which formulate and implement state policy in the field of the mass media, not later than the tenth day<sup>1</sup> after the day of official publication of the decision to call (hold) the election of the President of the Russian Federation. The said list must make special mention of all-Russian state-run periodicals which come out less frequently than once a week.

3.2. The list of regional state-run TV and radio broadcasting companies and regional state-run periodicals is published by the election commissions of the Subjects of the Russian Federation on the basis of information submitted by the appropriate territorial agencies of federal bodies of executive power which formulate and implement state policy in the field of the mass media, not later than the tenth day after the day of official publication of the decision to call (hold) the election of the President of the Russian Federation. The said list must make special mention of regional state-run periodicals which come out less frequently than once a week.

#### **4. How can TV and radio broadcasting companies and editorial offices of periodicals participate in election campaigning?**

4.1. TV and radio broadcasting companies and editorial offices of periodicals are not independent election campaigners. However, anyone can conduct such a campaign *through* the media provided his right to do so is recognized by law.

4.2. It should be noted that voting members of election commissions, state authorities, bodies of local self-government, charity organizations, religious associations, persons holding government and municipal offices, government and municipal employees, as well as servicemen are not allowed to take part in election campaigning while on duty or by taking advantage of their official position or status (Clause 5, Article 37 of the Federal "On Basic Guarantees of Electoral Rights and the Right of Citizens of the Russian Federation to Participate in a Referendum"). In the Federal Law "On the Election of the President of the Russian Federation" the list of organizations which are forbidden to participate in election campaigning also includes military units, military institutions, and election commissions (Clause 3, Article 44 of the Federal Law).

4.3. Under Clause 8, Article 3 of the Federal Law "On Basic Guarantees of Electoral Rights and the Right of Citizens of the Russian Federation to Participate in a Referendum," foreign nationals (with the

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<sup>1</sup> Here and below it should be borne in mind that, according to Clause 6, Article 5 of the Federal Law "On the Election of the President of the Russian Federation" in the event of early elections of the President of the Russian Federation the periods for the performance of electoral actions established by this Federal Law are reduced by one-fourth.

exception of cases where they enjoy electoral rights in municipal elections under an international treaty), stateless persons and foreign legal entities are not allowed to engage in any activity that assists or prevents nomination of any candidates (lists of candidates) or election of any registered candidates (Clause 8, Article 3 of the Federal Law "On Basic Guarantees of Electoral Rights and the Right of Citizens of the Russian Federation to Participate in a Referendum"). Under the Federal Law "On the Election of the President of the Russian Federation" (Article 11) the list of organizations which are forbidden to engage in the said activities also includes international organizations and international public movements. Accordingly, all these organizations are excluded from participation in election campaigning. TV and radio broadcasting companies and editorial offices of periodicals are obliged to make sure that these bans are duly observed.

## **5. Periods for election campaigning through TV and radio broadcasting companies and periodicals**

5.1. Election campaigning through TV and radio broadcasting companies and periodicals may be carried out within the periods established for election campaigning in support of or against candidates. According to the general rule, election campaigning starts on the day when a candidate is registered and ends at midnight, local time, 24 hours prior to voting day. In the event of repeat voting election campaigning is resumed from the day on which the Central Election Commission of the Russian Federation appoints the day for repeat voting and ends at midnight, local time, 24 hours prior to the day of repeat voting (Clauses 1 and 4, Article 45 of the Federal Law "On the Election of the President of the Russian Federation").

5.2. The Federal Law "On the Election of the President of the Russian Federation" makes special mention of the periods for election campaigning through TV and radio broadcasting companies and periodicals. According to Clause 5, Article 48 of the Federal Law election campaigning on the channels of TV and radio broadcasting organizations may be conducted on working days in the period which commences 30 days prior to voting day and ends one day prior to voting day; election campaigning in periodicals may be conducted in the period which commences 40 days prior to voting day and ends one day prior to voting day. In the event of repeat voting election campaigning on the channels of state-run and municipal TV and radio broadcasting companies and in state-run and municipal periodicals may be conducted on working days in the period which commences two days after repeat voting was declared and ends one day prior to voting day.

**Attention should be paid to certain differences in the procedure for calculation of the periods for election campaigning through TV and radio broadcasting companies and periodicals.**

Thus, if the number of registered candidates is less than ten, free air time on the channels of the state-run TV and radio broadcasting companies is provided 20 days, rather than 30 days, prior to voting day. No such differences are established for print media.

It is also noteworthy that the period for the provision of paid air-time remains unchanged regardless of the number of candidates (30 days prior to voting day). It should be also kept in mind that the forthcoming elections will be early elections and, therefore, all periods for performance of electoral actions (including election campaigning periods) are reduced by one fourth.

#### **6. What procedure is established for interaction between TV and radio broadcasting companies and periodicals and the election commissions?**

6.1. The national and regional state-run TV and radio broadcasting companies and editorial offices of national and regional periodicals are obliged to offer an opportunity to election commissions to present their information intended for publication, and to provide free air time to them in order to advise the voters about the timing and procedure of electoral actions, the progress of the on-going election campaign, candidates, registered candidates and also to respond to voters' questions.

6.2. Under Clause 17, Article 23 of the Federal Law "On the Election of the President of the Russian Federation" during the period of the preparation and conduct of the election of the President of the Russian Federation<sup>1</sup>, every week the national TV and radio broadcasting companies must provide not less than 15 minutes of free air time to the Central Election Commission of the Russian Federation and the regional TV and radio broadcasting organizations not less than 10 minutes of free air time to the election commissions of the Subjects of the Russian Federation on their channels.

6.3. Under Clause 18, Article 23 of the Federal Law "On the Election of the President of the Russian Federation" during the period of the preparation and conduct of the election of the President of the Russian Federation the editorial offices of national periodicals coming out at least once a week must provide, free of charge, not less than one percent of their weekly space to the Central Election Commission of the Russian Federation. During the same period, the editorial offices of regional periodicals coming out at least once a week must provide, free of charge, not less than one percent of their weekly space to the election commissions of the Subjects of the Russian Federation.

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<sup>1</sup> Apparently, this period begins from the day of official publication of the decision to call the election.

6.4. Other TV and radio broadcasting companies, editorial offices of other periodicals and their officials are obliged to provide the necessary information and documents to election commissions for the election of the President of the Russian Federation, respond to requests of election commissions within five days, while one day prior to election day and on election day, immediately (Clause 8, Article 12 of the Federal Law "On the Election of the President of the Russian Federation"). It should be also borne in mind that documents and resolutions of election commissions taken within the scope of their competence are mandatory for all TV and radio broadcasting companies and editorial offices of periodicals

## **7. The procedure for provision of free air-time by TV and radio broadcasting companies**

7.1. The state-run TV and radio broadcasting companies are required to provide free air-time to registered candidates. This air time must be provided to registered candidates on equal terms and conditions (with regard to the length of air time, timing and other terms and conditions) (Clause 1, Article 49 of the Federal Law "On the Election of the President of the Russian Federation").

7.2. Any expenses incurred by TV and radio broadcasting companies in the provision of free air-time to registered candidates are covered from the current budgetary funding of the relevant broadcasting organization.

7.3. Free air-time to be provided by each national TV and radio broadcasting company for election campaigning must total at least one hour daily on working days during the election campaigning period prescribed for these organizations. During the corresponding period regional TV and radio broadcasting companies must allocate at least 30 minutes of free air-time on working days, or at least one-fourth of the total broadcasting time if the total daily broadcasting time is under two hours.

7.4. The law provides that free air-time must be provided in broadcast periods viewed or listened to by the greatest number of persons.

7.5. Registered candidates may determine the form and nature of their election campaigning on the channels of TV and radio broadcasting companies at their own discretion, provided these forms are not banned by law (Clause 2, Article 44 of the Federal Law "On the Election of the President of the Russian Federation"). At the same time, federal laws establish some exceptions from this rule. Thus, under Clause 6, Article 49 of the Federal Law "On the Election of the President of the Russian Federation" one half (or, in the event of repeat voting, two-thirds) of the total length of free air-time made available by the state-run TV and radio broadcasting companies must be used by registered candidates for joint

debates, "roundtables" and other joint campaigning events of a similar kind. All registered candidates must be allowed to use this part of free air-time on equal conditions. The Federal Law establishes how air-time is to be used if a registered candidate (candidates) refuses to make use of free air-time allocated for joint campaigning events (Clause 7, Article 49 of the Federal Law). In the parliamentary elections, if only one candidate showed up for the debate, the debate was cancelled but this candidate, too, was deprived of the possibility to use his/her share of air-time. The presidential election law deals with this situation in a different manner. Now, if only one candidate shows up for the debate, he/she may use his/her share of the allocated air-time.

The remaining free air-time is distributed by means of lot-drawing to be organized by election commissions in a procedure established by the Federal Law. Under this law not less than three-fourths of free air-time made available to a registered candidate must be used by the candidate for his/her speeches, press conferences, interviews (Clause 9, Article 49 of the Federal Law "On the Election of the President of the Russian Federation"). This restricts the total extent of political advertising.

The date and time when election propaganda materials are to be aired are determined by drawing lots. Lot-drawing to distribute air-time on the channels of the national TV and radio broadcasting companies is organized by the Central Election Commission of the Russian Federation, to distribute air-time on the channel of regional TV and radio broadcasting companies, by election commissions of the Subjects of the Russian Federation.

## **8. The procedure for provision of paid air-time by TV and radio broadcasting companies**

8.1. Different procedures are established for provision of paid air-time by the state-run, municipal and non-state-run TV and radio broadcasting companies. *The state-run TV and radio broadcasting companies are required to reserve* paid air-time for registered candidates to carry on their election campaigning. The total length of paid air time so reserved must not be less than the total length of free air-time but must not exceed this air-time more than twice. Each registered candidate is entitled, for a charge, to use the reserved air time within its share given by the division of the total length of reserved air time by the total number of registered candidates (Clauses 12, 13, Article 49 of the Federal Law "On the Election of the President of the Russian Federation"). Therefore, all registered candidates are entitled to equal shares of the reserved paid air-time. It should be noted that the law does not require paid air-time (unlike free air-time) to be provided only in the prime hours.

8.2. *Municipal TV and radio broadcasting companies* which have published in advance the information concerning the length of air-time and terms of payment therefor as prescribed by law provide air-time to

registered candidates for election campaigning for a charge. The rates and terms of payment must be the same for all registered candidates but the total length of air-time to be made available to registered candidates is determined by the municipal TV and radio broadcasting company at its own discretion (Clause 15, Article 49 of the Federal Law "On the Election of the President of the Russian Federation").

8.3. *Non-state-run TV and radio broadcasting companies* which have published in advance the information concerning the length of air-time and terms of payment therefor as prescribed by law must provide air-time to registered candidates for election campaigning on equal terms and conditions (Clause 17, Article 49 of the Federal Law "On the Election of the President of the Russian Federation"). The law does not establish an opportunity for these TV and radio companies to refuse provision of air-time to some registered candidates or to provide air-time to some of them on a discriminatory basis. The TV and radio broadcasting companies which have failed to comply with the aforementioned terms and conditions for provision of air-time to candidates are not allowed to provide any air-time to any registered candidates for election campaigning. So, either to all on equal terms and conditions or to no one.

8.4. Paid air-time is provided upon the request of a registered candidate. To determine the date and time for airing election propaganda materials of each of registered candidates the *state-run and the municipal* TV and radio broadcasting companies organize lot-drawing in a procedure established by the Federal Law. Non-state-run TV and radio broadcasting companies are not obliged to use such lot-drawing. Air-time is provided on the basis of a contract for provision of paid air-time to be concluded between the TV and radio broadcasting company and the registered candidate. The information concerning the rates and terms of payment for air-time must be published by the TV and radio broadcasting company not later than 30 days or 22 days (in the event of early election) after the day of official publication of the decision to call (hold) the election of the President of the Russian Federation. This information along with the notice of readiness to provide air-time to registered candidates is submitted by the national TV and radio broadcasting companies to the Central Election Commission of the Russian Federation and by the regional and municipal TV and radio companies to the election commission of the Subject of the Russian Federation.

8.5. Registered candidates have full discretion to determine the manner in which they will use paid air-time. The Federal Law "On the Election of the President of the Russian Federation" establishes the conditions for and consequences of the refusal of a registered candidate to use paid air-time after lot-drawing (Clause 16, Article 49 of the Federal Law).

8.6. In all cases, irrespective of the nature of the TV and radio broadcasting company, all air-time payments must only be made through

electoral funds of registered candidates, with the due amounts to be paid in full before any air-time is provided.

## **9. Requirements to contracts for provision of paid air time to registered candidates; performance of such contracts**

9.1. The contract must be drawn up in keeping with the Civil Code of the Russian Federation and with due regard for the mandatory requirements laid down in the Federal Law "On the Election of the President of the Russian Federation."

9.2. Clause 19, Article 49 of the Federal Law "On the Election of the President of the Russian Federation" provides that any contract for the provision of paid air time must set out the following terms and conditions: the type (form) of election campaigning; the airing date and time; the length of air time to be provided; the rates and terms of payment; the form and conditions of participation of a journalist (moderator) in the TV or radio program. After the terms of the contract have been carried out a work performance record and a certificate of the used air time must be drawn up, which confirm the performance of contractual obligations and indicate the broadcast channel, the name of the program and its airing time. The Federal Law likewise establishes that, in case any registered candidate breaches any provision of the said Federal Law when using the paid air time, the relevant TV and radio broadcasting company may apply to a court for canceling the contract for provision of paid air. Should the contract be so cancelled, the TV and radio broadcasting company is not allowed to use the released air-time for election campaigning purposes.

The law does not prohibit conclusion of such contracts via intermediaries. Practical experience from the parliamentary elections has shown that all main broadcasting organizations were selling their air-time through various advertising agencies. In such cases, a contract of agency or commission must be concluded between the TV and radio broadcasting company and the intermediary (advertising agency).

## **10. The procedures for provision of free space by print media**

10.1. In the election of the President of the Russian Federation registered candidates are entitled to free space in the national state-run periodicals which come out at least once a week, the said space to be provided to them on equal terms and conditions (size of the space to be provided, place on the page, type, etc.) (Clause 1, Article 50 of the Federal Law "On the Election of the President of the Russian Federation").

10.2. The total weekly minimum amount of space which the editorial office of each national state-run periodical is to provide to registered candidates free of charge must be not less than 5 percent of the total weekly volume of the given publication in the period established

for election campaigning in such mass media. The editorial office of the periodical must declare the total amount of space to be provided for election campaigning purposes in this periodical free of charge not later than 20 days after official publication of the decision to call (hold) the election.

10.3. Under the Federal Law "On the Election of the President of the Russian Federation" lot-drawing to determine the dates for free publication of election propaganda materials of registered candidates is organized by the editorial office of the national state-run periodical with the participation of interested persons within a week after the end of registration of the candidates (Clauses 5, 6, Article 50 of the Federal Law).

10.4. When propaganda materials are published free of charge, the item so published must contain an express reference to the fact that it is carried free, plus an indication as to which registered candidate has been given an opportunity to publish the material (Clause 19, Article 50 of the Federal Law "On the Election of the President of the Russian Federation").

10.5. The expenses incurred by editorial offices of national state-run periodicals in provision of free space to registered candidates for election campaigning purposes are covered from current budgetary funding of these editorial offices (Clause 7, Article 50 of the Federal Law "On the Election of the President of the Russian Federation").

10.6. Registered candidates have full discretion to determine the manner in which they will use the space provided to them in periodicals free of charge (Clause 2, Article 44 of the Federal Law "On the Election of the President of the Russian Federation").

## **11. The procedure for provision of paid space by print media**

11.1. In the election of the President of the Russian Federation *the editorial offices of national state-run periodicals and regional state-run periodicals which come out at least once a week* are obliged to reserve space for publication of election propaganda materials of registered candidates on a paid basis. The rates and terms of payment must be the same for all registered candidates. The relevant information must be published in a procedure established by law not later than 30 days from the day of official publication of the decision to call (hold) the election of the President of the Russian Federation and must be submitted, along with a notice of readiness to provide space to registered candidates, to the Central Election Commission of the Russian Federation (for national publications), the election commission of the Subject of the Russian Federation (for regional and municipal publications). The total amount of paid space to be reserved by the editorial office of each national state-run periodical must not be less than the total amount of free space to be made available for election campaigning but must not exceed this amount more than twice. The total weekly minimum space to be reserved by the editorial office of each regional state-run periodical for provision to

registered candidates must be not less than 5 percent of the total weekly space of the given periodical in the election campaigning period. Each registered candidate is entitled to a share of the total reserved space given by the division of the total amount of reserved space by the total number of registered candidates (Clauses 8, 9, Article 50 of the Federal Law "On the Election of the President of the Russian Federation").

The date for the publication of election propaganda materials is determined by means of lot-drawing to be organized by the editorial office of the periodical with the participation of interested persons on the basis of written applications for participation in the lot-drawing submitted by registered candidates. Space is provided on the basis of a contract concluded after lot-drawing (Clause 10, Article 50 of the Federal Law "On the Election of the President of the Russian Federation").

11.2. *Editorial offices of municipal periodicals as well as editorial offices of state-run periodicals coming out less frequently than once a week*, which have published information concerning the rates and the terms of payment for space as prescribed by law provide space to registered candidates for a charge. The total amount of space to be so provided is determined by the editorial offices at their own discretion. The publication dates are determined by means of lot-drawing to be organized by the editorial offices with the participation of interested persons on the basis of written applications for participation in the lot-drawing to be submitted by registered candidates. After lot-drawing, space is provided on the basis of a contract (Clause 11, Article 50 of the Federal Law "On the Election of the President of the Russian Federation").

11.3. *Editorial offices of non-state-run periodicals* which have published information concerning the rates and the terms of payment for space as prescribed by law are obliged to provide space to registered candidates on equal payment terms. The law stresses that these editorial offices may refuse to provide space to a registered candidate. If these editorial offices fail to meet the requirements of the law relating to the procedure for provision of space on their pages, they are not allowed to provide space for election campaigning purposes to any registered candidates (Clause 13, Article 50 of the Federal Law "On the Election of the President of the Russian Federation"). At the same time, under Clause 18, Article 50 of the Federal Law the requirement that space in periodicals be made available on equal terms of payment does not apply to editorial offices of periodicals, if the given editorial office and/or periodical is founded by a registered candidate (registered candidates), an electoral association, electoral bloc which nominated a registered candidate, and the periodical is not run by the state.

11.4. In all cases, regardless of the nature of the periodical, payment for space in periodicals must be made only through the electoral funds of registered candidates, with the due amount to be paid in full before space is provided to them (Clauses 15, 16 of the Federal Law "On the Election of the President of the Russian Federation").

The materials published by periodicals with their publication paid for from the electoral fund of a registered candidate must indicate the registered candidate from whose electoral fund the given publication has been paid for. (Clause 19, Article 50 of the Federal Law "On the Election of the President of the Russian Federation").

