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REGULATION OF FINANCING OF ONLINE ELECTION CAMPAIGNS: INTERNATIONAL PRACTICE AND ELECTIONS IN KAZAKHSTAN

Abstract. This study attempts to identify the extent to which current legislation on electoral campaigning is effective in addressing digital forms of campaigning. Ensuring that all forms of campaigning by political parties and candidates adheres to principles of transparency and equality is instrumental in preserving the integrity of elections. The data used for this research includes the analysis of legislation from the European Union, the United Kingdom, the United States and Canada. Research also uses data on campaign advertising regulation introduced in the run-up to the 2023 parliamentary elections in Kazakhstan. Evidence suggests that legislation has been slow to respond to ever evolving forms of digital campaigning. In the context of Kazakhstan, while certain improvements have been introduced in legislation, it mostly relates to extending existing norms aimed at traditional campaign tools (TV and print media). As such, it is insufficient in addressing some of the bigger concerns related to financial accountability during elections. Given the latest developments in technology as it is used in political context, more measures are required for proper regulation.

Keywords: *elections, electoral campaign, campaign financing, online campaigning, social media, national electoral legislation, electoral commission*

Қуаныш Сайлау, Алуа Жолдыбалина

ОНЛАЙН КЕҢІСТЕГІ САЙЛАУ АЛДЫНДАҒЫ ҮГІТТЕРДІ ҚАРЖЫЛАНДЫРУДЫ РЕТТЕУ: ХАЛЫҚАРАЛЫҚ ТӘЖІРІБЕ ЖӘНЕ ҚАЗАҚСТАНДАҒЫ САЙЛАУ

Аңдатпа. Бұл зерттеу сайлау науқанын реттейтін заңнама цифрлық үгіт-насихат нысандарын қаншалықты тиімді басқаратынын анықтауға бағытталған. Сайлаудың тұтастығын қамтамасыз ету үшін саяси партиялар мен кандидаттар жүргізетін үгіт-насихаттың барлық нысандарына ашықтық пен қолжетімділік қағидаттарын сақтау маңызды. Бұл зерттеу Еуропалық

Одақ, Ұлыбритания, Америка Құрама Штаттары және Канададағы заңнаманы талдау нәтижесінде алынған деректерді қолданады. Зерттеуде сондай-ақ Қазақстандағы 2023 жылы өткен парламенттік сайлау алдында нақтыланған сайлауалды үгіт-насихат жүргізу ережелеріндегі жаңашылдықтар туралы деректер де пайдаланылады. Зерттеу нәтижесіне сәйкес, қарастырылған мемлекеттердегі цифрлық науқандарды реттейтін заңнамалық өзгерістер уақтылы енгізілмейтіні және цифрлық технологияларды қолданумен байланысты негізгі тәуекелдерді барынша азайтуға бағытталмағаны анықталды. Қазақстан кейсіне назар аударсақ, заңнамада онлайн үгіт-насихат жүргізу ережелері қарастырылғанымен, олар негізінен дәстүрлі үгіт құралдарына (теледидар және баспа БАҚ) бағытталған қолданыстағы ережелерді онлайн үгіт формаларына кеңейтумен шектеледі. Бұл сайлау кезінде кандидаттардың қаржылық есебіне байланысты бірқатар күрделі мәселелерді шешу үшін жеткіліксіз. Саяси контекстінде қолданылатын технологияның соңғы жетістіктерін ескере отырып, заңнаманы одан әрі дамыту қажет.

Түйін сөздер: *сайлау, сайлау науқаны, сайлау науқанын қаржыландыру, онлайн-насихат, әлеуметтік желілер, ұлттық сайлау заңнамасы, сайлау комиссиясы.*

Куаныш Сайлау, Алуа Жолдыбалына **РЕГУЛИРОВАНИЕ ФИНАНСИРОВАНИЯ ПРЕДВЫБОРНЫХ** **КАМПАНИЙ В ОНЛАЙН-ПРОСТРАНСТВЕ: МЕЖДУНАРОДНЫЙ** **ОПЫТ И ВЫБОРЫ В КАЗАХСТАНЕ**

