



закрепить возможность заключения контракта с нетипичными работниками.

Список использованной литературы:

1. Коркин А.Е. Нетипичные трудовые отношения: заемный труд, телеработа и работа по вызову/ Коркин Александр Евгеньевич – М.: Инфотропик Медиа, 2013. – 208с.

2. Кодекс законов о труде от 10 декабря 1971 року № 322-VIII // [Электронный ресурс]. – Режим доступа: <http://www.ligazakon.ua/>

3. Письмо министерства труда № 06/2-4/66 от 06 мая 2000 года VIII // [Электронный ресурс]. – Режим доступа: <http://www.ligazakon.ua/>

4. Прилипко С.Н. Ярошенко О.Н. Трудовое право Украины: Учебник / М.: Флп Вапнярчук Н.М. , 2008, 664 с.

5. Приказ Министерства труда Украины «Об утверждении типовой формы трудового договора» № 23 от 15 апреля 1994 года // [Электронный ресурс]. – Режим доступа: <http://www.ligazakon.ua/>

6. Дрижчана С. Аспекты правовой природы контракта / С. Дрижчана // Право Украины. - 1992. - 8. - С. 10-13

7. Курс сравнительного трудового права: учебник / [Иншин М.И. и др.]; под ред. А.Р. Мацюка. - М.: НикаНова 2012. - 979 с.

8. Прокопенко В.И. Соотношение понятий "трудовой договор" и "контракт" в трудовом праве Украины // Вестник Академии правовых наук Украины. 1995г. № 3. - 1995. - С. 109-117

9. Постановление Кабинета Министров Украины № 179 от 19 марта 1994 года «Об упорядочении применения контрактной формы трудового договора» // [Электронный ресурс]. – Режим доступа: <http://www.ligazakon.ua/>

10. Мельничук Н.В. Перспективы контракта как одного с механизмов договорного регулирования трудовых отношений/ Н.В.Мельничук/ /Правовое государство. - 2010. -Вып. 21. -С. 317-323.

FORMS OF LOBBYING IN THE LEGISLATIVE PROCESS OF THE VERKHOVNA RADA OF UKRAINE

Roman RADEYKO,

Postgraduate of Department Theory and History of State and law
Lviv State University of Internal Affairs

Summary

The article studies kinds and characteristics of the forms of lobbying in the legislative process of the Verkhovna Rada of Ukraine under the new developed democratic conditions of socio-political and political life of Ukraine. The article declares that Ukrainian Parliament, on the one hand, is a place for the defense and protection of the legal interests of different subjects of legal relations in the rulemaking process, and, on the other hand, promotes the adoption of laws that serve the interests of corporate pressure and influence groups that are diametrically opposed to the interests of society as a whole. The author analyzes theoretical and practical aspects of the lobbying activity and concentrates on the analysis of two main forms of the parliamentary lobbyism (direct and indirect).

Key words: Ukraine, The Verkhovna Rada of Ukraine, the legislative process, lobbying, forms of lobbying.

Анотация

В статье рассмотрены виды и особенности форм лоббирования в законодательном процессе Верховной Рады Украины в новых развитых демократических условиях общественно-политической и государственной жизни Украины. Отмечено, что украинский парламент является местом для отстаивания и защиты интересов различных субъектов правоотношений в процессе принятия законов, а с другой стороны, – способствует принятию актов, закрепляющих привилегии и преимущества корпоративных «групп давления» и «групп влияния», которые диаметрально противоположны интересам общества в целом. Автор анализирует теоретические и практические аспекты лоббистской деятельности и акцентирует внимание на анализе двух основных форм парламентского лоббирования (прямое и косвенное).

Ключевые слова: Украина, Верховная Рада Украины, законодательный процесс, лоббирование, формы лоббирования.

Problem statement. In the complex process of building up Ukraine as a democratic, social, and rule of law state, the recognition of man as the highest social value, the implementation of the main international human rights laws, and the rule of law and democracy, have created objective conditions for further development of the civil society and state. The last two conditions interact with each other through the satisfaction of needs and interests of the individual. European tradition comes not from the correspondance of private and public interests, but from a fair balance of interests between the individual and society. This balance is considered by the European Court of Human Rights as a guarantee of the lawfulness of «man-state» relations [1, p. 89]. Therefore, Article 3 of the Ukraine's Constitution stipulates that «human rights and freedoms and their guarantees determine the essence and orientation of the activity of the state» [2]. To implement the above constitutional provision in the Constitution of Ukraine,

the Verkhovna Rada of Ukraine in the first place legislates for the purpose of establishing and ensuring human rights and freedoms. The main objective of the national parliament is to adopt laws that would express the will of the people, and, more specifically, to embody people's interests.

