

PRE-ELECTION AGITATION AND POLITICAL ADVERTISING: CONCEPTS, INTERRELATION, COMPARATIVE LEGAL ANALYSIS

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In publishing conducted a study of the relationship between the concepts of "pre-election agitation" and "political advertising", the essence and significance of which cause some misunderstandings during their practical application. Characterized and analyzed the main features, which are highlighted when the distinction between the two categories studied. Attention was drawn to the legal issue of the unsettled political advertising in the period between elections and legislative consolidation of the relevant law on advertising. Studied foreign experience of legislative fastening of the given concepts.

Pre-election agitation, political advertising, elections, electoral process, commercial advertising.

One of the debatable issues of modernity is a separation of the concepts of "pre-election agitation" and "political advertising". These two terms are the most relevant in the period of conducting of the election process, but the lack of clear legal regulation of the issues of their relationship outside of it – leads to misunderstandings during the application in the period between elections. The election laws specify the contents of these two concepts, pointing out that political advertising is a form of campaigning. However, today, it is difficult to clearly distinguish between political advertising and campaigning. Especially remains

unresolved political advertising, which is applied in the period between elections and creates unequal conditions of participants in the electoral race" on the eve of the election process.

The purpose of this article is to summarize the interpretations of the relationship between the concepts of "pre-election agitation" and "political advertising" in modern conditions of development of the electoral legislation of Ukraine.

"Pre-election agitation" and "political advertising" – two different terms, the practice of application of which should not only be studied, but also improved. Therefore, it is important to determine what the criterion of distribution of those terms is.

The difference between these two terms is that it is through political advertising as a form of campaigning specifically defined campaign can be successful. In addition, political advertising can order only subjects election because, under current law, it is paid at the expense of their own election funds.. Pre-election agitation may be carried out not only by political parties or candidates, but all citizens of Ukraine. That is, important criteria for the distribution of these two concepts are the subjects of the distribution.

Another problematic issue related to political advertising and its legislative regulation is its coverage beyond the election period.

Of course, in accordance with applicable legal regulations, the fact of the advertisement till the beginning of the election process is not a violation. Political advertising may be outside of the electoral process, for example, in order to promote the ideology of individual parties. But thus, such activities put in unequal conditions, parties and candidates who plan to participate in elections.

But in this case there is a problem with the separation of political and commercial advertising. In this case, the basis is the distinction advertising period. If the election – it is commercial advertising, which is governed by

the general rules of advertising if – during the election process, the relevant terms - political advertising, which is regulated by election laws.

In our opinion, the division of advertising that has a pronounced political character, should not be a period beyond which it would be turned on commercial. All of it should fall into the category of "political advertising". To govern such activities advertising and election, in appropriate terms established by the law. Therefore, in our opinion, the definition of political advertising and regulation and definitions of the key provisions of this process should be defined at the legislative level, in particular by the relevant law on advertising.

Also, there is the opinion that an effective mechanism for resolving this issue would eliminate one of the concepts under consideration of the current legislation of Ukraine. However, opinions are divided on this issue.

Foreign same experience indicates that legal definitions of these concepts do not exist in almost all European countries, except Romania.

In our opinion, both terms should exist separately and have further legislative improvements, which should be done by clear definition of the concepts in the respective laws. This will allow to stop arguing among practicing lawyers, political scientists and scholars to and during the elections, and to prevent possible abuses. Because, as noted in the explanatory note to the draft Law "On amendments to some Laws of Ukraine on political advertising", there are already precedents of abuse of the unresolved status of this issue. And the improvement and systematization of legal regulation of the Institute of political advertising will agree upon the principles on the use and application of election campaigning during the election process and political advertising at all. This will allow the use of political advertising, as an independent, not bound by the framework of the electoral process of the democratic society.