Organisational, legal and socio-economic instruments of state regulation of the activities of political parties and election campaigns

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Abstract.
The article delves into the crucial realm of state regulation concerning political parties and election campaigns, drawing attention to the global focus on developing and implementing organizational, legal, and socio-economic instruments. Emphasizing alignment with international legal frameworks such as the International Covenant on Civil and Political Rights and the European Convention on Human Rights, the discourse highlights key principles outlined by bodies like the Venice Commission and OECD. It explores diverse regulatory mechanisms worldwide, including party registration procedures, financing regulations, and measures to prevent discrimination and corruption. Moreover, it examines the role of public funding, media access, and oversight bodies in ensuring transparency and fairness in political processes. By scrutinizing various approaches and challenges across different regions, the article underscores the significance of continued research and international collaboration in advancing democratic institutions globally.

Keywords:
Election Campaigns
Political Parties
Socio-Economic Instruments
Organisational Instruments
Legal Instruments

1 The research was conducted independently and does not represent the point of view of SSB.
Recently, the world community has paid a lot of attention to the development and implementation of organisational, legal and socio-economic instruments of state regulation of the activities of political parties and election campaigns, the legal regulation of which should be consistent with the provisions of international and regional legal instruments, including the International Covenant on Civil and Political Rights, as well as the European Convention on Human Rights [1-3].

<table>
<thead>
<tr>
<th>Name of the principle</th>
<th>Abridged Table of Contents</th>
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<tbody>
<tr>
<td>1. Right of private individuals to association</td>
<td>The right of individuals to associate and form political parties must be free from interference. Restrictions should be proportionate and approved at the legislative level.</td>
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<td>2. Duty of the State to protect the right of private individuals to freedom of association</td>
<td>The state is obliged to form an appropriate legislative field, introducing the necessary mechanisms and procedures to allow individuals to freely exercise their right to freedom of association and the creation of political parties together with other persons.</td>
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<td>3. Legality</td>
<td>Any restrictions imposed on the right of individuals to organise freely and to express their opinions must have a formal basis in the constitution of the State or a legislative act passed by Parliament.</td>
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<td>4. Eligibility</td>
<td>Any restrictions imposed on the rights of political parties must be appropriate and effective in achieving the aim pursued.</td>
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<td>5. Non-discrimination</td>
<td>State regulation of the activities of political parties should not discriminate against any citizens or groups of persons based on &quot;race&quot;, skin colour, sex, language, religion, political and other beliefs, national or social origin, property status, birth, sexual orientation or other grounds.</td>
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6. Equal treatment
All individuals and groups seeking to form political parties should be able to do so based on equality before the law.

7. Political pluralism
The purpose of legislation on political parties should be to create favourable conditions for political pluralism.

8. Proper application of the law on political parties
Enforcement of legislation relating to political parties should be carried out by bodies whose impartiality is legally and factually guaranteed.

9. Right to an effective remedy
Political parties must have at their disposal effective remedies against all decisions affecting their fundamental rights – the right to association, to freedom of expression, to freedom of opinion and assembly.

10. Accountability
As political parties may receive some benefits after their registration, they must assume certain responsibilities given their legal status, in particular, to provide reports on their activities and comply with the requirements of transparency of financial transactions.

Source: Guidelines for the Legal Regulation of Political Parties. - OSCE - https://www.osce.org/ru/odihr/81988?download=true

Among the elements of the system of instruments of state regulation of the activities of political parties and election campaigns, the most widespread in the world practice are registration of a political party (deprivation of registration of a political party); prevention of regional discrimination (restrictions based on regional location of a political party); admission to elections, prohibition and dissolution of a political party; regulation of the financing of political parties and election campaigns.

