



Support to the anti-corruption strategy of Azerbaijan (AZPAC)

Technical Paper on Regulation of Lobbying in Legislative Process of Azerbaijan: Lessons Learnt and Recommendation from International Experience

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1. Concept of "Lobbying":

The term lobbying, which translated from English means "hall, walking square, backstage, vestibule" was used in English monasteries for expressing "guard square" in 1553. After 100 years the term "lobby" was used to express vestibule and two entrance halls of parliament, which representatives of House of Commons attended for voting and meeting with persons who was not allowed entrance to the plenary meetings of the House.

Starting from 1829, the term "lobby" also gained wide scope in United States. The term lobby, which in USA at the beginning was used in political context in financial and political corridors, was meant buying votes by money in congress corridors. The wide spread of lobbying in America coincided to the period of Ulysses Grant XVIII the president of the United States. President Grant regularly were having informal meetings in hotel hall next to his headquarters, which he was visiting for snacks and having rest. Representatives of public, knowing about this habit of the president by visiting the same hotel hall and talking to him about their problems and difficulties were requesting help from him. Apart from informal meetings out of work and communication among political figures this was also establishment of foundation of lobbying activity in political history. Lobbying, which since 1864 had been expressing "Buying votes with money" in Congress corridors, for a long time had evaluated as non professional policy. Only starting from 19th century, lobbying had started to be used as a means for political influence.

But the modern form of lobbying only has gone through formation starting from 19th century. This process was conditioning with the expanding role of government in all branches of public life. Strengthening of state required different interest groups, in order to ensure their interests, to develop relations with state, keep regular contacts and communicate with state bodies.

Especially, this period is characterized with establishment of different associations having stable interests. Starting from that period the term lobby started to be used in its current meaning. The term lobby (lobbying) started to be used for expressing the unity of persons and groups protecting certain interests. However, nowadays as well content of the term lobby (lobbying) is subject do discussions.

According to widely acknowledged approach, lobbying as an institute, which expresses and represents certain interests in government structures is inseparable and important element of public, political and economic processes in countries. According to mentioned approach there must be free, continuous communicative exchange among citizens, organizations created by them, different groups, public and state structures in democratic countries. Thus, lobbying acts as a mechanism providing this exchange. During this exchange citizens get the opportunity to influence adoption and development of important government decisions. At the same time, state power gets the opportunity to execute and correct its activities according to dynamics of social needs. Thus, lobbying groups perform mediator functions between state and citizen. First of all, mediating expresses itself in the process of information exchange. Information and knowledge expressing the interests of certain groups of citizens summed in lobbying groups are mainly more important than knowledge of experts; at the same time decisions adopted by referring to this information are more legitimate. Lobbying enables to get more comprehensive information on the ways of adoption of important decisions in state structures and how they affect public and interest groups. Lobbying also enables state bodies and public better understand the interests of certain groups. Thus, lobbying, in some context, assists in feeling the climate dominating in public.

At first, lobbying appeared in USA as a specific political activity of public and private organizations. It is not by accident that, USA is considered to be the native land for lobbying. Here, first political-theoretical and legal basis of lobbying was formed. Theoretical basis of lobbying takes its source from pluralist democracy concept put forward by C. Madison, T. Jefferson, R. Dal and D. Truman. According to this concept American political system transformed to such a balanced system that it comprises of numerous groups trying to balance each other and execute their interests. Such pluralist model conditions the government to take decisions reflecting interests of different groups and reach compromise in society. According to the concept the policy of the government is formed as result of free competition and contest among interest groups sharing equal rights. If based on this concept it must be acknowledged that lobbying is the certain form of activities executed for influencing government and state institutions by interest groups trying to represent and express their interests in government structures. Lobbying acts as a means,

method and mechanism for interest groups to provide their interests in society. Lobbying enables state to learn needs of interest groups in general and for concrete cases and explain to state what they need. Interest groups don't limit their activities just to expressing their interests and representing themselves; they strive for the adoption of decisions they are interested in by using different method and means. Just, this activity of interest group directed toward influencing state bodies for provision of their interests by using certain methods and means can be linked to the terms of lobbying or lobbying activity concepts.

