

# Illicit enrichment criminalization

## Background

Illicit enrichment is a criminal offence which is defined as “*acquisition by a public official of significant assets legal origin of which is not proven, as well as the transfer of such assets to the third party*”. Illicit enrichment is punishable by imprisonment for up to two years, disqualification from holding certain positions or engaging in certain activities for up to three years, and the confiscation of property (Art. 368-2 of the Criminal Code of Ukraine).

Although NABU has been investigating a number of cases of alleged illicit enrichment, the Constitutional Court of Ukraine recognized the provision of on February 26, 2019. On October 31, 2019, the Parliament updated and restored the provisions on illicit enrichment in the Criminal Code.

## Timeline

### New attack on e-declarations and illicit enrichment

10.10.2020

by Vadym Valko originally published on Ukrainska Pravda On October 8, the Constitutional Court will consider the appeal of 47 Members of Parliament of Ukraine. It is about the unconstitutionality of certain provisions of the legislation regarding e-declaration, confiscation of unjustified assets, the NACP's authority to monitor the lifestyle of officials, as well as responsibility for submitting [...]

### Decriminalisation of illicit enrichment: possible solutions

07.03.2019

On February 26, the Constitutional Court found unconstitutional the article 368-2 of the Criminal Code of Ukraine on criminal liability for illicit enrichment. The decision came in force the day it was adopted. All legal consequences of the decision are already enacted, including the closure of all existing 65 criminal cases into illicit enrichment and [...]

### Poroshenko's and Tymoshenko's draft laws will not resolve the issue with illicit enrichment

02.03.2019

After the Constitutional Court ruled to abolish the article 368-2 of the Criminal Code of Ukraine, which provided for criminal liability for illicit enrichment, a number of officials submitted their draft laws to the Parliament allegedly to resolve the problem. AntAC lawyers analysed legislative initiatives by President Poroshenko and Yulia Tymoshenko and concluded that they wouldn't [...]

## **The decision of the Constitutional Court on decriminalization of illicit enrichment: analysis**

02.03.2019

On February 26, the Constitutional Court found unconstitutional the article 368-2 of the Criminal Code of Ukraine, which provided for criminal liability for illicit enrichment. The decision came in force on the day it was adopted. Therefore, all legal consequences of the decision are already enacted. The decision of the Court fully decriminalized the article [...]

## **Judges of the Constitutional Court of Ukraine who decriminalised illicit enrichment**

02.03.2019

On February 26, the Constitutional Court of Ukraine ruled article 368-2 of the Criminal Code of Ukraine on illicit enrichment unconstitutional. The hearing was held in the closed regime. Four judges voted against: Ihor Slidenko, Viktor Kolisnyk, Vasyl Lemak and Serhiy Holovaty, 14 - in favour. Among the judges who voted to rule illicit enrichment [...]

## **The court abolished decision of the SAPO regarding closure of General Tkachuk's case**

30.08.2018

The court abolished decision of the Specialized Anti-Corruption Prosecutor's Office to close a criminal proceeding on alleged illicit enrichment and declaration of false information by Chief of National Land Forces Academy, Lieutenant-General Pavlo Tkachuk. This decision was made on August 29, by a panel of judges of Kyiv Court of Appeal, writes in Facebook Yevheniya [...]

## **Draft law on limiting NABU's powers successfully stopped**

09.02.2018

Due to joint response of the European partners consideration of the detrimental draft law No7315 that would subordinate NABU to NACP in investigating illicit enrichment and false statements in e-declarations was postponed. Background information.

## **The first indictment of illicit enrichment by NABU**

21.10.2016

On October 7, 2016 NABU detectives completed a pre-trial investigation of the criminal proceeding on illicit enrichment by Kostiantyn Kulyk, the military prosecutor of ATO forces. On October 21, 2016 SAPO prosecutors jointly with NABU detectives handed down the indictment to Kulyk. He is suspected of committing a criminal offence under the Part 2 of [...]

## **Reintroduction of illicit enrichment**

10.11.2015

The Criminal Code of Ukraine was amended in order to reintroduce the crime of illicit enrichment which would comply with international standards and best practices, including UN Convention against corruption.

## **Documents**

### **IMF**

To address the legal issues raised by the February 2019 decision of the Constitutional Court, we have enacted as a prior action a law to re-criminalize illicit enrichment. We will monitor the law's implementation, especially as regards to the link to the income of the public official's asset declaration, criminal prosecution against assets above the designated threshold amount, and acquisition of assets by or through third-parties.

Full doc: <https://www.imf.org/~media/Files/Publications/CR/2020/English/1UKREA2020001.ashx>

### **IMF**

"The respective provisions of the Criminal Code of Ukraine pertaining to illicit enrichment will be brought in line with the UN Anticorruption Convention" para 24

Full doc: <https://www.imf.org/external/np/loi/2014/ukr/042214.pdf>

### **SBC**

"Serious progresses in the fight against corruption by setting up and ensuring effective functioning of a specialised anti-corruption investigative agency for high-level corruption cases in line with international standards, aligning criminal corruption offences with international standards, and the introduction and enforcement of provisions on illicit enrichment. " para 3.2.1

Full doc: