

Financial Law Review

No. 15 (3)/2019
quarterly

UNIVERSITY OF GDAŃSK • MASARYK UNIVERSITY • PAVEL JOZEF ŠAFÁRIK UNIVERSITY • UNIVERSITY OF VORONEZH
<http://www.ejournals.eu/FLR>

RELEVANT PROBLEMS OF LEGISLATION ON ELECTION CAMPAIGNS FINANCING

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Abstract

The present article is devoted to a current problem of legal regulation on financial security of electoral process in the modern world. The sharpness of a case in point is caused by increasing influence of scientific and technical achievements on a human civilization in questions about genesis of law and the question of legislation on economic guarantees of a such political activity sphere as elections. A main objective of article is identification the general trends and scientific problems in considered sphere of legal regulation by the basis of analysis of national legal systems of a several developed democratic countries and also justification of possible ways of their decision. In the research the comparative-legal method is used.

Key words: Elections, electoral fund, political party, national representation, sovereignty

JEL Classification: K100

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1. Introduction

One of the current fundamental scientific problems of the constitutional and financial law is the question about legal regulation on financial security of electoral process. The problem has double value as financial security of elections represents complex institute of an electoral law. So, financial security of preparation and overcoming elections, organizational and material expenses and financing of election campaigns of the concrete political parties or candidates participating in elections acts as components of this institute. In Russia, as well as in the majority of other countries, the obligation for the organization and elections is assigned to the state or to local government bodies (depending on the level of elections) represented by their authorized bodies. Accordingly, for preparation and overcoming elections public finance – monetary means of the corresponding public budget is used. For an election campaign of concrete participants of elections, using private money for election in public power position purpose as a usual practice can transform also in public character.

Considering financial security of elections in general as the complex institute of electoral law representing set of the precepts of law regulating financial activity of participants of electoral process in whose number public authorities, electoral commissions, political parties and candidates, voters, public associations and mass media are belong, it is necessary to make emphasis on difficult, complex nature of the specified legal institute including financing of preparation and overcoming of elections and financing of election campaigns of concrete political parties and candidates, having various legal nature and purposes, however at the same time acting in unity as a guarantee of realization of an active and passive electoral rights as a result of collective voting at elections.

With reference to Russian Federation the complex character is also that a basis of financing of elections law institute as aggregate of legal precepts make provisions of the Constitution of Russian Federation, international law rules and national electoral law. The important place at this legal institute is taken by laws which are not belong directly to electoral law, but nevertheless containing norms, which are regulating considered legal relationship such as, for example, Budget Code of Russian Federation, Tax Code of Russian Federation, Civil Code of Russian Federation, special law on purchases for the state and municipal needs, etc. The federal laws having nominally other objects of regulation can establish the separate legal concepts significant for electoral process [Chepunov 2005: 55].

Institutional nature of election financing allows to apply various acts, subordinating them to the principles in implementation of democracy and an electoral right. Such approach provides balance of private and public interests, allowing to realize as an active electoral right of citizens in the form of a possibility of providing financial support to concrete

political party or to candidate and also realization of public interest consisting in formation the public authorities on the basis of direct liberty elections.

2. Influence of a scientific and technological revolution on jurisprudence

At the same time, for jurisprudence as, however, and science in other areas of human knowledge, it is necessary to follow promptly changing objective picture of the world.

Several decades ago a very few people could assume as far as our life with arrival of the modern technologies which now are not seeming something supernatural will change today. Radio, television, mobile phones, the Internet, social networks, neuronets, modern electronic computers, robotics – it is possible to list infinitely, along ago and strongly entered our life. In total all these modern information and technical tools have a huge impact on public life, changing an objective picture of the world together with which not only knowledge about legal mechanisms of democracy realization changes, but also law concept is transformed.

Famous K. Marx's conclusion that not human consciousness defines their life, but, on the contrary, their social existence defines their consciousness [Marx 1959: 7], it is extremely relevant for researches in various fields of science, and of course especially for law science.

The concept of public consciousness which was finally fixed and introduced in scientific utility by A. Bogdanov as characteristics of a condition of concrete society, reflection of social existence, set of the collective representations inherent in a determine epoch, certainly, includes also the lawunderstanding formed in society [Bogdanov 1914: 101]. As followers of the theory of historical materialism note if during the early periods of human history public consciousness was formed only as direct generation of human material relations, then in the subsequent public consciousness began to have significant effect on consciousness of individuals through such public institutes as the state and the political system, the legal and political relations [Frolov 1981: 305].

