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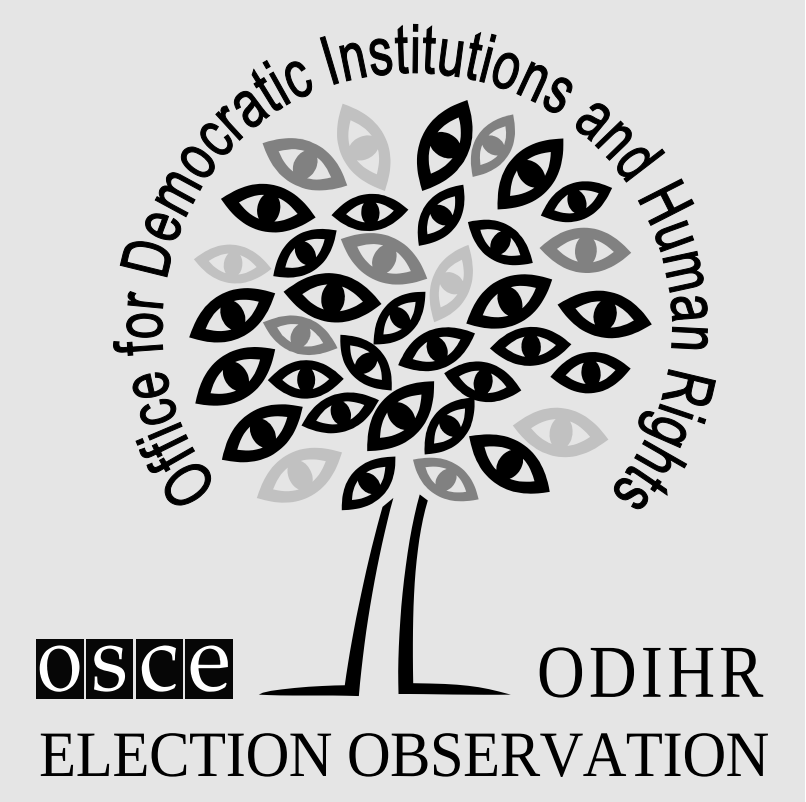
COMMENTS ON THE DRAFT LAW ON POLITICAL PARTIES OF THE RUSSIAN FEDERATION



Warsaw
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Warsaw, 15 January 2001

This report provides brief comments on a draft Law on Political Parties of the Russian Federation. It is based on a Russian-language text of the draft Law provided by the Central Election Commission of the Russian Federation. This draft, dated 21 November 2000, was prepared by a working group in the Russian Central Electoral Commission.

I. SUMMARY

1. The draft Law proposes a very extensive degree of regulation not only of the external activities of parties (the procedures for their registration, their status as participants in elections, their obligations to produce and publish financial records) but also of their internal procedures, including rules on their internal decision-making and the content of their charters.

2. All political parties are required to have a federation-wide presence (i.e. branches and members in at least half of the 89 subjects of the Federation) and to participate in federation-wide elections. This implies that there will be no place for local or regional political parties. This rule will substantially impede the development of party politics at least at the regional and local levels. Politics in many respects may therefore continue to be conducted by other less transparent and less democratic means.

3. The draft Law may benefit from clarification of the rules on:

    - "interference" in the activities of State agencies;
    - the suspension and liquidation of political parties, in particular to ensure that such measures are proportionate to the violations in question;
    - the publication of party accounts, including clear and very precise details within the Law itself on the information to be provided; and
    - equal access to State media and equal opportunities in the conduct of election campaigns.

II. CONCERNS ADDRESSED IN THE DRAFT LAW

1. The continuing absence of a law governing the status and functions of political parties and the rules on their creation and operation has raised numerous concerns with the advent of each new federal election. Some of the concerns evidently addressed by the present draft were set out in the recent report on the development of Russian election legislation delivered by the CEC.[1] Core concerns are that there are too many political parties, many of them are indistinguishable from one another, and all lack appropriate levels of internal regulation. One response to these problems proposed by the CEC is

[1] *Doklad Tsentral'noi izbiratel'noi komissii Rossiiskoi Federatsii "O razvitii i sovershenstvovanii zakonodatel'stva Rossiiskoi Federatsii o vyborakh i referendumak"'*, Moscow, 2000.