11.5. Registered candidates have full discretion to determine the manner in which they will use paid space provided to them in periodicals (Clause 2, Article 44 of the Federal Law "On the Election of the President of the Russian Federation").

## **12. Keeping records of provision of air-time and print space. Tape-recording of TV and radio programs containing election propaganda**

12.1. Under Clause 8, Article 48 of the Federal Law "On the Election of the President of the Russian Federation" TV and radio broadcasting companies and editorial offices of periodicals which provided free and paid air-time and space to registered candidates are required to keep separate records of the amount and cost of this air-time and space according to the forms established by the Central Election Commission of the Russian Federation. Five days prior to voting day and within five days after voting day, the data of these records must be submitted to, respectively, the Central Election Commission of the Russian Federation and the election commissions of the Subjects of the Russian Federation. These commissions may also request documents confirming the consent of registered candidates to the provision of paid services and their consent to pay for the services.

12.2. Under Clause 26, Article 49 of the Federal Law "On the Election of the President of the Russian Federation" TV and radio programs which contain election propaganda materials distributed by TV and radio broadcasting companies must be aired with simultaneous video and audio recording of the program. These recordings must be kept by the given TV and radio broadcasting organization for 12 months from the day on which the corresponding programs were aired. TV and radio broadcasting companies are required to keep accounting records concerning provision of free and paid air-time for five years after voting day.

## **13. Conditions for participation of specialized TV and radio broadcasting companies and specialized periodicals in election campaigning**

Specialized TV and radio broadcasting companies and editorial offices of specialized (cultural, educational, children's, technical, scientific and other) periodicals may refuse to highlight the election campaign (i.e., refuse to assume an obligation to provide paid and free air time and

space, imposed on the regulated media). According to Clause 7, Article 48 of the Federal Law "On the Election of the President of the Russian Federation" such refusal will be signified by non-presentation to the appropriate election commission of the notice of readiness to provide air-time, space to registered candidates.

#### **14. Requirements to the form and substance of the information printed/aired by periodicals/TV and radio broadcasting companies during the election time**

The Federal Law "On Basic Guarantees of Electoral Rights and the Right of Citizens of the Russian Federation to Participate in a Referendum" and the Federal Law "On the Election of the President of the Russian Federation" establish a number of special requirements as regards the form and substance of information printed or aired by the periodicals and TV and radio broadcasting companies during the election time.

**14.1. *Neutrality.*** Under the Federal Law "On the Election of the President of the Russian Federation" (Clause 25, Article 49) in TV and radio news programs reports concerning election campaigning events organized by candidates, registered candidates and their agents, electoral associations, electoral blocs and initiative groups of voters must be always presented in the form of separate items, as a rule in the beginning of such programs, and without any comments. Such news items are not to be paid for by candidates, registered candidates and their agents, electoral associations, electoral blocs, or initiative groups of voters. They must not give preference to any candidate or registered candidate, specifically, as regards the time devoted to highlighting their election campaigning activities. This, in effect, means that TV and radio broadcasting companies must remain politically neutral during the election campaign and are not allowed to conduct their own election campaigning. As regards print media, Clause 17, Article 50 of the Federal Law "On the Election of the President of the Russian Federation" additionally provides that publication of election propaganda materials must not be accompanied by editorial comments in any form whatsoever or by headlines or illustrations that have not been agreed in advance with respective registered candidates. This Federal Law also establishes that transmission of election propaganda materials of a registered candidate must not be interrupted, in particular, by commercials advertising goods and services and that the channels of the national state-run TV and radio broadcasting companies must not broadcast other TV and radio programs or other election propaganda materials during transmission of election propaganda materials of registered candidates (Clauses 23, 24, Article 49):

**14.2. *Public opinion polls.*** The laws establish a set of special rules for the mass media to publicize the data of opinion polls, forecasts of election results and other election-related studies during election time.

Under Clause 1, Article 46 of the Federal Law "On the Election of the President of the Russian Federation" when publishing (making public) the results of public opinion polls related to the election of the President of the Russian Federation, the mass media must indicate the organization which conducted the poll, the time when it was conducted, the number of respondents (sample), the method for the collection of information, the precise formulation of the question and the statistical margin of error. Within three days prior to voting day and on voting day the mass media are not allowed to publish any information about the results of public opinion polls, any forecasts concerning the results of the election of the President of the Russian Federation, any other studies related to the election (Clause 3, Article 46).

The Federal Law "On the Election of the President of the Russian Federation" (Clause 2, Article 46) provides that after the last day of candidates' registration the organizations which conduct opinion polls related to the election of the President of the Russian Federation for publication of their data in the mass media and the organizations which publish the data of such opinion polls and forecasts concerning the election results must furnish copies of these publications to the Central Election Commission of the Russian Federation for the formation of a data bank from which information must be made available on request to members of the Central Election Commission of the Russian Federation, registered candidates and their agents and authorized representatives for financial matters, media representatives and to foreign (international) observers for examination and copying.

*14.3. Advertising of election campaigners' business and other activities and relevant payment procedures.* Under the Federal Law "On the Election of the President of the Russian Federation" (Clause 3, Article 53) during the election campaign the business and other activities of candidates, registered candidates and their agents and authorized representatives for financial matters, electoral associations, electoral blocs, initiative groups of voters and the organizations whose founders, owners, possessors and/or whose governing or supervisory bodies include the said persons and organizations may be advertised only in the period when election campaigning is allowed and only for the account of the appropriate electoral fund of the candidate (registered candidate) with observance of the provisions of the Federal Law requiring equal payment terms. Such advertising is not allowed on voting day and the day preceding voting day.

*14.4. Protection of candidates' honor, dignity and business reputation.* Under Clause 4, Article 53 of the Federal Law "On the Election of the President of the Russian Federation" when highlighting the election campaign TV and radio programs on the channels of TV and radio broadcasting companies and the editorial offices of periodicals must not publicize information that may damage the honor, dignity or business reputation of a registered candidate (registered candidates) if these TV

and radio programs and editorial offices of periodicals cannot, free of charge, offer the registered candidate (registered candidates) an opportunity to make public (publish) a denial or some other explanation in defense of his/her (their) honor, dignity or business reputation before the end of the election campaigning period. The failure to offer such an opportunity makes these TV and radio broadcasting companies, editorial offices of periodicals and their officials prosecutable under law. At the same time, the Federal Law provides that the aforementioned rules do not apply to editorial offices of periodicals if the editorial office and/or the periodical are founded by the electoral association or electoral bloc which nominated the registered candidates and the periodical is not run by the state.

*14.5. Independence of registered candidates in choosing the form and nature of their campaigning through TV and radio companies and periodicals.* In accordance with Clause 2, Article 44 of the Federal Law "On the Election of the President of the Russian Federation" registered candidates conducting election campaigning on the channels of TV and radio broadcasting companies and on the pages of periodicals are entitled to select the form and nature of their election campaigning at their own discretion, within the limits of the forms provided by law and other forms which are not prohibited by law.

#### **15. Obligations of the state-run periodicals to publish information concerning operations with the resources of the electoral funds**

The editorial offices of state-run periodicals are required to publish information concerning the sums contributed to and spent from the electoral funds, passed on to them by the Central Election Commission of the Russian Federation. The following information is subject to mandatory publication:

(a) information about any financial transaction which involves expenditure of money from the electoral fund in an amount exceeding by more than 2 thousand times the minimum monthly wage established by the federal law as of the date of official publication of the decision to call (hold) the election of the President of the Russian Federation<sup>1</sup>;

(b) information about legal entities which donated sums to an electoral fund in an amount exceeding by more than one thousand times the minimum monthly wage;

(c) information about the number of individuals who have made donations to the electoral fund, which exceed by more than 100 times the minimum monthly wage;

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<sup>1</sup> Hereafter "the minimum monthly wage."

(d) information about the sums returned to donors and the reasons for the return;

(e) information about the sum total of contributions to and expenditures from the electoral fund (Clause 6, Article 58 of the Federal Law "On the Election of the President of the Russian Federation").

#### **16. Obligations of the media personnel participating in election campaigns**

16.1. All registered candidates holding mass media jobs must be relieved of their official duties for as long as they participate in the election of the President of the Russian Federation. Within three days of their registration, they must submit to the Central Election Commission of the Russian Federation a notarized copy of the appropriate order or directive temporarily relieving them of their official duties or copies of the documents evidencing that they have tendered their resignation within this period. In addition, in the course of their election campaigning they are not allowed to take advantage of their official position or status (Clause 3, Article 40 of the Federal Law "On the Election of the President of the Russian Federation"). In particular, taking advantage of one's official position or status is understood to include privileged access (compared to other registered candidates) or provision of privileged access to the public media for collecting voter signatures or election campaigning (Sub-clause "f", Clause 4, Article 35 of the Federal Law).

16.2. Officials, journalists and creative staff of TV and radio broadcasting companies and editorial offices of print media are not allowed to participate in highlighting the election campaign through the mass media if these persons are registered candidates or their agents, authorized representatives for financial matters of registered candidates, or authorized representatives of initiative groups of voters which nominated registered candidates (Clause 6, Article 40 of the Federal Law).

#### **17. Adjudication of disputes related to election campaigning via the mass media**

Disputes related to election campaigning via mass media are adjudicated by election commissions and courts of law.

At the same time, some disputes related to election campaigning via the mass media are submitted to the Judicial Chamber for Information Disputes under the President of the Russian Federation. The Chamber operates in accordance with Regulations approved by Decree of the President of the Russian Federation dated January 31, 1994.

The Judicial Chamber for Information Disputes may adjudicate information-related disputes and other cases either at the request of the parties concerned or on its own initiative. Appropriate petitions may be

presented to the Judicial Chamber by individuals, mass media and election commissions.

Members of the Judicial Chamber may ask government authorities and editorial offices of print media to furnish any materials necessary for the Judicial Chamber to perform its functions. Provision of such materials is mandatory. The Judicial Chamber for Information Disputes may require from media executives, other officials or journalists written explanations regarding any unethical acts they commit.

Overall, the decisions of the Judicial Chamber are advisory and do not have the legal force of a court judgment. However, government authorities and their officials to whom any ruling of the Judicial Chamber is addressed must advise the Judicial Chamber of compliance with such a ruling within two weeks. The Judicial Chamber may apply to the respective authorities requesting them to issue written warnings to the founder and/or the editorial office (editor-in chief) under Article 16 of the Law of the Russian Federation "On Mass Media", and may petition a court of law to close down any mass media whose founder and/or the editorial office (editor-in chief) have been given written warnings within the time established by the Law.

#### **18. Liability of the mass media for violation of election campaigning rules**

Clause 6, Article 53 of the Federal Law "On the Election of the President of the Russian Federation" establishes that in the case of a TV and radio broadcasting company or the editorial office of a periodical violating the election campaigning rules laid down by the Federal Law, the Central Election Commission of the Russian Federation or the election commission of the Subject of the Russian Federation may apply to law enforcement bodies, courts of law or executive bodies of state power which implement state policy in the field of mass media requesting them to put an end to the unlawful propaganda activities and penalize the TV and radio broadcasting company, the editorial office of the periodical or their officials as provided by the law of the Russian Federation.

In particular, liability for various violations in the sphere of election campaigning is established by the RSFSR Code of Administrative Offences.

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## **THE MASS MEDIA IN ELECTION CAMPAIGNS RULES AND PRACTICE**

The role of the mass media in election campaigns is driven by numerous factors, mainly by national tradition, the vagaries of past history, the structural development of civil society, dominant ethical preconceptions and so on. However, if one were to ignore the above and presume that all of us are merely subjects of law existing in a sterile atmosphere of legal relationships, one would be able to clearly see the rules of the electoral game that, in legislative terms, determine the media's role in the election campaign. Referring to laws, I primarily mean federal election laws such as the Federal Law "On Basic Guarantees of Electoral Rights and the Right of Citizens of the Russian Federation to Participate in a Referendum" of September 19, 1997 (as amended by the Federal Law of March 30, 1999), the Federal Law "On Election of Deputies of the State Duma of the Federal Assembly of the Russian Federation" of June 24, 1999, and the Federal Law "On the Election of the President of the Russian Federation" dated December 31, 1999, plus the Law of the Russian Federation "On Mass Media" dated December 27, 1991.

However, if we take a look at how these laws interact and analyze how they are being applied, we will see that the electoral game is played by entirely different rules. Real life erases the boundaries of this "playing field": as a result, political choice is no longer distinguishable from selecting a product in the supermarket; journalism – from advertising or, in the spin-doctors' lingo, from "public relations"; and politics – from business. Thus, the nascent market economy infiltrates the social sphere and creates a "market society".

In my opinion, the lawmakers clearly felt the danger of election campaigns turning into a business venture, as they both foresaw and tried to prevent the emergence of "black PR". A review of the regulations shows that the legislators' intent was indeed to prevent an "underground" or "bootleg" election campaign and the use of shadowy media buy-outs to manipulate votes. However, as we shall see below, the means used to attain the goal were, quite often, out of line with the objective. In some cases such means completely missed the objectives, in other cases, attained them only partially; sometimes, their effect was the exact opposite.

Meanwhile, in order to protect the electoral legislation from inconsistencies with other laws, the Law "On Basic Guarantees..." included special rules that address any conflict of laws in its favor. However, since this statute establishes general rules as regards the media's role in organizing and holding the elections, it only prevails over

other election laws. In any conflict with some rules of, e.g., the Federal Law "On the Election of the President of the Russian Federation", it is the rules of the Federal Law "On Basic Guarantees..." that apply (Section 7, Article 1). As regards all other Federal laws, the above law holds no special position; therefore, any potential inconsistencies between its rules and provisions of, e.g., the Mass Media Law should be subject to the generally applicable conflict of law rules.

The media play a multifaceted role in establishing representative bodies and other elected authorities. Here, a distinction ought to be made between **using** the media to campaign and its **participation** in an election campaign. In the first instance, the media mostly act as a provider of mass information services; in the second, they represent an independent institution of democracy. Indeed, both media roles described above are interrelated and indivisible: on the one hand, the **use** of the media by politicians eventually leads to **participation** of the media in the political process; on the other hand, **participation** of the media in the political process is ultimately a result of its **use** by certain political forces.

Who may use the media or be availed of media services in the course of an election campaign? Election commissions, government authorities and local governments, candidates, etc. What services are involved? Information (by way of publication and announcement) and provision of print space and air-time for election campaigns for a fee or free of charge.

What does media participation in election campaigns boil down to? The exercise of civil control at all stages of preparing and holding elections.

Such is the legislature's intent. In practice, things are somewhat different.

### **Media Types: Unity in Diversity**

The electoral legislation subdivides the media into several categories of different legal status. Section 1, Article 39 of the Law "On Basic Guarantees..." sets apart some mass media that might be referred to as "**authorized**" media. The above group includes TV and radio companies and editorial offices of print periodicals: a) founded (co-founded) by government or municipal authorities, organizations, or institutions, and/or b) funded with outlays made by any government or local authorities to the extent of at least 15% of their budget during the year preceding the elections.

Notably, the use of the 'and/or' conjunctive – a favorite of lawyers – allows the inclusion in this group of media which are founded by state or municipal bodies but not financed by them. And what funds would such media use to perform the functions that the law imposes on the “authorized” mass media? Media entities that used to receive financial boosts earlier but had none in the election year would inevitably find themselves in the same situation. Interestingly enough, if the editorial office of a media entity only starts receiving budgetary funding in the election year, such a media organization, strictly speaking, does not fall within the “authorized” category.

To resolve this inconsistency, one should look to those articles of the election law which indicate that government media are to cover their election-related expenses “at the expense of current budgetary funding of the said mass media” (Section 2, Article 26; Section 5, Article 40; and Section 1, Article 41 of the Law “On Basic Guarantees...”). Indeed, the law refers to budgetary funding as such, i.e., to special-purpose allocation of budgetary funds to individual media entities, rather than to the provision of benefits to certain media categories, e.g., with regard to taxes or rent. Therefore, this provision only applies to media funded from a particular budget.

Federal election laws of later vintage, such as the Law “On Election of Deputies to the State Duma...” and the Law “On the Election of the President of the Russian Federation” do not just fail to address this inconsistency but, on the contrary, give rise to new contradictions. Thus, Section 15, Article 49 of the Federal Law “On the Election of the President of the Russian Federation” contradicts Articles 40 and 41 of the Law “On basic Guarantees...” as it releases municipal media from the need to provide free information services to the candidates.

“Authorized” media carry the major burden of providing information support to the election campaign. They are charged with the following tasks:

- 1) to assure equal conditions for election campaigning by registered candidates, electoral associations and electoral blocs;
- 2) to provide election commissions with the opportunity to have certain information printed;
- 3) to provide free air-time to electoral commissions, so that they may keep the voters informed;
- 4) to provide equal free air-time to registered candidates, electoral associations and blocs during the prime hours;

- 5) to reserve paid air-time for campaigning by any candidate, electoral association or bloc in an amount at least equal to the amount of free air-time;
- 6) to allocate print space for any materials submitted by candidates, electoral associations and blocs;
- 7) to publish any information received from appropriate electoral commissions on cash revenues and expenditures of electoral funds, within three days of receipt; and
- 8) to publish the reports of candidates, electoral associations and blocs, received from appropriate electoral commissions, showing the size and listing all revenue sources of their electoral funds, as well as all expenditures actually made, within three days of receipt.

The second media category includes specialized print periodicals that formally fall into the "authorized" group yet cover no political topics. The electoral law recognizes that such media may refuse to publish any campaign materials at all, provided they take no part whatsoever in the electoral campaign. Let us describe this media category as "evaders".

Section 7, Article 48 of the Law "On the Election of the President of the Russian Federation" permits refusal to participate in campaign activities on the part of non-government and municipal TV and radio broadcasters, editorial offices of non-government and municipal print periodicals, as well as editorial offices of government print periodicals which are issued less frequently than once a week. Specialized radio and TV broadcasters, as well as the editorial offices of specialized print periodicals may refuse to participate in election campaign coverage.

Incidentally, unlike the Law "On Basic Guarantees...", the Law "On the Election of the President of the Russian Federation" expressly states that refusal to participate in election campaign coverage and campaigning activity is construed from a "failure to notify the respective electoral commission " of the amount and terms of air-time and print space provided for the purpose of election campaigning. In this way, the law links election campaign coverage with the provision of information services for campaign purposes. It is here that the legislators' desire to prevent unlawful election campaigning under the guise of an objective "election campaign coverage" manifests itself most vividly.

However, as it turns out, the legislators' measures are not effective enough. Besides, it would be completely unnatural to demand that any mass media that refrains from placing election campaign materials for a fee should likewise refrain from covering the election campaign. Such a requirement, among other things, is virtually impossible to follow since, for example, specialized musical broadcasts taking up a lion's share of the

FM band normally have no broadcast slots for election campaign, but almost always provide for short news bulletins. Should such broadcasters refrain from airing any information on the election campaign? Obviously such a requirement is excessive. Moreover, it is effectively ignored.