At the same time, M. Polani paid attention to regularity of influence of social factors to the content of scientific activity, to dependence of scientific rationality directly from a cultural and historical context [Polani 1981: 89]. From this it follows that qualitatively new scientific view on continuous embedding in public life of achievements of scientific and technical progress, including development of "electronic" democracy and introduction for the present of its separate elements in electoral and referenda process, needs to be done also taking into account sociocultural features of modern society.

From the aforesaid directly follows that the social phenomena in the modern world which are conditionally referred to category "social existence" among which also technical

progress which achievements all of us in a varying degree use in everyday life is registered define and change public consciousness including sense of law. And this fact, in turn, demands change of type of scientific rationality, demands development and justification of a new scientific picture of the world.

In relation to fourth scientific and technological revolution and general digitalization both everyday life, and spheres of state relations and also to impact of this factor on the law T. Khabrieva and N. Chernogor ascertain the noticeable impact of "digitalization" on the legal regulation sphere, importance of this factor for dynamics of legal regulation caused including emergence of the new public relations which before were not existing or not demanding legislation or which are not subject to it; emergence as the subject of legal relationship of the virtual or "digital" personality; the human rights arising in connection with realization in virtual space of the new "digital" rights; embedding in legal relationship of an inanimate object – cars, artificial intelligence; and, as consequence of all that – requirement for terms of jurisprudence for judgment of a virtual thing concept [Khabrieva, Chernogor 2018: 10, 11].

Today the similar phenomena form the following system challenge for jurisprudence: in what degree the human thanks to achievements of scientific and technical progress can be distanced from process of adoption of important management decisions on public level and how to provide balance of the above-stated private and public interests in the field of legal regulation of elections financial security? Especially, considering the fact that both scientific research, and especially lawmaking lag behind at least on one step technologies of election campaigns organization, including organization of their financing.

3. Comparative and legal analysis of legal regulation of elections financial security institute in different countries

In total with other methods of legal researches one of very effective tools are comparative and legal researches during which are compared national electoral system, national voting legislation and national electoral systems, the legislation in other states. Both scientific theories, and systems of electoral process legislative regulation in general and its separate elements, such as legal bases of voters list formation, advance and registration of candidates rules, public control in electoral process, an order of electoral bodies formation and functioning and also legal bases of election campaigns financial security are compared. So, the chairman of Russian Central Election Commission V. Churov in introduction to the digest "International elections standards" noted that the set of different electoral law national models and its application practices are the common universal property; as a priority of a country electoral democracy development in the serves orientation to international election standards [Churov 2013: 13, 15].

Indirectly this trend is confirmed by reports of OSCE/ODIHR missions following the results of observation of federal public bodies elections. For example, in reports following the results of Russian Parliament deputies elections on December 4, 2011 and of the President of Russian Federation election on March 4, 2012 OSCE/ODIHR observation Mission paid attention to separate problems on any aspects of elections organization, at the same time noted that the national electoral legislation in general conform the international democratic elections standards [Final report of the OSCE/ODIHR Election Observation Mission].

In the statement for preliminary resume and conclusions following the results of Russian Parliament deputies elections on September 18, 2016 OSCE/ODIHR notes that the legislative base in Russia is exhaustive and can be a reasonable legal basis for democratic elections organization [International Election Observation Mission].

However, for foreign experts any remaining questions regarding interpretation of international democratic elections standards are connected primary with feature of Russian legal culture, national sense of justice and national legal traditions. Certainly, the fundamental legal values in Russia and foreign countries proclaimed, for example, the Universal Declaration of Human Rights are identical. However, by words I. Ilyin, "European sense of justice is formal, indurate and leveling; the Russian person, on the contrary, waits from another person, first of all, kindness, conscience and sincerity ...; Russian person always ... appreciated freedom of spirit above formal legal liberty ..." [Ilyin 2017: 85].

The aforesaid caused need of qualitatively new scientific view on a perspective of elections financial security legal regulation to interrelations with fundamental international normative legal acts and also being of scientific interest legislative practice of a number of states. For comparison are taken any developed democratic countries having an old history of formation and development of national representation institutes, which legal systems represent both the Anglo-Saxon, and continental law systems.

3.1. French Republic

According to the Constitution of French Republic, the possibility of realization of every citizen right for participate in elections, to carry out the mandate in the conditions of full independence, to share the similar political ideas with other citizens, to gather peacefully is a necessary condition of democratic life. For these purposes, mechanisms of electoral expenses compensation and regulation of political parties and election campaigns financing were put into operation.