that "political parties as a civil institution must have all-Russian status and may not be regional or local".[2]

III. EXCLUSION OF NON-FEDERAL PARTIES

1. Under existing federal election legislation, the right to nominate candidates and otherwise participate in elections is limited to citizens and to "electoral associations". In the Duma election law these are defined as "all-Russian political social associations (political party or other political organisation, political movement) which have been created and have been registered in the Ministry of Justice of the Russian Federation in a procedure established by federal laws".[3] Thus the right to participate in federal elections is limited to all-Russian organisations. There is no place or recognition for regional or local political parties or political organisations.

2. The draft Law goes considerably further than this. Political organisations without a federation-wide presence are refused political party status for *all* elections and for all other purposes. Article 3(1) defines a political party as:

   "an all-Russian social association which has regional branches in more than half of the subjects of the Federation [of which there are 89], and which is a voluntary association of citizens of the Russian Federation, created with the purpose of participating in the political life of society by means of forming and expressing the political will of citizens, participating in elections and expressing the interests of citizens in agencies of state power and local self-government".

3. Moreover, a political party must have at least ten thousand members in order to be registered, with at least 100 in each regional branch.[4]

4. The consequence of this rule is not just that it will limit the number of political parties, an objective which is openly recognised by the CEC. It will also serve to exclude all local or even regional political parties, whether or not they espouse local or regional programmes. In reality, and in a country as vast and populous as the Russian Federation, this raises obvious questions as to whether party politics will be able to play a useful role in local and regional politics.

5. In established democracies, where political parties have a traditional and well-known identity and profile, experience suggests that regional parties can play a vibrant role in local politics. However, in a country such as Russia, where there is perhaps only one party that can claim a well-established identity and profile (the Communist Party), there must be serious doubts as to whether voters will take any interest in the other federation-wide parties when it comes to local and regional elections. If these proposals are implemented, there seems to be a strong likelihood that the evolution of party politics at the local and regional level will be undermined, and that politics will continue to be dominated by forces other than political parties.

6. This also raises questions about the division of jurisdiction between the Federation and the subjects of the Federation. Article 71 of the federal Constitution, which identifies

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2 p. 11.
3 Article 32.
4 Article 5(1).

those matters under the exclusive jurisdiction of the Federation, does not appear to permit the Federation to reserve to itself the regulation of political parties. It may be that the subjects of the Federation wish to permit political parties to operate and develop at the subject level. Any legislation they adopt to give effect to such a desire would almost certainly conflict with the proposed draft Law.

7. The exclusion of non-federal political parties may also breach the spirit, if not the letter, of paragraph 7.6 of the Copenhagen Document. This commits the participating States to:

"respect the right of individuals and groups to establish, in full freedom, their own political parties or other political organizations and provide such political parties and organizations with the necessary legal guarantees to enable them to compete with each other on a basis of equal treatment before the law and by the authorities".

8. A rule which refuses to recognise regional political parties imposes a significant restriction on the "full freedom" of citizens to establish political parties. It is not obvious that such a restriction is justified by reference to any competing social need.

9. In summary on this point, the rule limiting political parties to those capable of establishing a federation-wide presence raises two principal concerns. First, this restriction imposes a substantial restriction on the rights of citizens to establish their own political parties. Second, and perhaps more important, by extending this rule to *all* elections, the rule may give rise to a substantial obstacle to the development of local and regional party politics.

IV. REGISTRATION, SUSPENSION AND LIQUIDATION

1. Article 15 sets out an exhaustive list of documents required to obtain registration of a political party. Many of these documents certify that the requirements on setting up a party have been met (e.g. records of the founding congress). They include confirmation of payment of a registration fee. It is of course imperative that all parties pay the same fee. It may therefore be expedient to fix the level of the fee in the usual way, namely as a multiple of the monthly minimum wage.

2. In Article 16(5) the reference to Article 16(2) should be to Article 16(3).

3. Article 16(6) makes the important point that registration cannot be refused on the basis of mistakes or a lack of clarity in programme documents submitted to the Ministry of Justice. Nor can the Ministry demand any changes to the form or content of the political programme. However, these rules appear to apply only to parties created by transforming an existing all-Russian social association. The same rules should apply equally to newly created parties.