2. The difference between legal lobbying and corruption

In order to understand the difference between legal lobbying and corruption, first of all the content of these concepts should be clarified. Corruption – A) shall mean illicit obtaining by an official of material and other values, privileges or advantages, by using for that purpose his or her position, or the status of the body he or she represents, or his or her official powers or the opportunities deriving from those status or powers; B) Also, bribery of an official by illicit offering, promising or giving him or her by individuals or legal persons of the said material and other values, privileges or advantages. Mostly acts and activities mentioned in part B of above provided explanation are noted as lobbying (the main purpose of lobbying activity). There is no doubt that these acts and activities concern the content of illegal lobbying activity. In general, acting based on interests of a person (persons), group (groups) and illicit offering, promising or giving to public officials material and other values, privileges or advantages without any doubts must be considered corruption act, illegal lobbying. At the same time activities and acts of public officials directed to provision of interests of any person (persons), group (groups) in exchange of these must also be acknowledged as corruption and illegal lobbying. At these two points concepts of corruption and illegal lobbying activity overlap. But, illegal lobbying activity covers broader content. For example, blackmailing via media, threatening, trade in influence via relatives close persons of public officials, politicians and members of parliament.

Legal lobbying is the use of methods and technologies permitted by legislation for influencing important state decisions by certain interest groups rejecting above mentioned illegal methods. In other words, interest groups acquire certain legally defined opportunities for influencing the adoption of important state decisions. This includes different activities starting from being involved as an expert for drafting of laws, providing technical assistance, development of reports, and conduction of researches up to carrying out propaganda in media and influencing public opinion. The main difference of legal lobbying from corruption is that, it for the purpose of influencing the decision making process does not cover offering, promising or giving material and other values, privileges or advantages to different individuals taking part in this process but instead envisages influencing of decisions with legally defined or not prohibited methods and means. For example, lobbyist representing chemical industry tries the Commission on environmental issues of the parliament grant permission for construction of plant in one of regions. In this case, members of the Commission are presented the findings of the reliable researches, meetings with Commission members and experts are held, and their meetings with foreign experts and specialists are organized. Besides, hearings are organized with the participation of independent experts, foreign specialists, Commission's members and NGO representatives. Commission is submitted relevant documents and the opinion of experts that no damage to environment will be caused and measures will be taken to protect ecological standards. Speeches of different experts related to the subject on media are organized. Necessary information is gathered for Commission's members for taking a decision. The community of the region are tried to be convinced that this plant will not cause any damage to environment and nature, will lead to economic growth and etc. Thus, different combinations of methods and means not prohibited by law are used. And these acts can not be defined as and acts of corruption. This is legally regulated specific activity for a lobbyist for provision of his customer's interests and legally defined struggle for its interests for the interest group.

Or, in this situation, let's consider that one of the commission's member acts as a lobbyist for the group representing chemical industry. If, this member of Commission protects the position of

interest groups in exchange for given (promised) material and other values, privileges or advantages, he might (must) be accused in corruption.

But if legislation enabled MPs to act as representatives of interest groups and defined terms, frameworks in this regard, this already is considered legal lobbying. For example, Member of Parliament during hearing, discussions officially declares that he represents this interest group, and annually discloses in obligatory manner list of organizations he is cooperating with. In this case, the question may appear that whether Member of Parliament is bought or not and how to define this. This issue depends on the level of perfection and functioning of anticorruption legislation. Inevitably, Member of Parliament provides annual information on his incomes. The same MP must take into account attitude of voters. Because, he gives public information that he acts as a lobbyist or conducts some lobbying activity. It may happen that in next elections voters will not support him any more or other interest groups will act against him.

3. Lobbying in Azerbaijan

The term lobbying in Azerbaijan is widely acknowledged and used as influencing the adoption of important state decisions by persons acting on behalf of certain interest groups or protection of interests of interests groups by public officials, government members, MPs and politicians. At the same time the term lobbyist is defined as a person bought by interest groups or cooperating with them. Based on information in media, it can be said that in 90 percent of media materials the term lobbying used in this meaning. Generally, in speeches of politicians, MPs, government members, experts and media representatives the concept of lobbyist, lobbying, and lobbying activity is used in above mentioned context.

