

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

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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 offer effective solutions.

Poroshenko's draft law

On February 28 President Poroshenko submitted to the Parliament a draft law that allegedly is aimed at reinstating criminal liability for illicit enrichment. However, the provision proposed is even worse than the norm which was introduced in 2011 during the time of Viktor Yanukovich.

Poroshenko offers following wording: *"Obtaining by a person, authorized to perform functions of the state or local self-governance, in the ownership assets in substantial size with no legal grounds for that without signs of power abuse or abuse of office or signs of accepting a proposal, promise or receiving an unlawful benefit by an official, or transfer of assets from him/her to any other person"*

With the following wording, it would be impossible to prove illicit enrichment of an official in the court.

For bringing an official to accountability, the investigation would need first to prove that he/she had not obtained a bribe and had not abused the office. This would mean that the investigation would actually need to conduct separate investigative actions to refute the possibilities of these two crimes, but the Criminal Procedure Code does not foresee such powers.

This wording is worse than the one adopted in 2011. Back then illicit enrichment was considered as receiving an unlawful benefit. Previously, to punish an official for illicit assets the investigation had to prove the fact of accepting a bribe, while now Poroshenko offers for investigation to prove that an official had not accepted a bribe and had not abused the office.

Tymoshenko's draft law

On February 28, Yulia Tymoshenko also submitted a draft law allegedly to introduce liability for illicit enrichment.

Tymoshenko's wording is as follows: *"Obtaining by a person, authorized to perform functions of the state or local self-governance, in the ownership assets in substantial size, illegality of grounds of obtaining which was recognised by the court, or transfer of assets from him/her to any other person"*

Such a wording makes it almost impossible to bring an official to accountability for illicit enrichment. It foresees two stages of recognising the enrichment as illicit: the court recognizes the grounds for obtaining the assets illegal, and then, based on the court ruling, the actions are investigated. These court rulings should be enacted, meaning that they would need to pass both court instances, which might take years. Moreover, the “illegality of grounds of obtaining the assets” is a very vague statement.

Tymoshenko’s draft law offers to narrow down the notion of “illicit enrichment” to assets obtained exclusively upon illegal grounds.