The third category includes mass media or their editorial offices founded by any registered candidate(s), electoral associations or blocs and are therefore exempt from the requirements of Section 1, Article 39 of the Law "On Basic Guarantees..." We might refer to them as "**partisan**" media. Let us note that under the election laws such a category only exists with regard to print periodicals. Meanwhile, if an election race participant is to establish a TV or radio program or a TV or radio company, it won't count as a "partisan" media entity – at least that's what the law says. Importantly, this rule only applies to media organizations founded by registered candidates and associations and, therefore, established in the course of the election campaign.

The legal regime applicable to the "partisan" media is indeed specialized: it releases them from the obligation to provide print space to all competing candidates on equal terms. Paradoxical though it may seem, according to the Central Election Commission, they may only place campaign material of their founding candidates for a charge. In addition, this category is exempt from the obligation to refrain from publishing any information that may be detrimental to the honor, dignity or business reputation of any registered candidate when such media are unable to provide such a registered candidate with the opportunity to publish, before the election campaign ends, a rebuttal or other explanation to protect his or her honor, dignity, or business reputation. Therefore, such "partisan" media organizations and their officials are no longer held liable under Article 40<sup>13</sup> of the RSFSR Code of Administrative Offences or Article 11 of the Federal Law "On Administrative Liability of Legal Entities for Violations of the Russian Federation Laws on Elections and Referenda" of December 6, 1999.

Admittedly, this exemption from the general rules contained in Section 4, Article 53 of the Law "On the Election of the President of the Russian Federation" is hardly consistent with the requirements of the Civil Code of the Russian Federation and the Mass Media Law as regards the protection of one's honor, dignity, and business reputation. Obviously, it may not be construed as an indulgence granted to "partisan" media to release them from liability for disseminating untrue information injurious to the honor and dignity of candidates who stand for elected office. Any other interpretation would necessarily run counter to the Constitution of the Russian Federation.

Finally, the fourth category includes the mass media that do not fall in any of the first three groups and therefore may, under a contract, and for a fee, provide air-time and print space to any registered candidates,

electoral associations and blocs. Let us refer to this group as "paid" media.

Importantly, both payment for and provision of print space and airtime in such media must be subject to equal terms. Besides, such payment must exclusively be made through the appropriate electoral fund; plus, it should only be made as a 100% down payment.

### **Equal Terms: Illusions vs. Real Life**

Although electoral laws do guarantee equal media access to all candidates, electoral associations and blocs, the issue of truly assuring equal conditions with regard to both "paid" and "authorized" media entities is not that simple. One should emphasize that the legislators saw no need to define the notions of air-time and print space. As a result, application of the law remains constrained to the conventional meaning of such notions. Therefore, disputes may well arise, e.g., with regard to cable TV and cable radio, where the above terms are not applicable at all.

Neither should we discount the fact that candidates may independently determine the form and nature of their media campaign. The above opens up ample ground for artificially inflating campaign ratings within formally equal print space and air-time quotas. Therefore, the election campaign runs the risk of turning from a competition of political programs and personal qualities of the contenders, as it is meant to be, into a pageant of PR technologies and political advertising. Worse, the voters would be neither viewers nor jury members of such a pageant, but rather unwilling guinea pigs of somewhat dirty experiments.

Anticipating such a turn of events, the September 1999 Congress of Russian Journalists, held in Izhevsk in the Republic of Udmurtia, adopted a special Declaration in support of free and fair elections. In particular, it says: "Journalists may not and should not be held liable for any unlawful statements by candidates, electoral associations and blocs, which the media disseminate during the election campaign. Once the law entitles the candidates, associations and blocs to 'independently determine the form and nature of their media campaign', it is they who should be responsible for the content of campaign materials. In addition, the above should force media executives to refrain from covert campaigning and especially 'negative campaigning' that turns journalists into the 'cannon fodder' of election battles".

Seeking to guarantee equal conditions to contenders, the electoral laws prohibit candidates from taking advantage of their office. However, for some reason the prohibition only applies to government and municipal

officials, as well as to journalists. Registered candidates that work for mass media should be released from their official duties for the duration of their campaign; they may not participate in election campaign coverage through any media entities. In addition, journalist candidates are prohibited from covering the election campaign through any mass media entity. As a result, the journalist candidates are discriminated against and, for the election campaign period, stripped of their professional rights. Besides, violation of such provisions by a registered candidate constitutes a valid ground for de-registration.

The legislators' logic is clear: initially a journalist has an advantage thanks to regular media access. However, does not a "rank-and-file" oligarch with financial resources and mass media of his own enjoy much stronger electoral capabilities compared to any journalist? Do not show business stars enjoy continual access to voters' minds? Seemingly, the problem defies resolution by merely expanding the list of persons subject to certain restrictions. Apparently, the very design of the "equal terms" institution has some organic flaws, which the legislature is still to address.

Meanwhile, in real life, journalists, government servants, and municipal officials alike ignore the election law requirements that prohibit them from taking advantage of their office. For instance, during the 1999 State Duma campaign, Alexander Nevzorov, a TV anchorman running for a single-mandate district, provided regular comments on electoral events in the ORT current affairs programs. Another journalist-cum-candidate, Alexander Minkin, appeared in newspapers and on NTV shows just as often, effectively participating in election process coverage.

As to government and municipal officials, the database maintained by "Informatics for Democracy: 2000+", a non-government project, contains information on fifty-something cases where these individuals took advantage of their office. Such cases were established though public monitoring via the Internet (see [www.indem.ru/idd2000](http://www.indem.ru/idd2000)). Normally, a candidate holding some government office does not violate the law directly, opting instead for a scenario where his or her opponent is apparently attacked by third parties, outside the election context, and for reasons that seem fairly lawful, at least at first.

That is why the above declaration in support of fair elections requests numerous state and municipal authorities vested with supervisory, controlling, regulatory, and licensing functions to display utmost restraint throughout the election campaign period and take no repressive measures against mass media covering the elections, except in cases of a direct and unavoidable threat to vital public interests. "Throughout this period", says the Declaration, "we request them to refrain from withdrawing licenses, sealing editorial offices under the pretext of fire safety or public hygiene, disconnecting transmitters, etc. In any case, punitive measures or restraints ought to be commensurate with the actual

damage caused. Administrative repression against the mass media should never become an election tactic. Therefore, each such case should be viewed as a criminal offence of obstructing journalists' lawful professional activity and an attempt to introduce indirect censorship; it should attract an immediate response by election commissions, the procurator's office, and courts of law".

## **Responsibility vs Irresponsibility**

The "equal terms" institution also requires that TV and radio newscasts display no preference for any candidate, electoral association or bloc. At the same time, any journalist may obviously have his or her own opinion, and it would be unconstitutional to demand that such an opinion be withheld. However, as the "rules of the game" governing the election campaign dictate, the journalist's role involves comparing opinions, impartially analyzing various positions and representing the audience. He or she should be equally disengaged from all candidates. Otherwise, he or she reverts to the infamous role of "collective propagandist and collective campaigner".

In fact, Russian media have already initiated the development of their own operational rules to be followed during the election campaign period. For instance, a special internal memo of NTV, a private TV company, contains a number of recommendations. Journalists are prohibited from: manifesting their political sympathies or aversions in any way whatsoever; replacing information on campaign events with their own opinions; using unverified information; using incidental statements by candidates unless they contain substantial information on their positions; using too much street polling; encouraging offensive actions or statements by candidates; resorting to political labels and slurs, etc.

Certain deontological rules are likewise contained in the above Declaration. "During the election campaign period," it says, "media workers must be particularly thorough in following the requirements of law, rules of professional ethics and journalists' code of behavior, including those referred to in this Declaration, so as to avoid any doubts about honesty, impartiality, proper balance and newsworthiness of their materials and broadcasts and to avoid undermining the media's reputation and confidence in fair election results. Let us remember that a journalist pursuing his or her professional objectives is recognized as a person discharging their public duty. Serving the public and the public good should motivate journalists, rather than private interests, mercenary or institutional considerations. In this regard, we reiterate our commitment to the conception of journalism as a free profession that seeks public good

and resolutely denounce any attempts at bribing journalists and putting pressure on them".

Unfortunately, during the 1999 State Duma campaign, the Russian public had ample opportunity to find out how far the rules of law and professional ethics of journalism are removed from the actual practice of some media entities. The above may be illustrated by a certain case about which the Central Election Commission of the Russian Federation and the Grand Jury of the Union of Russian Journalists had identical views.

Representation No. 39/420-3 by the CEC of Russia "On Restricting Unlawful Campaign Activities and Initiating Proceedings against ORT TV/Radio Broadcasting and its Officials" dated October 29, 1999, notes: "The materials of the current affairs show entitled 'Sergey Dorenko's Own Show', as reviewed by the working group, gives evidence that its anchorman campaigns against the leaders and the entire federal list of the Fatherland-All Russia electoral bloc". Since "the TV and radio broadcasting organization and its officials (including anchormen) are not independent subjects of campaign activities", the CEC of Russia requested the Ministry of the Russian Federation for Press, TV/Radio Broadcasting and Mass Media "to take measures to restrict the unlawful campaign activities pursued by ORT TV/Radio broadcasting organization connected with the preparation and airing of the current affairs program entitled 'Sergey Dorenko's Own Show' and subjecting the organization and its respective officials to penalties stipulated by the legislation of the Russian Federation".

However, the Ministry disagreed with the CEC of Russia and declined to "take measures" against ORT. On its part, the Central Election Commission refrained from using its right to draw up statements of administrative offences and to refer the "Sergey Dorenko Case" to a court of law under Section 40<sup>8</sup> of the RSFSR Code on Administrative Offences ("Violation of Rules Governing the Conduct of the Election Campaign, Referendum Campaign in Print Periodicals and on the channels of TV and/or Radio Broadcasting Organizations").

On the contrary, the Grand Jury of the Union of Russian Journalists, on behalf of the entire press community, has unequivocally distanced itself from Sergey Dorenko. In its resolution of November 19, 1999, the Jury states that various episodes of Sergey Dorenko's current affairs show mixed news and views, presented opinions and interpretations as established facts, aired damaging information without taking due measures to verify it by reference to the subject of such criticism, failed to observe the requirement for qualitatively equal presentation of accusations and defenses and waged an information campaign deliberately intended to discredit individuals and organizations. The Grand Jury concluded that Sergey Dorenko may no longer call himself a journalist, since he has violated key provisions of the International Declaration of the Journalists' Code of Conduct that bind one

to only cite facts personally established by the journalist, to only use decent methods for obtaining information, and to use one's best efforts to correct any published information in the case that it is found to inflict damage by distorting the truth.

Meanwhile, the Grand Jury emphasizes that "any restriction of the journalistic right to gather and disseminate accurate information on any candidates to elected offices is absolutely inadmissible". This way, the Jury started an *ex-parte* dispute with Russia's CEC on the issue of whether the media may during election campaigns continue to fully discharge their social functions of informing the audience or should limit themselves to presenting events without any comment and providing air-time and print space to campaigners such as candidates, electoral blocs and associations and their agents. Obviously, the media not only may, but must bring to the public's notice any information they gather, provided they do not cross the line that separates objective information from campaigning. On the contrary, bringing the media down to the level of "information service provider" may turn an election campaign into a mechanism for open manipulation of the voters' will.

In the case that an election commission finds any violation of electoral legislation in media activity, it may go to law enforcement authorities, courts of law, and executive authorities of government in charge of the national media policy, requesting them to suppress any unlawful campaign activity and subject the TV and/or radio broadcasting organization or the editors of the print periodical to any penalty established by the legislation of the Russian Federation.

However, what is the penalty in question? In those cases where the law holds editorial officials liable, the answer is simple: a violation of election campaign conditions by a media entity or a journalist is punishable by a fine, to be imposed on the editor-in-chief, other executive, or the journalist (Article 40<sup>8</sup>, RSFSR Code of Administrative Offences). In addition, not only individuals, but organizations may be held liable under the Federal Law "On Administrative Liability of Legal Entities for Violations of the Russian Federation Laws on Elections and Referenda" of December 6, 1999. In fact, either an election commission or its members are entitled to draw up a statement of offence.

In the case that liability extends beyond the limits of the above law, the problem grows more complicated. On the one hand, reference to executive authorities of government in charge of national media policy in Section 9, Article 45 of the Law "On Basic Guarantees..." testifies to the legislators' intent of bringing the registration authorities into the picture. However, the media law only authorizes the registration authorities to deal with cases that involve the misuse of mass media freedom, violations of the procedure for declaring printing details and providing mandatory copies, or invalidation of a registration certificate. On the other hand, it

does not follow at all from the law that the legislature considers a violation of campaigning rules by the editors of a media entity as an instance of misusing mass media freedom or, for example, omitting the publisher's imprint.

One may, of course, surmise that the Law "On Basic Guarantees..." introduces an independent *corpus delicti*. However, in such a case, the reference to "liability established by the legislation of the Russian Federation" defies understanding. Obviously, the liability mechanism cannot operate through analogies and rough estimates.

Finally, even providing that a violation of campaigning rules by the editors does constitute a misuse of mass media freedom, the only form of response by the registration authority may be a warning. Only if the editorial office has two or more warnings on its record may the registration authority sue for termination of the media entity. As regards the suspension of any media business, the law views this as an interim measure, rather than a penalty.

### **A Tool of Civil Control**

The role of media in the formation of elected bodies of government also includes civil supervision of all campaign events. This is why the Law "On Basic Guarantees..." recognizes that media representatives have the following rights:

- a) to attend the election commission meetings and any working sessions with election-related documents (Section 1, Article 26);
- b) to be present at polling stations on voting day, from the time the precinct election commission begins its work until receipt of a message that the higher election commission has adopted a protocol of the voting returns (Section 3, Article 26);
- c) to be present on the premises of other election commissions when they determine vote returns, results of elections, compile relevant protocols on vote returns, election results, or while recounting the votes (Section 5, Article 26);
- d) to examine the protocol of the voting returns of the precinct election commission and the protocols of the voting returns or results of the elections of other election commissions; to make and have certified by the appropriate election commission or to receive therefrom any copies of the said protocols and documents attached thereto (Section 11, Article 26);

- e) to be informed of the re-drawing of the voting returns protocol by the election commission, in case any slips of the pen, typographical errors or arithmetic errors are found in the original protocol (Section 9, Article 57);
- f) to receive for examination from election commissions vote returns for each electoral precinct and territory, and election results for an electoral district, including any data contained in the protocol of the relevant election commission (Section 1, Article 60); and
- g) to receive general information on election results in the electoral district, referendum results from the election commissions that registered candidates, within 24 hours after the election results are determined (Section 2, Article 60).

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# **SOME CONTROVERSIAL ASPECTS OF THE LEGAL REGULATION OF ELECTION CAMPAIGNING UNDER THE FEDERAL LAW OF THE RUSSIAN FEDERATION “ON THE ELECTION OF THE PRESIDENT OF THE RUSSIAN FEDERATION”**

Undoubtedly, the national electoral legislation has made considerable headway in recent years. A respectable distance has been covered from the legal ad-libbing, typical of the '93 fall, to the establishment of a clearly structured legislative system.

All of the above being true there is, however, no such thing as perfection. A number of rather significant problems in the legal regulation of the electoral process remain still to be addressed. This applies to the electoral campaign, a key phase of any election.

This collection draws the readers' attention to some, I believe, serious inconsistencies that arise from legislative provisions and the evolving practice of applying the law.

I do not, God forbid, advocate ignoring the statutes because they are, often obviously, imperfect. The law is the law. However, improving the law is within our capabilities and interests .

## **“Premature” Election Campaigning**

A fundamentally important new provision of the Federal Law "On the Election of the President of the Russian Federation" is the rule prohibiting any electoral campaigning from the day when the decision to schedule (hold) the election is officially published (gazetted) until the date when any candidate is registered as such (Section 2, Article 45).

The legislature has unequivocally defined something currently missing from the legislation on the election of State Duma deputies, since neither the Federal Law "On Basic Guarantees of Electoral Rights and the

Right of Citizens of the Russian Federation to Participate in a Referendum", nor the Federal Law "On Election of Deputies of the State Duma of the Federal Assembly of the Russian Federation" contain such a prohibition. Indeed, while the law on the election of deputies provides that election campaigning by a candidate (list) prior to their registration (Section 2, Article 91) may serve as a valid reason for refusing such registration, but does not directly prohibit activities fitting the definition of "electoral campaigning", the Federal Law "On Basic Guarantees of Electoral Rights and the Right of Citizens of the Russian Federation to Participate in a Referendum" does not mention such a reason for refusing registration at all (Section 9, Article 32). The above gives rise to a number of substantial issues.

1. The very notion of "election campaigning until the candidates' registration" is devoid of legal meaning, since all the rules and conditions of election campaigning contemplated by the law only apply to candidates who are already registered. Any activity of citizens or political associations that may be similar to election campaigning does not amount to premature electoral campaigning until the candidate is registered. In fact, it is not electoral campaigning at all within the meaning of the electoral legislation.

It is, instead, informing, advertising, explication etc. by politicians and public associations, which is not regulated by the electoral legislation.

Violation of a legislative rule that does not yet apply is impossible. It is impossible to violate any rules and conditions of electoral campaigning until the moment (the candidate's registration date) that such rules and conditions come into legal effect.

Similarly, however strong the intent, there is no way of disturbing the neighborhood at night until night actually falls. One may commit any number of actions that otherwise have every feature of such a misdemeanor (yelling, turning the stereo all the way up, drilling concrete walls, etc.), but these actions would only qualify as an offence between 11 p.m. to 6 a.m., i.e., while the special legal regime is applicable.

Moreover, in our view, the authors of this new provision are held hostage to their misconception as to the legal nature of electoral campaigning and its place in the system of electoral legislation rules.

What they miss, is that the effect of certain legal regulations may be limited in time. Regulations of such limited duration also include the rules and conditions of electoral campaigning, as contemplated by law, since it starts "as of the candidate's registration date and ends at midnight local time, 24 hours before the voting day".

Meanwhile, banning any electoral campaigning prior to the registration date is completely unwarranted, if we adopt the only correct

view of the electoral campaign as a special legal regime applicable to all participants in the electoral process (including the candidates, electoral associations and blocs, as well as media), whose objective is to grant candidates a certain state-guaranteed minimum amount of information that allows them to reach the voters, to highlight the advantages of their political programs, etc.

Clearly, all participants come to the campaign starting line with different political "capital", with different financial, organizational, and other resources. Therefore it makes no sense to discuss equal opportunities of influencing voters. The state is only obliged to level the field for the electoral marathon, somehow narrowing the gap between the objectively pre-determined capabilities of clear leaders and obvious outsiders.

The above likewise applies to the conditions of election campaigning. Within a strictly limited period of time (from the registration date to the pre-ballot day) legislative guarantees and restrictions should be established with regard to media access by candidates and electoral associations, procedures of paying for campaign materials, etc.

It is no coincidence that, even though the legislature describes the electoral campaign procedures in the Law itself, reference is only made to registered candidates.

