

Reinstalling e-declarations just with a law is impossible. We explain why it is a deception

02.11.2020

During the meeting of the conciliation council, the Speaker of the Verkhovna Rada Dmytro Razumkov announced the registration in the Parliament of the draft law on the reinstallation of the provisions on asset declaration system, which were repealed by the Constitutional Court on October 27. [Reinstalling](#) such legislation will not save the situation, as it will not [restore](#) criminal proceedings, which should still be closed, and will not restore the results and legitimacy of thousands of inspections by the National Agency for the Prevention of Corruption (NAPC). The adoption of a law on asset declaration system in the same form that has been declared unconstitutional will again result in declaring it unconstitutional.

"At the moment such a draft law does not solve anything and it is an attempt to deceive society. First of all, it is necessary to resolve the crisis with the Constitutional Court, the current composition of which will completely cancel the adopted changes, referring to the previous decision," said the AntAC's head of board Vitaliy Shabunin.

Still, it will be impossible to return certain provisions – this applies to the re-criminalization of intentional failure to submit declarations, or knowingly submitting false information in declarations.

In the other part, it will be extremely difficult, if at all possible, to make such amendments that would clearly comply with this decision of the CCU and do not have the risk of declaring it unconstitutional once again, as the CCU did not provide any justification for abolishing certain provisions (even with regard of judicial independence) explaining what the inconsistency of the repealed provisions with the Constitution of Ukraine is. В іншій частині внести такі зміни, які б однозначно відповідали цьому рішенняу КСУ та не мали ризиків повторного визнання неконституційними, буде вкрай складно, якщо взагалі можливо, адже щодо окремих положень КСУ не навів у мотивувальній частині жодного обґрунтування (навіть щодо загроз суддівській незалежності), у чому полягає невідповідність скасованих положень Конституції України.

For instance, this also considers the provisions on establishing a special procedure for settling conflicts of interest in the activities of judges, judges of the CCU and a number of other high-ranking officials; open and public access to the register of declarations; establishing requirements for submitting notifications of significant changes in property status.

"The decision of the Constitutional Court of Ukraine No.13-p/2020 in the part in which it, contrary to the requirements of Art. 147 of the Constitution of Ukraine, is not justified, is arbitrary, contradicts the principle of legal certainty and the rule of law. This Decision cannot be binding for the objective reasons defined above, as it is contradictory and it is really impossible to understand from it what actions the Verkhovna Rada of Ukraine should take to implement it," the professor of the National University of Kyiv - Mohyla Academy, member of the board of the Center for Political and Legal Reforms, doctor of law, Mykola Khavroniuk summed up on [Facebook](#).

It is impossible to quickly enforce the decision on the new controlling authority for compliance of anti-corruption legislation by judges and judges of the CCU. A possible option is to transform the NAPC from an executive body into an independent body. However, this is realistic only in the case of transformation of the

NAPC into a constitutional body and requires amendments to the Constitution of Ukraine. Changing the status of the body only in the relevant law, taking into account previous [decisions](#) of the CCU, may be insufficient and lead to the recognition of the unconstitutionality of the new provisions.

Another option is to transfer the relevant powers to the judiciary (as already proposed by [one of the draft laws](#)). However, they do not have sufficient capacity to exercise such powers, and empowering them will only increase secrecy, non-transparency and collective impunity among judges.

It also does not in any way address the issue of how to monitor compliance with anti-corruption legislation by CCU judges, as according to the Constitution the CCU is not part of the judiciary and therefore the judiciary self-governance bodies cannot control the CCU judges.

In any case, due to the decision of the CCU, any previous criminal proceedings for submitting false information is declarations or intentional non-submission of declarations have already been lost. Any verification and control will be possible only for declarations submitted after the adoption of the new law.

Recently, the AntAC provided [the analysis of solutions and risks](#) of the crisis provoked by the Constitutional Court of Ukraine.

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