

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 in declarations of false information and illicit enrichment.

Main signatories of the [appeal](#) were Members of Parliament from the pro-Russian party "Opposition Platform – For Life". Among them are Viktor Medvedchuk, Vadym Novynskyi, Grygoriy Surkis, Sergiy Lyovochkin, Ilya Kyva and Nestor Shufrych.

Members of Parliament want to declare unconstitutional:

1. obligation to submit in the declaration common-law husband or wife;
2. obligation to submit in the declaration minor children, if they live separately from the subject of declaration;
3. obligation to submit in the declaration real estate and objects of unfinished construction, expensive movable property, cash and funds lent to third parties, received loans, expensive expenses and transactions, as well as information on part-time work;
4. obligation to submit in the declaration property of third parties, if the declarant or members of his family have the right to use such property;
5. authority of the NACP to monitor lifestyle of declarants and right of the NACP to access state registers and data banks;
6. criminal responsibility for submitting in the declaration of false information (article 366-1) and illicit enrichment (article 368-5);
7. provisions on recovery to the state revenue of officials' assets that are declared unfounded in civil proceedings.

In fact, the position of Members of Parliament is that e-declaration interferes with personal and family life, information from declarations allows to learn about health of declarants and members of their families, and the legislation itself is complex and confusing.

The text of submission also cites the conclusion of the Main Scientific and Expert Department of the Verkhovna Rada of Ukraine that simple dismissal rather than criminal responsibility is sufficient for submitting in the declaration of false information, and the wording of article on illicit enrichment again allegedly does not comply with the rule of law and violates the presumption of innocence.

As for the NACP's authority to monitor the lifestyle of officials, so Members of Parliament are outraged and equate it to surveillance and investigative actions, and the collection of unjustified assets to the budget in civil proceedings is equated to confiscation and special confiscation.

There is only one explanation regarding this "appeal". Some Members of Parliament, as well as other

dishonest officials, are afraid of functioning NACP, e-declaration, confiscation of their unjustified assets and criminal responsibility. Therefore, they will do everything possible to destroy e-declaration system as much as possible.

All reasons and “arguments” of Members of Parliament are easily refuted:

- when any person decides to become the official, he understands that the consequence is obligation to submit e-declaration. It is foreseen by the Law of Ukraine “On Prevention of Corruption”. At the same time, the Law is clear and universally accessible, and such restriction in democratic society is clearly proportional and justified;
- in the case of [Wypych v. Poland](#) the ECHR stated that participation in public activities brings certain benefits, but such functions inevitably entail responsibilities and even limitations due to their public nature;
- during the implementation of e-declaration system in Ukraine the principle of proportionality was not violated, and restrictions of human rights and freedoms corresponded to legitimate goal, namely to prevent and fight corruption;
- the need to submit in the declaration of common-law husband or wife or property of minor children, who live living separately, is due to the fact that declarants very often try to hide assets by registering them to above-mentioned persons;
- the Family Code stipulates that family consists of persons who live together, are connected by common life, have mutual rights and obligations, and property acquired by such persons during joint residence is their joint property. Therefore, attempt to remove common-law husband or wife from the list of family members is nothing more but banal desire to hide assets from the declaration;
- detailed information about property (address, registration data, etc.) in declarations on the website is not disclosed and is not displayed for public assess;
- monitoring of lifestyle is conducted by the NACP in compliance with the legislation on personal data protection and does not foresee excessive interference with the right to privacy and family life of the person;
- the NACP is not pre-trial investigation body and does not conduct investigative actions. If results of lifestyle monitoring reveal signs of the crime, this information will be transferred to authorized bodies;
- responsibility for submitting in the declaration of false information is already divided into administrative and criminal. This does not include possibility of dismissal as one of types of disciplinary responsibility;
- the so-called “civil confiscation”, which is regulated by the CPC, by its legal nature and mechanisms of application is completely different from the confiscation and special confiscation that is foreseen by the CPC.

What could be consequences of declaring provisions on e-declaration and other norms unconstitutional?

- the NACP will be deprived of important tools for effective work, and the whole system of e-declaration will lose its meaning, will become formal procedure without real opportunity to detect unjustified assets or signs of illicit enrichment;
- officials can hide their property simply by registering it on common-law husband or wife;
- all criminal proceedings regarding false declarations or illicit enrichment, which are currently being investigated or are already being heard in the court, will have to be closed and years of work of anti-corruption bodies will again be in vain;
- international partners may consider such decision as violation of [commitments](#) by Ukraine, it has made as part of visa liberalization with the European Union, which potentially threatens visa-free travel;
- you can forget about receiving international financial assistance, including cheap loans. And this, in turn, will lead to inflation and increase of hryvnia exchange rate.