

Reform Watch

World Bank, G7 urge Ukraine to reinstate penalty for illicit enrichment

By **Oleg Sukhov**.

Published March 4. Updated March 4 at 5:40 pm




 A person walks by the building of the Washington-based global development lender, The World Bank Group, in Washington on Jan. 17, 2019.

Photo by **AFP**

The World Bank and the G7 on March 4 urged Ukrainian authorities to reinstate a law imposing criminal liability for illicit enrichment, calling its cancellation “a serious setback in the fight against corruption in Ukraine.”

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According to the World Bank and G7, the cancellation of the law by the Constitutional Court on Feb. 26 could put continued lending from the West and Ukraine's visa-free regime with Europe at risk – the passing of the illicit enrichment law was a requirement for both.

“This has weakened the impact of the whole anti-corruption architecture, including the soon to be established High-Anti-Corruption Court, which was expected to rule on a significant number of illicit enrichment cases, and the ability of the National Anti-Corruption Bureau of Ukraine to investigate high-level corruption,” the World Bank and G7 said in a statement.

Following the court ruling, the National Anti-Corruption Bureau of Ukraine said it would have to close 65 criminal probes for illegal enrichment and four more cases that have already been filed in court.

The World Bank and G7 argued that “courts around the world have recognized that criminalization of illicit enrichment is a powerful tool in the fight against corruption, while at the same time respecting fundamental human rights and constitutional principles such as presumption of innocence, protection against self-incrimination and legal certainty.”

“The G7 and the World Bank call on Ukrainian authorities to step up efforts for safeguarding the effectiveness of anti-corruption legal tools and institutions, including by reinstating criminal liability for illicit enrichment in line with UN, OECD and ECHR principles and finding a way to continue the dozens of investigations and prosecutions threatened by this ruling.”

Meanwhile, anti-corruption watchdog Transparency International said on March 1 that “the Constitutional Court’s decision violates Ukraine’s international commitments.” The watchdog said it was calling on

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the Ukrainian government to immediately take all necessary steps to rectify the situation.

“The Court argued that (Article 368-2 of the law) violated the presumption of innocence and the right to refuse to testify,” the watchdog said. “However, Transparency International Ukraine’s analysis of Article 368-2 and the court’s decision proves that the article did not place the burden of proof on the accused. The burden of proof lay with the prosecution. The provision did not oblige a public servant to prove the legitimacy of assets acquired, but provided accused individuals with the chance to confirm the legitimate origin of their assets.”

Serhiy Holovaty, a member of the Constitutional Court, also argued in his dissenting opinion that the illicit enrichment law does not violate the presumption of innocence because the burden of proof lies on prosecutors, not the defendant.

He also said the law does not go against the principles of the rule of law and legal certainty.

Even if a new law on illicit enrichment is passed, suspects in illicit enrichment cases charged in recent years will not be convicted because the law will have no retroactive force.

Vitaly Tytych, the ex-coordinator of the Public Integrity Council, proposed another solution: passing an additional ruling of the Constitutional Court that will recognize a previous version of the illicit enrichment law as valid. In this case, courts will be able to convict current suspects in such cases.

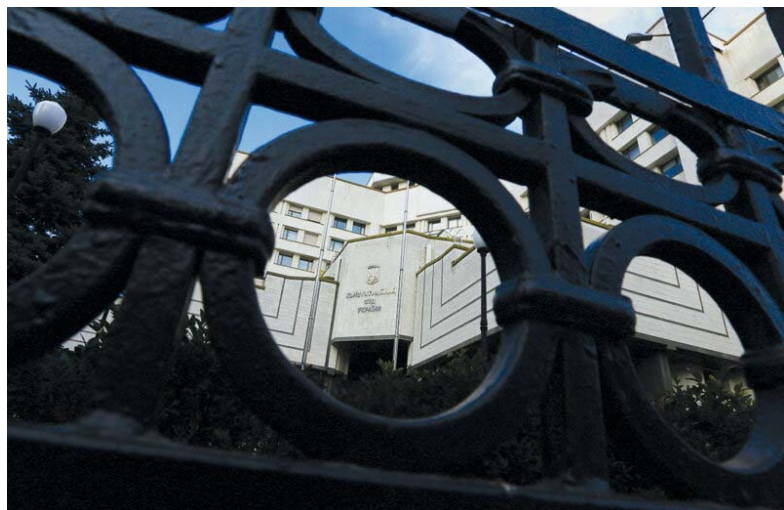
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Transparency International: Constitutional Court ruling 'undermines anti-corruption achievements in Ukraine'

By **Brian Bonner**.

Published March 2. Updated March 2 at 8:06 am



🖼 The Constitutional Court of Ukraine building, photographed on Feb. 28, 2019. The court recently struck down a law against unlawful enrichment, claiming that it violated the constitutional presumption of innocence.

