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**THE TOPICAL ISSUES OF IMPROVING THE INSTITUTE
ADMINISTRATIVE RESPONSIBILITY FOR PRODUCTION,
DISSEMINATION OR POSTING CAMPAIGN MATERIALS IN VIOLATION
OF REQUIREMENTS OF THE LEGISLATION ON ELECTIONS AND
REFERENDUMS IN THE RUSSIAN FEDERATION**

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The authors consider the issues of improving the institute of administrative responsibility for production, dissemination or posting campaign materials in violation of the legislation on elections and referendums in the Russian Federation, make proposals to improve the legislation in this area of public relations.

Keywords: campaign materials, administrative responsibility, electoral rights of the citizens, illegal pre-election campaigning, elections, referendums, election commissions.

Currently, the number of cases of violation the rules of production, dissemination and posting of campaign materials in violation of the legislation on elections and referendums has increased in the Russian Federation, which in turn leads to the limitation of voting rights of Russian citizens. According to the open internet sources [5], there were 123 illegal campaigning facts, 101 violations of campaigning in the media, 120 violations of street and outdoor campaigning in the election of the President of the Russian Federation March 04, 2012. In this regard the improvement of the institute of administrative responsibility for production, dissemination and posting of campaign materials in violation of the legislation on elections and referendums is one of the priority tasks of the state.

Terms and procedure for the production and dissemination of printed and audiovisual campaign materials are provided for in article 54 of the Federal Law “On Basic Guarantees of Electoral Rights and the Right of the Citizens of the Russian Federation to Participate in a Referendum”, article 61 of the Federal Law “On the Election of Deputies of the State Duma of the Federal Assembly of the Russian Federation”, article 55 of the Federal Law “On the Election of the President of the Russian Federation” and similar norms of regional laws on elections and referendums.

Printed campaign materials include flyers, posters, calendars and other printed materials containing signs of pre-election campaigning. Audiovisual campaign materials include campaign materials on audio and video. To other campaign materials can be attributed badges, billboards, banners and other. Pre-submission to the Election Commission of copies or images of campaign materials (depending on their shape) – is a prerequisite of the lawfulness of their dissemination. At that must be provided information under part 4 article 61 of the Federal Law “On the Election of Deputies of the State Duma of the Federal Assembly of the Russian Federation”, paragraph 3 article 55 of the Federal Law “On the Election of the President of the Russian Federation”. The absence of such information, as well as failure to provide copies of campaign materials to the Election Commission is punishable under article 5.12 of the Code on Administrative Offences of the Russian Federation (hereinafter CAO RF).

There are few offenses that are administratively punishable: the production or dissemination during the preparation and conduct of elections or referendum of printed and audio-visual campaign materials without a written confirmation of the consent of a registered candidate, political party, public association, referendum initiative group, as well as production and dissemination in the period of preparation and conduct of elections or a referendum of printed and audio-visual campaign materials that do not contain the statutory information about the number of copies printed and the date of issue, the name and address of the organization or the last name, the name, middle name, place of residence of the person, who has made printed and audio-visual campaign materials, about the name of the organization or the last name, the name, middle name of the person, who has ordered the production of printed and audio-visual campaign materials, as well as the production of printed and audio-visual campaign materials, in which the listed data are incorrect or incomplete.

In accordance with paragraph 2 article 43 of the Federal Law “On Basic Guarantees of Electoral Rights and the Right of the Citizens of the Russian Federation to

Participate in a Referendum”, printed campaign materials must contain the output data: the names and addresses of the organizations (surname, first name, middle name and place of residence of persons) that have produced printed materials, the organization name (surname, first name, middle name of a person), which has ordered the production of these printed materials, as well as information about the number of copies printed and the date of their issue. The law also provides that copies of printed campaign materials before their dissemination must be submitted to the Election Commission that has registered a relevant candidate, to the referendum commission that has registered a referendum initiative group. Along with the materials to the Commission should be also submitted information about the location (address of the place of residence) of organizations (persons) that have manufactured and ordered these materials. Note also that the production and dissemination of printed campaign materials without the written consent of respective registered candidates, electoral associations, electoral blocs, and referendum initiative groups is not allowed. Dissemination of printed campaign material in violation of these requirements is prohibited. An offence could be committed both in the form of action and inaction. Its subjects can be both citizens and officials.