The task of this scientific. In the period of social, economic and legal reforms, the Parliament, as the sole body of legislative power in Ukraine, on the one hand, serves as the basis for the defense and protection of the legal interests of different subjects of legal relations in the rulemaking activity, and, on the other hand, promotes the adoption of laws that serve the interests of corporate pressure and influence groups that are diametrically opposed to the interests of society as a whole. Therefore, the need for political and legal analysis of the forms of lobbying in the legislative process is essential to the mechanism of interaction between the civil society and the state of Ukraine.



The state of research. The problems of forms of lobbying in the legislative process were considered in the works of foreign and domestic scholars such as T. Baluta, Yu. Hadzhurov, N. Grychyna, O. Grosfeld, Ya. Kozhenko, K. Kutsenko, R. Matskevych, V. Nesterovych, O. Odintsova, Yu. Sabanadze, and other scientists.

The aim of the article is to identify and analyze forms of lobbying in the legislative process of the Verkhovna Rada of Ukraine.

Body. In democratically developed countries, different social groups have the right to realize and protect their rights and interests by legal means. A quite effective way is the right to be involved in the formation of state power by participating in elections. Equally effective is the right to file individual or collective appeals to the bodies of state power and their officials. This right is provided in Article 40 of the Constitution of Ukraine [2], and the mechanism of its implementation is detailed in the Law of Ukraine On Appeals of Citizens. [3] Such law provides the citizens of Ukraine with the opportunity to participate in public and community affairs, to influence the improvement of state and local governments, enterprises, institutions, organizations, whether public or private, to protect their rights and interests, and defend them when violated [3]. Among other effective methods of advocating the interests and influencing authorities to adopt legal regulations that are necessary for a particular group is lobbying. Lobbyism as a political and legal phenomenon is an active process of the activities of the subjects of legal relations, connected by certain common interests (economic, political, social) in order to advocate, defend, and protect their interests (interests of other subjects of legal relations) before the authorized bodies of state power for adoption (including amendment and /or repeal) of the necessary legislative act.

After Ukraine's proclamation of independence, a chain of authority has been formed based on the principle of authority localization within small groups for whom access to power or impact on it was conditioned by narrow corporate interests that only partially coincided with the public interests [4, p. 891]. These groups directly or indirectly deliberately influence the legislation of the Verkhovna

Rada of Ukraine. Parliament under the present conditions is the institution of representative democracy for lobbying economic, political and personal interests of individual citizens or their associations. Parliamentary lobbying is an active influence on the subjects of legislative initiative with the aim of adoption of laws by the Verkhovna Rada of Ukraine in favor of the subjects of legal relations whose interests are represented by the lobbyists of legislative laws.

The field of interests, the object of parliamentary lobbying in Ukraine, mostly does not differ from the interests which are lobbied in other states. Most of the lobbying bills are aimed at settling the narrow socio-economic interests: privatization of some state enterprises, guarantees, privileges, quotas, licenses, tariffs, license to engage in certain activities for individual enterprises, institutions and organizations, providing state support, and encouraging the development of certain industries of economy.

The effectiveness of lobbying depends on the selected form. Parliamentary forms of lobbying mean the ways of influencing the subjects of legislative initiative by the subjects of the legal relations. In Ukraine the forms of lobbying have been formed on the basis of lobbying institution functioning in the «old» democracies, but they have their peculiarities in the process of national legislation.

In their works, foreign and native researchers point out various general scientific approaches to the classification of forms of lobbying. However, given the lack of proper legal regulation of lobbying activities and the preference of «shadow» lobbying in Ukraine, it is necessary to characterize two major forms of parliamentary lobbying. They are direct lobbying and indirect lobbying.