4. Article 19(4) includes the wholly appropriate provision that where registration is refused on the basis of defects in the registration documents, those documents can be resubmitted once the necessary corrections have been made. It also provides that a refusal of registration can be appealed to a court, although the court in question should be specified.

5. Under Article 40, a political party, once suspended, faces various prohibitions. Some of these are wholly understandable: they may not have access to State media or participate in elections. Such prohibitions are effectively the denial of certain privileges accorded to political parties by virtue of their special status, and it is obviously right that once they lose that right, they should be denied these privileges. However, Article 40 goes further than this. It also seeks to prevent suspended parties from meetings, demonstrations and other public events. This surely goes too far. The capacity of citizens to assemble freely and peacefully, whether they organise themselves individually or through some form of organisation, is a fundamental constitutional right, not a privilege dependent on status. This part of Article 40 appears to violate not only Article 31 of the RF Constitution but also Russia's various international commitments to protect freedom of association and assembly.

6. Article 41(3) sets out the grounds on which a party may be liquidated. The decision to liquidate may only be taken by the party's highest organ or by the federal Supreme Court. Grounds for liquidation include the failure to eliminate unlawful practices following the party's suspension, a fall in party membership below the minimum number established in the draft Law, and non-participation in elections for a period of two terms of the State Duma (eight years). However, a party may also be liquidated on the ground of "activity by the political party or its territorial branches which is prohibited by Article 8(1)". This is probably a reference to Article 9(1) in the present redaction of the draft, which refers to such activities as those directed at violent change of the constitutional order and inciting social and racial hatred.

7. If this *is* intended to be a reference to Article 9(1), it is not clear how Article 39(1), which envisages the *suspension* of political parties which have violated Article 9, relates to Article 41(3). In particular, if a party's activities are found to have violated Article 9, can the party be immediately liquidated, without an interim period of suspension? It would be disturbing if this were the case. If, for instance, a representative of one of a party's many regional branches made one comment which was found to incite racial hatred, a comment which was then vigorously condemned by the national party leadership, it would hardly be an appropriate response to liquidate the entire party. So far as possible, the draft Law should create a framework for a proportionate response to unlawful acts by political parties. If there are any circumstances in which a party can be liquidated immediately, without any period of interim suspension during which violations can be rectified, those circumstances should be more clearly identified.

V. THE DIVISION BETWEEN THE STATE AND POLITICAL PARTIES

1. The draft Law includes numerous provisions which are clearly intended to preserve a clear division between the State and political parties. For instance, party structures cannot be created or operate within State agencies.[5] To the same end, Article 10(1) prohibits political parties from interfering in the activities of State agencies and officials except as expressly provided by the present Law. The problem with such a rule is that, in a sense, "interference" with the State is precisely what political parties are about. People unite in political parties precisely because they want to influence, or interfere with, the way the State functions. It is not entirely clear that the draft Law allows parties sufficient scope to perform their legitimate functions.

[5] Article 9(2).

2. Article 25, which sets out the rights of political parties, indicates that they are entitled to make proposals to State agencies on political and other issues, distribute material on their activities and to propagandise their goals and tasks. This would appear to permit parties to lobby State agencies and officials in an effort to persuade them that their party's policy on a particular issue is the best one. In this context, the precise scope of the prohibition in Article 10(1) (above) is far from clear. Bribes and threats are of course impermissible, but such actions are already covered in the criminal code. Where a law seeks to impose prohibitions on political parties, it is of course highly desirable that the scope of the prohibitions are as clear as possible, particularly where a party may find itself de-registered because it is found to have breached such prohibitions. It may therefore be expedient either to remove the prohibition in Article 10(1) or to redraft it in more precise terms.