It may be noted with confidence that, lobbying activity, when used in Azerbaijan is associated with illegal activity and protection of some persons' interests by officials, MPs and politicians. Lobbying mainly is used to express negative act, attitude.

In Azerbaijan, lobbying, lobbying activity is not accepted as in its current internationally accepted meaning. Lobbying is evaluated as *a priori* illegal act, violation of laws by majority. It is not by accident that, any public official while expressing negative thought on MP, government representative or politician is accused of being their lobbyist.

In internationally accepted meaning lobbying activity is almost not used in Azerbaijan practice. However, sometimes certain signs are observed. Sometimes campaign in media is carried out, results of researches of NGOs' are disclosed and published, speeches of experts, MPs and business sector representatives on related subject are organized in order to let some interest groups influence adoption of important state decisions. Different events, round tables, discussions are held. Speeches of MPs' on certain topic start to be heard very often. For example, recently we observed such an activity concerning the case of exemption of custom duties from companies importing grains to the country.

At the same time, according to most experts, in Azerbaijan, practice of MPs' acting as lobbyists of private sector and government members are widely applied. From time to time, MPs quite in an open manner do not avoid taking the position of interest groups during discussions of draft laws related to economic regulations. Or during hearing of government reports, adoption of budget MPs' acting as lobbyists are more clearly felt. MPs in an open manner defend ministers, head of committees on behalf of whom they act as lobbyists and try to respond to criticism directed toward them.

Experts note that, the lobbying activity of MPs is vividly observed during adoption of laws having great significance, touching huge finance and bureaucratic interests. For example not adoption of "Law on education" for several years are explained by observers and independent experts with the clash of interests of different interest groups and interests related to education business, management of finance and taking of decisions in education system. It is noted that the trend shows itself in the parliament. Although the draft law discussed for several times its adoption is delayed.

According to experts, in Azerbaijan's experience sometimes civil servants and MPs themselves became a business partner of private sector and act as his lobbyist. These activities include, getting

state orders, winning in state tenders, protection against intervention of state bodies carrying out control and regulation functions, getting credits on favorable terms, creation of favorable terms for import export transactions. These activities rarely appear publicly. Sometimes exceptions are taking place, for example recent attempts of Ministry of Transport to apply the rules related to regulation of public transport in Baku, immediately led to proper critical speeches in Parliament.

4. Legal regulation of lobbying, world experience

USA experience

In several countries lobbying is forbidden, in France it is out of law according to provisions of Parliament *regalement*. In India it is identified with corruption, in Italy no need is considered for adoption of separate laws regulating lobbying. Currently lobbying activity is regulated by law in USA, Canada, Brazil and Australia. In Germany, the registration of unions, associations and their representatives are regulated with special rules.

In 1946, lobbying activity was officially registered in US Department of Justice as an entrepreneurial activity and on the bases of legislation moved to financial control. That time, legislation put following obligation on lobbying activity: the persons who by himself, or through an agent, or employee or other persons in any manner, solicits, collects, or receives money or anything of value to be used principally to aid the passage or defeat of any legislation by the Congress, shall provide all the notes to certain department on their expenses once in three months. According to USA legislation lobbying activity is executed in two ways. 1. Direct lobbying: This is the direct, open talks and executed between lobbyist and representative of decision making institution. In this case surrounding persons have the right to express their positions on the issue as they are familiar with planned works. 2. Indirect lobbying: This can be characterized as an activity carried out by professional lobbying organizations. This activity more reminds political advertising.

In 1995, the improved form of law on lobbying was passed in US Congress. According to this law lobbyists prior to starting their activities for aiding the passage or defeat of any legislation by the Congress must register with the Clerk of the House of Representatives and the Secretary of the Senate then make an oath and submit written application. The followings should be mentioned in the application:

Surname of the person and address of registered institution.

Surname and address of the customer he is representing.

The period of the contract, the amount of reward and purposes of allocation of resources.

Registered lobbyist quarterly submits to the clerk and secretary report on propaganda carried out for or against of certain draft laws and comprehensive information on his writings appeared in media. Clerk and Secretary print this information on "Congress's Report". The violation of these norms creates criminal liability for three years forbidding lobbying activity. According to tradition lobbyists apply to congress on behalf of their clients and gather concrete information for them.