It is the actual registration that serves as the legal fact vesting the potential contenders for the Russian Presidency with campaign-related rights and duties.

Likewise, the mass media are vested with corresponding rights and obligations only with regard to registered candidates. Therefore, the entire legal relationship between the media and the election participants regarding the election campaign only arises once the candidates have been registered.

2. The electoral legislation defines the notion of "election campaigning" in the broadest possible manner as any activity by citizens, public association, parties, etc., that encourages or aims to encourage voters to participate in the election and to vote for or against any candidate.

Therefore, the prohibition binding public associations, mainly political parties, to refrain from any informational or propaganda activity or any political campaigning may be viewed as an attempt to unlawfully restrict constitutional rights and freedoms.

Under Article 30 of the Russian Constitution, everybody has the right to association.

Freedom of public association is guaranteed.

Section 12.1 of the Federal Law "On Public Associations" lists participation in society's political life by influencing the development of individuals' political will among the principal objectives of any public political association.

Naturally, political propaganda serves as the main tool for attaining that objective.

The Federal Law "On Public Associations" also establishes that "public associations are free to determine ... the forms and methods of their activities" (Article 15) and that any public association is entitled to "freely disseminate information on its activities", to "hold meetings, rallies, demonstrations, marches and picketing" and to "propose any initiatives on various points of public life" (Article 27).

According to Article 55 of the Constitution, the rights and freedoms of human beings and citizens may be restricted by Federal Laws only to the extent necessary to protect the fundamentals of the constitutional system, the morality, health, rights and lawful interests of other persons or to assure state security.

Supposing that such Federal Laws with regard to public association activities include electoral laws, one ought to bear in mind that the restriction on the free pursuit of any political propaganda is strictly limited in time (for the effective period of the special legal regime, when such political propaganda qualifies as election campaigning).

## **Election Campaign Participants**

The problem of election campaigning by individuals and public associations during a presidential race is closely related to the previous issue.

Under Article 8 of the new Federal Law, the state guarantees the freedom of political campaigning to the citizens of the Russian Federation and public political associations.

The above participants in the electoral process may carry out an election campaign in any form permitted by law and through lawful means. However, two essential points should be kept in mind.

1. Under Article 2 of the Federal Law "On Basic Guarantees of Electoral Rights and the Right of Citizens of the Russian Federation to Participate in a Referendum", which prevails over all other election laws, campaigning is understood as an activity of citizens of the Russian

Federation and political associations, including those that have no political agenda.

Therefore, in this case, the Law in question contradicts an operational Federal Law.

2. Articles 47-52 of the Federal Law "On the Election of the President of the Russian Federation" (mainly, the Articles governing electoral campaigning on TV and radio), establish special guarantees of media access for registered candidates and subject them to special conditions regarding other forms of campaigning.

Meanwhile, the Law does not expressly prohibit election campaigning through the media by individuals and public associations.

During the 1999 State Duma campaign, it was this very inconsistency that led the CEC of the Russian Federation to conclude, I believe without proper justification, that no participants in the electoral process (other than registered candidates and electoral associations that have registered their lists) "may conduct an electoral campaign through the mass media" (Section 9, Explanations by the CEC of RF, as adopted by Resolution No. 8/52-Z of the CEC of RF, dated August 13, 1999).

This problem should be given special attention while applying the law, both in its current and amended form.

### **Government TV and Radio Companies: Status and Procedures**

In essence, the Federal Law retains the language of previous electoral laws regarding the right of registered candidates to receive free air-time from the channels of government companies founded (co-founded) by government authorities, organizations or institutions and/or funded with outlays made by any authorities of the Russian Federation or Subjects of the Russian Federation to the extent of at least 15% of their budgets during the year preceding the official publication date of the decision scheduling the elections.

Even though the legislature, in fact, replicated a similar norm from the previous electoral law, they unfortunately failed to address a number of important points that, in my opinion, significantly affect normal campaigning via TV and radio.

The first problem involves the founding (co-founding) role of government authorities and TV/Radio company organizations.

In fact, such founding (co-founding) status is often purely formal, establishing no serious or solid relationship between the TV or radio company and the state. I direct your attention to the Federal Law of the Russian Federation "On Joint Stock Companies" which makes a distinction between the notions of "founder" (a person participating in the establishment of any organization) and "shareholder" (a person holding a parcel of shares). Obviously, by the time an election is scheduled, a founder may no longer be a shareholder of the organization it has founded, since national and municipal authorities and organizations are fully entitled to divest any shares they hold. Therefore, the situation may well arise where a TV or radio company that counts no government or municipal authority or organization among its shareholders may be obliged to provide free air-time for the sole reason of this formality. I believe that even the distant possibility of such a situation should be eliminated.

Next, government authorities co-founding any TV or radio company with other entities may end up holding very minor interests, such as 0.5%, 5%, 10%, etc., which makes the relationship between such TV and radio companies and the state quite tenuous. Therefore, the law should refer to a controlling (blocking) interest (share) of the State in any TV or radio company.

The second problem involves the trigger condition of funding a TV and radio company from appropriations made by federal government authorities or by government authorities of any Subject of the Russian Federation. Subjecting such funding to a threshold which is equivalent to 15% of the company's budget during the year preceding the date when the elections are called constitutes a step forward, as the laws that regulated the Federal elections of 1995 and 1996 contained a controversial reference to "full or partial funding".

Indeed, the Russian legislation fails to provide a clear definition of funding by government authorities. As a result, such "funding" may be construed as benefits awarded to a TV/radio company; government subsidies; government contracts (by federal authorities, Subjects of the Russian Federation or municipal authorities); or funding for special programming on TV and radio (legal, environmental, cultural, educational, etc).

Different conceptions of "funding" are seen even in the new Federal Laws themselves (Section 5, Article 40 of the Federal Law of the Russian Federation "On Basic Guarantees..."; Section 11, Article 56, of Federal Law "On Election of Deputies of the State Duma ..."; and Section 11, Article 49 of the Federal Law "On the Election of the President of the Russian Federation"), which establish that any expenses incurred by TV and radio companies in providing free air-time to participants in the electoral process should be covered from their current funding budgets.

In this regard, either some uniform terminology should be introduced at a later stage (such as "current budgetary funding") or, realizing that it is not really possible to reimburse GTRKs<sup>1</sup> expenses in this way, we should delegate the responsibility of compensation to the CEC of the Russian Federation, drawing on the funds allocated by the state to holding the elections.

The new Federal Law, similarly to the current Federal Law of the Russian Federation "On Election of Deputies...", establishes that free air-time should be allocated in the hours when TV and radio programs of government companies have the largest audience, during so-called 'prime time'. However, neither the Federal Law of the Russian Federation "On Basic Guarantees...", nor the Federal Law "On Election of Deputies of the State Duma...", nor the Law in question contain any clarification as to who is to determine such a period and how, although in the absence of instructions by the CEC of the Russian Federation such vagueness threatens to strip this rule of the effect it would otherwise have. In the future it would be advisable to make the respective electoral commissions determine the above period either on the basis of a special opinion poll or independently by reference to the advertising tariffs submitted by the GTRK: as a rule, they peak in prime time.

Regrettably, the Federal Law "On the Election of the President..." is still ridden with substantial gaps in establishing the arrangements for provision of free and paid air-time. These legal lacunae have already resulted in numerous conflicts and disputes during the State Duma elections.

Thus, the new Law (Sections 8 and 9, Article 49) stipulates that, within one week after the registration of candidates (lists) has been completed, a drawing of lots should be held in order to distribute free air-time between the registered candidates who apply to participate in such drawing of lots. Lamentably, the Law determines no due date for filing such applications, nor any authority or organization with whom the said application should be lodged. In addition, it is absolutely unclear with regard to the candidate's rights and guarantees as to how one could justify a refusal to provide free air-time by reason of a late application that may nevertheless be filed, e.g., 36 or more days prior to the election date (i.e., before the period when such free air-time should in fact be provided).

I am convinced the lawmakers themselves should immediately address this issue. The drawing of lots determines the date and time of airing any election campaign materials. The results of such lot-drawing are documented by an appropriate statement and the air-time schedule established as the result of the lot-drawing is published in appropriate

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<sup>1</sup> A Russian acronym for a State-Owned TV and Radio Broadcasting Company.

government-affiliated periodicals by the electoral commission supervising the procedure.

Meanwhile, in the case that a candidate refuses to campaign on TV or fails to attend a live show, the law prohibits any use of such time for campaign purposes (Section 15, Article 49). If, out of the established list of 5 or 6 candidates, the second, third, fourth, or fifth fail to attend, some "holes" ought to appear in the campaign time slot as the law prohibits reshuffling the candidates.

Given the characteristics of the TV production process, GTRKs should be given a relative degree of freedom, allowing them to change the airing time slots of attending candidates in case some fail or decline to attend.

## **TV Debates**

Similar to the existing legislation on election of deputies to the State Duma, the new Law contains a rule that is intended to influence the substance of election campaigning, rather than its form, since it obliges government TV and radio companies to reserve one half (or, in a run-off vote, two thirds) of the total free air-time allocated to candidates for discussions, round tables and other collective forms of election campaigning. The election campaign participants should also use such time equally. Implementation of this rule raises a number of serious points which, unless resolved by regulation, will threaten the legality of the electoral campaign and the guarantee of equal rights to candidates:

- 1) who will determine the format of collective electoral campaigning (whether it will be a discussion, debate or round table) and the topic of such campaigning, and how;

- 2) the mechanism for assuring equal treatment of candidates during a debate is undefined and the law is silent on the rights of moderators in the case that the candidates fail to adhere to the established procedure of such collective events or to observe Russian legislation; and

- 3) what will happen to any air-time that, for some reason, is not "taken up" by election campaign participants? (For instance, as was the case during the 1995 elections, certain electoral associations or blocs may refuse to participate in collective campaign events.) The Federal Law addresses only one aspect of this problem: refusal by a candidate to participate in joint campaign events does not result in any increase in the air-time provided to them personally by the drawing of lots (Section 7, Article 49).

The above points and other issues arising from the aforesaid rule call for immediate resolution at the legislative level. Otherwise, the GTRK management would face serious difficulties while arranging electoral campaign work.

## **TV and Radio Newscasts**

Under the new Federal Law, no radio or TV company may give any preference in its newscasts to any candidate and/or registered candidate, including any preference in terms of time allocated to their campaign coverage. This means that each TV or radio company should either provide equal time to each participant in its newscasts or should refrain from referring to any party in the electoral process if the company has no newsworthy reason to mention some of the candidates. Therefore it would be preferable, in my opinion, to exclude the word "including" from the above rule.

Moreover, TV and radio newscasts should normally carry information on campaign events held by any candidates (registered candidates) and their agents, electoral associations (blocs) as a separate section at the beginning of such news bulletins and without comment.

The legislator has to address two problems, clearly laying down the possible alternatives.

1. First and foremost, given the present stance of the Russian CEC, which evolved during the State Duma election, it would be necessary to allow expert comments on election events in the same newscast. In addition, journalists themselves are not counted as persons whom the law prohibits from election campaigning, while the Mass Media Law entitles journalists to make comments and give their views. Naturally, the exercise of such a right could be viewed as campaign propaganda. However, a prohibition on journalists pursuing their trade appears to be excessive and unwarranted.

The same applies to journalists hosting their own shows.

2. To establish clearer guidelines for applying the law, the legislator should define the term "TV and radio newscast".

## **Liability**

Both the new Law and the entire electoral legislation currently in force suffer from a very serious flaw: they hold the editorial office (editor-in-chief) liable under the Mass Media Law for any violations a candidate may commit while using his or her guaranteed airtime.

Absurd indeed is a situation where a candidate independently determines the format, nature and content of his or her campaign materials, which the media editors are obliged to disseminate, while the liability for potential violations rests with the very same editors.

I am convinced that either the Mass Media Law (Article 57) or the Federal Law "On the Elections of the President of the Russian Federation" should be amended to indicate that the liability for any violations a candidate may commit while availing himself or herself of free or paid airtime should rest with the candidate instead of the editors.

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## **THE “LAW ON THE PRESIDENTIAL ELECTIONS OF THE RUSSIAN FEDERATION” IN REGULATING THE MEDIA**

In examining the Law on the Presidential Elections of the Russian Federation in relation to the media, we cannot but look back with concern at the role played by the media in the recent parliamentary campaign. Neither the Law on the Election of Deputies to the State Duma of the Federal Assembly of the Russian Federation, nor its implementation by the Central Electoral Commission was able to prevent the media from conducting an extensive propaganda battle on behalf of certain candidates/parties and a smear campaign against others. This verdict was confirmed by international observers: the European Institute for the Media criticised the overwhelmingly dirty coverage of the elections by the most important media outlets; the OSCE, while denying any major violations to the democratic process, nevertheless lamented negative and inappropriate media coverage. The media, once a pioneer of democratic reform in Russia, has turned to old Soviet habits, using the state infrastructure to foster desired results. In this context, where even a new word “killer-journalist” has been coined to describe the worst offenders of their craft, how can a fair regulatory environment be created during the short period before the start of the early presidential campaign? To examine this proposition, we should look at two areas relating to the media: legal and ethical .

The Presidential Law, as well as the Law on the Election of Deputies to the State Duma, which it resembles in its significant points, both attempt to regulate the activities of the media and ensure that the media behave in a responsible way. However there are areas of these laws that lack clarity and are detrimental to the electoral process. This is especially the case in the definition of “pre-electoral agitation” . As we saw in the parliamentary campaign, the well-intentioned attempt by the Central Electoral Commission to restrict the media from participating in agitation so as, presumably, to prevent the illegitimate practice of purveying propaganda, did not have the desired effect. The other issue lies in the very word “agitation”, which is used to restrict journalists from doing their legitimate job. Although regulation of the media is necessary, it should not be used as a straightjacket to restrict the traditional role of the media in a democratic society. In any election, the media provide two important functions : (i) a chance for candidates and parties to promote their policies

and programmes and (ii) a chance for voters to receive accurate information about candidates and parties so that they can make informed choices.

In so far as these laws provide equal conditions on free and paid political advertising for all candidates and parties to express their views in the media and to attract voters to its side, it can be said that the first function is fulfilled. The same cannot be said for the second function. The problem lies in the fact that these laws combine both functions, disregarding the distinction between two very important but totally different activities – political advertising and coverage of events.

Advertising, of whatever sort, has the purpose of selling a product – be it a presidential candidate or party or a commercial product. Strictly speaking, according to Article 2 of the Law on Advertising “advertising is...directed at...contributing to the sale of products, ideas and undertakings”. It is a genre the public understands as not being wholly based on truth and more in the realm of “promotion” or “propaganda.” Political candidates and campaigns are promoted by advertising and public relations agencies and so-called “spin-doctors”, the new more aggressive exponents of political campaigning now wide-spread in the West – but not by the media. For this reason in Great Britain, for example, broadcasters are expected to be very tough in demanding balanced coverage of events, but they are not too particular about facts presented in party political advertising because it is assumed that the public is aware that advertisements will present issues and candidates only in a positive light and that political advertisements do not necessarily reflect the gospel truth.

Political advertising then must be distinguished from coverage (information and analysis), which is the job of the media. Under Russia's current electoral laws, however, the role of the media is not clear. Although there is nothing in these laws that disqualify journalists from reporting in the normal way, the CEC's provisions and clarifications during the Duma electoral campaign have indicated that journalists cannot participate in electoral agitation: that is, they cannot “encourage or aim to encourage voters to participate in the elections” or “to vote for or against any registered candidate” (Article 8:2 of both laws). On the one hand, the CEC's position appears to be invalid in so far as journalists are not designated under the law as subjects disqualified from taking part in agitation. On the other hand, the CEC's position seems absolutely justified, in so far as journalists should not be involved in agitation.

What this means is that the definition of electoral agitation should not apply to journalists at all, nor to their job of providing coverage and analysis: it should apply only to candidates or parties. Agitation, after all, simply means advertising or promotion – which is not the role of journalists. Moreover, the very use in the definition of agitation of the word “aim” to encourage voters to vote for or against any candidate can only

refer to candidates' legitimate intentions to capture an electorate. It has no relevance to the media, whose only "aim" is to provide information.

By including media coverage of elections under the terminology of pre-electoral agitation and declaring this a prohibited zone to journalists, the laws in one fell swoop restrict a fundamental right of the media in all democratic societies. If a journalist cannot say anything "for" or "against" a candidate this negates his professional duty to act as the "watchdog" of public interest. The traditional role of journalism during elections in established democracies is to provide accurate information and to ask probing questions of candidates or representatives of parties in order to reveal any hypocrisy or deception on their part (which they can get away with in political advertising) and to study the background of candidates and parties so that they can give a proper assessment and overview of their policies and statements (good or bad). This activity is conducted in the interest of the voter – to provide him with information that will enable him to make a balanced decision. If journalists had been doing their legitimate job during the Duma campaign we would have had a better idea of what policies were represented and not simply what parties were represented.

Thus, if the advertising agent works in the interests of the candidate, the journalist works in the interest of the voter. A voter cannot be expected to be an "expert" and must therefore rely on others, whose job it is, to get accurate information. If a journalist cannot say anything for or against a candidate, he becomes simply a mouthpiece for candidates' ambitions (which is in itself reporting "for" a candidate). The point is that there is very little information that doesn't incline either for or against something: information does not exist in a vacuum. Neither do facts in themselves necessarily give a whole picture. What is needed as well are impartial analysis, sound judgement and logical argument.

During the three months before the parliamentary elections, the International Foundation for Election Systems, together with the National Press Institute and sometimes jointly with the CEC and subject electoral commissions held 12 regional seminars for journalists to discuss and clarify laws regulating the media. We found that journalists were both worried and perplexed about what they could report. In theory, it was asked, is it possible to report that candidate N explained his policy in a moderate and correct manner? This statement may be "for" a candidate, but it may also be objectively true. Shouldn't the voter be informed when one candidate performed professionally, while another candidate ranted and raved? When we begin to talk about critical issues, such as a candidate's criminal associations, the voter's right to know becomes far more crucial. A number of times during the course of these seminars apologists of the law suggested that a direct link between candidates and voters without the journalist as intermediary was preferable. This again demonstrates the confusion between advertising and information. Although "direct links," like "direct democracy," may sound appealing, the

journalist, as intermediary, is needed precisely to provide balance to the political electioneering of candidates.

