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**LEGALIZATION, ACCREDITATION, CONTROL AND SUPERVISORY  
ACTIVITY CONCERNING LOBBYISTS AND LOBBYING  
ORGANIZATIONS: PROSPECTS FOR UKRAINE**

***Annotation***

*The article examines the issue of legalization, accreditation and oversight activities of lobbyists and lobbying organizations in the context of legislative regulation of lobbying institute in Ukraine. It is stated that in order to prevent abuse, the order registration, accreditation and authority oversight bodies should be clearly defined in the law of Ukraine on lobbying.*

***Key words and expressions:*** lobbying, legalization, registration, accreditation, lobbyists, lobbying association, control and supervisory activities.

*“Legality is a procedure”  
English juridical expression*

The development of the project «Lobbying law» by the special group of the Ministry of Justice of Ukraine optimized greatly the range of problems of its legitimacy among the legal community. Along with this, despite the lively debate, the conduct of number of representative

round work tables on lobbying, questions about legalization, accreditation, control and supervisory activity of lobbyists and lobbying organizations were left unattended. According to these circumstances, I think it is necessary to express my own thoughts and suggestions on this question.

Legalization or official recognition of lobbyists and lobbying organizations in foreign experience has unified character and is carried out by registration: giving to the authorized public authority the standard registration form [1, pp. 44-50]. Domestic bills, taking into account the relevant foreign standards, are also the only bills and foresee the registration of lobbyists and lobbying organizations as a form of legalization. The only exception is «Lobbying law» of Ukraine, which foresees also the other form of legalization except registration: notification about foundation. The latter, according to the Art.25 of the bill is carried out by the written notification to the Ministry of Justice of Ukraine, local government authorities, executive committees of village and town councils [2].

In the Ukrainian bills the two approaches to the registration are used:

1. Registration of lobbyists and lobbying organizations is carried out by that authority, which is defined by the object of lobbying. Thus, the «Lobbying law» of Ukraine names such authority as public and local self-governance authorities, and the projects «On the legal status of groups united by the common interests (lobby groups) in Verkhovna Rada of Ukraine»[3] and «On the activities of lobbyists in Verkhovna Rada of Ukraine» [4] are specially authorized sub-department of the Staff of the Verkhovna Rada of Ukraine.

2. Registration of lobbyists and lobbying organizations is carried out by the Ministry of Justice of Ukraine. This method is foreseen by

the project of law of Ukraine «On regulation of lobbying activities in government» [5] and by the Concept of the project of law about lobbying in 2009 [6, pp.12], according to which the lobbyists must also be accredited by the state authorities.

I think that with the introduction of poly object model of lobbying in Ukraine, according to which lobbying may be implemented in several public authorities, the second approach to the way of registration of physical persons as lobbyists and juridical persons of private law as lobbying organizations is the most appropriate. The use of this way will contribute the unification and standardization of the registration process through the establishment of common requirements with the account of special features of authorities' activity, which are assigned to the objects of lobbying, and this will ensure the accreditation procedure in these organizations.

In my opinion, the registration is legalization (official recognition) of lobbyists and lobbying organizations carried out by special governmental authorities. Taking into account institutional and personnel resource, such authority can be the Ministry of Justice of Ukraine or one of its organization departments. At the local level the registration is carried out by the appropriate territorial departments of the Ministry of Justice of Ukraine. As a result of registration lobbyist or lobbying organization gets a Certificate of the right to lobby, the form of which must be approved by the Cabinet Council of Ukraine.

For registration of the person as a lobbyist, the law should foresee the filing of the following documents:

- application about getting the Certificate of the right to lobby;

- certified copies of the document of higher education, work record card, a contract for lobbying in the interests of the applicant (for the foreign lobbyists);

- certificate of conviction;

- photographs of the applicant, the size and the number of which are fixed by the specifically authorized department of the Ministry of Justice of Ukraine;

- billing document certifying the recalculation of registration fee.

Registration of juridical person of private law as lobbying organization is carried out by the filing of such documents:

- application about getting the Certificate of the right to lobby;

- protocol of the constituent congress (conference) or general meeting;

- list of the membership management;

- billing document certifying the recalculation of registration fee.

For collecting, storing, accounting and providing the exact information about the lobbyists and lobbying organizations in Ukraine, the Ministry of Justice, as the registration authority, must keep a register of lobbying subjects. The fundamentals of its keeping are defined by the lobbying law and the Regulation about the Lobbyists Register of the subjects of

lobbying approved by the Cabinet Council of Ukraine. The bills of the Lobbyists Register must be open and posted to the public for acquaintance through official publications, as well as posted on the official website of the Ministry of Justice of Ukraine.