Direct parliamentary lobbying means purposeful work with the subjects of legislative initiative (their officials and structural bodies) with a view to adopting a legislative act by the Verkhovna Rada of Ukraine that corresponds to the interests of certain persons (groups of persons). This form of lobbying is expressed in the following:

1) *introducing by the subjects of legislative initiative and promoting adoption:* of draft laws of Ukraine on Amendments to the Constitution of

Ukraine, introducing draft laws, draft laws setting out a new version of the laws, draft laws on amending the laws, amendments to draft laws, draft resolutions, appeals of the Verkhovna Rada of Ukraine to the authorized subjects. Groups of interest and influence not only deal with the drafting of laws but they also ensure the implementation of a mechanism to promote the draft law.

Often, however, the adoption of a draft law is replaced by political expediency prevailing over legal requirements. This results in non-observance and violation of the procedure of submission, examination, and adoption of the draft law, ignoring the comments and suggestions of the Chief Scientific and Expert Department and the Legal Department of the Verkhovna Rada of Ukraine, Committees and the Institute of Legislation of the Verkhovna Rada of Ukraine, violations of consistency in the work of the Parliament; lack of correspondence between private interests and a national interest. When considering draft legislative acts, the provisions of which conflict with personal or group interests of the interested persons, the representatives of the latter can insist on and defend the position of not passing the law;

2) *direct contact with the authorized persons in the process of preparation and revision of draft decisions made by the Verkhovna Rada of Ukraine.* With the help of formal (committee and factions meetings) and informal (meetings in the office of the deputy or the minister or cabinet, private meetings, social events) contacts with people's deputies and other subjects of legislative initiative, interested persons may agree on the content of the draft law, discuss the procedure of the mechanism to promote the bill and address other issues. Deputies and other public officials often respond to the invitation to attend public events held by the interested groups. These meetings create a natural and favorable atmosphere to discuss business matters. The main objective of a lobbyist is to achieve an agreement on the action in question with an official;

3) *providing the subjects of legislative initiative with the information on the necessity of new laws, making amendments or repeals of the existing laws of Ukraine.* Despite the presence of the think tank in the structure of the government, lobbyists can conduct and provide research,



opinion polls, and make predictions about the functioning of various branches of economy (energy, agriculture, etc.) that are a subject of legal regulation. The information contained in these studies must meet the following requirements: accuracy, objectivity, argumentation and integrity;

4) *the examination of draft laws.* Lobbyists can provide expert opinions on draft laws. Paragraphs 3 and 5 of Article 103 of the Law of Ukraine about Regulations of the Verkhovna Rada of Ukraine state that certain laws may be directed for an expert advice to institutions and organizations as well as individual experts. The findings of the expert examination are sent to the main committee to take into account when considering the bill. [5] Such expert opinions, along with analysis of the text may contain detailed and specific proposals to improve regulations regarding the inclusion or exclusion of certain provisions of the draft law. Thus, an expert decision may include the interests of an interest group. Therefore, a prerequisite for providing an independent expert opinion is neutrality and goodwill of the expert agency or expert.

5) *giving a speech at the parliamentary or committee hearings held to examine issues which are of public interest and require legislative regulation.* During the parliamentary and committee hearings lobbyists can state their viewpoint on issues requiring legal regulation directly to the people's deputies of Ukraine. According to the first paragraph and the second paragraph of Article 235 of the Law of Ukraine on Regulations of the Verkhovna Rada of Ukraine, representatives of state authorities, local authorities, political parties and other public associations, academic institutions and all other members of the public who wish to participate are welcome at the hearings of the Verkhovna Rada of Ukraine. The committee, which arranges parliamentary hearings, generates a list of invitees, the procedure and the order in which the participants will give their speeches [5]. However, the criteria for the selection of members of the parliamentary hearings are not provided. During the parliamentary hearings, lobbyists have an opportunity to express their point of view, which is then fixed in the verbatim record and may be reflected in the decision of

the Verkhovna Rada of Ukraine, which approves those recommendations.

As for committee hearings, according to Article 29 of the Law of Ukraine On Committees of the Verkhovna Rada of Ukraine, committees, when preparing and conducting hearings in the committee, are empowered to hold parliamentary hearings with a view to discussing the drafts of the most important legislative acts, determining the effectiveness of the implementation of laws and other acts of the Verkhovna Rada of Ukraine referred to the subjects of its competence, as well as involving the general public to participate in the determination of the state's policy, building a democratic society. Committees conduct hearings, determine venues for their conduct, the list of invitees, the time limits and the order of speeches [6]. Similarly to the parliamentary hearings, the criteria for the list of participants are not defined. Committees, if necessary, may invite to the hearing the First Vice Prime Minister of Ukraine, the Vice Prime Ministers of Ukraine, the ministers of Ukraine, the heads of state authorities, local authorities, representatives of public associations and individuals.