Material is considered to be campaign material, if it aims to encourage (encourages) to vote for a candidate, candidates list, referendum participants – to support the initiative to hold a referendum, or to refuse to provide such support, to vote, or not vote at the referendum, to support or reject a question submitted to the referendum. For a more accurate determination of the features of pre-election campaigning in the material we should refer to paragraph 2 article 48 of the Federal Law “On Basic Guarantees of Electoral Rights and the Right of the Citizens of the Russian Federation to Participate in a Referendum”.

For violation of a number of rules for production and dissemination of campaign materials articles 5.5, 5.8-5.12 and 5.18-5.20 CAO RF establish administrative responsibility. Article 5.14 CAO RF provides for responsibility for the willful destruction of or damage to legally manufactured and disseminated campaign materials.

Activity can be qualified as a campaign activity, if there are calls to put signatures in support of referendum, to vote for or against the issues submitted to the referendum, and so on, or in the case of the fact of payment for making campaign material from the referendum fund or its posting within specially provided free air time and free print space.

The administrative science distinguishes three main grounds of administrative responsibility [1]: normative, factual and procedural. Other authors distinguish two

kinds of grounds of applying administrative responsibility: normative and factual (M. N. Biryukov, I. N. Zubov, A. K. Mustafin, A. P. Shergin, A. Yu. Yakimov).

It should be emphasized that the legal (i.e. formally-normative) ground for administrative responsibility is now constituted by the law, and not by other normative-legal act (decree, executive order, etc.). Participation of local representative bodies and executive authorities of all levels (including federal ministries and agencies, the Government of the Russian Federation), as well as the President of the Russian Federation in establishing of administrative responsibility is excluded by CAO RF [3, 46].

In the Code on Administrative Offences of the Russian Federation there is considerable uncertainty in one of the most important issues – on the delimitation of legislative powers in determining of the elements of administrative offenses. Paragraph 3 part 1 of article 1.3 CAO RF provides that the jurisdiction of the Russian Federation includes establishing administrative responsibility regarding matters of federal importance, including administrative responsibility for violating the rules and norms provided for by federal laws and other normative legal acts of the Russian Federation. However, it is not clear what is meant by “federal importance” of the issues, in respect of which responsibility may be established by CAO RF.

Condition of unclear delimitation of the powers of federal and regional legislators regarding the adoption of norms of the special part of the legislation on administrative offenses creates another problem also having constitutional and legal origins. In particular, the question about the right of the subjects of the Russian Federation to adopt laws on administrative responsibility on the matters of joint competence, if such responsibility is not established by a federal law, remains unanswered.

Electoral Commission for cooperation with law enforcement agencies, courts, executive authorities, which are responsible for the control and supervision in the sphere of mass communications, must take measures to eliminate violations in the field of manufacturing and dissemination of campaign materials during election campaigns, and other violations in the sphere of information security of elections in order to ensure the rule of law in electoral process, the conduct of free and fair elections that meet international electoral standards and the requirements of federal laws [4].

Proceeding from the analysis of the concept of pre-election campaign, which has been given by the legislator in paragraph 4 article 2 of the Federal Law “On Basic Guarantees of Electoral Rights and the Right of the Citizens of the Russian Federation to Participate in a Referendum”, under “other actions” we should

understand those actions, which must simultaneously have the following qualitative features:

- 1) activity is carried out in the period of an election campaign;
- 2) activity aims to induce or encourages the voters to a vote for a candidate, candidates, list of candidates or against it (them) or against all candidates (against all lists of candidates).

In any case, the basic meaning of the wording “other actions” is that the law leaves the list of forms of pre-election campaigning open: any action consistent with the above features should be recognized pre-election campaigning.

Placing of printed campaign materials in violation of the law from the objective aspect can be expressed in two actions.

First. Placing printed campaign materials in places where this is prohibited by Federal Law.

Paragraph 10 article 54 of the Federal Law “On Basic Guarantees of Electoral Rights”, similar provisions of other election laws include a ban on the hanging (sticking, placing) of printed campaign materials on monuments, obelisks, buildings, structures and premises of historical, cultural or architectural value, as well as in the in buildings occupied by the Electoral Commissions, premises for voting, and at a distance of less than 50 meters away from them.

Second. Placement of printed campaign materials in premises, buildings, on structures or other objects without the permission of the owners of these objects.

An administrative offence is constituted by any violation of the established order.