The Lobbyists Register, in my opinion, should contain such information about lobbyists, lobbying organization and their applicants:

- 1) Name and surname of the lobbyist;

- 2) Number, date of making a decision to get the Certificate of the right to lobby;

- 3) The authority, which made a decision to issue the Certificate of the right to lobby;

- 4) Number and date of issue of the Certificate of the right to lobby;

- 5) Zip code, address and office phone number of the lobbyist;

- 6) In the case of lobbying by lobbying organization - its name and location;

- 7) Name and surname of the founders of lobbying organization;

- 8) The code of the Uniform State Register of enterprises and organizations of Ukraine;

- 9) The date of registration of information in the Lobbyists Register;

- 10) Name and surname of the person who registered the information in the Lobbyists Register;

- 11) Name and surname of lobbying services' applicants;

- 12) Type of activity of lobbying services' applicants.

If the information contained in the Lobbyists Register changes, lobbyist or lobbying organization must inform the Ministry of Justice of Ukraine about such changes during ten working days. Information and changes are filed to the Lobbyists Register by the registration authority during ten working days from the moment of its getting and Certificate of the right to lobby gets a corresponding mark.

An important moment for legitimization of lobbying in Ukraine is prevention of abuses by officials of the Ministry of Justice of Ukraine by the registration of physical persons as lobbyists and legal persons of private law as lobbying organizations. Therefore, in my opinion, the attention should be noted to the following important points:

1) To set the period of time for issuance of the Certificate of the right to lobby. In consideration of the time, which is required by the officials of the Ministry of Justice for review and validation of the facts contained in documents, this period should not exceed ten days from the date of filing of these documents by lobbyists and lobbyists organizations.

2) To foresee that by the registration of physical persons as lobbyists and legal persons of private law as lobbying organizations, they should pay the registration fee, the size of which must be fixed by the Cabinet Council of Ukraine. In my opinion, it mustn't exceed ten minimum wages for lobbyist and twenty minimum wages for lobbying organizations. The establishment of too high registration fee, as it was mentioned

above, restrict significantly the lobbying capacity of the third sector and can strengthen the legitimized lobbying shadow.

3) To point that from the date of issuance of the Certificate of the right to lobby, lobbyist or lobbying organization is considered registered and gets the rights, which are foreseen by the lobbying law. The period of validity of the certificate is five years from the date of its issuance. Lobbyists and lobbying organizations should re-register after the expiration of the validity term.

4) To give an exhaustible list of grounds because of which the authority can refuse to re-register the physical persons as lobbyists and legal persons of private law as lobbying organizations. Among those I propose to mark out three reasons: a) inadequacy of the lobbying law for lobbyists and lobbying organizations; b) submission of false information; c) non submission of documents foreseen by lobbying law or its improper registration.

5) To establish that the decision to refuse the registration of physical persons as lobbyists and legal persons of private law as lobbying organizations should be made and brought to the applicant's notice during ten days after submission of documents for registration of lobbyist or lobbying organization. The decision to refuse the registration of physical persons as lobbyists and legal persons of private law as lobbying organizations must contain the legal grounds for such refusal.

6) To foresee that if there was a refusal to register the physical persons as lobbyists and legal persons of private law as lobbying organizations on the basis of documents' non submission, foreseen by the lobbying law, or its improper registration, the persons can submit the documents again after the removal of disadvantages.

7) To establish that the decision to refuse the registration of lobbyist or lobbying organization can be appealed in the court according to the legislation.

8) To define the exhaustive list of grounds for termination of lobbyist's or lobbying organization's activity. I suggest to establish such grounds: a) the submission of the application for termination of lobbying to the lobbyist registration office; b) death of the lobbyist; c) the lobbyist becomes legally restrictedly incapable or completely incapable; d) reorganization or liquidation (dissolution, forced dissolution) of lobbying organization; e) abolition of registration of lobbyist or lobbying organization.

9) To note that the de-registration of the lobbyist or lobbying organization can be only because of the following reasons: a) non submission of accounting documents by the lobbyist or lobbying organization, the submission of false information; b) the court decision to return the lobbyist guilty for committing the premeditated crime, c) the breach of lobbying requirements, defined by the legislation of Ukraine, by lobbyist and lobbying organization.