These gaps in the legal procedure of the parliamentary committee hearings could create a fertile ground for manipulation of the orientation of hearings, turning them into the means of lobbying just one way of solving the problem [7]. Thus, during December 14, 2011 parliamentary hearings devoted to the creation of favorable conditions for the development of the software industry, one of the participants reported intentions to lobby the law on economic experiment to create favorable conditions for the development of the software industry in Ukraine. The speaker announced, «I promise to be a lobbyist of the bill and do everything that depends on me. Believe me, I have not only my voice, sometimes there is also a microphone to convince the deputies that it has to be done» [8].

6) *direct participation of the representatives of the interest groups and groups of influence in meetings of relevant committees, factions and groups, special and temporary committees of Parliament as well as interfactional parliamentary associations.* During speeches at the meetings of these bodies of the Verkhovna Rada of Ukraine lobbyists can declare and defend the position of an interested group on

the discussed draft decision and determine the legislators' attitude to it. It is them who prepare and evaluate draft legislative acts, and the relevant committee's opinion during the presentation and discussion of the bill at the plenary session is crucial to the decision of parliament. Therefore, during the formation of the Verkhovna Rada of Ukraine, factions, groups and individual deputies compete for leadership in relevant committees, attractive in terms of the distribution of economic, financial and material resources. Article 4 of the Law of Ukraine On Committees of the Verkhovna Rada of Ukraine provides that parliamentary committees in the exercise of powers interact with enterprises, institutions and organizations, their public officials. However, the principles and mechanism of this interaction are not clearly regulated.

On the other hand, in the situation with the mechanism of lobbying bills in the parliament more vividly emerges a tendency to emphasize a lobbying influence not only on the committees as a laboratory which designs legislative decisions, but also on the deputy groups and factions as the last and decisive institution of their adoption. They determine the final model of the last part of the lobbying activity [9, p. 59].

Indirect influence is an influence on the subjects of legislative initiative for the adoption, amendment or repeal of the law of Ukraine or another decision of the Verkhovna Rada of Ukraine.

Among the forms of indirect lobbying are the following:

1) *the organization and conduct of public and political events to shape public opinion on the necessity of a legislative initiative.* People's deputies of Ukraine are often guided by public opinion, as it may affect the results of their re-election. Public opinion in society with regard to the adoption of appropriate laws is formed through surveys, publications of news materials by the mass media, advertising campaigns, publications of the roll-call voting, protests (picketing, demonstrations, strikes, rallies) etc.. An example of one of these events are the mass rallies and protests of small and medium-sized businesses against the Tax Code of Ukraine adopted by the Verkhovna Rada of Ukraine in November 2010 which forced the President of Ukraine to veto the Code;



2) *financing of election campaigns of political parties and candidates who support the idea of an interest group* (this causes the inclusion of lobbyists into the lists of candidates of a political party or financing a campaign of the majoritarian candidate). This form, on the one hand, is the interest group's proper financial and organizational support of the elections and the victory of parliamentary candidate and, on the other hand, it creates the deputy's dependence on the interest group in defending its interests during initiation, review and adoption of legislative decisions. In this case, you can accept the idea of M. Prymush that «today a large number of Ukrainian political parties is seen as a rational mechanism to enter the parliament and conduct lobbying activities» [10, p. 36];

3) *the distribution of information and analytical materials*. After drafting the decision representatives of interest groups start sending it to the subjects of legislative initiative. It is important for these drafts to be efficiently prepared. Firstly, it creates a good reputation for the organization that distributes these materials. Secondly, being accustomed to familiarizing oneself with materials and using them in their work, lawmakers will be careful with the arguments which are presented in the materials and relate to the draft act which is lobbied [11, p. 47].