Rapid development of holding election campaigns political technologies, new communication technologies development, new legal tools using (including ways of carrying out election propaganda in view of the amplifying political competition and also need of execution of expenses on ensuring the publicity principle and transparency of elections according to amplified public request) induced French legislator to interfere and adopt in 1988, 1990, 1993, 1995 and 1996 a number of normative legal acts concerning financing of election campaigns. They are applied to following types of elections: in the European Parliament, presidential elections, regional, cantonal and municipal elections.

Legislative regulation raised questions of selective expenses (bulletins, official information posters and materials directed to voters), limits of such expenses, management of financial resources and the state functions on regulation and control flow of funds and election accounts formation.

Elections are financed in France in two ways:

- the public financing which is carried out according to Organic law of November 6, 1962 (No. 62-1292) with amendments made to it by organic laws of February 5, 2001 and of April 5, 2006 and also organic laws on financing of political parties 1988, 1990 and 1995 of years;
- the private financing realized in general by political parties (membership fees) and also individuals.

Each candidate on elections is obliged to open special account for an election campaign on which it is possible to track origin and nature of made expenses; the candidate cannot use this account personally and has to appoint the financial intermediary (agent). According to the Organic law of April 5, 2006 data on maintaining such account have to be submitted to the National commission on audit of election campaigns and political parties financing (CNCCFP) for check of its use. The limit of expenses is annually set by relevant decree.

Reimbursement of an election campaign expenses is supposed by paralipsis. For candidates in the first round it reaches 4.75% of expenses limit for candidates who collected less than 5% of votes, and 47.5% – for collected more than 5% of votes. For candidates participating in the second round it also makes 47.5% of maximum sum of expenses made in the second round. Anyway, the sum of compensation cannot exceed the sum of expenses declared by candidates.

Donations from individuals limit is set at 4600 euros, and maximum sum of donations by cash cannot be more than 150 euros. At the same time according to the law of January 19, 1995 donations in a natural form from private companies are forbidden, otherwise there can come different types of responsibility – from tax to criminal. So, for example, if the

candidate exceeded a limit of selective expenses, it has to return to exchequer surplus of funds.

Since 1988, the legislator consistently adopted a number of regulations on political and election campaigns financing aimed at providing elections transparency purpose.

Political parties receive state support which is a main source of financing now and depends on their results of elections. Candidates in the course of elections have to observe the limits of expenses set by the law and also can receive support from public legal entities. For receiving this support they have to reflect all the income and expenses in the special election campaign account which is under tax agent authority appointed by them and presented by accounts department.

Legal regulation of election campaigns financing in France is based now on several basic principles which the following is among:

- legal recognition of political parties legal status to which the Constitution assigns two functions: competition in an electoral process and ensuring equal women's and men's access to elective offices. At the same time parties operating executive legal regime can benefit by public financing;
- incoming and using monetary resources of parties and candidates has to be followed by a number of guarantees of transparency to avoid secret financing and financial pressure as it can threaten their independence. In this regard in 1995 the government decided to reduce any communication between corporate money and political figures – parties and candidates – and to forbid legal entities, regardless of an activity form, to participate in financing of political life;
- establishment of selective expenses limit restrictions for ensuring bigger equality between candidates, irrespective of their personal means.

Control of observance rules of parties and election campaigns financing is carried out by independent administrative body – National commission on audit of election campaigns and financing of political parties (CNCCFP).

Within improvement of the anti-corruption legislation it is also established that data on property of elected officials have to be published at the beginning and at the end of the term of implementation of their powers to guarantee that they did not use the official capacity for unjust enrichment.

During the election campaign political parties can spend the money for remuneration of constant employees, rent of estates and hotlines, secretarial and a postage, advertizing and communication, editing, the press and distribution of printing materials. Also parties have the right to support their candidates financially.

For expenses financing party can use two main sources: private financing and state financing. Sources of private financing make in party contributions from party members and donation from citizens to which the tax concessions are provided. As it was already told above, legal entities have no right to do any donations or to provide any payments in a natural form in favor of political parties.

Every year bankrolls intended for allocation in favor of political parties and political groups join in the budget Law and are distributed among political parties as follows:

- a half – by results of the last elections first round, and this part of public funds is allocated to parties having representation at least in 50 constituencies or in one department or overseas territorial unit and also candidates who received not less than 1% of votes (this condition is put into operation since 2003 for restriction number of candidates whose number significantly increased). The first form of financing decreases in case of requirements violation for ensuring equality of men and women;
- a half of parties represented in Parliament – in proportion to the number of members, at the same time the right for the second financing form arises only at parties which use the first form.