Аннотация. В данном исследовании предпринята попытка определить, насколько действующее законодательство в области регулирования предвыборной агитации эффективно в случае цифровых форм агитации. Важным для обеспечения целостности проводимых выборов является соблюдение принципов прозрачности и равенства в доступе ко всем формам агитации, проводимой политическими партиями и кандидатами. Данные, используемые для этого исследования, включают анализ законодательства Европейского Союза, Великобритании, США и Канады. В исследовании также используются данные о нововведениях в правила предвыборной агитации, уточненные в преддверии парламентских выборов 2023 года в Казахстане. Результаты свидетельствуют о том, что нововведения в регулировании цифровых кампаний вносятся несвоевременно и не направлены на минимизацию основных рисков, связанных с использованием цифровых технологий. В контексте Казахстана, хотя в законодательстве и были предусмотрены правила для онлайн-агитации, в основном они распространяют существующие нормы, направленные на традиционные инструменты агитации (телевидение и печатные СМИ). Этого недостаточно для решения некоторых серьезных проблем, связанных с финансовой подотчетностью во время выборов. Учитывая последние достижения в области технологий, которые используются в политическом контексте, требуется дальнейшая доработка законодательства.

Ключевые слова: выборы, избирательная кампания, финансирование избирательной кампании, онлайн-агитация, социальные сети, национальное избирательное законодательство, избирательная комиссия.

Introduction

The use of digital technologies has become widespread in many aspects of political life in recent years. In the future, it is highly probable that the use of technology will continue to grow at an ever increasing pace. The political use of technology becomes especially relevant in the context of election campaigns. Data on campaign spending by political candidates has shown significant growth in the share of digital advertising (including targeted advertising) in overall campaign spending over the past 10 years, and this growth is projected to continue [1]. The many benefits of online campaigns include lower costs compared to traditional advertising, access to content personalization, and the ability to make faster adjustments based on real-time data analytics [2].

In this regard, there are concerns about the regulation of this form of political campaigning and the costs of it. Ensuring that it complies with election laws is important to maintaining the fairness and integrity of elections, in which every voter has access to the same information and can make their own choices without physical or, in the case of online technologies, psychological pressure.

Various countries are seeking to introduce measures to regulate the use of digital advertising campaigns, in some cases taking advantage of restrictions placed on pre-existing campaigning methods. However, the characteristics of digital advertising mean that it is not enough to simply expand the existing rules used for traditional forms of advertising onto online campaign tools, and that new and broader measures are needed [3].

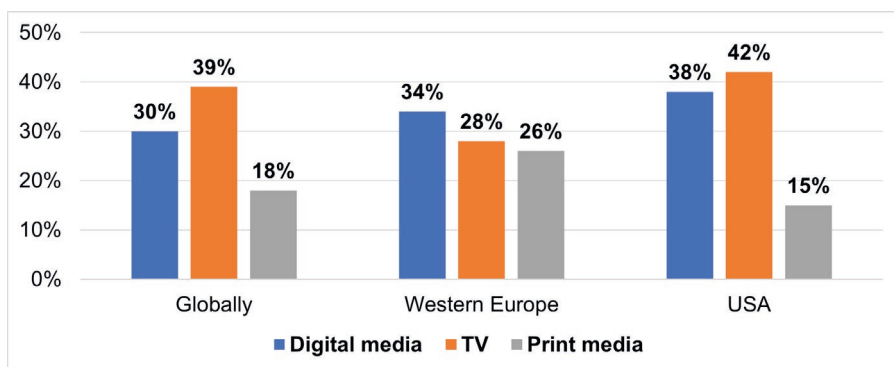
This article provides a comparative analysis of current innovations in the legislative regulation of online campaigning expenditure in countries and organizations such as the UK, Canada, the USA and the EU. The article also draws on an analysis of legislation in Kazakhstan, including the 2023 amendments to the Constitutional Law “On Elections” aimed at regulating online campaigning, along with other relevant legislation. The paper will analyze the extent to which current legislation has succeeded in regulating the costs of online campaigning. The results suggest that existing norms for regulating traditional forms of campaigning (television and printed materials) are insufficient for online campaigning and that election regulation must occur in the context of more comprehensive measures to regulate the digital environment. More advanced measures, however, come with their own inherent shortcomings, and thus further deliberation and research on this subject is necessary.

Methodology

The paper analyzes existing legislation, most notably national laws on election that relates to terms and conditions of electoral campaign financing. Presented cases of online campaign financing and its regulation by institutions responsible for national elections include the United States, the United Kingdom, the European

Union and Canada. The paper also analyzes the recent amendments to electoral legislation and regulations of use of digital technologies in Kazakhstan. These include the Law “On Elections in the Republic of Kazakhstan”, the Law “On Online Platforms and Online Advertising”, as well as the Law “On Personal Data and Their Protection”.

