

## CHAPTER 1

### MODERN TRENDS IN PUBLIC ADMINISTRATION

#### REGULATORY AND LEGAL MECHANISMS OF REGULATION FOR THE LOBBYISM INSTITUTE IN UKRAINE: PROBLEMS AND SOLUTIONS

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**Abstract.** *The article analyzes draft legislative acts of Ukraine, which regulate the institute of lobism, lobbying activities. The objective of the article is a theoretical substantiation and systematization of problems and prospects for development of regulatory and legal framework mechanisms for regulating the institute of lobbying in Ukraine. It has been proved that there are ongoing attempts to envisage the institution of lobbying in the current legislation in Ukraine. At the same time, mechanisms of legislative regulation differ. Some jurists suggest registering lobbyists in special registers, others suggest registering only in the Verkhovna Rada of Ukraine. The need to regulate the institute of lobbying in the legislation of Ukraine has been substantiated. We find it reasonable to define that a lobbying activity is the one of representatives of non-governmental organizations to establish contacts with officials and deputies of the Parliament, Government and other public authorities and local self-governmental bodies in order to influence development, adoption and implementation of political and administrative decisions as well as regulations by the said persons on behalf and in the interests of specific non-governmental organizations (their associations). In addition, it is necessary, firstly, to introduce activities on regulating lobbying carried out by the National Council of Ukraine, which is a central executive body that operates to ensure the national security of Ukraine in the process of registration and supervision of lobbying activities. Secondly, it is required to initiate formation of the Unified Register of Lobbyists of Ukraine, which is supported by the National Council of Ukraine on regulating lobbying. Thirdly, it is important to determine that a person (legal or natural) acquires the rights defined by this Law from the moment of inserting information about it into the Unified Register of Lobbyists of Ukraine.*

**Keywords:** *Parliament of Ukraine, Cabinet of Ministers of Ukraine, lobbyist, lobbying, lobbying activity, stakeholders, corruption, regulating activities, regulatory and legal framework.*

**JEL Classification:** H10, H11, H70, K29

**Formulas:** 0; **fig.:** 0; **tabl.:** 0; **bibl.:** 14

**Introduction.** The institute of lobbying has been formed in many countries abroad, including the United States, Canada, and Europe. This institute is also being formed in Ukraine. Unfortunately, today there are no legal documents that would regulate the lobbying processes, lobbying activities, which calls into question the lobbying process. At the same time, lobbying of certain interests takes place regardless whether this institute is regulated or not. Therefore, today there is a real objective need to address the mechanisms for regulating lobbying in Ukraine.

**Literature review.** Problems of the regulatory and legal framework of the institute of lobbying, including lobbying abroad are analyzed by political scientists, sociologists, jurists, specialists in public administration, including: V. Andrushchenko, M. Anokhin, T. Aravina, O. Barvin, O. Binetsky, D. Cohen, V. Bebyk, T. Bogynia, D. Bogush, I. Bogdanovska, A. Ball, F. Kyrlyuk, V. Korolko,

O. Lisnychuko, M. Mikhalchenko, V. Nesterovych, M. Obushny, M. Ozhevan, A. Onuprienko, O. Porfyrovych, G. Pocheptsov, M. Rachynska, V. Sumska, S. Teleshun, E. Tykhomyrova, M. Khylo, O. Saltovsky, V. Fedorenko and others. These authors analyze problems of regulation of the phenomenon of lobbying in the current regulatory and legal framework of Ukraine, define functions of lobbying, scientific approaches, as well as modern opportunities for lobbying.

At the same time, there are no systematic studies of problems and prospects for development of regulatory mechanisms for regulating the institute of lobbying in Ukraine.

**Aims.** The objective of the article is a theoretical substantiation and systematization of problems and prospects for development of regulatory and legal framework mechanisms for regulating the institute of lobbying in Ukraine.

**Methods.** The author used the methods of logical comparison, systematization and generalization, which made it possible to achieve the goal of the study.

**Results.** In the regulations of the countries where lobbying is already regulated by law, there are various procedures for regulating the issue of legalization of lobbying activities.

In Canada, the regulation of lobism is under joint management of the federation and the provinces as laws are adopted at both the federal and regional (provincial) levels. The combination of these laws, together with the guidelines of lobbyists' codes of conduct and ethics, is Canada's lobbying legislation. The main normative act regulating lobism in Canada is the Federal Lobbying Act, which was adopted in 1988 and entered into force in 1989 [1]. The provinces of Canada (Nova Scotia, Quebec, British Columbia, Newfoundland, Ontario and others) passed laws regulating lobism in accordance with federal experience. For example, in Newfoundland, the law was adopted in 2005, and in Ontario in 1998 [2], in Quebec a law called *The Lobbying Transparency and Ethics Act* was adopted in 2002 [3].