From the list of laws regulating lobbying activity in US, the following laws can be noted, "Registration of Foreign Representatives Act" of 1938, "Open Character of Lobbying Act" of 1946, 1995.

Nowadays lobbying activity being an important branch of US political system is carried out in other areas along with Legislative-Executive-Judiciary powers. Big transnational corporations, former and current congressmen, bankers, lawyers, political-public man, farmers, business man, ethnic diasporas and owners of other occupations deal with lobbying activity.

According to USA legislation lobbyists of foreign governments who passed registration in Ministry of Justice have the rights to engage in lobbying activity and form public opinion. They must provide information on their activities and acquired income to Ministry of Justice once in 6 months.

It is relevant to not one fact that in 2006, 2.45 billion dollar was spent to lobbying activity in USA.

Germany

There is no special federal law in Federative Republic of Germany regulating lobbying activity. Lobbying activity is regulated by provisions in different normative acts. In FRG political and legal practice as a rule "interest groups" term is used. In Germany participation of professional unions, associations in formation of industrial policy are envisaged in "Common Statute on Federal Ministries". "Activity Regulations of German Bundestag" enables public hearing for "expert and interest" groups in parliament committees. In 1972, in Germany law defining disclosure of "lobbyist lists" was adopted. This list reflects the names of all union and associations having official access to parliament. According to ethic code of Bundestag members, each member according to the way defined in law, shall disclose information about his cooperation with different organizations and companies. Member of Bundestag must provide information on any speech he makes in parliament as a representative of interest group. Election regulations of FRG enable interest groups to promote their representatives to parliament by using election lists.

5. Object of lobbying

State, state structures are defined as object of lobbying. Interest groups or their representatives, advocates acting as lobbyists of these interest groups, or lobbying companies are defined as subject of lobbying. But mainly parliament acts as an object of lobbying. Because protection of group interests disclose itself more brightly in parliament and there is more favorable conditions for this. At the same time, decisions related to government's activity, budget and appointments are adopted in parliament. Parliament is always in the center of attention as an elected structure representing different layers of society. There are different approaches whether judiciary might be the object of lobbying activity or not. For example, it is considered in Russia that, courts carry out judiciary and the concept that court be the object of lobbying may create very serious impediments to the execution of court proceedings. At the same time, this is against the philosophy of due justice.

6. Subjects of lobbying activity

In numerous countries both legal and natural persons can be engaged in lobbying activity. But only, natural persons are registered (individual entrepreneurship activity). Law drafted in Russia on "Regulation of Lobbying Activity in Federal Structures" also envisages registration and getting of relevant license for natural persons. At the same time it is envisaged to have permission for establishment of lobbying companies. Depending on legislation public officials, civil servants, citizens of foreign countries, persons without citizenship, MPs, person without higher education and etc. are forbidden to engage in lobbying activity. For example in Germany only, legal persons can be the subject of lobbying activity.

7. How lobbying is differed from public advocacy?

Public advocacy envisages the provision of interests. But different from lobbying, here provision of interest is carried out through any structure not just state and government structures. That is, different from lobbying object of public advocacy can be any structure. From this point the content of public advocacy term is broader than lobbying term. Lobbying also, sometimes can act as an element of public advocacy campaign.

8. How lobbying is differed from Government Relations?

Government relations is the branch of general management. Lobbying is tools and technology. Government Relations responsible does not need to take necessary steps, have comprehensive information on current situation and balance of powers and follow daily events for these purposes. The main task of government responsible is to find specialists with due knowledge and experience for implementation of some projects and to set mechanism of company-business, association-government relations. The main task of this specialist is to set working, stable relations with government structures for quick settlement of any issue (technical, procedural, bureaucratic, preparation of necessary documents and etc).

9. Perspectives of regulation of lobbying in Azerbaijan

Generally, as in the world, there are two approaches to lobbying in Azerbaijan. According to first approach legalization of lobbying and establishment of relevant normative base may limit corruption. Thus, interest groups in order to influence the adoption of important state decision may use legally permitted methods and technologies for influencing public officials, MPs, judges, members of ruling party instead of buying their opinions with money. Thus, they may have options and in this case instead of bribing, convincing, promoting and involvement may take front line. Interest groups by stating their interests openly may try to reach their goals through lobbying activity.