VI. ACCESS TO THE MEDIA

1. Article 32(1) spells out the right of political parties to equal access to State and municipal mass media and to equal opportunities in conducting their election campaigns. If such equality of access is to be guaranteed irrespective of the party's size compared to other parties or the number of seats occupied by the party in Parliament, this may be worth clarifying in the Law. This is clearly a live issue given that State financial support *is* allocated according to the party's results in federal elections.[6]

VII. INTERNAL REGULATION OF PARTIES, THEIR RIGHTS AND DUTIES

1. The draft Law includes numerous detailed rules on the internal organisation and decision-making procedures of a political party. For instance, the decision of a founding or constituent congress to set up a political party must be taken by more than two thirds of at least 500 delegates who must include residents of at least half the subjects of the Federation. It is not wholly unusual for laws on political parties to include rules which are designed to promote democratic internal procedures. However, one of the problems of including such normative requirements within the Law is that they provide a vast range of potential grounds for refusing to register a party. A challenge against the validity of an internal decision and the ensuing risk of deregistration could be particularly damaging if made in the context of an election campaign. It is therefore recommended that the degree of control imposed by the Law on internal party procedures, most of which is found in Chapter IV, is kept under very careful scrutiny. More specifically, it is recommended that the Law includes clear time limits beyond which the procedural validity of internal party decisions cannot be challenged. These time limits should be fairly short, perhaps two or three months, if they are to have any benefit.

2. Article 22(2*) states that foreign citizens and persons without citizenship may not be members of Russian political parties. The significance of the "*" in the paragraph numbering is not apparent in the draft; it may be that this is presented as a tentative proposal. In any event, it may be worth noting that such a restriction would not appear to violate relevant international standards. Both the Copenhagen Document[7] and the

[6] See Article 33.
[7] Paragraph 6.

International Covenant for Civil and Political Rights[8] refer to the rights of "citizens" to participate in political life. Given the language of these documents, there is some force to the argument that the State's obligation to promote these rights is limited to its own citizens.

3. Article 27(1) includes a requirement that political parties inform electoral commissions at the appropriate level (the meaning of which is not entirely clear) of any event connected with the nomination of candidates for deputy or for State office. The expressions "at the appropriate level" and "connected with" would benefit from clarification. Is a meeting where candidates are discussed but no votes are to be taken a meeting "connected with" nomination of candidates? As a general point, political parties are private (in the sense of "non-State") organisations and should be entitled to hold their meetings in private, with only their members present. There is a much more specific objection to this rule in Russia, where members of electoral commissions are not neutral but in many cases are put forward by political parties. It would be bizarre for a person who is identified with a particular political party (however impartial that person seeks to be in practice) to have the right to information and to be present on a vitally important internal meeting conducted by an opposing political party. This is one area where a greater degree of trust may have to prevail over the desire to control and monitor the activities of political parties.

4. Article 27(3) provides that political parties are entitled to participate in electoral campaigns. It may be worth clarifying the extent of this right. In particular, if a party has not set up a branch in a particular subject of the Federation, is it entitled to nominate candidates for federal, regional or even local elections in that subject?

5. Numerous parts of the draft Law envisage the possibility of court proceedings concerning the registration of political parties and their general activities and operations. It would appear that further amendments to the Civil Procedure Code may be required to give effect to these provisions.

VIII. PARTY FINANCES

1. The draft Law imposes fairly detailed and clear restrictions on sources of party finances and on the type of activity which a party may use to raise funds. For instance, a party cannot engage in general commercial activity as a means of increasing its resources. The draft prohibits anonymous donations and includes rules on disposing of funds received in this way. Article 20(2) requires a party charter to indicate the sources of money and other property. Presumably this means types of sources rather than individual donors.

2. One very important issue which is not addressed in the Law is the tax status of political parties. The legislature may wish to ensure that parties are subject to a preferential tax regime to reflect their public function and their not-for-profit status. Consequential amendments to the relevant tax legislation might therefore be included in the concluding provisions of the Law.

3. The Law imposes strong obligations on political parties to produce and publish accounts of their finances, including records of donors. It is recommended that the accounting

[8] Article 25.

requirements include details of money spent on wages and fees to party officials and others. It may also be expedient to include in the Law itself detailed and precise rules on the content of and format for disclosure, perhaps by including specimen declaration forms as an annex to the Law. Different forms would be needed for declarations provided to the Ministry of Taxes and reports published in the media.[9]

[9] See Articles 34(2) and (5) and Article 35(2).