Figure 1. Share of spending on various forms of campaigning as part of total campaign spending in countries and regions of the world, 2015.

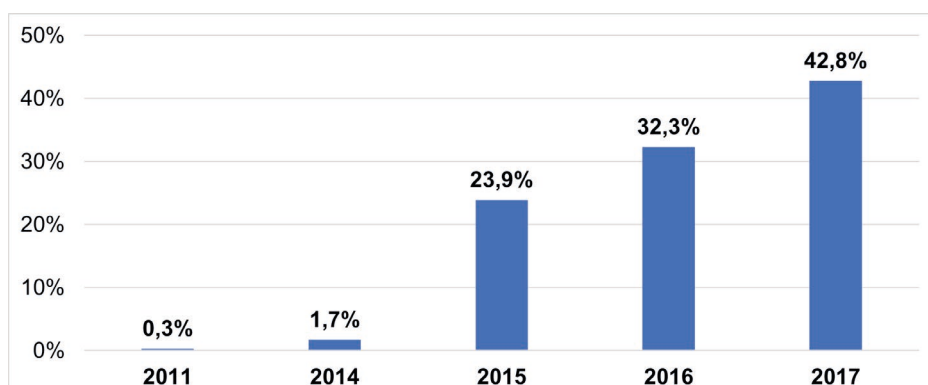


Source: Forbes.com

Research results

Global trend in financing online campaigning. Spending on online campaigning has increased in recent years, especially over the past decade. In 2015 alone expenditure in developed countries reached 30-40% of overall campaign spending (Fig. 1), and since then the positive trend in their growth has steadily continued [4]. For instance, in the run-up to the 2020 US presidential elections, candidates spent about \$1.6 billion on online campaigning, mainly on advertising on Facebook and Google, which is 2 times higher than in 2017-2018 [5].

Figure 2. Digital campaign spending as a share of total campaign spending in UK general elections.



Source: The UK Electoral Commission

The case of general elections in the UK demonstrates how spending on digital information campaigns has increased manifold, reaching 42.8% of total election campaign spending in 2017 (Fig. 2) [6]. In just two years, British political parties have increased their spending on Facebook and Google ads more than three times, from £4.3 million in 2017 to approximately £14.5 million in 2019 [7].

The growing use of technology by political parties to promote their candidates is certainly related to the increased use of technology by voters. On the one hand, growth is driven by increasing access to digital technologies for large sections of the population. According to the Pew Research Center, nearly half of U.S. adults follow news on social media at least periodically. 70% of US adults use Facebook, and 82% use YouTube. The share of people who receive news through TikTok has increased significantly: from 22% in 2020 to 33% in 2022 [8].

On the other hand, an ever increasing share of Generation Z, who are active users of social networks and digital resources, are reaching voting age. Initial observation of recent electoral campaigns, such as the 2022 US midterms election suggest that members of this generation are more active compared to previous generations at the same age [9]. Moreover, members of Generation Z are much more active users of social media compared to older generations, including as a source of news and a means of political expression [10].

It should be noted that the increase in spending on digital campaigning is accompanied by a simultaneous decrease in the cost of technology. Another factor is a continuing increase in efficacy of technology compared to traditional forms of campaigning. This means that spending of a certain amount on online campaigning can be much more effective than equivalent spending on traditional campaigning methods.

One of the benefits of online campaign tools is more advanced targeting capabilities. This means that technology can transmit personalized information to a specific category of people based on their place of residence, age, gender and other demographic characteristics. The scope of targeting is a subject of continuing debate, such as the extent to which candidates can incorporate political views of their target demographic in their targeting algorithm.

Use of online resources also has the advantage of statistics and analytics that are updated in real time. Candidates and political parties can almost immediately monitor the effectiveness and success of certain campaign materials, slogans and statements soon after their release. This allows them to adjust their election campaign messaging based on feedback and increase the effectiveness of their campaigning. In this regard, online resources are much more effective and resource-efficient compared to traditional forms of campaigning on TV, print media and handouts.