In terms of building an institutional infrastructure for preventing and combating corruption, including political corruption, the Venice Commission [4] was established in 1990, including all 47 member states of the Council of Europe In total, the Commission has 61 member countries. The European Commission and the OSCE Office for Democratic Institutions and Human Rights (OSCE/ODIHR) regularly participate in the
There are states in the OSCE region whose legislation does not require mandatory registration of political parties. In Germany, Greece, Denmark, the Netherlands and Switzerland, national legislation does not have provisions for the mandatory registration of a political party. On the other hand, in Ireland and Sweden, party registration allows you to protect the name of the party. Registration usually has a simplified procedure and is reduced to a simple formality. In Austria, Spain, Uruguay and Norway, the only condition for registration is the collection of 5,000 signatures.

In other countries, such as Poland, the Czech Republic and Latvia, special bodies check the requirements established for the activities of the party. Registration provides a party with several advantages compared to a regular non-governmental organisation, particularly regarding access to budget funding and state media during the election campaign.

In many OSCE countries, a registration fee is charged for the registration of a political party, the amount of which should not become an obstacle to the registration of a political party, and one of the conditions for registration is to prove a minimum level of support from citizens.

International experts recommend establishing the prevention of restrictions based on the regional location of a political party, i.e. the prevention of discrimination of parties at the regional level compared to parties whose activities are spread throughout the country.

In addition, since international cooperation between parties sharing the same system of views is a widespread practice, restrictions on the interaction and work of such parties are considered unacceptable.

Legislation on political parties should include provisions to promote the involvement of women and national minorities in political activities.

In some cases, gender electoral quotas are established. For national parliaments, such quotas are established in Albania, Armenia, Bosnia and Herzegovina, Bulgaria, Spain, the Republic of Macedonia, Portugal, Serbia, Slovenia and Spain. Under such quotas, the ratio between men and women in the legislature fluctuates within 15-50%.
In the state regulation of the activities of political parties, the instrument of deprivation of registration of a political party is used, which entails the consequences of the loss by a public entity of preferences that, other things being equal, are granted to a political party. Other measures to punish law violations by a political party for this type of activity in international practice include the prohibition or dissolution of a political party [7]. When determining the justification for banning or dissolving a political party, the proportionality of such a step shall be applied.

An effective instrument of state regulation of political activity in the country is the procedure for admitting a political party to elections. As a rule, a pre-election deposit is applied, which is returned to the party if it receives a sufficient number of votes.

The allocation of free airtime in the media is a component of state regulation of political activity and one of the main resources of a particular party in terms of direct and indirect communication with voters, as well as a tool for shaping public opinion according to the vectors determined by the party. All political parties should have the opportunity to meet, especially during the election period [8-9].

In practice, different models of the formation of bodies for holding elections are used. In some countries, electoral bodies are wholly or partially formed of persons appointed by political parties. In some countries, representatives of political parties are not included [10]. At the same time, it emphasises the need for local and foreign observers to participate in the elections, who are given the right to monitor all aspects of voting and signal to the competent authorities about the election process violations. This increases trust in the election process.

In the process of developing relevant legislative acts, the OSCE countries may also use special financial instruments, including in national legislation provisions of an economic nature, in particular:

- restriction of private donations in terms of nature and volume, as well as on the use of budget funds;
- ensuring the ratio between private and public funding; determining the criteria for providing state support;
limiting campaign spending;  
- sanctions for violation of electoral law.

To fulfil its main tasks, a political party needs proper funding, the regulation of which plays an important role in terms of increasing the level of party autonomy, including reducing the influence of party donors on its activities. Funding for political parties includes financial support for the day-to-day operation and financing of election campaigns. Political parties are financed at the expense of private contributions and state support of the respective party.

Private funding is provided as membership fees, intra-party revenues and revenues, candidates' funds, and private donations. In some cases, parties require the payment of membership fees, in the process of administering which questions inevitably arise regarding the possible evasion of the restrictions imposed on the amount of donations. At the same time, parties can finance their regional (local) divisions, and receive income from the sale of goods (works, services), the volume of sales of which is not subject to restrictions, except for the mandatory declaration of such activities.

