

Unofficial translation

**To President of Ukraine
Volodymyr ZELENSKYI**

Dear Volodymyr Oleksandrovych,

The United Nations Convention Against Corruption is part of the national legislation of Ukraine. According to its Articles 5 and 6, each State Party should ensure existence of a body that develops and implements an effective coordinated anti-corruption policy.

In Ukraine, the National Agency on Corruption Prevention (hereinafter - the National Agency) serves as such a body. In accordance with Part 1 of Article 4 of the Law of Ukraine “On Prevention of Corruption” it ensures the development and implementation of state anti-corruption policy, which includes measures aimed at ensuring compliance with the mechanisms of financial control over the assets of public officials under threat of criminal penalties.

On October 27, 2020, the Constitutional Court of Ukraine issued a decision № 13-r/2020, which essentially abolished criminal liability for not submitting a declaration and submission of knowingly false information in it.

Today, December 4, 2020, the Verkhovna Rada of Ukraine adopted the Law of Ukraine “On Amendments to Certain Legislative Acts of Ukraine on Establishing Liability for Declaring Inaccurate Information and Non-submission of a Declaration of a Person Authorized to Perform State or Local Self-Government Functions” (hereinafter - Law).

According to the analysis of the provisions of the articles of the Law, the intentional non-submission of the declaration (Article 366-3 of the Criminal Code of Ukraine) or submission of inaccurate information in the declaration, if they differ from reliable in the amount of 500 (about UAH 1 million, which is twice as big as a similar threshold, which existed according to the repealed Article 366-1 of the Criminal Code of Ukraine) up to 4000 (about UAH 8 million) living wages for able-bodied persons (Part 1 of Article 366-2 of the Criminal Code of Ukraine), will become criminal misdemeanors, while before the adoption of the said Decision, they belonged to the crimes and could be punished by imprisonment.

The easing of sanctions for these acts will not ensure the achievement of the purpose of punishment (Part 2 of Article 50 of the Criminal Code) - correction of convicted persons, as well as prevention of new criminal offenses by both convicted and other persons. After serving the punishment (for instance, after paying a fine) persons convicted of a criminal misdemeanor will be recognized as those that have no criminal record (paragraph 2-1 of Article 89 of the Criminal Code of Ukraine).

Therefore, in case of non-submission of the declaration or indication of inaccurate information, which differs from reliable information in the amount of up to 8 millions of UAH, public servants will be able to continue their work in an office after paying the fine, as they will not be considered criminally prosecuted.

In addition, the “transfer” of these acts from the category of crimes to the category of criminal misdemeanors provides an opportunity to avoid criminal liability by exempting from criminal liability in connection with effective repentance (Article 45 of the Criminal Code), which will affect the effectiveness of anti-corruption measures in Ukraine.

Also, the punishment in the form of restraint of liberty, which may be imposed for intentionally entering inaccurate information in the amount of more than 8 million UAH (Part 2 of Article 3663 of the Criminal Code), is imposed by courts infrequently as the number of penitentiary institutions in which compliance with the conditions of execution of this punishment may be ensured is quite low. In addition, the conditions for those who commit such crimes will look extremely lenient, as this punishment is carried out in correctional facilities without isolation from society.

The international experience shows that imprisonment for such crimes is a typical international practice. For instance, in France, for submitting the false information in declarations the person might be convicted for up to 3 years of imprisonment, in Poland - for up to 5 years, in Lithuania - for up to 8 years.

It is also worth noting that effective sanctions for non-declaration are the basis for ensuring liability for illicit enrichment, which was renewed in the Criminal Code of Ukraine (Article 368-5 of the Criminal Code of Ukraine) on your initiative.

In addition, this Law does not take into account the provisions of the draft law № 4434 that you initiated on 27.11.2020, draft law of the Chairman of the Verkhovna Rada of Ukraine and representatives of 6 out of 7 deputy groups (№ 4304 dated 02.11.2020), draft law № 4301 dated 02.11.2020 (MP Iryna Heraschenko and other people's deputies), and draft law № 4307 dated 02.11.2020 (MP Yuliia Tymoshenko).

Taking into account all fact mentioned above, I would like to ask you to apply the right of veto to this Law in accordance with paragraph 30 of Part 1 of Article 106 of the Constitution of Ukraine.

Respectfully yours

**Head of the National Agency on
Corruption Prevention**

Oleksandr NOVIKOV