Article 49:25 of the Presidential Law (56:24 of the Law on the Election of Deputies) is also problematic in the way in which it restricts coverage of political activity on television. The restriction placed on providing commentaries about the elections at the beginning of TV news programs, during a round up of electoral events or press conferences, is certainly understandable. However, CEC's clarification ( e.g. Letter to TV Centre of 23.08.99, NO 05-18/1792) that prohibits commentaries after the news bloc as well and, by implication, commentary in any other programme is of great concern. While the objective of giving accurate information to the voter is laudable, in particular in the current context of prevailing "dirty technologies," the prohibition of political commentary and insight should not be applied to "current affairs" or "news analysis" programmes, once they are properly identified. Such an across-the-board restriction on analysis and commentary cannot be applied sensibly. It would therefore make sense to provide a definition of what is meant by news and information-analytical programming and to make sure that this type of programming is not restricted as long as it provides the electorate with responsible and legitimate political coverage

That a journalist should provide information and analysis is hardly contestable in a democratic society. The only proviso is that the information is accurate and the analysis sound. The fact that there are unscrupulous journalists and that information can be manipulated (i.e. concealed advertising) does not take away from the value of journalism as such. In this case the Central Electoral Commission should give those journalists, who retain a sense of pride in their independence and impartiality, the chance to do their jobs properly without the threat of sanctions. The Judicial Chamber for Information Disputes of the Presidential Administration made the same point in their statement of 7 December 1999 arguing that elements of agitation in media coverage should not be used as grounds for banning journalist participation in the electoral campaign.

Of course, the CEC's intention to prevent, as far as possible, a biased and partisan media from manipulating the elections is understandable. The past two years of information wars, cynical "kompromat" and other forms of negative journalism provided ample evidence of this danger. Unfortunately, this state of affairs has come about because of a lack of regulation in the sphere of concentration of media ownership, the influence of media moguls, pressure from state and regional administrations and the recent financial difficulties of many media outlets that make them susceptible to influence in order to survive.

However, as we have seen during the Duma elections, attempting to curb the media in such an all-encompassing way is counterproductive. It is also untenable because it goes against the fundamental right of free speech and free media in a democracy. It was precisely disagreement

with the CEC's interpretation of agitation that made the Ministry of the Press, Teleradio Broadcasting and Mass Communications, for example, refuse to implement the CEC's request to issue a warning to ORT; a principled stance, whatever the politics behind it. When the Ministry did finally issue a warning late in the campaign on 14 December it was addressed to both ORT and TV Centre, although TV Centre can hardly be accused of having offended in its coverage to the same degree as ORT.<sup>1</sup> State-owned RTR, also a prime culprit, got away without any warnings. Yet it is precisely ORT and RTR, whose reach covers most of Russia, that are the most influential channels. Nor can it be justified that cases of government officials using their office for the purpose of agitation went largely unnoticed, or that disproportionate and mainly favourable coverage was allowed for certain politicians (e.g. 44% share of time for Zhirinovskiy on all national channels between November 28-December 4, according to the European Institute for the Media, which no doubt helped his party over the 5% barrier).

Despite the harsh potential of the law and the CEC's clarifications, which could have been restrictive, in practice the CEC did not unduly interfere with the media. The problem, rather, was that those decisions that were taken were random and arbitrary. It appears that CEC's aim was more in the realm of scare tactics which, unfortunately, did not scare the worst offenders. Nevertheless imperfect laws remain dangerous if democratic rights can be manipulated at will. Moreover, the Supreme Court's decision of 19 November 1999 in the case against the journalist Aleksandr Minkin strengthens the CEC's hand by reinforcing the position that journalists cannot take part in agitation. The problems of the Duma campaign are therefore carried over to the presidential campaign. The CEC, however, is obliged only to implement the law; it is up to the lawmakers in the Duma to amend those laws if it has concern for democratic institutions.

What, then, can be done to give journalists their freedom to provide accurate information to the voter during the presidential elections, while preventing agitators disguised as journalists from misleading the public? Obviously cases defending one's honor and dignity in ordinary courts of law where appeals can prolong a decision way past the elections, as in the case of Luzhkov vs Dorenko in Moscow, are not satisfactory for most plaintiffs. The CEC is in the best position to enforce sanctions, but only if it is able to work quickly and fairly against genuine cases of excessive bias

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<sup>1</sup> ORT conducted a fierce, systematic political campaign to destroy the name of the leadership of Fatherland-All Russia through the Sergei Dorenko Program and programs presented by Mikhail Leontyev and Pavel Sheremet. TV Centre, which supported Fatherland-All Russia and was critical of the President and the Unity party, was also culpable but in no way as vicious in its smear tactics. However the Ministry's warning was analogous for both channels although the offences were quite different: ORT was accused of systematic bias while TV Centre was found to have offended only in one interview considered as pre-electoral agitation. This will have future consequences when the licence for both channels is reviewed in May.

and concealed political advertising, leaving the rest of the media community in peace to do their job. Moreover, its power to do this has been strengthened by the new Law on the Administrative Responsibility of Legal Entities for the Violation of Russian Federation Laws on Elections and Referendums, which gives electoral commissions direct right to impose fines. Many more complaints could also be channelled to the Judicial Chamber for Information Disputes, which has demonstrated its independent stance on many occasions.

This brings us to the question of ethics. What appeal can be made to journalists or media owners if they are indifferent to ethical considerations, rich enough to pay fines or powerful enough to be confident that their TV license will not be revoked? In most western countries it is usually the threat of tarnishing one's reputation that keeps quality newspapers and national channels in line, as losing the high moral ground tends to go with financial losses. In Russia where it is not only business interests but political influence that counts, this is not so obvious. And although Andrei Cherkizov has spoken of the concept of a journalist pariah, I have not seen such ostracism working if a journalist has sufficiently powerful friends. In fact there have been some strange arguments put about to defend, for example, Dorenko and Leontyev's programs on the grounds that they are "personal" programs and therefore the authors can say whatever they like. Since when, I would like to know, can millions of dollars of taxpayer's money that go into broadcasting facilities transmitting to 100 million voters be used by one person simply to spout whatever prejudices come into his or his mentor's head? If he can, this is not in the public interest.

Neither is it in the media's interests to lose their reputation. If so, journalists should put their own house in order. In most established democracies, it is through professional codes of conduct that balance and neutrality of information are maintained. The CEC would do well, and deprive itself of a headache at the same time, if it made a serious appeal to the media community to regulate their own activities. After all, many of the cases of improper journalistic practice are matters of ethics and conduct. In Russia there are a number of well-formulated and principled journalistic codes, drafted and approved by journalists themselves. The Union of Journalists has its own code of ethics, as well as a Grand Jury, which was the only self-regulatory journalistic body that issued a public reprimand during the parliamentary campaign. The Charter of Television and Radio Broadcasters was signed by most of the top stations last year but, unfortunately, its signatories did not once invoke it during the parliamentary campaign despite massive violations of taste and decency. What are fine words for? There is also the Russian National Association of Telebroadcasters' Memorandum on elections, NTV's Instructions for its journalists, the Advertising Code etc (for some of these, see the Appendix). If the task of bringing together disparate journalists and their vested interests appears overwhelmingly difficult today, there is still no better time to start than during a crisis of confidence. Journalistic

professionalism and independence is, after all, a common interest. In other countries journalists tend to abide by their codes precisely because they don't want to be regulated by any outside force, which may not understand the finer points of their profession and may represent opposing interests.

If the CEC challenged the media to abide by their own rules, it would be doing the media a service. The media really has only two options: self-destruction, if the excesses of the parliamentary campaign are repeated, or self-regulation.

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## **ETHICS OF THE OLDEST PROFESSION** **(the mass media during the elections)**

In discussing journalistic ethics in Russia, rather than ethics in general, and examining the condition of journalistic ethics within the narrow bounds of two election campaigns, one cannot help touching upon a problem which falls outside the scope of this theme, yet wholly determines journalists' behavior. This is the answer to the question: who does the journalist think he is? What are his aims when he uses the possibilities offered him by the mass media? After all, the figure of an "information killer" arose neither out of the blue nor during the election campaign.

### **Look, who's coming?**

Today we live with the conviction that the years of *perestroika* and *glasnost* accustomed journalists, although not overnight, to the fact that it is possible to speak out without reference to the opinion of the Communist Party. Furthermore, these people who rose on the crest of the first waves of the process which, thanks to A. P. Chekhov, is aptly known as "the process of squeezing the slave out of oneself," quickly and easily cast aside the stereotypes of journalistic behavior, engrained by party directives.

The last ten years has radically transformed the Russian journalist. The graduate from the Faculty of Journalism of Moscow State University – clean-shaven and well-mannered or, at least, looking so, with coat and tie – now sports a moustache and even a beard or is unshaven and in a worn turtleneck sweater. However, all these outward characteristics of the new journalist are merely external distinguishing signs. There are other more important things. What appealed to everyone so much when Alexander Politkovsky appeared on the TV program "Viewpoint", cap pulled over his eyes and speaking in conversational tones, has now unexpectedly for many idealists taken on a completely different form. What was just "color" for Politkovsky has become obligatory journalistic behavior.

Glibness, brashness, lack of any restraint in interviewing respected or well-known personalities, the use of underworld jargon and even four-letter words (recall, for example, Alexander Gordon and his obscene remarks about Nikita Mikhalkov in a live broadcast on the radio station

"Silver Rain") have become necessary features of a popularity-seeking journalist and, alas, are regarded as such by the journalistic community in its successful attempt to implement the right to free expression. One would like to believe that these are only the outward passing peculiarities of independent minded journalists and that the characteristic trait of new Russian journalism is a retreat from servile respect towards the powers that be, but actually this is not the case.

The regional media, both print and electronic, cannot utter a word without the approval of local authorities. In the center, informational blows are dealt against the public whenever one scandal has to be covered up by another. Today, it is only within the bounds of ideological inter-clan wars that journalists are permitted to conduct investigations and publish sensational exposes. As the Russian Union of Journalists noted in its appeal for the protection of the freedom of mass information, "journalists are increasingly becoming the 'cannon fodder' of the election campaign. Under the pressure of circumstances, either through personal weakness or deliberately and voluntarily, some of our colleagues methodically and persistently erase the boundaries between the first and second oldest profession."

New Russian journalism has turned out to be "old new journalism," only with bad manners and scornful attitudes towards people who willingly or unwillingly come within the focus of journalistic attention.

### **The hero of events, his private life and the rights of a journalist**

At the dawn of *perestroika*, Urmas Ott, having posed a shocking question to Lyudmila Gurchenko about her age, felt himself to be a hero who had passed the Rubicon. After that, there were no questions that television correspondents would not ask and features they would not show. However the first real step at revoking the guarantee of privacy under Russian legislation of an individual occupying a public post was made in 1997. The journalist Larissa Kislinskaya, who published an article with photographs of the Justice Minister V. Kovalev with women in a sauna, rejected charges of interfering in his private life, stating: "The Justice Minister is a public figure. His personal life is with his wife....If this is his personal life, then I certainly have invaded it."

For the first time in the history of the Russian press this statement expressed the demand of journalists to be accorded special rights in gathering information about the private life of socially prominent figures, including candidates for elected office. However, instead of paying attention to this emerging tendency, the Charter of Television and Radio Broadcasters merely declared "a ban on the gathering, storage and use of information about the private life of persons without their consent." As a

result, the past election campaign has demonstrated several vivid examples of how far the practice of the mass media deviate from this document and how calmly journalist-killers ignore not only this principle, but also the idea of the privacy of medical information.

On the program "However", Mikhail Leontyev not only presented an allegedly authentic medical record of Alexander Hinshtein, a journalist from the OVR camp, and not only read off the diagnosis, but relished in the responses which, again allegedly, Hinshtein had given to a doctor as a child. Today, when the Ministry for the Interior is trying to force A. Hinshtein to submit to compulsory psychiatric examination, the Union of Russian Journalists has stood up for him. Characteristically, waving the medical file on the air did not prompt any kind of reaction from the journalistic community. Such methods are, according to Vsyevolod Vil'chek's phrase, "outside the profession!" Quality journalism does not use such methods, but by not condemning them, it disorients the young generation of journalists. In a report on the TV program "Today" when the group Rolling Stones arrived in Moscow a female voice was heard asking: "Will you use Viagra in Moscow?" This is the style of journalism in vogue today with young journalists.

### **A new style of behavior or the absence of style?**

It cannot be said that all the objects of journalistic attention obediently accept this tone. On a number of occasions people have tried to leave the studio during a live broadcast. This is what it seems a former Minister in the government of Azerbaijan, whose political opponents were calling for his extradition from Russia, intended to do during the program "Hero of the Day". The presenter Pavel Lobkov called him a "sidekick" of a crime boss, who was also wanted in his native land. One of the guests on the program "Those Who..." stated that she would leave if the journalists did not change their behavior. Natalia Medvedeva displayed greater courage and left the studio in protest during a live broadcast of the program "Press Sharks."

It is this program more than any other that has consistently cultivated and established the new type of "free-minded" young journalist – a type not particularly bothered by ethical restraints and unconcerned by the views or feelings of the person he has invited to the studio or who has accidentally found himself at the center of a "news" item. Suffice it to mention the attempt to interview the parents of a student who, in the summer of 1999 knifed a man in a synagogue, just when the parents had found out about the incident.

Still less important for this "new" type of journalist are ethical and moral norms by which people who watch television are guided. The illusion that such journalistic behavior is acceptable is created by ratings, which really only represent interest towards what is happening on the air

or by the circulation of "yellow" publications, which people buy for a variety of reasons. These purely quantitative indicators have nothing to do with an assessment of moral or ethical principles.

### **What the "talking head" says**

In reality, normal people have practically no opportunity to speak on today's mass media. Given all attributes of his behavior the "new" Russian journalist often turns out to be a "new old" journalist if we analyze what he thinks about public opinion and its influence on journalists. Today, television air-time is occupied by endless journalists as "talking heads", who not only exercise their right to free expression, but continue to act as "messiahs" bringing us new knowledge.

Journalists feel they are owners of the news, which they think they can shape as they wish. An example of such an approach to news, doomed in our eventful time to be viewed as classical at least for some time, was demonstrated by the well known television critic, Irina Petrovskaya.

At a time when Sergei Dorenko was leading an aggressive propaganda campaign against Mayor Yuri Luzhkov and the election bloc OVR on the ORT television channel, disorienting voters, she wrote in the newspaper *Izvestia*: "To criticize Dorenko is like spitting on the ceiling. From now on, I'll treat his program like we treat people who have died: we say either nothing or something good about them. But if I ever do the latter, then it will mean I was tortured."

So, Irina Petrovskaya does not like Dorenko – which means that she will not analyze his program. But a newspaper, at least a normal newspaper, is published not only so that people who like to write critical articles about television can publish their articles. The basic function of a newspaper is to enable citizens to realize their constitutional right to receive information. Of course as a journalist with the right to express one's opinion, which is guaranteed in our country, Irina Petrovskaya may choose not to write about Dorenko. But in this case *Izvestia* should understand that by depriving its readers of an alternative point of view regarding this program, it clears the field for further manipulation of voters in the interests of one of the participants in the election campaign.

As shown in a study by the Center of Regional Applied Research, commissioned by the newspaper *Mir za nedelyu*, in the period from the first of September until the fifth of October, 1999, Sergei Dorenko's program devoted a total of five and a half hours to politicians. Of this time, one hour and thirty minutes was devoted to features with a predominance of negative information about the Mayor of Moscow, Luzhkov. Dorenko devoted twenty-four minutes and thirty-three seconds to Primakov, where an attempt was made to give neutral information, although twenty per cent

of features were negatively tinged. Thirteen minutes was dedicated to Stroeve, ninety per cent of which was negative. Of the main "positive" heroes of the program it is worthwhile mentioning only two names on the list. They are Vladimir Putin – thirty minutes (only positive and neutral information) and President Boris Yeltsin – seven minutes (only positive and neutral information). One of the most frequently mentioned movements was "Fatherland – All Russia" to which the program devoted a total of fifty minutes with an obvious predominance of negative information. Specialists had no difficulty in recognizing the orientation of this program.

But was it so obvious to viewers? According to sociologist Vsyevolod Vil'chek, an intelligent audience watches Dorenko "with a certain feeling of masochism; for them it is a circus. As for the mass audience, unless it is clearly explained to people how they are being fooled, these methods may be effective." Did viewers have the chance of receiving another point of view? After all, according to the Sociological and Marketing Research Center "Status," even in comparatively prosperous Moscow a quarter of the population do not read newspapers or receive information from television programs.

In his program Dorenko initiated scandalous media-events, drawing into their orbit both other programs and television channels. He was supported by the second state-run television channel on which Nikolai Svanidze stated in his own analytical program that the Moscow government is like a deceased person – one either says good things or nothing at all about it (familiar method!). In response, in her "informational-analytical serial" "Soap" on the TVTs channel, Svetlana Konogen showed Dorenko with a dog's barking dubbed over his normal speech. On the TV6 channel Arina Sharapova rushed to the defense of "Dorenko's name."

After Dorenko failed to find any palaces in Spain that belonged to the Mayor of Moscow and instead showed the luxurious properties of Gusinsky and Khait, owners of Most Company, the terrified weekly *Argumenty i Fakty* (No. 41) wrote: "A new outbreak of hatred: first directed at personalities involved in television mudslinging, later at Jews... Beware of igniting an anti-Semitic war, in which "the evil eyes" of television hosts will reduce to ashes not just property, but trust in television and your entire reputation!"

In the information television war, even a football match between the Russian and Ukrainian teams was turned into a political event which, incidentally, demonstrated how difficult it was for A. Lyubimov to resist the aggressive propaganda of the Ukrainian side. Russian journalism, democratically oriented, found no tools with which to oppose these classic methods of Soviet propaganda and it is these methods that were subsequently adopted by the ORT television channel.

Ordinary voters were in need, as never before, of a dispassionate, balanced point of view. The Code of Professional Ethics of Russian

Journalists has no provisions requiring a journalist to expose unworthy methods of work by his colleagues and such provisions are absent in the journalistic codes of other countries. But, just think, is it ethical to abandon *Izvestiya's* three hundred thousand readers in such a situation and refuse them an alternative opinion or an unbiased analysis of events. In my view, only torture could make a journalist, who is aware of his responsibility to the public, do this.

### **Give me a say!**

Are there many programs about ordinary people or, as we used to say, about the rank and file? Do such people have any kind of opportunity to express their point of view? Excluding the program "Time" (*Vremechko*), which is not especially concerned with election-related issues, no programs appeared during the election campaign inviting the audience to be active participants rather than extras. Although it would seem that ordinary citizens are present everywhere, they are present only in the background, as a necessary attribute.

Analyzing the TV program *Vox Populi* ("People's Voice"), the best program during the period of the State Duma elections, Nikolai Zhuravlev recently wrote in *Literaturnaya Gazeta* (No. 42, 1999): "It can be said to be a plaster cast of our political system. In the arena you see people who talk about their own concerns ( and who do not necessarily understand each other), but the masses are somewhere else, on their own. Occasionally remembering the title of the program and that it is the people that are most important, the host asks them to "raise their voice" – questions are asked, votes are taken.

Similarly, ordinary people formed the background of another ambitious election-related television project, "Process" – Konstantin Ernst's brainchild. On the program two hosts defended opposite points of view, while viewers voted by telephone for or against either of these positions. So that the "masses" could better understand the essence of the problem, the hosts spoke in "popular" vernacular, stirring emotions to such a boiling point on the issue "What should be done about Chechnya?" that it appeared that the aim was either to provoke a squabble as in a communal kitchen or a gangsters' shootout.