According to second approach lobbying is the legalization of corruption. That is, lobbying companies and those dealing with lobbying activity will curtail the buying of public officials, MPs, ruling party representatives in order to influence the adoption of important state decisions.

Defenders of both approaches provide enough serious arguments. But everyone understands that the effectiveness and the form of lobbying activity depend on the level of perfection of legislation and implementation of anti corruption legislation.

Defenders of this approach note that as in every state and society lobbying activity de facto exists in Azerbaijan, in this or other form. From this point of view legalization of lobbying may enable the process of drafting and adoption of important state decisions more transparent and inform society broadly on these issues, interest groups and their positions. At the same time experts might be consolidated around discussed issues, public hearing might be held and attention of society might be directed into this area.

According to this approach in order to regulate lobbying activity adoption of separate law, creation of relevant normative base, as mentioned above, plays important role in protection of balance in society. In Azerbaijan's context, it can act as an important tool for prevention of monopolization. Thus, all interested parties will get equal rights in struggle for protection of their rights. The struggle, competition of interest groups within legal framework might assist in prevention of monopolist trends and provision of transparency and accountability. Legalization of lobbying activity might act as factor making accountable the participants of drafting and adoption process of important state decisions and those able to influence these processes.

Legal regulation of lobbying by enabling establishment of civil mechanism of protection of economic and political interests might increase the opportunities for limiting the level of corruption.

More different views are expressed in discussions regarding this issue. Those adhering to second approach on adoption of separate law for regulation of lobbying activity are not much optimist. But supporters of this view, who have dominant position in society based on numerous reasons note that the adoption of separate law mainly will result in negative consequences. According to them Azerbaijan society is not ready for such a law yet. There is no social, economic, political, legal basis for that. So that, Azerbaijan is not big country and from the point of development of economic relations, settlement of economic structures, development level of market economy it can not be compared with the leading countries of the world. From this perspective, lobbying activities in Azerbaijan may not appear in the scale similar to economically developed countries. From other side, society itself, legal culture and legal awareness must be ready for this, so that provisions of the law don't remain on paper or don't affect negatively.

It should be taken into account that, it is already 17 years that Azerbaijan has acquired its independence, and the most part of the society yet not liberated themselves from the influence of soviet stereotypes. This especially shows itself vividly in society's legal culture, legal awareness. From this perspective, it can be said that adoption of separate law for regulation of lobbying activity will receive different reactions from society and even, it is possible that most will say that it is adopted to curtain buying of public officials, MPs with money. Thus, it would be hasty to state that there is social order for adoption of such a law. It is not by accident that there is no separate law for regulation of lobbying activity in post soviet countries. Also Eastern European countries, which passed through huge development after the collapse of socialist bloc lack such laws.

From other side, it should be taken into account that, NGOs, public organizations, trade unions, general organizational activities of society are not developed and in case of adopting separate law more economic and business groups will benefit it. At the same time, public control over implementation of this law will not be in sufficient level. In this case this law may turn to pressure tool on parliament for economic groups.

Another point here is less study of the issue and the lack of sufficient knowledge and experience in this area in Azerbaijan. There is a need for studying of lobbying regulation issues.

Putting forward all these arguments supporters of second position note that even though lobbying in Azerbaijan is not regulated by separate law, however there are limitations defined in legislation in regard to acting of government members, public officials, MP as a defenders of interests of interest groups.

National legislation prohibits public officials, civil servants and MPs to engage in business activities. They, apart from executing their duties defined by law are allowed to engage in creative activity and earn income for this. Besides, law requires public officials, civil servants and MPs to submit annual financial declarations on their incomes. Laws on "Combating Corruption", "Code of Ethics for Civil Servants", "Status of Member of Parliament" and "Internal Statute of Parliament" define prohibitions for public officials and MPs to act as a defender of interest groups. Such provisions are also reflected in draft law on "Prevention of Conflict of Interest in the Activities of Public Officials". Also Criminal Code, Code of Administrative Violations defines liability for abuse of power for public officials. And these mechanisms provide broad opportunities for regulation of lobbying. However for more effective regulation of lobbying anti corruption legislation and legislation regulating activities of civil servants and MPs must be improved.