During the election campaign, candidates use their funds to finance the needs of their political force. In some cases, limits are imposed on the size of candidates' membership fees. Political parties also attract private donations to finance their current and electoral activities. The law does not prohibit the use of credit resources to finance political campaigns, provided that the requirements for ensuring the transparency of such financing with a clear definition of the sources of financial resources are met.

As a rule, donations from foreign sources are prohibited by national legislation on the activities of political parties. [11] Anonymous donations are subject to strict regulation.

The regulation set is based on the donation limit that one person can pay. It is quite common in the world practice (more than a third of the OSCE countries) to limit the amount of spending that political parties and candidates spend on election campaigns. The rationale for the different types of prohibited donations is illustrated in Table 2.
### Table 2

<table>
<thead>
<tr>
<th>Type of ban</th>
<th>Rationale</th>
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<tr>
<td>Foreign legal entities</td>
<td>Prevention of external/foreign influences; The Principle of Self-Determination</td>
</tr>
<tr>
<td>(Partially) public institutions</td>
<td>Avoiding the use of public funds for political purposes</td>
</tr>
<tr>
<td>Trade unions (sometimes of all types of legal entities)</td>
<td>Avoiding Undue Influence of Diverse Associations</td>
</tr>
<tr>
<td>Corporations executing government orders</td>
<td>Reducing the risk of &quot;barter&quot; donations</td>
</tr>
<tr>
<td>Anonymous sources</td>
<td>Ensuring transparency of funding</td>
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<tr>
<td>Indirect Donations</td>
<td>Making it easier to control other prohibitions.</td>
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</tbody>
</table>

Source: Control of finances of political parties from A to Z: the experience of Latvia. / Riga – Kyiv, 2016 – 52 p.

State funding of political parties is carried out to reduce the excessive dependence of parties on private donations, and legal norms (reporting, financial standards) are designed to guarantee the impartiality of the distribution of taxpayers' funds and developed and applied to prevent corruption in this area.

Public funds allocated to parties for these purposes are considered an integral part of compliance with the principle of equal opportunities for all candidates and political forces and are carried out based on balancing the proportions of private and public financing of political parties. The legislation of countries where political parties' financial support is provided by the state as usual contains special provisions to regulate the amount of such funding. In addition to direct state funding, state support can be provided in the form of tax breaks, free airtime on state media channels, and free provision of places for party meetings.

The procedure for providing public funding in different countries has its peculiarities. Some electoral systems provide for the payment of funds before the elections, while
others provide for the payment of funds based on the results of such elections. To protect democratic processes, the financing of political parties is subject to regulation, as well as mandatory declaration. Reports on the use of funds spent are submitted within the established time limits to the authorised regulatory bodies. [12-13]

In almost all countries of the world, at least several forms of legal regulation of political financing are used: the prohibition of donations from certain sources, as well as the maximum levels of spending of funds and provisions on public funding.

The regions of Eastern, Central and South-Eastern Europe and Central Asia are distinguished by the variety of forms and methods of political financing, as they consist of countries with fundamentally different regimes, from classical democracy to open autocracy. Accordingly, approaches to the regulation of political finance also differ. At the same time, some interesting similarities are revealed. In particular, the two main categories of violations in financing political parties and election campaigns include (1) non-compliance with limits on the number of expenditures and/or donations, and (2) abuse of free access to the government and the media by large parties.

Institutions responsible for overseeing the financing of parties and election campaigns lack adequate enforcement mechanisms, especially in cases of systematic violations of spending and donation ceilings.

Another problem is the generality of norms and the presence of inconsistencies (or even contradictions with each other) in legislative acts on political financing in particular. Uniform rules do not always contribute to strengthening political pluralism and transparency. In some cases, spending and donation limits are limited to an extremely low threshold to make it difficult to enforce them – which provokes the selective application of the sanctions regime to oppress political opponents.