It never occurred to the authors of the program to find out whether televiewers liked this form of clarifying positions, whether they share intolerance towards other people's point of view, whether they consider it acceptable, even in the interests of elucidating the truth, to use statements like: "Chechnya is a plague-ridden barracks which should be destroyed" or "These scum have international links." Did voters benefit from this kind of "process"? Did the program influence the viewers' point of view and if it did, how ?

On the program 24,529 people voted to "fight to victory" and 4,250 to "let Chechnya go." The program was shown in two parts, separated by a week. A new vote gave the same result: 22,252 against 3,788. A disturbing result, although it clarified what was already well known for a long time.

Of course, it is possible to regard this program as just another modification of the TV election technology intended to support the position of the Kremlin and the Government. But the matter does not end there. Is it ethical to use this method to consolidate stereotypes already rooted in the public mind and to whip up such emotions? Allowing the discussion of Chechnya and of Chechens to reach such a level of hostility enables the program to justify military hostility as well. Using caricature images and the crude language of agitation, the program insults the dignity of the whole nation.

Since different points of view were represented on the program, it is difficult to assert that it violated one of the important commandments of the Code of Professional Ethics of Russian Journalists "to counteract any forms of extremism and the restriction of civil rights". It is worth noting, however, that although the Code has existed since 1994 and the Charter of TV and radio broadcasters since 1999, Russian journalism still cannot comprehend its responsibility to the public and to individual citizens.

Formally the Charter was not infringed. Moreover, the program defends what the authors of this document understand as the public interest: "the need to defend the basic principles of the constitutional system" (the masses supported the preservation of Chechnya as part of the Russian Federation) and "to prevent threats to national security" (again see the results of the vote – fight to victory). But other elements of the public interest mentioned in the Charter, such as "defense of public health and the safety of the population, prevention of the public from being misled by actions, documents or reports...." could have laid the basis for a more detailed analysis of whether consolidating negative stereotypes in the public consciousness in regard to policy in Chechnya meets the current interests of Russian society and contributes to the defense of public health or whether a vote taken among a part of the public that is an active consumer of television misleads the entire country.

What do we receive as the "voice of the people" on these programs? After all, the real audience in NTV and ORT studios hardly participate at all in what is going on there. On the program "Process" the opinions of the hosts are written down in the script beforehand, while separate attempts by more active representatives of "the people" (a characteristic shout from the hall: "Be quiet both of you and listen!") to change the course of the program are relentlessly put down.

The same is true of the program "Vox Populi," which some adherents of "old new Russian journalism" perceived only as another move by NTV in its competition for ratings with ORT. Announcing this

program, the weekly *Argumenty i Fakty* carried a headline "People Call Deputies Unprintable Names" (No. 41). Although, according to *Argumenty i Fakty*, "Kiselev dropped his self-important manner, moving to and fro between the people in this people's talk show," ordinary viewers on this program are still badly represented, even though this program comes much closer than any other to the standards of quality journalism. "Please give me a say!" – the words shouted by somebody from the hall are characteristic of this program.

The obvious conclusion is that representatives of the two poles of Russian journalism – "old new journalism" (the entire "killers' team" from ORT) and genuine new journalism (the NTV team) – are trying to take part in the electoral process still playing the role of journalistic messiahs of society. That is why such importance is attached to the ethical norms of individual journalists and why it is so difficult to compel journalists to follow the Code and the Charter.

### **Is there a way out?**

Today it is difficult to say that an adequate understanding exists in Russia about how far the ethics of modern Russian journalism corresponds with the ethical norms of the majority of citizens of our country. Such research is not conducted in Russia. What does exist, however, is the idea that something is wrong and that the mass media are out of touch with ordinary people in this country.

"All this is fraught with the catastrophic fall in trust towards the mass media, the irretrievable loss of journalism as a free profession and an important public service" – this is how the present situation is characterized by the Union of Russian Journalists in its address in defense of the freedom of mass information. In order to understand what is actually happening, it is necessary to immediately conduct an in-depth study of the practices of the Russian press during the election campaigning period and the influence of these practices on the audience's trust in the mass media.

A detailed study conducted in 1997 in the USA at the initiative of the American Union of Newspaper Editors showed unequivocally that the growth of negative attitudes towards the mass media on the part of the mass audience is directly linked with media practice and the system of professional norms and values of journalists, which were in active contradiction with the ideas and priorities of the majority of ordinary Americans. A kind of "scissors of values," primarily ethical values, which formed as a result of this contradiction accounts for a growing mistrust towards information published in the press.

The data of the opinion poll show that currently seventy-three per cent of respondents do not trust the mass media, naming among the

reasons excessive concern for ratings (for electronic media) and circulation (for print media), as well as bias and disrespect towards the audience. A significant portion of ordinary citizens are convinced that journalists do not understand many problems confronting the country and that the mass media operate within what might be called an "electronic cocoon", which deprives the audience of the opportunity to influence the media effectively.

This being the case, one consolation is the fact that the continuing crisis of the Russian mass media is not unique and is merely a reflection of world-wide trends. However, until Russian journalists realize how much their ethical principles conflict with the audience's views, no appeals to the president of the country will overcome the crisis.

The American press, shocked by the results received in the study, immediately began to develop new mechanisms of cooperation with the audience and to test journalists for professionalism before being employed.

Russian journalism also needs a shock since its professional morals and ethics do not elicit anything other than irritation and disappointment in ordinary citizens. Although there are still no real statistics, many journalists do not even imagine how far their views might diverge from what the audience believes. It is hard to expect that the situation will change for the better in the coverage of the Presidential elections. So far, ORT is planning to intensify the fight, countering Kiselev's Sunday program with a new TV show by Alexander Nevzorov, a well-known advocate of the Soviet empire. But all the same, hopefully, quality journalism will eventually triumph.

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## **INFORMATION DISPUTES RELATING TO ELECTION CAMPAIGNING VIA THE MASS MEDIA: THE EXPERIENCE OF THE JUDICIAL CHAMBER IN THE 1999 ELECTION CAMPAIGN.**

The results of the 1999 parliamentary elections will continue to be hotly debated for many months by different "audiences"; from that domestic civic center, the kitchen, to the topmost seats of power.

Nevertheless, with their official results made public, the recently held elections have now acquired the status of a legal fact. With the usual hassles and squabbles, our elected deputies of the State Duma have eventually set about tackling their principal job, i.e. law-making. Meanwhile, we, the electorate, have swiftly, without even pausing for breath, found ourselves amidst the race unfolding to elect the President of the Russian Federation. Now, what is it that we can borrow confidently from "that election" and apply in "this campaign"? What particular experiences? What useful strategies? What is it that we would only be happy to leave behind for good, like some awful nightmare? I suggest that we should go ahead and address these and other related questions against the backdrop of the most common information disputes adjudicated by the Judicial Chamber in the course of, and following, the 1999 parliamentary election campaign.

### **Role and functions of the Judicial Chamber in the electoral process**

In the first place, I would like to remind the reader that the specialized information-focused judicial body – **the Judicial Chamber for Information Disputes under the President of the Russian Federation** – has, from the point of view of its background, a direct, fundamental link with issues of campaigning via the mass media in the course of the past elections and referendum. The Judicial Chamber for information disputes, just like Hesiod's Aphrodite, emerged from the frothy waves of campaigning battles fought in the new Russia's first parliamentary elections and constitutional referendum in late 1993. Back then the Judicial Chamber was known under its "maiden" name, as the Arbitration Court on Information Matters – an ad-hoc public-and-state body (established exclusively for the period of elections) that had proven itself quite successfully as a non-partisan, independent and fair judge operating in the campaign-related information arena for all participants of the then turbulent (suffice it to recall the still lingering drama of the

September-October 1993 events in Moscow) electoral process. Unlike Aphrodite, the Judicial Chamber did not emerge from the foamy waves fully unadorned. This government body's legal "attire", confirming its status, functions and powers, continues to be provided by the Regulations on the Judicial Chamber approved by the January 31, 1994 Decree of the President of the Russian Federation (No. 228).

Thus, the Judicial Chamber for Information Disputes has been active in the information arena for over six years now. Over the years, it has been through the severe test of disparate election campaigns.

Those include two federal-level parliamentary campaigns (the 1993 and 1995 Duma elections), one Presidential campaign (1996) and countless electoral races held by numerous Subjects of the Russian Federation. In all, the Chamber's experiences in the area of tackling information disputes relating to campaigning via the mass media is quite impressive.

Today the Judicial Chamber is an authoritative (both domestically and internationally) quasi-judicial institution, performing in our uneasy transitional days the crucial social function of an agent of positive influence: both ethical-and-legal (in terms of substance) and state-and-public (in terms of structure). This influence affects the overall state of play both in Russia's government and public information arena, particularly in the area of exercising the right to election campaigning through the mass media.

Now, what are the components of this influence? Those are the Chamber's **status**, **functions** and **competence** defined by the aforementioned Regulations on the Judicial Chamber for Information Disputes. Notably, the **status** of "a state body under the President of the Russian Federation" (to emphasize, "a state body under the President" rather than a structural element of the Presidential Administration) makes, for one, government agencies and their officials (targeted by the given Chamber ruling) obligated to report on the ruling's implementation within **two weeks** (see Clause 2 of the Regulations).

Under Clause 13 of the Regulations, other government agencies and organizations shall report to the Judicial Chamber on "the results of considering the materials on the violations of rights and freedoms (including electoral rights) in the area of mass media operations **within one month**".

The Judicial Chamber performs its **functions** independently, external interference **by any party** being ruled out (see Clause 3 of the Regulations).

Quite a few of the Chamber's functions appear to be directly related to election campaigning through the use of the mass media.

In particular, those specific functions include:

- helping to assure non-partisan and truthful media coverage of the matters bearing on the public interests;
- assuring the principle of parity in the area of mass media engagements;
- helping to apply the principle of political pluralism through television and radio news and political talk shows;
- issuing guidance on correcting misjudgments in the area of media reporting on the matters of public interest.

And finally, a word about the Chamber's **competence** component. Competence is most generally outlined by Clause 8 of the Regulations. Under the provisions of this Clause, the Judicial Chamber shall adjudicate on "the disputes and other cases that involve the mass media".

Apart from the relevant Russian legislation, the legal base for tackling such disputes is formed by "the universally accepted principles and rules of international law and requirements of the Russian Federation's international treaties" as well as by the standards of journalistic ethics.

### **Separating the powers of courts and the Judicial Chamber**

A crucial element of the competence component relates to the issue of separating the powers of general jurisdiction courts, on the one hand, and the Judicial Chamber for Information Disputes, on the other. The two jurisdictions have been defined in very general terms, with the Chamber's competence (under Clause 8 of the Regulations) covering disputes and other cases in the area of mass media engagements, "except for the matters formally referred to in the jurisdiction of courts of the Russian Federation". As a matter of fact, the problem of separating the powers of judicial entities is not that simple and requires some attention. To clarify things, here is one specific point.

Pursuant to Clause 2 Article 79 of the Federal Law "On Electing the President of the Russian Federation" of December 31, 1999 (No.228), "the rulings and actions (inaction) on the part of the bodies of state authority, bodies of local government, public associations and officials found to be violating the electoral rights of citizens of the Russian Federation **can be appealed in a court of law**. The word "**can**" in this particular case in no way means that a legal case can only and exclusively be considered by "a court of law". Under Clause 2 Article 45 of the Constitution of the Russian Federation, "every citizen has the right to defend his/her rights and freedoms through the use of all vehicles that are not barred by the law".

Hence, any participant in the election of the President of the Russian Federation, who happens to be considering what means to choose in order to defend his/her electoral rights and freedoms (either a strictly judicial or quasi-judicial approach, say, through turning to the Judicial Chamber), shall first have to define criteria for choosing particular means.

Should the criteria be, for one, the severity of legal action against the offender, the plaintiff's preference should definitely be in favor of a court of law. Obviously, it is precisely a court of law that is authorized to pass an appropriate sentence to punish an official found to have used the mass media access benefits in violation of the requirements under Article 35 of the Federal Law "On Electing the President of the Russian Federation".

As far as the Judicial Chamber goes, it has no authority to have anyone thrown into some **information jail**. However, it does have the authority to pass explicit and sound legal judgments on a range of specific cases. To provide one example, the Chamber can make its professional assessments on the cases of preferential (as compared with opportunities enjoyed by other candidates) access to the mass media or cases when such preferential access has been assured through mediation of some office holders pursuing their own campaign goals. It can also assess other cases of abusing the right to conduct election campaign activities via the mass media.

The general competence provision recorded in the Regulations (see Clause 9) is to consider the disputes resulting from violating the principle of parity in the area of mass media operations, particularly disputes produced by infractions of the safeguards enabling all running candidates to have equal access to the mass media (see Clause 3 Article 8 of the Federal Law "On Electing the President of the Russian Federation").

By the way, turning initially to the Judicial Chamber in no way rules out the possibility of commencing a suit through a court of law. What is more, "armed" with the Chamber's expert opinion, the plaintiff has a better chance of securing a tough ruling passed by a court of law of the Russian Federation in order to punish the party found guilty of breaching the electoral legislation rules.

### **Cases considered by the Judicial Chamber in the course of the 1999 State Duma election campaign**

These sorts of disputes may be categorized by different criteria. Arguably, given the circumstances at hand, it is most beneficial to use "the dispute subject matter" criterion. To put it more plainly, one should answer

the principal categorization query: what is at stake in this particular dispute? Under this measure, **first** to crop up in the days of the 1999 parliamentary campaign were disputes over the **nature** of materials released by the mass media. The problem would then be whether the materials in question should be classified as campaign propaganda or regular material?

Described below are some "subject-matter-related" cases that can be summed under the title: **campaign propaganda or not?**

In October 1999, the Judicial Chamber received a letter from S. V. Bolshakov, member of the Central Election Commission of the Russian Federation, asking for an expert opinion on whether the identified pieces carried by the September 28, 1999 issue of the "Vladimirskie Vedomosti" daily, amounted to violation of the requirements of the standing Russian electoral legislation and laws on the mass media.

The Judicial Chamber experts examined the substance of the supplied materials headlined "Making the right choice comes above all" and "Those abroad will 'help' us out".

The catchy title "Making the right choice comes above all" belonged, in fact, to a report on the visit to Vladimir oblast of G. N. Seleznev, the speaker of the State Duma of the Federal Assembly of the Russian Federation. In particular, the report held the following remark made by G. N. Seleznev at a news conference and meeting with electorate:

"The real force capable of countering the ongoing lawlessness in the country and steering Russia out of the deadlock is represented by the 'For Victory' electoral bloc. It includes the more progressive and outward-looking political parties and public figures backed by the broad masses of the people that hold various political views and convictions, come from a variety of social groups but are driven by the same patriotic sentiments, love for their Motherland and readiness to sacrifice all they possess in order to restore the nation's former might, regain lost social security standards and establish law and order throughout the land".

And then the quote went on: "The people will not be fooled yet another time despite the desperate efforts undertaken by the "democrats", huge resources expended for propaganda purposes and dirty electoral technologies applied in the process!"

While examining fragments of the article, the Chamber's experts proceeded from the definition of "campaign propaganda" as an activity pursued by citizens of the Russian Federation, registered candidates, electoral associations, electoral associations and public associations aimed at urging or encouraging voters to come to the polls and either support that or another candidate (list of candidates) or vote against those indicated (see Article 2 of the Federal Law "On Basic Guarantees of

Electoral Rights and the Right of Citizens of the Russian Federation to Participate in a Referendum").

Checked against this rule, G. N. Seleznev's remarks along with the article's headline "Making the right choice comes above all" were passed by the Judicial Chamber as an encouragement to come to the polls and vote for the electoral bloc "For Victory".

Considering that the material was released September 28, 1999, which was before the official launch of campaigning in the election of deputies to the State Duma (the time limits having to be fixed in keeping with the provisions of Clause 1 Article 53 of the Federal Law "On the Election of Deputies to the State Duma of the Federal Assembly of the Russian Federation"), the Judicial Chamber concluded that the given newspaper article was released in violation of the standing Russian legislation on the time limits for election campaigning activities.

While looking into the subject matter of the article "Those abroad will 'help' us out" carried by the same issue of the "Vladimirskie Vedomosti" daily, the Judicial Chamber experts observed that the material contained no direct calls to come out in support of those or other candidates (lists of candidates) running for seats in the State Duma. To emphasize once again, under the relevant provisions of the Russian electoral legislation the notion of "campaign propaganda" implies a range of activities that go beyond the bounds of direct calls on the electorate and include, for one, activities designed to encourage voters to cast their votes either in support of those or other candidates (lists of candidates) or against them.

The article "Those abroad will 'help' us out", introduced with a caption explaining the purpose of B. Nemtsov's visit to the local capital (preparing for the upcoming elections), was written to impart facts and offer a train of logic that in effect maneuvered the reader towards a totally negative perception of B. Nemtsov and his movement. The fact of this material being carried next to the report on G. Seleznev's visit to the city left little doubt both as to the newspaper's preferences and what forces that mass media vehicle had been pushing for.

In its expert opinion "On the nature of materials carried by the September 28, 1999 issue of the "Vladimirskie Vedomosti" daily" of October 21, 1999 (No.9/54) the Chamber concluded that the material "Those abroad will 'help' us out" had the features of campaign propaganda while the fact of its being released on the given date (September 28, 1999) amounted to breaching the provisions of Clause 1 Article 53 of the Federal Law "On the Election of Deputies of the State Duma of the Federal Assembly of the Russian Federation".

Checking the article "Those abroad will 'help' us out" for compliance with the requirements of Article 51 of the Federal Law "On the Mass Media", the Judicial Chamber determined that in this particular case the author had not actually breached the Article's rule barring a reporter

from abusing his/her right in order to slander a person for his political affiliation.

In early November 1999, the Judicial Chamber considered another petition from S. V. Bolshakov, member of the Central Election Commission of the Russian Federation, relating to the problem of assessing the "campaign propaganda content" of some mass media reports. This time, the Chamber's experts were engaged to check and see if the materials carried by the special October 1999 issue of the "Krasnoyarskie Profsoyuzi" newspaper contained any infractions of the requirements of the Federal Law "On the Election of Deputies of the State Duma of the Federal Assembly of the Russian Federation".

After the Chamber's experts had examined the contents of the submitted materials "Stability sought by all..." and "'Fatherland's' manifesto", they arrived at the following decision:

The piece headlined "Stability sought by all...." contains isolated remarks from a presentation made by E. Primakov, one of the leaders of the "Fatherland – All Russia" electoral bloc, at the bloc's founding conference.

However, the story's logic pushes the reader towards forming a wholly favorable perception of the "Fatherland – All Russia" electoral bloc. In particular, the newspaper carries the following remark by E. Primakov: "I am positive that once we achieve a solid status in the State Duma, our bloc will be in a position to interface democracy with order." And then, the story carries another remark by E. Primakov: "Should our bloc secure a prominent position in the State Duma, we will know how to achieve our objectives without running any risks or resorting to any confrontation. At the same time, we will make the people respect us".