Photo by **Oleg Petradiuk**

The Constitutional Court of Ukraine ruling on Feb. 26 to strike down Article 368-2 of the Criminal Code, the provision criminalizing illicit enrichment, “greatly weakens the country’s anti-corruption efforts, undermines up to 65 open investigations and has a direct impact on four cases against high-ranking officials that were already before the courts,” according to [Transparency International](#).

The international corruption-fighting organization, including its Ukrainian chapter, said that the Constitutional Court’s decision violates Ukraine’s

international commitments, and calls for the Ukrainian government to immediately take all necessary steps to rectify the situation.

“The court’s resolution basically provides state officials with a way to legalize their possibly ill-gained assets and have no fear of criminal prosecution,” said Andrii Borovyk, executive director of Transparency International Ukraine. “Moreover, the electronic declarations of public officials’ assets that have been successfully introduced as part of anti-corruption reforms will now lose their purpose due to the lack of criminal responsibility for illicit enrichment. Eventually, provisions against deliberately declaring false information will also lose their purpose, as there will be no need to hide assets.”

According to Ukrainian law, the decision of the Constitutional Court is binding, final, and cannot be appealed. The court argued that the Article violated the presumption of innocence and the right to refuse to testify.

However, Transparency International Ukraine’s analysis of article 368-2 and the court’s decision “proves that the article did not place the burden of proof on the accused. The burden of proof lay with the prosecution. The provision did not oblige a public servant to prove the legitimacy of assets acquired, but provided accused individuals with the chance to confirm the legitimate origin of their assets,” according to the nongovernmental organization.

“The government of Ukraine should take responsibility for the cases that investigators, prosecutors, and judges will be forced to close due to the ruling. Even if a new law on illicit enrichment is introduced and adopted, it will not be retroactive, leaving all current cases closed and allowing the corrupt to escape justice,” Transparency International said.

“If the systemic legislative problems in Ukraine are not resolved and cases of illicit enrichment are abandoned, many of the country’s anti-corruption achievements will have been in vain,” said Delia

Ferreira Rubio, chair of Transparency International.

“Officials accused of corruption should be prosecuted and rule of law established. If no solution is found, there is a chance that the country’s visa-free regime with the EU and financial assistance from the IMF will be frozen, hampering the country’s economic development.”

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Ukraine cancels criminal responsibility for illicit enrichment



Ukraine's constitutional court decriminalises bribe taking

By bne IntelliNews February 27, 2019

Ukrainian Constitutional Court has cancelled criminal responsibility for illicit enrichment, Ukrainska Pravda online outlet reported on February 26 quoting four separate unnamed sources.

The court believes that criminal responsibility for such wrongdoing violates the presumption of innocence. The decision was reportedly made during a closed hearing.

The move followed immediately another largest scandal, when local media investigation reported on February 26 that President Petro Poroshenko's inner circle allegedly illegally profited from the war in Donbas.

Meanwhile, the court's head Stanislav Shevchuk neither denied nor confirmed the move

when questioned by the *Kyiv Post* on February 27.

According to the newspaper, the article of Ukraine's Criminal Code that the court found unconstitutional envisages that state or local officials who cannot explain the source of their assets may face up to 10 years of prison.

The decision will effectively lead to the closure and deletion of 65 outstanding criminal investigation and it will be impossible to restore the relevant investigations in the future, the National Anti-Corruption Bureau of Ukraine (NABU) said in a statement, which also claimed the decision was unconstitutional.

"The decision of the Constitutional Court means that all criminal proceedings related to the unlawful enrichment of these persons will be closed. As well as the cases that are already being heard in court ... Reopening the investigation ... if the relevant article is returned to the Criminal Code, it's not possible. Therefore, the acquired property by default will be considered legal, regardless of its sources of origin," NABU said on its website on February 27.

The Rada passed the law in 2015 as one of the conditions for Ukraine to receive a visa-free regime with the European Union and to continue its cooperation with the International Monetary Fund (IMF).

Rescinding the law potentially puts the visa-free regime in danger – one of the few successes President Petro Poroshenko can claim in his pivot to the west.

In 2017, a group of 59 lawmakers filed a complaint with the Constitutional Court about this norm. The decision of the Constitutional Court is binding, final and cannot be appealed.

NABU notes that its detectives are investigating the facts of illegal enrichment totalling more than UAH500mn (\$18.5mn) in 65 criminal proceedings. Among the persons whose state of origin causes a question regarding the legality of sources of origin, there are a lot of judges, prosecutors, people's deputies, former and current heads of state bodies.

"The abolition of criminal liability for illegal enrichment, which is a consequence of the decision of the Constitutional Court, opens up opportunities for officials to abuse and provides indulgence for the commission of criminal offenses of corruption," NABU said.

NABU regards the decision of the Constitutional Court as politically motivated and contrary

to Ukraine's obligations under the ratified UN Convention against Corruption, agreements with the IMF and the EU. NABU also believes that the decision of the Constitutional Court is connected with the approaching start of the work of the new Supreme Anti-Corruption Court of Ukraine, which "included peculiar political mechanisms of regulation".