For this purpose a mechanism of registering interest groups involved in political activities was created. Openness of lobbying provided an possibility to understand what is happening in the political process, as well as to balance private interests with the public ones. For example, if some political forces act driven by private interests of any corporation, their opponent will seek to oppose them either another private or public interest, depriving the competitor of benefits.

The main task of lobbying legislation in Canada is to oblige lobbyists to register and insert information into a special register [4].

There are several legal regulations in the United States that regulate lobbying. The are as follows:

*Foreign Agents Registration Act* of 1938, which regulates the procedure for lobbying in the United States in favor of foreign legal entities. The US Congress passed a number of amendments to improve the provisions of the Act. These amendments drew a legal line between political propaganda and activities of foreign economic entities in the field of economics, singled out the Presidential Administration, government departments and institutions/agencies as objects of

lobbying, and also regulated the system of registration and reporting of lobbyists and lobbying organizations, that defend foreign interests, in more detail. [5].

*The Lobbying Disclosure Act* of 1995 is the basic legal act in the field of lobbying. This Act defined the status of lobbying entities and the basis for their registration and reporting in more detail; a list of lobbying entities and lobbying objects has been significantly expanded; control and supervision over the legality of lobbying relations was intensified; penalties for violation of requirements of the established registration procedure by lobbyists was increased from USD 5 thousand to 50 thousand [6].

*Honest Leadership and Open Government Act* of 2007 specified the forms of contact between government officials and lobbyists and lobbying associations to minimize corruption risks when lobbying. In particular, the term, during which a congressman who terminated his powers, has no right to engage in lobbying activities, was extended from one to two years; the clause on a possibility of a congressman to receive gifts in the amount of USD 50 was suspended; a fine for violating the law on lobbying was increased from USD 50 thousand to 200 thousand and imprisonment for up to five years was introduced; a term of the reporting period of lobbyists was reduced from six to three months [6].

Thus, it can be noted that a clear regulation of lobbying will allow lobbyists to exist not in the "shadow sphere", but to add value to the state and society through involvement of public in government and administration decisions.

The first attempts to resolve the problem of lobbying in the current legislation of Ukraine were curtailed in 1999 in the draft Law of Ukraine *On Lobbying in Ukraine* dd April 13, 1999 No 3188 [7]. This project provided that lobbying is using of means that are not prohibited by the legislation of Ukraine in order to influence authorities or a representative of the government for making a decision that meets the interests of a lobbyist. Lobbyists are established and operate on the basis of voluntariness, equality, legality and transparency. They are free to choose areas of their activities, except for those areas and activities that are prohibited by law. Restrictions on the activities of lobbying associations can be established by the Constitution and laws of Ukraine only. Lobbyists must regularly publish and disclose their key documents [7].

The draft law *On the Legal Status of Groups United by Shared Interests (Lobby Groups) in the Verkhovna Rada of Ukraine* dd November 3, 1999 No 3188-1 stipulates that groups united by shared interests are associations of citizens of Ukraine that represent certain economic and social interests of interested communities and population groups and they have the right to legally influence formation of Ukrainian legislation. Political parties are outside shared interests groups. A purpose of a shared interest group is to influence adoption of legislative acts by the Verkhovna Rada of Ukraine. Registration of shared interests groups is carried out by the Unit for Work with Shared Interest Groups of the Secretariat of the Verkhovna Rada [8].

The draft Law *On Regulation of Lobbying in Government Authorities* dd March 25, 2003 (which was not submitted to the Verkhovna Rada of Ukraine) incorporates a category of "a lobbying activity" to define a concept of "lobbying". It means "an

interaction of legal entities and individuals with public authorities in order to influence development and adoption of regulations and other decisions in the personal interest or for the benefit of specific clients by the said bodies.” The right to engage in lobbying activities (a status of a lobbyist) have individuals (individuals-lobbyists) and legal entities (legal entities-lobbyists) who are registered in the Register of Lobbyists of Ukraine and have received a Certificate on the right to conduct lobbying activities. State registration of lobbyists is carried out by the Ministry of Justice of Ukraine (hereinafter referred to as the registration body) in the manner prescribed by this Law and the Regulations on Registration of Lobbyists and the Register of Lobbyists of Ukraine approved by the Cabinet of Ministers of Ukraine. A fee for the state registration of lobbyists and registration of changes in the Register of Lobbyists of Ukraine is charged in the amount determined by the Cabinet of Ministers of Ukraine [9].

The draft Law of Ukraine *On Activities of Lobbyists in the Verkhovna Rada of Ukraine* dd November 4, 2005 No 8429 stipulates that a citizen of Ukraine may be registered as a lobbyist in the Verkhovna Rada of Ukraine in the manner prescribed by this Law who on a paid or unpaid basis on behalf or in the interests of a legal entity (client), within and in a manner not prohibited by the Constitution of Ukraine, this and other laws of Ukraine, makes influence on the subjects defined by this Law, in order to influence development, discussion and adoption of draft laws of Ukraine and other decisions of Verkhovna Rada of Ukraine (lobbying influence) [10]. Thus, there is a simplified procedure for registration of lobbyists, their activities are limited to activities in the Verkhovna Rada of Ukraine.