10) To point that the decision to cancel the

registration of a lobbyist or lobbying organization, which is accepted by the registration authority, must be based only on the grounds listed in the lobbying law. The procedure of de-registration is carried out by removing of the lobbyist or lobbying organization from the Lobbyists Register and is the ground for termination of the Certificate of the right to lobby. In addition, the cancellation of lobbyist's or lobbying organization's registration automatically leads to the cancellation of their accreditation, which will be discussed below. If lobbyist or lobbying organization does not agree with the decisions about canceling of their registration, they may appeal it in the court.

After getting the Certificate of the right to lobby, lobbyists and lobbying organizations must undergo the accreditation procedure in the public authority. The main destination of lobbyists' and lobbying organizations' accreditation is the creation of appropriate organizational conditions for lobbying. The number of authorities, which can accredit lobbyists or lobbying organizations, is unlimited.

Accreditation is getting of permission by the lobbyist and lobbying organization on the basis of the Certificate of the right to lobby in public authorities that are defined by lobbying law as lobbying objects for lobbying in these authorities.

In my opinion lobbyists and lobbying organizations should submit to the authority, which accredits, the following documents: 1) an application for accreditation, which contains a list of lobbying draft laws and regulations, as

well as structural subsections, officials of the authority, which are the subject of lobbying; 2) the Certificate of the right to lobby.

The result of the accreditation of lobbyists and representatives of lobbying organizations is a document in form of permit, which gives the right to enter the territory and premises of the authority, in which they are accredited, with consideration of the mode of working of these authorities. Accreditation may be renewed or canceled depending on the observance of the accreditation conditions by lobbyists and lobbying organizations.

To control and to adjust lobbying in public authorities, which are the objects of lobbying, there is a Register of Accredited Lobbyists and Lobbying Organizations. Moreover, to ensure the principle of openness lobbying the authorities, which accredit lobbyists and lobbyist organizations, must publish the following information on their official websites in the Internet: a) the number of accredited lobbyists and lobbying organizations by these authorities; b) the list of the projects of normative legal acts, which are lobbied; c) meetings of officials of the appropriate authority with accredited lobbyists.

The accreditation of lobbyists and lobbying organizations in public authorities, which are fixed by the lobbying law as the objects of lobbying, is carried out with taking into account the peculiarities of these authorities' activity. This requires the development of the Standard regulation about lobbyists' and lobbying organizations' accreditation, which must be

approved by the Cabinet Council of Ukraine. On its basis the authorities, which are the objects of lobbying, develop their own regulations taking into account the peculiarities of their activity, which will contain the clearly defined order of lobbyists' and lobbying organizations' accreditation.

An important factor for effective realization of lobbying law's regulations in Ukraine is the creation of special supervisory body for the subjects of lobbying [supervisory body] with wide powers, which will be bolstered by the appropriate organizational and legal means. In the foreign experience of constitutional and legal regulation of lobbying, there are three models of control and supervisory bodies:

1) Supervisory body is created as structure subunit in public authorities that are related to the objects of lobbying by the lobbying legislation (Poland) [7; Poz.1414].

2) Supervisory body is an independent body which is not included in any of the branches of government, but is accountable to the Parliament (Canada, Lithuania) [8, pp. 712-715, 9; Nr. 35-1461].

3) Supervisory activity is carried out by several bodies. For example, for national lobbyists - bodies, which are defined by the legislation as objects of lobbying, for lobbyists, who carry out lobbying for the interests of foreigners - the Ministry of Justice (USA) [10; Stat. 696-700, 11, pp. 217-218].

There is only the first model of supervisory body in the domestic draft laws. For example,

projects “About lobbyists’ activity in Verkhovna Rada of Ukraine” and “About the legal status of groups (lobbying groups) with common interests in Verkhovna Rada of Ukraine” propose the supervisory body to act in the structure of Verkhovna Rada of Ukraine, which would control it. The first project is specially authorized subunit of the Apparat of Verkhovna Rada [4], and the second project is the department on work with groups of common interests of the Secretariat of Verkhovna Rada [3].

Conceptually another approach of supervisory body, which contains some indications of the first model, is used in the draft Law «Lobbying in Ukraine», which defines the number of institutions [2]: the registration of lobbyists is carried out by the public authorities and local governments, which are the objects of lobbying; state control and supervision over the lobbyists’ activities is carried out by public authorities in the order foreseen by Ukrainian legislation; supervision over the execution and law observance of lobbying organizations, associations or unions is carried out by the prosecutors; control over the sources and sizes of income taxes paid by lobbying organizations, associations or unions is carried out by the corresponding financial authorities and tax inspectorate.

Quite interesting model supervisory body can be seen in the draft law of Ukraine «On the regulation of lobbying activity in public authorities”. Its authorities on the organizational and legal formation of lobbyists’ relations

and execution of the supervision over them are entrusted to the one public authority - the Ministry of Justice of Ukraine [5].