Studies have noted the presence of a positive effect of online campaigning on voter participation in elections and their turnout on election day [11]. In addition, a successful online election campaign can have a positive impact on the chances of candidates or parties to win the election. According to research, the victory of the Conservative Party in the 2019 general elections in the UK occurred,

among other things, thanks to the successful campaigning of party candidates on Facebook [8]. A study of the 2018 presidential election in Brazil notes a positive correlation between the number of followers on candidates' Instagram pages, the level of engagement and feedback from followers (engagement), and the election outcome [12]. Also, despite accusations of disinformation and other alleged violations of the law, it is important to note the impact that online campaigns had on the results of the 2016 presidential election in the United States and the 2016 referendum in the UK to leave the European Union.

Online campaigning is notable because its legal status is not yet fully defined and codified in many countries. In cases where certain measures have started to take place, legislation has not kept up the pace with rapid changes in technology. Electoral legislation in particular fails to take into account the increasing level of involvement of both voters and political actors in the online space. It is possible to argue that there is a consensus in many countries regarding the need to regulate online campaigning. However, there is no consensus on the exact regulatory measures that are necessary to do it efficiently [2].

Risks of lack of regulation. It is important to identify the risks of insufficient regulation of online campaign spending. For instance, the growing costs of online campaigning have the greatest impact on transparency, which is one of the key characteristics of legitimate elections. A key problem in providing information on online spending in countries around the world (including Kazakhstan) is that election commissions still do not fully collect data on digital campaign spending. In the absence of a requirement of mandatory reporting of spending, candidates will be incentivized not to declare how much they spent on digital campaigning. Such an attitude would violate basic principles of transparency, since the public is unaware of how and where candidates focus their online campaigns. This is especially concerning if one takes into account the extent to which digital campaigning is cost-effective, meaning that even a modest spending by a candidate can have a significant impact on turnout and election results.

In the absence of proper regulation, online campaigning also provides an opportunity for third parties to finance the election campaign or conduct it themselves. This is especially problematic if such third parties are not directly associated with political parties and candidates. Even if proper legislation is put forth to regulate the online activity of political parties and candidates in the election season, it might not prevent non-political actors from influencing the voters.

Along with this, due to the presence of targeted advertising, candidates from parties with a radical ideology and agenda can mobilize their electorate. Among other issues, they might engage in promoting controversial and politically problematic issues. This may have a positive effect on turnout, but it also leads to ideological polarization and division among the population. At the same time, attempts to regulate and limit such information in order to reduce polarization can have the opposite effect and lead to further division in society, as research shows.

Finally, low costs of online campaign tools make them more attractive to use outside of the election season. This is identified in the literature as ‘permanent campaign’, whereby candidates engage in campaign-like activities even during

non-election periods [13]. In the case of an elected official, such a need to engage in campaign-like activities while in office has the evident risk of distracting him or her from direct responsibilities of the position. On the other hand, failing to engage in permanent campaigning could take the advantage away from the incumbent and empower his or her challengers in solidifying their positions during the election period.

Taking into account these risks, countries are taking measures to improve legal requirements for the use of digital technologies in election campaigns. Some of the international practices in selected states are provided hereinafter.

Discussion of results. *International practice of regulation of online campaign spending.* In the US, the Federal Election Commission (FEC) is responsible for regulating the election process nationwide. However, each state determines its own procedures for conducting elections at the local level. If questions arise regarding certain aspects of election activities, the FEC issues an advisory opinion. Regarding financial reporting, candidates in federal elections are required to report their expenses and collections to election funds, including expenses for online campaigning [14].

In the past, the FEC experienced difficulties with determining whether certain instances of online advertising should be designated as campaign material. The source of dispute frequently was the size of the advertisement (in the case of small posts on social networks or a short advertising link), the owner of the advertisement (the candidate himself or third parties) and the extent to which regulation affects the right to freedom of speech and political expression in the online environment. The latter is particularly relevant given that a key regulatory challenge is the attempt to reconcile the scope of regulation and the provision of freedom of expression for political candidates.

At the moment, according to the advisory opinions of the FEC, any campaign material published on social media must have an appropriate disclosure as such. Additional requirements were introduced through a 2018 advisory opinion requiring campaign advertising on Facebook to be appropriately labeled, though the reach of this advisory opinion is rather limited [15]. Requirements for campaigning by third parties who are not directly involved in the candidates' election campaign remain underdeveloped. Compliance with this rule is mandatory for traditional methods of campaigning on TV and in print media, but in the case of online content there are no similar requirements.