Production or dissemination of campaign material is considered an administrative offence, if at least one of the following violations has been committed:

- 1) campaign material does not contain the following details:
 - information on the number of copies and the date of issue;
 - about the payment for the making copies from a particular election fund, a referendum fund;
 - information on the name, legal address and taxpayer identification number of the organization, which has made these printed or audio-visual campaign materials, or information on the family name, name, middle name, place of residence of the person, who has made these printed or audio-visual campaign materials;
 - about the name of the organization or on the family name, name, middle name of the person, who has ordered the production of these campaign materials.
- 2) production of printed or audio-visual campaign materials, in which the above-mentioned data are incorrect;

3) production or dissemination of campaign materials containing commercial advertising;

4) campaign material are produced or disseminated without payment from a corresponding electoral fund;

5) printed or audio-visual and other campaign materials are disseminated without submission of their samples (copies) or photos to an appropriate Election Commission along with information about the location (address of the place of residence) of the organization (person), which has produced and ordered these materials;

6) printed or audio-visual and other campaign materials are disseminated in violation of the law about the use in them an image of an physical person, positive statements of the physical person about a candidate, electoral association, electoral bloc.

Procedural grounds of administrative responsibility in this offense are acts of a competent authority on the fact of imposing specific administrative penalty for specific administrative misconduct on a specific offender, which are drawn up by one of officials of the Internal Affairs Bodies (Police), as well as members of an election commission, referendum commission with a decisive vote authorized by election commissions, referendum commissions [2]. For example, under general rule, a case on administrative offense is considered at the place of its Commission (article 29.5 CAO RF). Therefore, the failure to specify the exact location of an administrative offense (up to the house number) when administrative proceedings would be considered, for example, by a justice of peace may cause difficulties in bringing a person to responsibility. This is due to the fact that, according to article 47 of the Russian Constitution, no one may be deprived of the right to the consideration of his or her case in that court and by that judge in whose cognizance the given case is according to law.

On the basis of article 54 of the Federal Law "On Basic Guarantees of Electoral Rights and the Right of the Citizens of the Russian Federation to Participate in a Referendum", which regulates the terms of production and dissemination of printed campaign materials, violations during the election campaign through the called method can be of two types: committed in the manufacture of printed campaign materials and in their dissemination

Violations in the sphere of production of printed campaign materials include:

- production of printed campaign material without prepayment at the expense of a corresponding election fund (paragraph 5 article 54 of the Federal Law);
- production of printed campaign materials without specifying the necessary details (paragraph 2 article 54);

- production of printed campaign materials by organizations or individual entrepreneurs, which have not fulfilled the requirements to publish information on the amount (in the currency of the Russian Federation) and other terms of payment for work or services for production of printed campaign materials in period of time stipulated by federal law, and (or) which have not submitted such information in the same period to a corresponding election commission (paragraph 2 article 54).

Summing up, it can be noted that the system for identifying persons committing unlawful acts, namely the production, dissemination or posting of campaign materials in violation of the legislation on elections and referendums is not perfect. Often, the police officers, who have the functions to detect these offences, are not directly involved in this activity, not because of their reluctance, but on the circumstances that they are overwhelmed with various other functions and orders. To improve the detection of offenders is needed to establish offices in the Directorate of the Ministry of Internal Affairs in the subjects of the Russian Federation, which would be competent to deal only with offenses in the area of electoral rights of citizens.

References:

1. Bakhrakh D. N. *Administrative Law of Russia: Textbook* [Administrativnoe pravo Rossii: Uchebnik]. Second revised and enlarged edition, Moscow: Eksmo, 2006.
2. *Library of the Center of Journalism in Extreme Situations. Media and Elections* [Biblioteka Tsentra ekstremal'noi zhurnalistiki. SMI i vybory]. Moscow: 2011.
3. Manokhin V. M., Adushkin Yu. S. *Russian Administrative Law: Textbook* [Rossiiskoe administrativnoe pravo: Uchebnik]. Second revised and enlarged edition, Saratov: publishing house of State Educational Institution of Higher Vocational Education "Saratov State Law Academy", 2003.
4. *Recommendations for the election commissions of the subjects of the Russian Federation to prevent and suppress violations in the field of production and dissemination of campaign materials during election campaigns, and other violations in the sphere of information support for elections. The Central Election Commission of the Russian Federation* [Rekomendatsii dlya izbiratel'nykh komissii sub'ektov Rossii-skoi Federatsii po preduprezhdeniyu i presecheniyu narushenii v sfere izgotovleniya i rasprostraneniya agitatsionnykh materialov v period izbiratel'nykh kampanii, in-ykh narushenii v sfere informatsionnogo obespecheniyu vyborov. Tsentral'naya izbiratel'naya komissiya RF]. Moscow: 2007.
5. Available at: <http://www.kartanarusheniy.org/stat> (accessed: 14.06.2013).