In checking the aforementioned fragments and the article as a whole, the Judicial Chamber (just like in the case with the "Vladimirskie Vedomosti" newspaper) took guidance from the "campaign propaganda" definition recorded in Article 2 of the Federal Law "On Basic Guarantees of Electoral Rights and the Right of Citizens of the Russian Federation to Participate in a Referendum".

Based on the criteria contained in the given legal provision, the fact that "Krasnoyarskie Profsoyuzi" carried such remarks by E. Primakov was classified by the Judicial Chamber as using the mass media for the purpose of urging the electorate to vote in support of the "Fatherland – All Russia" electoral bloc in the upcoming Duma elections.

As it went on to assess the "Fatherland's" manifesto" article carried by the same issue of "Krasnoyarskie Profsoyuzi", the Judicial Chamber found that, just like in the case of the "Stability sought by all..." material, the story contained no direct calls to vote for those or other candidates (lists of candidates) nominated to run for seats in the State Duma. However, given that under the current Russian electoral legislation the

notion of "campaign propaganda" implies a broader range of campaigning activities than just direct calls to support the given candidates, the Judicial Chamber proceeded to look into the essence of the article rather than merely examine it for the presence or absence of formal indicators of non-compliance.

With this approach being duly applied, it was determined that the "Fatherland's manifesto" article basically contained a campaign policy platform reflecting the key tenets pursued by the "Fatherland" public association, which later joined forces with the "All Russia" movement to form the "Fatherland – All Russia" electoral bloc running for seats in the State Duma. The "Manifesto" called on Russians to join the colors of "Fatherland" ("a multiethnic community open to all those wishing well for themselves and the country"), claimed that the movement would aspire to assure prosperity for Russia and her people, and stated that "Fatherland" would achieve complete security both for the nation and its individual citizens, etc.

Proceeding from the aforesaid, the Judicial Chamber determined that the "Fatherland's manifesto" article included elements of campaign propaganda coming within the definition under Article 2 of the Federal Law "On Basic Guarantees of Electoral Rights and the Right of Citizens of the Russian Federation to Participate in a Referendum".

Given the fact that these materials had been carried by the "Krasnoyarskie Profsoyuzi" newspaper before the election campaign was formally launched, as prescribed by Clause 1 Article 53 of the Federal Law "On the Election of Deputies of the State Duma of the Federal Assembly of the Russian Federation", the Judicial Chamber held the decision by the editors of the "Krasnoyarskie Profsoyuzi" newspaper to carry the material to be an infraction of the Russian electoral legislation requirement governing the questions of election campaign timelines.

In the same category is the November 25, 1999 expert opinion (No.13/58) "On the nature of the material 'Local GKChP plotters' carried by the October 27, 1999 issue of the 'Moskovsky Komsomolets' daily". In this particular case, the Judicial Chamber issued its expert opinion on the request from O. K. Zaostrozhnaya, secretary of the Central Election Commission of the Russian Federation, who wanted to know "if the 'Local GKChP plotters' piece by M. Deutsch contained any indications of campaign propaganda falling within the relevant provisions under Article 8 of the Federal Law 'On the Election of Deputies of the State Duma of the Federal Assembly of the Russian Federation'".

Having studied and assessed that rather lengthy article, the Judicial Chamber came to the following conclusion. The main character of M. Deutsch's story is V. Starodubtsev, governor of Tula oblast. The reporter sets out to research the governor's engagements aimed at getting the Lenin livestock-breeding collective farm (Novomoskovsky region, Tula oblast) outfitted to produce pure alcohol. The reader is then informed of a

suit filed against V. Starodubtsev on evidence of tax dodging related to that newly established business. The article describes numerous cases of the governor's incompetent management on the regional level and even goes as far as alleging that V. Starodubtsev might be involved in the deaths of some of his opponents. This essentially makes the core of M. Deutsch' story, the introductory and concluding paragraphs containing the "campaign propaganda" refrain: "Given all this knowledge, V. Starodubtsev remains as No.3 on the federal list of candidates from the KPRF electoral association. Right next to Comrades Ziuganov and Seleznev".

The Judicial Chamber determined that the article contained the elements of campaign propaganda within the provisions of Article 8 of the Federal Law "On the Election of Deputies of the State Duma of the Federal Assembly of the Russian Federation".

Within this category of cases relating to the examination of a broad variety of print media materials "either for the presence or absence of campaign propaganda content", the Judicial Chamber also perused assorted materials released by the domestic broadcast media vehicles. In particular, while writing the expert opinion of November 3, 1999 (No. 11/56) "On compliance of some materials released by domestic broadcast media vehicles in August-September 1999 with the requirements of the standing electoral legislation of the Russian Federation" in response to the application by O. K. Zaostrozhnaya, secretary of the Central Election Commission of the Russian Federation, the Judicial Chamber experts were able to view the video of a concert held in the city of Cheliabinsk as part of the "Right Cause" association's "You are right" action and aired August 18, 1999 on one of the channels operated by the VGTRK.<sup>1</sup> The concert in its own right was positively held to be a propaganda action in support of the "Right Cause" association. That was obvious from a conspicuous display of the "Right Cause's" logo, B. Nemtsov's (one of the association's leaders) explanations of the "Right Cause's" policy goals and the spectators being repeatedly enticed to focus on the "Right cause" leaders who were attending the concert.

At the same time, the Judicial Chamber's experts took notice of the fact that the "Right Cause" is not listed as an electoral association running for deputy seats in the 1999 State Duma elections. Admittedly, some of the "Right Cause" leaders were on the list registered by the "Union of Right Forces" electoral bloc. Indeed, there were some common points (personalities, agenda points) between the "Right Cause" and the "Union of Right Forces". Notwithstanding, there was no legal succession between the two. Hence, there were no legal grounds for the Chamber's experts to conclude that the concert was a campaigning action in support of the "Union of Right Forces" when that action featured slogans, signs and leaders of a different political association, i.e. the "Right Cause".

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<sup>1</sup> The State-owned TV and Radio Company.

Under the existing electoral legislation of the Russian Federation, the term "campaign propaganda" is defined as campaigning either **"for"** or **"against"**. The **"for"** campaigning, for one, has its own "reefs" that the Y.Luzhkov-E. Primakov campaigning boat ran up against, springing a leak in the days of the December 1999 parliamentary elections, particularly in the "TV-Center" television campaigning. But the "reefs" in the **"for"** campaign mostly had to do with political or conceptual expedience, taste, decency, moderation etc.

Engaging in **"for"** campaigning, it is rather hard to collide directly with the rules of electoral or other legislation. One would really have to work on it, as it were...

But things are radically different in the case of **"against"** campaigning activities, which contains risks of breaching a range of substantive legal rules imposed both by the Russian electoral legislation and the Federal Law "On the Mass Media".

A typical example is an editorial headlined "Y. Luzhkov: "Helping them set up shop in this land of wealth" published in the October 8, 1999 issue of the "Kazachyi Vesti" newspaper (No. 40-44), the material becoming the target of the Judicial Chamber's expert opinion, issued on November 30, 1999 (No.14/59). Having considered the case, the Judicial Chamber arrived at the following determination.

The "Kazachyi Vesti" editorial was written to give a picture of Moscow's current social and economic situation and of various aspects of the actions by the Moscow government and Y.M. Luzhkov (the mayor of Moscow).

The article's authors unequivocally characterize the state of affairs in Russia's capital city as extremely hostile to its residents ("helplessness and spinelessness of the city that is being humiliated, robbed and tortured, and where the specters of greed, profiteering, egotism and commercialism prevail").

The article keeps searching for the enemy guilty of Moscow's woes, basing this search mainly upon the ethnicity issue.

The article, in particular, claims that "any and all outlanders feel free to do as they please in Moscow, which can never be said of ethnic Russians". The material goes on to say that "a major role in corrupting the metropolitan city's population has been played by Jews who are flocking the city", and then – "the proportion of ethnic Russians has plummeted on account of large numbers of outlanders coming to settle in the city".

Simultaneously with creating enemy images for Muscovites ("Outlanders", "Jews", "Southerners"), the article is found to be consistently intent on building an image of the Russian capital city's dweller as denigrated, robbed and suppressed by the local authorities. The material's authors, in particular, claim that "Moscow's fickle residents, degraded by the corrupt internationalist-intellectuals, keep degenerating

and losing their mental capacities", that "the local philistines can hardly think of grumbling at the authorities on account of being too downtrodden by the never-ending hardships", and that "even those who are still capable of standing up to their bullies are too discouraged by the lack of any good prospect".

The material provides a graphic picture not only of the **"enemy"** image but also of an integrated **"enemy's patron"** image. The authors argue that it is precisely **the authorities of Moscow** that are seeking to "squeeze out of Moscow for good the few ethnic Russians that are still found to be there", and that they are doing their utmost to "win the respect of the outlanders bossing the show in Moscow".

The authors of the piece try to whip up a negative perception of Moscow authorities with Y. M. Luzhkov and his administration being accused of cynicism and impunity. The newspaper's editorial observes that "Moscow's rulers led by the city mayor are not yet fearful of their future inasmuch as the local law-enforcement agencies are wholly engaged to assure their security".

Of note in connection with this is the article's treatment of the crime scene in Moscow. The authors, for example, argue that the "Caucasus criminal gangs act with the knowledge and connivance of the city authorities that apparently are never left unremunerated". The authors proceed to prattle on even about international affairs. In particular, they quite groundlessly suggest that the operations of Caucasus crime gangs are "coordinated by Baku via its embassy officials in Moscow". Understandably, these sorts of accusations in no way contribute to promoting neighborly relations between the two friendly nations. On the contrary, they only serve to sow the seeds of enmity and intolerance.

The article's concluding segment provides a clear instance of xenophobia where the authors provide a list of "The 1999 Moscow Administration led by Y. Luzhkov", identifying persons on that list by their non-Russian ethnicity. In this article's context, that list could very easily be read as both a collective and individually identifiable image of the culprits responsible for Moscow's calamity, i.e., as **the enemy image built to show its anti-Russian identity**.

Hence, the article "Y.Luzhkov: "Helping them set up shop in this land of wealth" carried by the "Kazachyi Vesti" newspaper clearly contains unsubstantiated assertions where the interests of Moscow dwellers are pitted against those of the city authorities and the interests of ethnic Russians are set against those of non-ethnic Russians, where some social and ethnic groups are portrayed to be dominant with respect to other groups and interests, where the ethnic identity factor is particularly emphasized either to create a negative perception of that or another personality or ethnic community, or fuel intolerance towards non-ethnic Russian dwellers of Moscow.

Given these facts, the Judicial Chamber arrived at the following conclusion.

The editorial article "Y. Luzhkov: "Helping them set up shop in this land of wealth" carried by the October 8, 1999 issue of the "Kazachyi Vesti" newspaper (No.40-44) contains elements violating the requirements of Article 4 of the Federal Law "On the Mass Media", the specific infraction being the use of the mass media for the purpose of stirring up ethnic hatred and social intolerance.

Moreover, this article also contains elements of campaign propaganda coming within the meaning of the provisions under Article 2 of the Federal Law "On Basic Guarantees of Electoral Rights and the Right of Citizens of the Russian Federation to Participate in a Referendum", of the requirements under Article 8 of the Federal Law "On the Election of Deputies of the State Duma of the Federal Assembly of the Russian Federation", and can be judged as using the mass media for the purpose of urging voters to come out against Y. Luzhkov – one of the leaders of the "Fatherland – All Russia" electoral bloc and a candidate running for a State Duma deputy seat.

Also falling within the category of risks of abusing the right to engage in the **"against"** campaign propaganda activities is the case of the "Communists, workers of Russia – for the Soviet Union" electoral bloc who in late November 1999 submitted their campaigning material for a free publication in the "Rossiyskaya Gazeta" newspaper. Having examined that communist propaganda piece, the "Rossiyskaya Gazeta" editors got suspicious and dispatched the material to the Central Election Commission of the Russian Federation (CEC RF) who, for its part, forwarded the propaganda commercial to the Judicial Chamber, requesting "to check the material for the presence of elements that can foment social enmity and intolerance".

Upon investigation, the Judicial Chamber issued the December 24, 1999 expert opinion (No. 19/64) "On the nature of the campaign propaganda material written by the "Communists, workers of Russia – for the Soviet Union" electoral bloc". The Judicial Chamber's determination was as follows.

The given campaign propaganda material contains a list of the leaders of the "Communists, workers of Russia – for the Soviet Union" electoral bloc; the bloc's political platform; a photo collage with the "Aurora" battleship placed against the backdrop of the Kremlin to illustrate a poem.

The electoral bloc's political program is aimed at "getting the spoils plundered by the democrats restored to working people". This statement, as a matter of fact, alleges that the working people have been robbed, and robbed by the democrats at that.

Inasmuch as a broad variety of interest groups and strata in current Russian society are associating themselves with the democratic process and democrats, the "Communists, workers of Russia – for the Soviet Union" electoral bloc by this token accuse them all of robbery.

The campaign propaganda piece explicitly lays out how the electoral bloc plans to implement the restoration of "the spoils from the democrats over to the working people". The catchphrase "It is time 'Aurora' reloads its guns!" actually amounts to a militaristic call to arms in order to achieve the goals proclaimed by the electoral bloc. Notably, the material's wording is most explicit about the pressing need for forceful action ("It's time 'Aurora' reloads its guns!").

The Judicial Chamber determined that the negative perception of the democratic process and democrats was particularly marked by the material being written in rhymed verse ("Great ideals discarded by a greedy gang, and the nation plundered for profit"). The call "It's time 'Aurora' reloads its guns" is also prominently displayed by the rhyme.

Having assessed the contents of the submitted campaign propaganda piece designed by the "Communists, workers of Russia – for the Soviet Union" electoral bloc, the Judicial Chamber experts concluded that its release through the agency of the "Rossiyskaya Gazeta" newspaper could amount to violating the provision under Clause 1 Article 60 of the Federal Law "On the Election of Deputies of the State Duma of the Federal Assembly of the Russian Federation" that "prohibits any campaign propaganda stirring social hatred and enmity".

In the course of its operations to investigate assorted campaign propaganda activities during the 1999 parliamentary elections, the Judicial Chamber could boast of a good number of cases when submitted materials did not receive the "thumbs down" sign. A large volume of applications were generally given positive responses because no violations of either ethical standards or legal rules were unearthed. Coming within this category of cases is a graphic example of an "effigy of power" being put to the flame in the city of Nizhny Novgorod. The case is described by the Judicial Chamber's expert opinion of December 30, 1999 (No.20/65) "On the nature of the reports released by the NNTV, Seti NN and Volga television organizations to cover the election campaign rally conducted November 13, 1999 by S. V. Voronov registered to run for a State Duma deputy seat in the Semenovskiy electoral district (No.121)". Essentially, the case comes down to the following.

The Judicial Chamber was provided by the election commission of Nizhny Novgorod oblast with the video materials covering the November 13, 1999 campaign rally arranged by S. V. Voronov running for the State Duma in the Semenovskiy electoral district (No.121). Given that the rally, which turned into a high-profile event, was broadly covered by the local broadcast media, the Nizhny Novgorod oblast Election Commission requested the Judicial Chamber to assess the subject matter contained in

the video materials and issue an expert opinion focussing upon the following two questions.

1) Do the activities of S.V. Voronov, registered as a candidate running for a State Duma deputy seat, shown in the given video materials, contain any elements of campaign propaganda intended to foment social enmity and hatred?

2) Do the activities pursued by S.V. Voronov, registered to run for a State Duma deputy seat, contain any indications of campaign propaganda amounting to a breach of the Russian legislation on the protection of intellectual property?

Having investigated the submitted video materials and covering documents, the Judicial Chamber arrived at the following determination.

The video materials, submitted by the Nizhny Novgorod election commission and aired by the NNTV, Seti NN and Volga television companies, have been produced to cover the election campaign rally arranged by S. V. Voronov, registered as a candidate running for a State Duma deputy seat, with one of the rally's functions including the burning of an "effigy of power" that according to the function designers impersonated the bureaucrat failing to deliver on his promises.

The Judicial Chamber's competence does not cover the task of determining whether such election campaign functions as rallies and public meetings comply with the relevant electoral legislation.

At the same time, the Judicial Chamber deemed it necessary to point out that the coverage of the event by the NNTV, Seti NN and Volga television companies was accurate and contained no elements of campaign propaganda intended to stir up social hatred and enmity.

As far as assertions about the likely violation of intellectual property rights (the right to reproduce images) go, as can be seen from the video materials, the effigy was not positively identified as any particular person by the spectators present at the event. As an aside, though, we can say that many spectators seemed to associate the effigy with I. Skliarov – the governor of Nizhny Novgorod oblast.

Overall, the Judicial Chamber concluded that the Duma candidate S.V.Voronov's activities, covered by the submitted video materials, do not amount to a violation of the campaign propaganda provisions within the existing Russian electoral legislation.

It is common knowledge that the major campaign battles of the 1999 parliamentary race were fought not through the print media but exclusively through the medium of television. Naturally, this could not but have been reflected in the Judicial Chamber's activities. And it was.

In early December 1999, the Judicial Chamber received an application from O. K. Zaostrozhnaya – member of the Central Election Commission of the Russian Federation (CEC RF). Accompanying the

application were two video cassettes with several hours of taped news and current affairs programming broadcast in November 1999 by ORT and TV-Center television companies. The CEC RF secretary turned to the Chamber's experts with just one very specific question: do the video materials contain any elements of election campaign propaganda as defined by the provisions of Article 8 of the Federal Law "On the Election of Deputies of the State Duma of the Federal Assembly of the Russian Federation?"

To respond to the query, the Chamber's experts spent many hours watching the submitted video materials and debating their legal and ethical content. What it boiled down to, one can see in the Judicial Chamber's expert opinion of December 3, 1999 (No.15/60) **"On the Elements of the Election Campaign Propaganda Found in the News and Current Affairs Programs Broadcast in November 1999 by ORT and TV-Center TV Companies and Submitted on Tape for Assessment"**. Basically, the determination comes down to the following.

November 10, 1999, coming "live" on the TV-Center company's news program was journalist D. Kiselev interviewing A. Kokoshin, member of the "Fatherland" association's political council registered to run for a State Duma deputy seat and entered on the Moscow segment of the "Fatherland – All Russia" electoral bloc's federal list.

In this interview A. Kokoshin presented the key points of the economic program promoted by the "Fatherland" association – one of the components of the "Fatherland – All Russia" electoral bloc.

The party affiliation of A. Kokoshin and the fact that the presented economic program belonged to the "Fatherland – All Russia" electoral bloc as a whole, was made clear by D. Kiselev in the following words: "This evening we have been hosting A. Kokoshin, who along **with the "Fatherland – All Russia"** bloc, advances an economic program designed to take one step back before moving two strides ahead".

In the course of their dialogue, the journalist and the politician avoided the explicit invocation to vote for the federal list of candidates put together by the "Fatherland – All Russia" electoral bloc.