The second model of supervisory body, which will be independent from other public authorities, especially from those that will be determined by the lobbying law as the objects of lobbying, is the most attractive for Ukraine. This can minimize the factor of departmental interference in the work of the newly-made body. However, taking into account the Ukrainian practice to create such bodies, such as the National Bureau of Investigations, which exists according to the Decree of the President of Ukraine since 1997 but is still not actually created, the most optimal variant of the basic supervisory body is the Ministry of Justice of Ukraine. One should pay attention to the fact that, according to the Model Law of the CIS “On the regulation of lobbying activity in public authorities» of 2003, the supervision body over the subjects of lobbying is the Ministry of Justice [12, pp. 263].

Putting the control and supervisory powers to the structural subunits in the public authorities, which are the subject of lobbying, can significantly reduce the supervision activity, as such subunits often don’t have enough personnel, financial, organization and technical resources for the execution of such activity. Moreover, according to the fact that the legitimized lobbying is a fundamentally new constitutional and legal institution for Ukraine in many aspects, it can lead to the various practice of right application of the

same regulations of future lobbying legislation, which is unacceptable.

However, the concept of the basic supervisory body of public authority requires some clarification and detail on the basis of relative diversification according to the principle of sectoral specialization:

- the Ministry of Justice of Ukraine should have the following powers: a) to keep the Registry of the subjects of lobbying; b) to control the compliance of the lobbyists' and lobbying organizations' activity with lobbying law with the help of selection checks, information provided by lobbyists and lobbying organizations, submission of information requests to the registration authorities, etc.; c) to send the lobbyists and lobbying organizations notifications about non-admission of illegal activity and taking the appropriate measures to stop them; d) to make a decision on refusal and termination of lobbyists' and lobbying organizations' registration on the grounds foreseen by the lobbying law; e) to go to the law regarding the prohibition of lobbying by lobbyists and lobbying organizations; f) to generalize and to divulgate the information about lobbying in accordance with statute-established order;

- accreditation of lobbyists and lobbying organizations in public authorities, Verkhovna Rada, Council of Ministers of the Crimea Autonomous Republic and local governments, which are the objects of lobbying, should be attributed to the competence of these bodies;

- tax control over the subjects of lobbying  
- to the bodies of state tax administration;

- in case of violations or criminal acts of the subjects of lobbying, the investigation and proceeding in these cases are carried out by the correspondent investigative groups of law enforcement agencies according to the jurisdiction defined by the procedure legislation.

Establishment of the misdeed or crime in the actions of the subjects of lobbying is the reason for the ban of the implementation of lobbying;

- ban on lobbying, which must be mentioned in the lobbying law of Ukraine, can be established only according to the court decision.

The effective control and supervisory activity of the Ministry of Justice of Ukraine is impossible without the systematic reporting of lobbyists and lobbying organizations on their activities. In my opinion, the optimal frequency of reports is every six months. The report, the form of which must be approved for unification of information by the Cabinet Council of Ukraine, should indicate: a) the authorities, which accredited lobbyists or lobbying organizations; b) legal acts and their projects, according to which the lobbying was carried out; c) the customers of lobbying services; d) the size of actual expenses and expenses received according to the contract for lobbying services.

The generalized by the Ministry of Justice information must be divulgated by the official publications, as well as by the official web-site on which a special window or tab must be made for information about lobbying. The

divulgence of the information about lobbying and availability of easy access to it will help to overcome the negative stereotypical perceptions about lobbying, which now prevail in public opinion and will promote the greater openness in legal acts' passing.

The divulgence of the information about lobbying must answer the reporting periods of lobbyists and lobbying organizations, *videlicet* every six months. In my opinion, the Ministry of Justice of Ukraine must divulge the following information about lobbying: information about lobbyists and lobbying organizations, who carried out lobbying during the specified time; information about public authorities and draft laws; the information about customers of lobbying services; a brief description of the

legal acts provided by the public authorities; information about the size of actual expenses and expenses received according to the contract for lobbying services.

Thus, the question about legalization, accreditation, control and supervisory activity of lobbyists and lobbying organizations must be mentioned in the future lobbying law of Ukraine with minimal discrete powers of supervisory bodies. Phasic and procedural bases of accreditation and registration of lobbyists and lobbying organizations must be clear and understandable. Only such conditions can prevent the abuse in this sphere and provide the equal opportunity for all the persons interested in lobbying for the purpose of protection of their own interests and the interests of third parties.

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