Coming to the perspective of regulation of lobbying in Azerbaijan, inevitably, it is possible to make brave steps and adopt separate law on lobbying after studying all these issues comprehensively. However, it is time to take steps for studying foreign experience in regard to this. Initiatives should be carried out for development of specialized specialists in this area in Azerbaijan. Efforts should be taken for analyses and improvement of normative base regulating the activities of civil servants and MPs.

10. Recommendations

We think, that discussions of regulation of lobbying activity should be continued. Such discussions are useful and necessary. From this point, it is purposeful to pay attention to following issues.

First of all legislation in Azerbaijan should provide legal explanation of lobbying and lobbying activity concepts.

Legislation should define status of lobbyists, accreditation and registration of lobbyists, methods of lobbying, responsibility and accountability of lobbyists, subjects of lobbying activity, customers of lobbying activity and object of lobbying activity.

Below mentioned generalized approaches should be taken into account while improving legal regulation. Thus, lobbying, lobbying activity should be considered in below mentioned contexts.

Psychological approach: Manipulative - psychological mutual attitude with officials, contact.

System-functional (institutional) approach: as an institution of political system providing mutual relations of subjects of political system. In this case according to pluralist democracy concept mentioned above, lobbying is considered as a means of balancing society.

Instrumental approach: Lobbying can be considered as method and technologies which can be used to influence drafting and adoption of important state decisions.

Procedural approach: Lobbying as an element of bureaucratic rule and procedures related to adoption of important state decisions.

Pluralist approach: Lobbying is such a system of activities that where all lobbyists are equal right participants of drafting and adoption of important state decisions.

Communicative approach: Official assigns lobbyist to find information, set necessary contacts, involve intellectual resources and etc. Lobbyist in exchange for this gets the access to direct decision maker. Thus lobbyist assists the official in carrying out his functions more efficiently.

General classification of subjects of lobbying activity

1. Political lobbyists – These are first of all, financial-economic social groups, who by taking part in elections and political struggle acquired power to influence others.
2. Social lobbyists – Trade unions and other this type professional associations.
3. Economic Lobbyists – Financial-economic groups, trans-national corporations, huge companies, huge economic subjects.
4. Regional lobbyists - Regional administrative units, their unions.
5. Foreign lobbyists – National communities, foreign interest groups
6. Ethnic lobbyism - Diaspora organizations, national communities.

Customers of lobbyists and lobbying companies.

Big companies, trans-national companies, civil society institutes, religious bodies, communities, diaspora organizations, political groups, parties, countries and etc. can act as customers of lobbyists or lobbying companies. In several countries, only legal persons have the right to be the customers of lobbying companies, or only public organizations can act as customers of lobbyists or lobbying companies (France).

Lobbying technologies

Classic lobbying technologies have been known since 19th century: These include: taking part in election campaigns, giving donations, speeches in profile committees of parliament and in profile commissions of government, speeches in different hearings, drafting of laws, organization of information campaigns on drafted or adopted laws, publication of information on the voting of MPs, organization of scientific pedagogical conferences, round tables with the participation of government representatives, conduction of researches related to concrete issues, publication of results, organization of banquets and advertisement campaigns for government representatives and work with media. Following point should be especially paid attention in regulation of lobbying activity in Azerbaijan.

In US practice, period over period, it is not required to be registered as lobbyist for persons engaged in direct and indirect lobbying activities (carrying out campaign in media, organization of calls, letters of voters and campaigns). This creates a big loophole in legislation.

It would be appropriate to prohibit MPs, municipality members, government members and public officials to engage in lobbying activity

MPs, government members and public officials must provide information on their contacts with lobbyists while submitting financial character information

Separate structural unit should be created in the Ministry of Justice for registering lobbyists and controlling their activities.

Lobbying must be licensed as individual entrepreneurial activity.

Lobbyists (natural and legal persons) must register themselves and provide reports on their activities two times in a year

There should be separate terms related to registration and activities of foreign lobbyists.

Courts should not be included into the row of objects of lobbying activity.

Objects of lobbying activity might be parliament, municipality bodies.

Subjects of lobbying activity should exactly be clarified.

The methods of lobbying activity also must be clearly clarified.

Public must have access to information on lobbying activity and lobbying in the country.