"We are convinced that such a course of events does not meet the public interests and requirements of clearing the government from corruption. The EU decision is a step back in Ukraine's anti-corruption struggle and a step towards the revenge of the old system," NABU said.

The Ukraine government has been tirelessly resisting pressure from its international donors to crack down on corruption. Underlying this latest move is the use of corruption as a mechanism to control the government, politicians and the state bureaucracy as *bne IntelliNews* argued in a piece "[Kudrin and Poroshenko will fail because corruption is the system in Russia, Ukraine.](#)"

The New York Times

Ukraine President Tries to Salvage Corruption Law as Tough Election Looms

By Reuters

Feb. 28, 2019

KIEV — Ukrainian President Petro Poroshenko proposed fresh legislation on Thursday aimed at fighting corruption, after the constitutional court threw out a previous anti-graft law, raising concerns that the country was backtracking on the issue.

Poroshenko's record on tackling corruption is a central topic of debate ahead of his bid for a second term in a presidential election on March 31. He trails in the polls and critics accuse him of not doing enough to root out entrenched corruption.

Opposition lawmakers called him to be impeached earlier this week over allegations involving a close ally.

Ukraine passed a law criminalizing illicit enrichment in 2015 as a condition of it receiving bailout loans from the International Monetary Fund that kept the country afloat during a steep recession. It was also a precondition for the European Union to grant visa-free travel to Ukrainians.

But the constitutional court overturned the law this week on the grounds that it contravened the presumption of innocence, sparking concern in the EU and among anti-corruption campaigners and the anti-corruption bureau.

"This morning I have signed, and now I am commissioning to register, a presidential bill which takes into account the remarks but preserves the key position - the inevitability of criminal punishment for illicit enrichment," said Poroshenko, who came to power after the Maidan protests in 2014.

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Valdis Dombrovskis, Vice-President of the European Commission, highlighted the court's decision in a speech during a visit to Kiev on Thursday.

"I must say that we have certain concerns concerning yesterday's constitutional court ruling concerning the illicit enrichment and the burden of proof concerning this illicit enrichment," he said.

"So we must see what exactly the concerns of the constitutional court were, and how it will affect the effectiveness of the fight against corruption."

The National Anticorruption Bureau of Ukraine (NABU) said it had to stop 65 criminal investigations of alleged illicit enrichment of top officials due to the court ruling.

Even if parliament approved a new bill, NABU would not be allowed to resume those investigations because the law would have no retroactive effect.

"The abolition of the article on illegal enrichment is a step back in the anti-corruption reform of Ukraine," NABU said in a statement.

"This step ... is politically motivated and contradicts Ukraine's obligations under the United Nations Convention against Corruption, agreements with the International Monetary Fund and the European Union," NABU said.

The IMF did not respond to a request for comment on whether the court's decision could derail the disbursement of new aid.

(Reporting by Natalia Zinets; Editing by Matthias Williams and Hugh Lawson)

UKRAINE-EUROPEAN UNION RELATIONS

EU to study Ukraine's Constitutional Court ruling on illicit enrichment

By [Interfax-Ukraine](#).

Published Feb. 28 at 9:50 pm



European Union flags flutter in the wind in front of the European Commission in Brussels on Nov. 14, 2018.

Photo by AFP

The European Union has expressed concern about the Constitutional Court ruling on unconstitutionality of Criminal Code article on illicit enrichment.

"Here, however, I must say that we have certain concerns as regards yesterday's Constitutional Court ruling concerning the illicit enrichment and the burden of proof concerning this illicit enrichment. Of course, we will need to assess this ruling in more detail, but it must be said that the principle legal presumption is the principle that the person who possesses certain assets, certain wealth, has to be able to prove the origin of those assets," the Kyiv-based European Pravda ezine said, citing the words of European Commission Vice-President for the Euro and Social Dialogue Valdis Dombrovskis during his lecture, titled "Five years after Maidan", delivered in Kyiv.

In his words, this is an international principle, and the EU must look at the motives of the Constitutional Court and what influence the decision will have on the effectiveness on the battle against corruption.

As earlier reported, The Constitutional Court of Ukraine on Feb. 27 ruled Article 368-2 of the Criminal Code of Ukraine on illegal enrichment is unconstitutional since its provisions do not comply with the principles of the rule of law and the presumption of innocence.

The ruling is mandatory, final, and cannot be appealed.

Ukrainian President Petro Poroshenko responded, saying on Feb. 27 he would submit a bill penalizing officials for unlawful enrichment to the parliament after the Constitutional Court published its ruling. The president promised that the bill would be written very precisely. Changes in Article 368-2 appeared in 2015. Corresponding draft law No. 1660 was adopted by parliament in full during February 2015. It was one of the bills in a package of anti-corruption initiatives, passage of which was a condition for liberalizing visa-free travel for Ukrainians in the EU, as well as for continued cooperation with Ukraine by the International Monetary Fund (IMF). In January 2018, a group of parliament deputies attempted to decriminalize an article on illegal enrichment, registering bill No. 7499. The measure was dropped following a public criticism.