The draft Law of Ukraine *On Lobbying* dd September 20, 2016 No 5144 states that a person acquires the rights defined by this Law from the moment of inserting information about him into the Unified Register of Lobbyists of Ukraine. In order to collect, store, record and provide information on lobbying entities, the Ministry of Justice of Ukraine maintains the Unified Register of Lobbyists of Ukraine (hereinafter referred to as the Register), which is open, accessible and free of charge. The Register is maintained in accordance with this Law and the Regulation on the Unified Register of Lobbyists of Ukraine, which is developed and approved by the Ministry of Justice of Ukraine [11]. Thus, the registration of lobbyists is handled by the Ministry of Justice of Ukraine.

The draft Law of Ukraine *On Lobbying* dd October 05, 2016 No 5144-1 stipulates that a person acquires a status of an entity of lobbying from the moment of inserting information about him into the Electronic Register of Lobbying Entities. In order to collect, store, record and provide information on lobbying entities, the Administrative Office of the Verkhovna Rada of Ukraine maintains the Electronic Register of Lobbying Entities (the Register). The Register is free of charge, carried out in accordance with this Law and the Regulation on the Electronic Register of Lobbying Entities, approved by the Administrative Office of the Verkhovna Rada of Ukraine [12]. Thus, the maintenance of the Register is provided by the Verkhovna Rada of Ukraine, and activities of lobbyists are carried out within the scope of activities of the Parliament of Ukraine.

The draft Law of Ukraine *On State Registration of Lobbying Entities and Conducting Lobbying Activities in Ukraine* dd February 11, 2020 No 3059 stipulates that a person acquires the status of a lobbying entity from the moment of inserting information about him into the Electronic Register of Lobbying Entities. The holder of the Electronic Register of Lobbying Entities is the Ministry of Justice of Ukraine, which takes organizational measures to ensure the continuous operation of the Register. The Electronic Register of Lobbying Entities is maintained in the state language with the use of software developed in accordance with the state standards, which ensures its compatibility and interaction with other information systems and networks. The Electronic Register of Lobbying Entities is open for anyone for getting familiar with the information entered into it, both in terms of information about lobbying entities and in relation to contracts for rendering lobbying services [13].

The draft Law of Ukraine *On Legal and Transparent Regulation of Lobbying Activities* dd March 02, 2020 No 3059-2 stipulates that an individual who is a citizen of Ukraine acquires a status of a lobbying entity from the moment of taking the oath and inserting information about him in the Unified Register of Lobbying Entities, which is formed and maintained by the Ministry of Justice of Ukraine (by the Council of Lobbying Entities of Ukraine after its creation and transfer of rights to the Council of Lobbying Entities of Ukraine by the Ministry of Justice of Ukraine in order to form and maintain the Unified Register of Lobbying Entities). A legal entity acquires the status of a lobbying entity from the moment of inserting information about it into the Unified Register of Lobbying Entities, which is formed and maintained by the Ministry of Justice of Ukraine (by the Council of Lobbying Entities of Ukraine after its creation and transfer of rights to the Council of Lobbying Entities of Ukraine by the Ministry of Justice of Ukraine in order to form and maintain the Unified Register of Lobbying Entities) [14].

**Discussion.** The conducted analysis gives grounds to note that there are ongoing attempts to enshrine the institute of lobbying in the current legislation of Ukraine. At the same time, mechanisms of legislative regulation differ, some jurists suggest registering lobbyists in special registers, others suggest registering them only in the Verkhovna Rada of Ukraine.

**Conclusions.** In our opinion, the institute of lobbying is to be regulated in the legislative acts of Ukraine. We find it reasonable to define that a lobbying activity is the one of representatives of non-governmental organizations to establish contacts with officials and deputies of the Parliament, Government and other public authorities and local self-governmental bodies in order to influence development, adoption and implementation of political and administrative decisions as well as regulations by the said persons on behalf and in the interests of specific non-governmental organizations (their associations). In addition, it is necessary, firstly, to introduce activities on regulating lobbying carried out by the National Council of Ukraine, which is a central executive body that operates to ensure the national security of Ukraine in the process of registration and supervision of lobbying activities. Secondly, it is required to initiate formation of the Unified Register of Lobbyists of Ukraine, which is supported by the National Council of Ukraine on

regulating lobbying. Thirdly, it is important to determine that a person (legal or natural) acquires the rights defined by this Law from the moment of inserting information about it into the Unified Register of Lobbyists of Ukraine.

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*Received: December 25, 2020*

*Approved: January 27, 2021*