Different ways of state support of political parties are tax concessions, state grants and also those forms of support which can be considered indirect financing:

- political parties represented by parliamentary groups in National Assembly or in Senate outside an election campaign have "the right for broadcasting" to represent their positions on state radio and television;
- the state provides to parties tax concessions (corporate income tax at preferential rate) on some of own income (rent of buildings).

Current organization of election campaign financing is based on several principles:

- private financing is carried out in form of donations from individuals or political parties (party donations are not limited, donations of natural persons cannot exceed 4600 euros for an election campaign);
- expensive election campaigns are forbidden (a TV and radio advertizing in six months preceding elections, telephone marketing and digital technologies using, advertizing in press, creation campaign websites);
- quantity of election expenses is limited according to number of inhabitants. So, for example, for elections to legislature bodies the limit makes 38 thousand euros for one candidate plus 0.15 euros per voter in the constituency. According to the Law of April 14, 2011 on simplification of provisions of Electoral code and on political life financial transparency limits of expenses are, as a rule, updated annually taking

into account inflation. However these limits are left by the Organic law of February 28, 2012 in the frozen condition before return to balanced condition of public finances;

- each candidate has to appoint the representative who can be, if necessary, natural person, – the financial agent or the organization for electoral financing registered according to the Law of 1901 on associations. This agent has right to raise funds for a covering of an election campaign and to provide reimbursement of expenses (thus, for candidates any direct manipulations with money are forbidden). This agent functions within a year before elections and stops powers after the end of elections. The candidate, in turn, monitors activity of the agent during an election campaign: he controls origin of bankrolls and expenses details. The account status at the same time cannot become negative. The agent is authorized to generalize all resources and expenses connected with an election campaign on the account. If one of candidates received less than 1% of summary votes, his account certified by the accountant will be sent for consideration in National commission on audit of election campaigns and political parties financing which claims or rejects election campaign accounts. Certified accountant within two months after elections sends the report together with confirming proofs to National commission on audit of election campaigns and political parties financing. In case of report rejection National commission may declare termination of elective office status and disqualification the candidate in connection with offense for a period of up to three years.

The state provides to candidates who collected not less than 5% of votes in the first round, single compensation at the rate to 50% of expenses limit (now this percent is reduced up to 47.5% under budget Law and Organic law of February 28, 2012). At one-time return of candidates funds, besides an other expenses, the state refunds also expenses on printing of ballots, leaflets, posters and other lawful expenses incurred by candidates.

3.2. Canada

In Canada Law on elections includes the special section - Part 18 "Financing implementation" [Canada Elections Act 2000].

The law established very strict requirements for subject who can make contributions (donations: registered party; to registered office of party in the constituency (association); to candidate on a general election; to person acting in a competition (elections) to purpose to ensure a post of the party leader. In the Law it is accurately defined that only citizen of Canada or person having status "constantly living" in the territory according to the legislation on immigrants and refugees protection can act as a donor.

As all candidates operations of financial character can be carried out only by their financial agents if the last have doubts about relation of financing sources, they are obliged about a current of 30 days from the moment of receiving such funds to return donations. In case of impossibility to define the donor or donation was made not in cash, their commercial cost is transferred to financial agents who in turn send these funds to Central electoral department for purpose of translation them in state treasury.

Organizations and trade-unions have right to bring donations in the amount up to 1 thousand dollars to the registered office of party (association) and also the candidate of any political party. Similar sums can receive as well candidates who go on elections not from registered party. Such contributions are allowed to be done within calendar year only in one constituency. At the same time, if in the constituency within a year several election campaigns are conducted, restriction of donations with the sum of 1 thousand dollars is not permitted.

For counteraction to influence on electoral process from business in general and, in particular, from foreign companies, considered Law included provision on prohibition to make contributions (donations) to certain categories of corporations and trade-unions. Such prohibitions are operating for corporations which have no business in Canada; trade-unions which do not support interests of persons who are employed in Canada; "royal corporations" as they are defined according to Law on management of finance; corporations which funds more than for 50% are formed by the state.

For alignment chances of candidates for a victory on a general election and also during the competitions on party elections it was accepted the provision that own funds of candidates for these purposes are considered in the same mode, as well as the funds allocated in their fund by natural and legal entities.