Another important trend in regulating online campaigning in the United States is addressing the issue of transparency. Tech companies such as Meta, Google and Twitter (until 2019 in the case of the latter) took the initiative after insufficient control of campaigning on their platforms during the 2016 presidential election led to the dissatisfaction of the government and Congress. Both companies organized an archive of personalized advertisements, including those used as part of an election campaign. Company archives provide access to a large store of data over a long period of time. For example, Facebook stores all types of personalized advertising for 7 years. However, due to the fact that these measures are an initiative of the tech companies rather than a requirement of government agencies, the archives do not provide comprehensive data. They are mostly limited

to aggregation of approximate data on spending on online campaigning [16]. As such, this initiative is an important step in ensuring transparency, but requires further development on behalf of the authorities.

The case of the United States demonstrates that regulation of certain materials published online by laws and regulations is a complex issue. Issues of concern include the characteristics of political advertising, who advertises them, the extent of regulation, as well as transparency.

The most detailed legislation regarding regulation of the online environment has been developed by **the European Union**. The EU has one of the most detailed laws to protect the personal data of its citizens, the General Data Protection Regulation (GDPR), developed by the European Council and the European Parliament and adopted in 2016. GDPR strengthens the pre-existing Convention 108 on the protection of the right to privacy by extending its application to the online environment. Together, these two laws define particularly stringent rules regarding the use of data for political campaigning [17].

The most important provision is the recognition of the user as the final owner of all his or her data on the Internet. This approach requires mandatory obtaining of the user's consent to process user data, including for the purposes of political targeting. GDPR includes specific provisions concerning the category of sensitive data, which includes, among other things, the political views of EU citizens. As a general rule, the use of sensitive data is limited and, in most cases, prohibited. For this reason, political parties and candidates have fewer useful targeting options at their disposal. This means that they are less interested in spending on online advertising. This enables indirect control over the costs of online campaigning.

Despite fairly developed and strict regulation, the EU and most of its member states do not define specific measures for reporting expenditure on online political campaigning. Regulation of online campaigning spending remains fragmented across EU member states. The level of regulation ranges from a complete ban on any form of online campaigning for six months before elections in France, to no requirements for online campaigning in the Netherlands.

Therefore, EU legislation defines strict data protection requirements. However, there is no uniform standard for ensuring transparency in the financing of online election campaigning.

In **the UK**, the Electoral Commission is responsible for enforcing campaign finance laws and regulations. The Transparency in Lobbying, Nonpartisan Campaigning, and Union Governance Act of 2014 introduced new rules for third-party organizations (non-partisans) participating in election campaigning, including participation through spending on online advertising. The law requires these organizations to register with the Electoral Commission if they plan to spend more than £20,000 on campaigning, including online, in England and £10,000 in Scotland, Wales and Northern Ireland during an election campaign [6].

The UK government has also initiated the gathering of data on campaign spending by parties and candidates on Facebook and Google. This initiative was implemented in anticipation of the 2019 general elections. The reason for this was a series of controversies related to party campaigning in the 2017 elections, as well as Cambridge Analytica's interference in the 2016 United Kingdom European

Union membership referendum. Also, as in the case in the United States, the data provided by Meta and Google are approximate and do not reflect the detailed picture of all online campaign spending [7].

The UK Electoral Commission has also made recommendations to ensure transparency in digital election campaigns. Recommendations include providing more detailed reporting on online campaigning expenses, though it is not mandatory. At the moment, parties and candidates themselves determine how much detailed information they provide to the commission. The recommendation sets out more stringent requirements regarding the content of campaigning, targeted regions of the country and the amount of campaign expenses. However, there are limited actions to set out codified requirements for political parties and candidates. Among recommendations that have been introduced as law is a requirement to include an imprint on online political advertisements, which does not include spending information. This provides limited transparency since detailed information about the extent of funding is still not fully available to the public.

Elections Canada, which reports to Parliament, is responsible for enforcing campaign finance laws and regulations **in Canada**. Minor changes regarding online campaigning were made to the Election Law in 2018. Candidates must mark campaign videos as “election advertising,” third-party organizations must also declare their affiliation with the election campaign, and a limit is set on election expenses.

These changes are limited in nature and apply to a small amount of online content, largely covering republication of material previously published on television or in print. In previous years, Elections Canada and Canadian courts have ruled that social media posts are primarily a tool of self-expression rather than a method of political campaigning. As a result, regulation of online campaigning in Canada remains limited, especially compared to regulation of traditional campaigning tools [18].