Enforcing rigid normative rules as they see fit is the hallmark of more autocratic regimes in this part of the world. The opposite also happens: restrictions are set at such a high level that even the richest political party is not able
to violate them.

In some countries in Eastern, Central, South-Eastern Europe and Central Asia, public funding is moderate and insufficient to cover party costs, especially when the party does not have access to the government apparatus. One of the reasons for the low level of public funding is the unsatisfactory economic situation in many countries in these regions.

The practical experience of these regions shows that strict rules are not enough to create a system of control over the financing of political activity (and ensure its transparency). It is necessary to introduce rules that are more appropriate to the current socio-economic situation in each country, including the active involvement of civil society groups and independent media.

In addition, experts from the International Institute for Democracy and Electoral Facilitation recommend that policymakers on political finance at the national level clearly define financial reporting requirements for both parties and candidates and establish specific guidelines and procedures for compliance with existing regulatory rules on political finance. At the same time, the level of marginal costs should be properly justified and indexed to inflation.

It is also proposed to establish a balance between pro-government and opposition parties in the media and provide indirect state funding to all parties that meet the established criteria, including opposition parties [14].

In the international practice of combating corruption, many different approaches are used, which take into account both the attraction and use of significant resources, and based on their limitation. For example, sometimes a separate unit for combating corruption is created at different levels of public administration, in particular, internationally, the main tasks of which include the formation and implementation of the state's anti-corruption policy, the performance of law enforcement functions in certain cases and cooperation with citizens' structures. Such a public administration body, as a rule, is provided with adequate resources (infrastructure, funding) and is vested with special powers to the extent sufficient to perform its duties (investigative, operational
search and other activities).

As a large number of players are actively involved in financial management in politics, the Council of Europe recommends the creation of a special supervisory decision-making body, which should be as independent as possible from political parties and the government. The powers of such a body should be concentrated in "one hand", that is, not distributed between different departments and institutions. The Council of Europe considers that, regardless of the legal form of the supervisory authority, the issue of its independence should be clearly distinguished. The scope of control of the supervisory authority should depend on the scope of the process of financing political parties.

In some countries, such as Estonia and the Czech Republic in particular, supervisory powers are granted to parliamentary committees. However, these parties are reluctant to exercise their powers, as they do not have sufficient resources to study the financial condition of political parties. In Finland, such control is exercised by the Minister of Justice.

In Lithuania, Moldova, Romania, and Slovakia, control over the financial activities of political parties is exercised by several regulatory bodies, usually the Central Election Commission and the State Tax Inspectorate. In the Netherlands, the financial reports of political parties are controlled by the internal Ministry of Audit. However, its powers are limited to checking the intended use of public funds.

In some cases, campaign finance is not controlled at all. Such trends are observed in Croatia, Iceland and Turkey. In some cases, only the costs of elections, receipts, and their origin are controlled and remain outside the attention of regulatory authorities. Sometimes regulatory authorities are empowered to conduct financial investigations. In particular, the Irish Standards Commission controls contributions to political parties, political donations, and election spending, and also has real supervisory powers. The results of the Commission's investigations are submitted to the prosecutor's office and other law enforcement agencies.

In Cyprus, however, the supervisory authority's opinion on the campaign costs of candidates in national and European
elections is not made public. In Greece, a special Control Committee transmits its findings to the Speaker of Parliament and the Ministry of the Interior based on auditors' reports. In general, the development and regulation of the activities of political parties and election campaigns are important aspects of the modern political system. They must comply with international norms and standards, ensuring freedom of association and expression of opinions, as well as transparency of financial flows and combating corruption. Further research and international cooperation in this area will contribute to improving these processes and promoting the development of democratic institutions on a global scale.

References:


[12] Комитет ООН по правам человека, Замечание общего порядка № 25, статья 25 (право участвовать в ведении государственных дел, право голосовать и право на равный доступ к государственным услугам), п. 19 (United Nations Human Rights Committee General Comment 25, Article 25: The right to participate in public affairs, voting.