However, having perused the contents of the program (propaganda, remarks to expound the forwarded economic program) and the techniques used to entice television viewers to form a positive perception of A. Kokoshin (registered to run for a State Duma seat and entered on the Moscow segment of the federal list promoted by the "Fatherland – All Russia electoral bloc"), the Judicial Chamber's experts confirmed the presence of elements of election campaign propaganda in support of the "Fatherland – All Russia" electoral bloc within the meaning of Article 2 of the Federal Law "On Basic Guarantees of Electoral Rights and the Right of Citizens of the Russian Federation to Participate in a Referendum" and Article 8 of the Federal Law "On the Election of

Deputies of the State Duma of the Federal Assembly of the Russian Federation".

On November 11, 1999, ORT company's "Vremya" program aired "live" M. Leontyev's comment on the economic program advanced by the "Fatherland" association.

The contents of the comment and phraseology used ("grind", "demagoguery", "off the mark") enabled the Chamber's experts to confirm the presence of elements of election campaign propaganda **against** the "Fatherland – All Russia" electoral bloc within the meaning of Article 2 of the Federal Law "On Basic Guarantees of Electoral Rights and the Right of Citizens of the Russian Federation to Participate in a Referendum" and Article 8 of the Federal Law "On the Election of Deputies of the State Duma of the Federal Assembly of the Russian Federation".

On November 14, 1999, television host S. Dorenko in his Sunday program continued his efforts to create a negative public image of E. Primakov and Y. Luzhkov – leaders of the "Fatherland – All Russia" electoral bloc.

In particular, the position of E. Primakov and Y. Luzhkov on Federal authorities' actions in Chechnya was portrayed by S. Dorenko as a betrayal of Russia's interests, with the train of logic running as follows.

Firstly, neither Y. Luzhkov nor E. Primakov dared to censure the President of Ingushetia R. Aushev for calling on the Federal leadership to cease military operations in Chechnya. Secondly, the leaders of the "Fatherland – All Russia" electoral bloc allegedly have been encouraging the West to put pressure on Russia with the aim of terminating the land war in Chechnya, and given that the West has been supportive of the terrorists, E. Primakov and Y. Luzhkov have likewise appeared to be backing the terrorists.

Reporting on the murder of the "Radisson-Slavianskaya" hotel's managing director (a US citizen), S. Dorenko spoke of Y. Luzhkov and N. Kovalev (both registered candidates running for the State Duma) as accomplices in the crime as if their involvement had already been confirmed.

Assessing S. Dorenko's reports on the leaders of the "Fatherland – All Russia" electoral bloc E. Primakov and Y. Luzhkov aired on ORT television in the past two months, the Judicial Chamber deemed it essential to point out the following.

The proportion of airtime devoted to this topic, the predominance of negative judgments and the derogatory tone are clearly indicative of S. Dorenko's engagement in election campaign propaganda **against** the "Fatherland – All Russia" electoral bloc's leaders.

While making an overall assessment of the video materials submitted by the CEC RF, the Judicial Chamber pointed out the absence

of any direct calls to vote either for or against any candidates (lists of candidates) for the State Duma of the Federal Assembly of the Russian Federation.

However, proceeding from the definition of "campaign propaganda" in Article 2 of the Federal Law "On Basic Guarantees of Electoral Rights and the Right of Citizens of the Russian Federation to Participate in a Referendum" and Article 8 of the Federal Law "On the Election of Deputies of the State Duma of the Federal Assembly of the Russian Federation", the Judicial Chamber concluded that the video materials contained elements of election campaign propaganda within the provisions of the existing Russian electoral legislation.

### **Problems to be tackled**

Among these problems, the first place undoubtedly belongs to the problem of **conflict** between the current electoral legislation and the Federal Law "On the Mass Media". Actually, the issue is not so much the conflict of laws as the conflict of their interpretations. Interpretation of the actual content of different legal norms (electoral law and the law on mass media) that both govern the multifaceted phenomenon of campaigning via the mass media. Institutionally, the actors involved in this conflict are the CEC RF and the Ministry of the Press. What are their basic positions?

**The CEC RF**, operating within its jurisdiction, recorded under Point "e" Clause 1 Article 24 of the Federal Law "On the Election of Deputies of the State Duma of the Federal Assembly of the Russian Federation", adopted the August 13, 1999 document "Clarification of certain aspects of pre-electoral campaign propaganda activities in the electoral campaign period for the election of Deputies to the State Duma of the Federal Assembly of the Russian Federation in its third convocation" published in "Rossiyskaya Gazeta" a week later. Clause 9 of the document determined that, proceeding from the meaning of Articles 8, 52, 55-57 of the Federal Law "On the Election of Deputies of the State Duma of the Federal Assembly of the Russian Federation", "...campaigning through the mass media (via the channels of television and radio organizations and through the print media) can **only** be conducted by registered candidates and electoral blocs who registered federal lists of candidates, and exclusively at the expense of their electoral fund". The CEC RF emphasized that no other participants in the electoral process "have the right to engage in election campaigning via the mass media".

**The Ministry of the Press** did not publish any official documents in connection with this, as far as I know, but the Minister himself and his Deputies have voiced their position in numerous print and broadcast interviews throughout October – November 1999. The position was simple: literal implementation of the provisions of Article 8 of the Federal

Law "On the Election of Deputies of the State Duma of the Federal Assembly of the Russian Federation", as demanded by the Central Election Commission, would actually amount to **a moratorium on the freedom of the press in Russia**, which the Ministry of the Press, naturally, cannot agree to.

The ministry even released a statement to the effect that it would initiate an application by the Government of the Russian Federation to the Constitutional Court of Russia in order to check whether the provisions under Article 8 of the given Federal Law comply with the constitutional rule under Article 29 of the Constitution of the Russian Federation, which guarantees the citizens of Russia freedom of speech.

However no such application, to our knowledge, has been forwarded. Instead, on October 29, 1999, the CEC RF filed with the Ministry of the Press a document entitled "On restraining unlawful election campaigning practices and bringing legal action against ORT television and its officials".

Proceeding from the provisions of Clause 7 Article 60 of the Federal Law "On the Election of Deputies of the State Duma of the Federal Assembly of the Russian Federation", the CEC RF suggested that the Ministry of the Press should "take measures to restrain the unlawful propaganda practices by the ORT broadcasting organization, relating to the production and broadcast of the weekly current affairs program "S. Dorenko's Own Program", and to bring legal action against the aforementioned organization and appropriate individuals in accordance with the current legislation of the Russian Federation".

That document provoked a fresh wave of attacks on the CEC RF for its policies, led by the ministry's champions of free press in Russia. The November 3, 1999 issue of "Vremya MN" newspaper, for one, carried the following eloquent quote from an interview with M. Lesin – Minister of the Press: "I would rather be demoted as a Minister than have my Ministry go down in history as a suppressor of the free press".

The tug-of-war had nearly come to a stalemate. High-level government officials were in heated debate over the matter. S. Dorenko, while being "stripped" by the Grand Jury of the Union of Journalists of Russia of the lofty title of journalist, continued his weekly current affairs program. Indignant viewers complained to various "authorities." Journalists almost unanimously censured their colleague for his style, bad manners and the content of "Dorenko's own" TV compositions. Everyone had something to say, but nothing changed.

However, all things have a beginning and an end. Eventually, the problem with S. Dorenko was resolved somehow, with a major contribution being made by the December 3, 1999 expert opinion (No.15/60) issued by the Judicial Chamber in response to the application filed by O. K. Zaostrozhnaya – a CEC RF member.

Nevertheless, the problem of interpreting the legal rules governing election campaign propaganda practices persists. The goal pursued by the CEC RF's interpretation of those legal requirements appears quite clear and noble. Put another way, it boils down to the CEC RF seeking to assure, in terms of discipline and finances, "equal access to the mass media", as stipulated by Clause 3 Article 37 of the Federal Law "On Basic Guarantees of Electoral Rights and the Right of Citizens of the Russian Federation to Participate in a Referendum", for all relevant subjects, the registered candidates enjoying top priority.

The question, however, is whether we would be throwing the baby out with the bathwater : if such an interpretation of the election laws was thrown out, it might radically affect active participation in **free election campaigning** (guaranteed by the very same legal provisions) by people other than those registered to run by election commissions.

Therefore, the legal stance assumed on the matter by the Judicial Chamber and reflected in the December 7, 1999 statement (No.2/12) "On certain aspects of the legal and ethical standards of election campaigning to be observed by the campaign participants" has greater potential than that used in the past State Duma elections. It can serve as a solid foundation for further integrated efforts to find **the right** solution to this complicated problem.

Briefly, this legal stance may be broken down into the following points.

- The big question in all elections is who to vote for? How free and informed the electorate's search for an answer to this question will be depends very much on the mass media – the principal means used by citizens of the Russian Federation, political associations and other parties in the electoral process to exercise their right to election campaigning.
- Such major political events as parliamentary or Presidential elections must be accompanied by broad public debates, a comparison of views, ideas and political positions of campaign participants.
- Journalists and editors of mass media arrange, and often participate in, such public debates, which is, of course, in good order. And the fact that this sort of journalism may contain elements of campaign propaganda within the provisions of Article 2 of the Federal Law "On Basic Guarantees of Electoral Rights and the Right of Citizens of the Russian Federation to Participate in a Referendum", of Article 8 of the Federal Law "On the Election of Deputies of the State Duma of the Federal Assembly of the Russian Federation" or Article 8 of the Federal Law "On Electing the President of the Russian Federation", according to the Judicial Chamber, does not and should not serve as legal grounds for banning this kind of activity.

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- According to electoral legislation, campaigning is a special informational and legal regime established by the state that enables registered campaign participants to access the mass media within fixed timelines, in order to inform the electorate of the principal points of their political platforms. This is what the principle of equal access to the media means. This also explains why the campaigning activities pursued by such parties in the electoral process as registered candidates etc., are regulated through the application of a range of legal procedures (drawing lots to allocate free and paid airtime and print space, special payment procedures for placing campaign propaganda materials, accountability requirements, etc).
  - Essentially, the **equal media access** rule for registered candidates under Clause 3 Article 37 of the Federal Law "On Basic Guarantees of Electoral Rights and the Right of Citizens of the Russian Federation to Participate in a Referendum" means that each of them has the right to receive the same amount of print space or airtime on equal terms (payments, timing, etc.) within the law-established quotas.
  - Clause 5 Article 37 of the Federal Law "On Basic Guarantees of Electoral Rights and the Right of Citizens of the Russian Federation to Participate in a Referendum" holds a closed list of office holders, institutions and organizations barred from engaging in election campaigning activities. The list includes neither reporters nor mass media organizations. Obviously, if law-makers had regarded them as "inappropriate agents of electoral propaganda", they would have been entered on that list. Hence, the view that any media report, column or editorial containing elements of campaigning amounts to unlawful campaign propaganda because it is issued by an "inappropriate agent of electoral propaganda", has no legal grounds, and results from an overly formal and superficial interpretation of the law.
  - Assessing media reports in the course of election campaigning, one should be governed by other, more subtle and substantive, criteria. Media materials should primarily be checked to see whether they fully comply with legal requirements stipulated by the civil and criminal codes of the Russian Federation, the Federal Law "On the Mass Media", and electoral legislation. Cases of non-compliance might include: the repeated and intentional dissemination of false information; distortion of information representing public interests; defamation of a candidate's honor, dignity and business reputation; discrimination based on ethnicity, sex, occupation etc.; slander and insults.
  - Many aspects of election coverage in the media should be evaluated not only in legal terms but also from the standpoint of professional journalistic ethics. Thus, the Charter of Russian Television and Radio

Broadcasters adopted in 1999, forbids media campaigns aimed at discrediting persons or organizations; and obligates broadcasters to air their criticisms and responses to those criticisms together and in the same format. The Declaration of Russian journalists in support of free and fair elections in 1999 proclaims the same principles.

To sum up, I would like to emphasize my main idea: only the reasonable application of legal rules and ethical standards by all participants in the electoral process will produce the much desired political and informational campaigning culture.

**Viktor Monakhov,**  
*Vice Chairman,  
Judicial Chamber for Information Disputes  
under the President of the Russian Federation*

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## **ON ELECTION COMMISSIONS WORKING WITH THE MASS MEDIA IN THE COURSE OF CAMPAIGNING TO ELECT THE PRESIDENT OF THE RUSSIAN FEDERATION**

Given the early election of the President of the Russian Federation, the issue of the Election Commissions working together with the mass media has become particularly crucial. As the experience of campaigning in the election of deputies of the State Duma of the Federal Assembly of the Russian Federation demonstrates, it was campaigning activities which turned out to be a stumbling block in relations between the two subjects involved in the electoral process. In view of this circumstance, and for the purpose of assuring uniform application of the Federal Law "On Electing the President of the Russian Federation", the efforts undertaken by election commissions to explain the existing Russian election laws and specifics of their implementation in the election of the President of the Russian Federation, as well as keeping all electoral participants duly advised of the timelines and procedures for performing appropriate election-related functions throughout the stages of the electoral process come to be of critical importance.

The legal base for the election commissions to work together with mass media vehicles in the course of the year 2000 election campaign is formed by the Federal Law "On Basic Guarantees of Electoral Rights and the Rights of Citizens of the Russian Federation to Participate in a Referendum" and the Federal Law of January 5, 2000 "On Electing the President of the Russian Federation".

These two laws explicitly define the status, powers and procedures for relevant election commissions, as well as the rights and responsibilities of television and radio broadcasters and periodical print media vehicles.

One of the more challenging tasks posed by the aforementioned laws is to improve the quality of mass media coverage of elections and enable voters to exercise their right to enjoy access to comprehensive, truthful and unbiased reporting on the running candidates.

Under the Federal Law "On Electing the President of the Russian Federation" (further on referred to as the Federal Law), the period of an individual candidate's election campaign begins upon their registration and ends at 00 hours (local time) one day before the balloting.

Given the circumstance of early elections of the President of the Russian Federation in the year 2000, the relevant campaign timelines are cut by one quarter.

Election campaigning via the channels of television and radio broadcasters are only allowed on working days within the period that, in the case of early elections, shall begin twenty three (23) days prior to the voting day and end one day before the balloting, i.e. from March 3 through March 24, 2000.

Election campaigning via the periodical print media is allowed within the period that, in the case of early elections, shall begin thirty (30) days prior to the voting day and end one day before the balloting, i.e. from February 25 through March 24, 2000.

Under the new Federal Law "On Electing the President of the Russian Federation", election commissions are committed to keep the electorate informed of the timelines and procedures for election-related moves, of the progress of the given campaign and the registered candidates. Pursuant to the established legal provisions, the relevant election commissions are authorized to gain access to free air-time with certain television and radio broadcasters and use uncharged space with certain print media periodicals.

The Federal Law explicitly defines the television and radio broadcasting organizations (further on referred to as TRBO entities) and periodical print media vehicles (further on referred to as PPMV entities) tasked to make available the aforementioned opportunities for the election commissions. These entities include the state-run all-Russian television and radio broadcasting organizations (providing for effective coverage of more than half the Subjects of the Russian Federation), state-run all-Russian periodical print media vehicles (distributed to subscribers residing in more than half the Subjects of the Russian Federation), state-run regional television and radio broadcasters (providing for effective coverage of less than half the Subjects of the Russian Federation) and state-run regional print media vehicles (distributed to subscribers residing in less than half the Subjects of the Russian Federation).

The aforementioned TRBO and PPMV entities are also committed to support the election commissions with relevant reports and materials and respond to election commission inquiries within five days until five days prior to the voting day (including the balloting day), during which time all inquiries shall be satisfied immediately.

The dates and hours for airing the free-of-charge election commercials via the channels of state-run all-Russian television and radio organizations shall be fixed through the drawing of lots arranged by the Central Election Commission of the Russian Federation, with representatives of the relevant television and radio broadcasters being in attendance. The draw to determine the dates and hours for airing the free-of-charge campaign propaganda materials via the channels of state-run

regional television and radio broadcasters shall be conducted by the election commissions of the Subjects of the Russian Federation. The draw to fix the dates for the given print media periodical to carry the free-of-charge campaign propaganda materials shall be conducted by the relevant state-run all-Russian print media vehicle, with the parties concerned being in attendance.

Television and radio broadcasting organizations and print media editorial offices shall provide air-time and print space for the purpose of election campaigning only to special subjects of the electoral process – registered candidates who are nominated to run for the office of the President of the Russian Federation and who, notably, are free to design the pattern and character of their campaign activities.

Television and radio broadcasting organizations and print media periodicals shall make public the information on sizes and terms of payments (in the currency of the Russian Federation) for air-time and print space no later than twenty three (23) days following the official release of the decision calling the election of the President of the Russian Federation, i.e. no later than January 29, 2000, and forward relevant notifications on the readiness to accord air-time and print space for the registered candidates: the appropriate reports being dispatched to the Central Election Commission of the Russian Federation – by the all-Russian television and radio organizations and editorial offices of the all-Russian print media periodicals; to the election commissions of the Subjects of the Russian Federation – by the relevant regional and municipal television and radio broadcasting organizations and the editorial offices of regional and municipal print media vehicles.

Non-governmental TRBO and PPMV entities shall apply the same payment terms when providing airtime and print space to registered candidates.

As requested by the Central Election Commission of the Russian Federation or election commissions of the Subjects of the Russian Federation, the relevant TRBO and PPMV entities shall make available the documents confirming the given registered candidate's consent to cover the cost of paid services provided by the contractor in question.

With the candidates achieving registration, the public opinion surveyors tracking public sentiments for the purpose of revealing the findings through the media, as well as the organizations making public the results of such polls and voting forecasts shall dispatch copies of their releases to that effect to the Central Election Commission of the Russian Federation in order to help build up a database that interested parties (including foreign or international observers) may borrow from at some later stage.

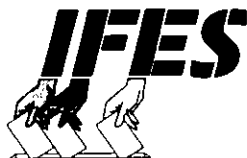
Should any TRBO or PPMV entity happen to breach the election campaigning procedures established by the Federal Law, the Central Election Commission of the Russian Federation or Election Commission of

a Subject of the Russian Federation shall have the right to appeal to the relevant law-enforcement body, court of law or executive body of state authority performing regulatory functions in the area of mass media and demand that the unlawful campaigning activities should be terminated and the relevant TRBO or PPMV entities and their officials be taken legal action against in keeping with the existing laws of the Russian Federation.

Law enforcement and other state authority agencies shall seek to limit unlawful campaigning activities and immediately advise the Central Election Commission of the Russian Federation and relevant Election Commission of a Subject of the Russian Federation of the infractions recorded and corrective measures undertaken.

Moreover, administrative liabilities for TRBO and PPMV entities are established by the December 8, 1999 Federal Law "On Administrative Liability of Legal Entities for Infractions of the Russian Federation Legislation on Elections and Referendums". The RSFSR Code on administrative infractions in the wording of the January 2, 2000 Federal Law "On Introducing Amendments and Additions to the RSFSR Code on Administrative Infractions" established liability for TRBO and PPMV officials charged with similar violations of the law.

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