In a legislative order also donation limits in funds of various participants of electoral process are defined, these sums should not exceed 5 thousand dollars within calendar year in fund of registered political party, its office (association) on purpose of election of the person which will represent party on elections both for candidates, and for participation in parliamentary elections; 5 thousand dollars in general for candidate for participation in elections who does not represent any registered party; 5 thousand dollars for participation in elections on a post of the party leader.

Do not take into account the following specified sums: contributions which are not exceeding 5 thousand dollars which are contributed by the candidate for participation in a general election or elections during which the candidate from the party, in his own fund is defined; similar contributions of the candidate representing unregistered party; contributions up to 5 thousand dollars for participation in elections on a senior parties position.

Also inflation is considered when determining sums of candidates expenses.

Concerning financing of elections expenses taking at election campaign, in particular, of admissible sums which can be spent for these purposes by candidates and political parties are in detail stated in Canadian legislation not only, but also it is determined "electoral expense". This category joins expenses on elections; expenses of "personal character"; expenses which are incurred by candidate payment for auditor service and also in case of votes recount was made for recognition of candidate as winner on elections; advertizing materials, telecasts, articles or other publications in periodicals or other editions; payment for personnel work providing holding an election campaign of candidate; rooms rent for meetings, forums, etc. for a performance of candidates or their representatives; carrying out various researches for ensuring efficiency of an election campaign.

Canadian system of election campaign financing proceeds from the central role which is occupied by political parties in this process, allowing them to make expenses on these purposes from own funds, besides expenses of candidates.

Maximum sum of registered party expenses on holding an election campaign is defined on the basis of sum received as a result of multiplication 0.70 dollars by total voters number included in preliminary list on that constituency in which this party proposes the candidate, and the index reflecting growth of the minimum living standards at the date of election campaign starting order publication.

Annually reports on financial character operations have to be sent to Central electoral department by proxy of the agent; results of financial inspections which are carried out by auditor; declarations of the special representative certifying correctness on submitted data.

Reports on financial character operations have to include data on all deposits (donations) into the party account with indication of their quantity; a surname and address of each person who brought donation for sum more than 200 dollars in general, concrete sums on each "contribution" with indication of date for which the political party received this money; donations addressed to party for their transfer to fund of a campaign for the choice of the party leader; report on a financial position of party made according to general requirements imposed to documents of a similar look; data on financial complaint made to party; income statement and expenses of party; declaration with breakdown on all constituencies about commercial cost of goods and services received by party and that part of them who were sent to candidates and registered offices (associations) of party; declaration on commercial cost of goods and services and also money provided to party by its registered offices (associations), candidates, persons participating in promotion on a post of the party leader and also funds for inclusion in electoral registers from political party; report on expenses made on holding the by-election taking place within a year; report on used "services" (here join, in particular, granting placements on holding

meetings); data on loans made by party; donations received by party which were totally or in part returned.

Term of providing reporting in Central electoral department — no later than six months after end of financial year.

In addition, political party has to no later than six months after holding a general election send to Central electoral department report on all expenses of party on holding an election campaign and also auditors report on check of all financial activity of the party for this period and declaration of authorized person in confirmation of submitted data.

Not less strict requirements are provided by elections legislation to reporting of candidates: transfer to candidate's representatives no later than four months after elections of reports on all financial character operations, including full information about contributions (donations) to his name with splitting on natural and legal entities, with indication of a surname and address of donor and also documentary confirmed data on all expenses; direction of auditors conclusion in which all have to be reflected doubtful, from his point of view, transaction and also his opinion concerning completeness of information provided to it by the candidate.

For the same time frames, candidates have to submit to their agents declaration on all expenses on an election campaign incurred by them.

In Canada rule of a partial covering of expenses at elections is just working after they were made and issued in documents which are sent as it was noted above, in Central electoral department. System of public elections financing operating now includes a covering of registered political parties and candidates expenses depending on a voters support level; tax concessions that who made donations in fund of political parties election campaigns; financial support of "small" parties which did not receive enough votes.

Operating system of compensation for political parties expenses on elections is designed for those from them which got a certain support of voters. Such support is given on basis of Law on elections to parties if they received in general not less than 2% of votes which took part in elections or 5% of voices — in constituencies in which registered party exposed their candidates.

In presence of such indicators political party can expect on a covering for 50% of elections expenses.

There are also provided quarterly payments to registered parties, which candidates at last general election received not less than 2% of votes, which took part in voting, or not less than 5% of votes in the constituency in which registered party exposed its candidate.