Online election campaigning in Kazakhstan. The 2023 parliamentary elections have become a landmark for the election legislation of Kazakhstan. Amendments that directly affect online campaigning were introduced in the run-up to elections in February 2023. Amendments mostly addressed Article 28 of the Law “On Elections in the Republic of Kazakhstan” [19]. The new version of the article defines the general obligations of the online platform owners. In order to ensure transparency, owners of online platforms must provide the Central Election Commission of the RK (CEC) with information in advance about the amount of payment and the terms and conditions for publishing campaign materials on their platforms. These steps are also accompanied with broader measures to regulate the activities of online users. In particular, the Law “On Online Platforms and Online Advertising” was adopted in 2023 [20], as well as amendments to the Law “On Personal Data and Their Protection” [21].

Thus the legislation formally equates online platforms with traditional media resources and extends the same legal norms that already existed for traditional forms of campaigning to the online environment. This allows for a formalization of the activity of Internet resources and increases transparency on the largest

online platforms.

At the same time, the changes did not affect the reporting format of candidates and political parties on income to their election funds and expenditure of funds. As the precedent of the last two national election campaigns in Kazakhstan, including the 2022 presidential elections and the 2023 parliamentary elections demonstrates, candidates are still not required to provide information about the funds they allocated to online campaigning tools. The report that candidates and parties must submit to the CEC includes data on spending on the following forms of campaigning [22]:

- Public speeches in any registered media;
- Organization and conduct of public election events, such as rallies;
- Production and (or) distribution of printed, audiovisual and other campaign materials;
- Payment for the services of legal entities and individuals in organizing campaign work;
- Transport and travel expenses;
- Production of printed materials for free distribution, as well as other visuals specifically made for the election campaign [19].

The required items do not include the cost of online resources. This can potentially have a negative impact on the transparency of election campaigning. Moreover, when comparing the case of Kazakhstan to the states mentioned earlier in this paper, the need to address the activities of third parties that campaign on behalf of political parties and candidates also requires regulation. Such measures are even more relevant in the case of local elections, where the level of and resources for enforcement are limited. Given the fact that Kazakhstan is extending electoral mandate to local representative and executive institutions, with the introduction of election of rural and county-level akims, such provisions would be necessary in order to ensure a transparent campaign on a local level.

Conclusion

In general, despite consistently increasing spending on traditional campaign materials (TV appearances, print publications and posters) by political parties and candidates, voters are spending more and more time online, which has started to attract an ever growing attention of political actors seeking office. Given the potentially strong effect of online campaigning on voter turnout and election outcomes, there is a need to anticipate the increase in online activity of candidates in future elections and regulate online campaigning in order to minimize risks described in this article.

Taking into account the ongoing development of digital technologies, their use in election campaigns and the current election legislation in the case of Kazakhstan, the following measures are recommended for adoption for the upcoming election campaigns:

- Updating the CEC's regulations regarding reporting on receipts and expenditures of electoral campaign funds, where a separate item detailing online spending is included. This will contribute to improved transparency of electoral campaigns by presidential candidates, candidates for local executive positions,

as well as members of the lower house of the Parliament (the Majilis) and local representative institutions (maslikhats).

- Introduction of amendments to further regulate online campaigning, in particular targeting voters and declaring materials as electoral campaign advertisements. For this purpose, it is appropriate to ensure consistency across the content of the Laws “On Elections in the Republic of Kazakhstan”, “On Online Platforms and Online Advertising” and “On Personal Data and Their Protection”.

- Ensure regulation of regional online campaigns. It is necessary to provide the necessary tools to territorial election commissions in order to monitor the activities of candidates from single-mandate constituencies who will engage in election campaigns in their regions. This is important because elections at the local level require an appropriate level of regulation, but this is complicated by the smaller scale of funding for territorial commissions.

The scope of this article is limited to the financial aspects of regulating online campaigning. Further research would be necessary to address such issues, as protection of personal data, effects of targeting and micro-targeting, and matters of ensuring security of elections systems online. On the other hand, there is a need to intensify the pace of research, since it is not merely the scope of national legislation that becomes increasingly outdated. With the advent and further rapid development of digital technologies, academic study of its effect on such political processes as elections will also become increasingly outdated with time.

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