4) *organization and hold of public and scientific events (round tables, conferences, seminars, etc.) on the necessity of adopting legislative acts within the powers of the Verkhovna Rada of Ukraine;*

5) *promotion of interests through mass media* (hereinafter – the media). As it has already been said, lawmakers respond to what is published in the media, since the latter as active actors of civil society, affect the general public opinion. It is therefore important not only to establish information drives for the journalists to pay attention to a particular problem and intended solution of the problem, but also to appear in the media, as no one will lay out the arguments and proposals of the interested group better than themselves [11, p. 47]. Also, with the rapid development of the Internet technologies in Ukraine, interested groups can find like-minded people and allies to lobby certain legislative decisions. Groups of pressure and interest use “information warfare” for

putting pressure on subjects that affect the adoption of the decision concerned.

Conclusions. In the face of hidden (shadow) lobbying in Ukraine, absence of legal regulation of lobbying activities, the use of various forms of lobbying or their combination is not controlled by the state. As a result, uncivilized lobbying is becoming popular. Uncivilized lobbying as an informal institution is the key to development, discussion and adoption by the national parliament of legislative solutions that satisfy and protect narrow corporate interests of political, economic and social groups.

Minimization of the non-legal orientation of domestic lobbying is possible only under the conditions of its legislative regulation, particularly the adoption of a special law on lobbying. This law must be adopted only with regard to: 1) its practical operation in the states with a high level of democracy (U.S., Canada and Western Europe), 2) the principles of regulation of lobbying activities as defined in the Parliamentary Assembly of the Council of Europe Recommendation 1908 (2010) on Lobbying in a democratic society (European code of conduct on lobbying), 3) peculiarities of the domestic legal system and the prevailing political and legal culture in Ukraine.

The introduction of legislative regulation of the form of lobbying activities will allow to consolidate civilized activities of lobbyists in the legislative process, to protect subjects of the legislative activities from the outside undue influence, to promote the openness and transparency in the development, discussion and adoption of laws of Ukraine and other acts of Verkhovna Rada of Ukraine, etc.

List of reference links:

1. Скакун О.Ф. Теорія права і держави: Підручник. – 3-тє видання. – К.: Алерта, 2012. – 524 с.

2. Конституція України від 26 червня 1996 року // Офіційний вісник України. – 2010. – № 72 / I Спеціальний випуск/. – Ст. 2598.

3. Про звернення громадян: Закон України від 02 жовтня 1996 року № 393/96 –ВР // Відомості Верховної Ради України. – 1996. – № 47. – Ст. 256.

4. Касьянов Г.В. Групи інтересу та впливу, клани і олігархія // Політична

система для України: історичний досвід і виклики сучасності / гол. ред. В.М. Литвин; авт. кол.: О.Г. Аркуша, С.О. Біла, В.Ф. Верстюк та ін.; НАН України. Інститут історії України; Інститут політичних і етнонаціональних досліджень ім. І.Ф. Курса. – К.: Видавництво «Ніка-Центр», 2008. – С. 870-893.

5. Про Регламент Верховної Ради України: Закон України від 10 лютого 2010 року № 1861-VI // Відомості Верховної Ради України. – 2010. – № 14 /№ 14-15; № 16-17/. – Ст. 133.

6. Про комітети Верховної Ради України: Закон України від 04 квітня 1995 року № 116/95 вр // Відомості Верховної Ради України. – 1995. – № 19. – Ст. 134.

7. Оглядово-аналітичний звіт «ЛОБІЮВАННЯ ТА КОРУПЦІЯ» Підготовлений Лабораторією законодавчих ініціатив. Автор. колект. Ковриженко Д. та інші. – 2008. – 10 с. – Електронний ресурс. – Режим доступу – <http://politzone.in.ua/index.php?id=463>.

8. Стенограма парламентських слухань «Створення в Україні сприятливих умов для розвитку індустрії програмного забезпечення» від 14 грудня 2011 року. – Електронний ресурс. – Режим доступу – http://static.rada.gov.ua/zakon/new/par_sl/sl1412111.htm.

9. Ганжуrow Ю. Парламентське лобіювання в контексті політичної комунікації / Ю. Ганжуrow // Політичний менеджмент. – 2005. – № 4 (13). – С. 50-62.

10. Примуш М. Партиїне будівництво. Міфологія і генезис / М. Примуш // Віче: теоретичний і громадсько-політичний журнал. – 2005. – № 34-36.

11. Одінцова О.О. Правове регулювання лобізму в сучасній Україні (загальнотеоретичне дослідження) [Текст]: дис... канд. юрид. наук: 12.00.01 / О.О. Одінцова; Одеська національна юридична академія. – О., 2008. – 194 с.