At the same time, the state support is given in Canada not only to political parties, but also to candidates.

From accounts of Federal Treasury candidates who won a victory on elections and also received not less than 10% of votes which took part in voting can receive money. Payments to candidates make 15% of those sums which it was authorized to them to spend on elections. This sum is initial contribution of the state to fund of compensation for expenses to an election campaign of each candidate who received stated above percent of votes. After submission of report on expenses candidates receive additional resources which in the sum with already made payments have to make up to 60% of their expenses.

According to Law on elections each candidate at the end of all procedures for submission of reports receives through the authorized agent deposit which he made at registration as candidate, of 1 thousand dollars.

3.3. Norway

Norwegian electoral law specific is that in this country elections legislation does not regulate public relations connected with elections financial security. In Norway these questions are considered in connection with financing of a political parties activity, cause political parties are main participants of electoral process, and regulated by Law on some aspects of activity of political parties. Political parties activity financing including activity connected with their participation in elections is regulated by chapters 3 and 4 of the Law. At the same time institute of elections campaigns public financing in the country does not exist and also corresponding limits are not set.

Law on political parties in Chapter 3 "Financing of the Organizations of Political Parties and Selective Groups" regulates questions connected with principles and amount of political parties public financing on different levels: nation-wide, provincial and municipal.

According to Article 8 of the Law on political parties the state guarantees to political parties organizations at all levels financing in sizes determined by Norwegian parliament - Storting. Storting carries out financing on including in it groups – parliamentary fractions. Financing of party groups elected in provincial board is carried out by administration of province, local administration carries out related financing of party groups, elected to municipal board. At the same time financing of party groups elected in provincial and municipal bodies is carried out in proportion to number of votes, received by political party on corresponding elections.

Purposes of state financial support of political parties in Norway are guaranteeing stable and fair political parties financing; contribution to increase in trust in relation to political

figures, political parties and also to activity of the government in general; fight against corruption and suspicion of corruption [Questionnaire on Transparency of Party Funding in Norway].

Law on political parties recognizes that amount of state subsidizing to parties is directly proportional to number of votes, received by party following the results of last elections.

Noted feature of Norwegian political parties public financing system is lack of control mechanisms behind use by parties of funds allocated from the government budget. Public authorities do not control parties and elected groups spend funds received from the state. Norwegian legislator at adoption of this norm proceeded from principles of political freedom of action and independence of political parties activity: parties are free in use allocated public funds without establishment any a observation and control from authorities. The legislation besides does not set any limits of parties expenses, however parties are obliged to publish annually report on their financial activity.

According to the Constitution of Norway of 1814 Storting is the highest authority in sphere of political parties financing in the country. Parliament, adopting the state budget, approves general annual amount of state support provided to parties. Based on values, which are contained in the budget, Ministry of municipal and regional growth of Norway counts concrete amount of payments from state treasury to concrete political parties operating at nation-wide, regional and municipal levels. The ministry transfers corresponding sums to nation-wide parties and youth organizations directly, as for public financing of political parties operating at the provincial or municipal level, funds intended to them arrive at first to the governor of related province who then transfers these amounts to provincial and municipal parties and youth organizations.

Besides state budget financing of political parties activity from other sources according to Chapter 4 of Law on political parties is allowed.

Donations, made by any person to whom it is not prohibited by the law can belong to such sources. Maximum amount of private donations is not limited. All donations have to be noticed in political party annual report on income. There are forbidden donations from anonymous donors, from legal entities which are under state or public agencies control, from foreign natural persons and foreign legal entities.

3.4. Russian Federation

Chapter VIII of Federal law [Federal electoral law] is devoted to questions of preparation and carrying out elections and referenda financial security in Russian Federation.

The law, depending on purposes and sources of financing are allocated two elements of elections and referenda financial security: expenses connected with preparation and carrying out elections and referenda at corresponding level, operation and development of digital support equipment, training of elections organizers, informing voters and expenses connected to holding an election campaign of electoral association, candidate, and a referenda campaign of initiative group on holding a referendum. First group of expenses is provided at expense of funds from corresponding budget (according to the level of elections – federal budget of territorial subject of Russian Federation or local budget), second group – at expense of funds of a special electoral count of electoral association or candidate, referendum fund.

A number of problems of elections and referenda financial security legal regulation revealed by practice of carrying out in Russian Federation of elections and referenda on various levels consists in the following.

Legislation, namely paragraphs 1, 2 article 57 of the Federal law are provided that expenses connected with preparation and carrying out elections are made at expense of funds from budget corresponding to level of elections. In practice situations when the money intended for these purposes is not provided in corresponding budget are happened or are not led up to electoral commissions organizing elections at the scheduled time or in total.

Unlike general elections which by a number of separate provisions of Constitution of Russian Federation and the Federal law are periodic and obligatory and are held in uniform ballot day, it is impossible to provide preterm elections in advance, basis for holding preterm elections – early termination of elected body powers, provisions of the legislation on uniform ballot day do not extend to holding preterm elections – such elections are held within six months from the date of emergence of basis for their carrying out. When holding preterm elections most often there are problems with financial security of their carrying out (for example, elections to local government bodies in Zabaykalskiy region at 2009 [Violations of the electoral law were found in Chita], preterm elections to local government bodies in Buryatia at 2014¹).

Taking into account that the right of citizens to choose and be elected to public authorities and municipal bodies is guaranteed by Constitution of Russian Federation, elections are obligatory and periodic, and main objective of electoral commissions is providing electoral rights of citizens, it is necessary to return to earlier existing legal regulation of the specified problem, having provided the following.

¹ <http://vybor-naroda.org/lentanovostey/57720-v-buryatskom-sele-ne-vydelili-dengi-na-vybory-kotorye-dolzhny-proyti-v-voskresene.html>

If financing of elections, a referendum is not carried out at expense of funds of corresponding budget and also in case of delay transfer of funds to commission organizing elections, preparation and carrying out elections, a referendum should be covered by credits of banks. At the same time admissible volume of expenditure of funds cannot exceed sum which is contained in report of electoral commission of appropriate level on expenditure of funds by preparation and carrying out similar previous elections, inflation-adjusted for the expired period. Government of Russian Federation, appropriate authority of regional executive bodies, authorized municipal body are obliged in ten-day period from the date of relevant commission appeal to give it state or municipal guarantee on execution of obligation to return proceeding credits, including percent charged on them. Return of received proceeds of credit and payment percent charged for use of specified proceeds of credit are carried out at expense of funds of corresponding budget.

Another problem of elections financial security legal regulation consists in contradictions between separate rules of law on elections and legislations on purchases for state and municipal needs.

Legal base for implementation of a procedure for procurement of the goods, works, services necessary for elections, arises at electoral commission only from the moment of acceptance and publication decision on beginning electoral campaign.

Federal law of "About a contract system in sphere of purchases for ensuring state and municipal needs" established periods for implementation of purchases procedures, which cannot be reduced according to decision of state customer. To these terms there do not correspond terms established for separate electoral procedures. For example, informing voters, participants of a referendum is carried out by electoral commissions, public authorities and municipal bodies during an election campaign, a referendum campaign, that is strictly after publication the decision on calling an election, a referendum. At the same time, established by Federal law 44-FZ the closing period of government contract procedure on rendering corresponding services by which supplier can be determined only by holding a public electronic auction makes not less than 29 days from the date of notice on purchase publication.

In some cases the law exempted electoral commissions from a duty to carry out competitive procedures for definition of the supplier.

So, the special order is provided for purchase of ballot papers, absentee ballot papers, special signs. Such procurements are conducted at the only suppliers (the contractors, performers) determined by Government of Russian Federation by offers of regional supreme executive bodies at least once in five years.

The federal law "About introduction of amendments to the Federal law "About a contract system in sphere of purchases for ensuring state and municipal needs" on a duty to carry out procedures for definition the supplier released precinct, territorial, district electoral commissions and electoral commissions of municipal units which are not administrative centers (capitals) of a regions of Russian Federation. However, also a number of electoral commissions of municipal units are not exempted from this duty selective the commissions of territorial subjects of Russian Federation (being public authorities).

Due to above-stated priority of constitutional right for participation in elections and referenda, need of providing electoral rights and rights for participation in a referendum of citizens it is necessary to give to electoral commissions of all levels an opportunity to conduct procurement of the goods, works, services necessary for preparation and carrying out elections, referenda, at unified supplier. For anti-corruption, respect for principle of fair competition the list of suppliers should be decide on established frequency by Government of Russian Federation, and regional executive bodies (according to level of elections, a referendum).

Another group of problems is connected with formation and expenditure of electoral associations and candidates election funds.

Follows from constitutional principles of sovereignty and democracy that all types of support can be rendered to electoral association, to candidate on elections only by persons having right to take part in elections.

So, Federal electoral law established the list of persons who do not have right to bring donations in election funds, funds of a referendum which treat including –foreign citizens, stateless persons, welfare and religious institutions, legal entities registered less than in one year prior to ballot day on elections about day of the beginning of a campaign of a referendum. At the same time limits of donations are determined by law depending on maximum permissible amount of expenditure from corresponding election fund. For example, according to Federal law "About elections of deputies of State Duma of Federal Assembly of Russia" citizen may offer voluntarily in an election fund of political party up to 750 thousand rubles, legal entity – up to 7.5 million rubles.

Unfortunately in practice it is easy to bypass this ban, having transferred money not in an election fund directly, and to the "intermediary" having right for donation introduction who will transfer further money in an election fund [CEC Against Campaign Finance through Internet Wallets].

At the same time, not so long ago in Russia, besides obligatory submissions of financial statements at the end of the election campaign from candidates and parties, question of periodic financial statements of political parties and responsibility for failure to follow

these requirements was settled. So, parties and their offices are obliged to submit reports on financial activity quarterly in Russian Central Election Commission and in regional electoral commissions [Federal law «About political parties»].

4. Conclusion

Comparative and legal analysis of legislation and legal practice in different countries showed existence of similar legal problems in the field of legal regulation of elections financial security.

So, national legal system of each country sets an aggregate of certain restrictions for financial admissions in election funds of parties and candidates. At the same time in all cases purpose of legal regulation is approximately identical – anti-corruption, ensuring equality of electoral rights and free competition on elections, providing equal opportunities to voters regarding providing financial support to participants of elections.

General for all countries trend is also reflection in legislation amplifying role of political parties in questions of state construction. In this regard political parties activity financing not only within electoral process, but also in the sphere of current activity, including state support of parties, gains public character and transparency. It's very important that public opinion about character the political processes and events happening in the state is formed on the basis of this information [Frost 2003: 87-104].

Obviously legislators of each of considered countries made attention to need of national sovereignty protection in the sphere of preparation and carrying out elections. At the same time solution of the matter in each state absolutely unequivocal – the direct legislative ban on providing financial support to political parties and candidates from foreigners and foreign entities and also stateless persons. Similar legislative practice corresponds to the rules of international law establishing the following provisions.

So, International Covenant on Civil and Political Rights establishes the right of people for self-determination from which right of free establishment of political status follows. The right for participation in administration of state affairs directly or through the elected representatives connects the Pact with existence of nationality. Concerning elections the right to choose and be elected with observance of requirements similar to established by the Universal Declaration of Human Rights is established [International Covenant on Civil and Political Rights]. Provision on communication of nationality with the right of participation in administration of the state is corresponded also by provisions of Declaration on human rights concerning the persons who are not citizens of the country in which they live who are not providing such right concerning foreigners [Declaration on

human rights concerning the persons who are not citizens of the country in which they live who are not providing such right concerning foreigners].

Based on these principles, Convention for the Protection of Human Rights and Fundamental Freedoms allows a possibility of imposition of restrictions on political activity of foreigners [Convention for the Protection of Human Rights and Fundamental Freedoms 1950].

However it is necessary to recognize that the national legal system as it was already noted above, actually is not in time behind development of modern digital technologies. So, a number of payment service providers, such as, for example, existing in Russia "Yandex money", actually allows entering into an election fund of party or candidate donations by anonymous donor. Though it directly is also prohibited by the law, such cases take place and not always candidate or political party is able to return such receipts.

At the same time, universal trend on transition from production economy to service economy causes need of further scientific and practical researches in the field of implementation of modern digital technologies in electoral process.

So, for the first time at the election of President of Russian Federation in 2018 voting procedure in current location or "mobile voter" system was applied [Design of Central Election Commission of Russian Federation]. Then nearly 5.7 million voters could fulfill the civic duty and take part in elections thanks to this system [CEC: 5.7 million people used the Mobile Voter mechanism in the 2018 elections].

Exactly thanks to "the mobile voter" creation of absolutely new, unique legal mechanism allowing Moscow inhabitants, who in ballot day will be outside the territory of the city, became possible to vote on elections of Governor of Moscow city on September 9, 2018 [Reut 2018: 40-42].

In all listed technical innovations, in dynamics of their emergence in daily practice of electoral process it is traced idea about necessary and possibility of realization active electoral right, creation of convenient conditions for the voter. Certainly, it concerns also election campaigns financing as the future, undoubtedly, behind general digitalization.

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