

Ukrainian Constitutional Court Cancels Asset Declarations for Activists

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On June 6, 2019, after over two-year advocacy campaign, the Constitutional Court of Ukraine rendered the asset declaration for activists unconstitutional¹. Such decision became possible due to the efforts of one of the biggest coalitions of CSOs – Reanimation Package of Reforms (RPR) – joining forces with 65 Members of Parliament, who submitted an appeal to the Constitutional Court after all other measures for repealing the law failed to bring results. The Ukrainian Center for Independent Political Research (UCIPR) was among CSOs advocating for the Parliament to repeal the law and together with RPR it prepared a draft appeal to the Constitutional Court. UCIPR also provided a legal opinion to the Court explaining why the provisions are against the Constitution of Ukraine and international law.

Asset declarations for activists were introduced by the amendments on March 23, 2017 to laws related to special aspects of financial control over specific categories of public officials (article 3 of the Law on Corruption Prevention) (Draft Law No. 6172). It came as a punishment for anticorruption activists and followed the introduction of the asset declarations

for public officials in 2016 (entered into force on January 1, 2018). Originally, the draft law No. 6172 aimed to exempt military personnel involved in the military conflict in the east of Ukraine from filing asset declarations. The amendments requiring anticorruption activists to file e-declarations on their assets were introduced during the voting, which violated the Rules of Procedures of Parliament. The title of the Draft Law itself conflicted with the contents of the amendment since it referred not only to officials.

Since end of the March 2017, there were seven draft laws registered at the Parliament that sought to repeal the asset declarations for civil society activists:

- Draft Law No. 6271² to repeal asset declarations for activists;
- Presidential Draft Laws No 6674 and 6675³ to repeal asset declarations for activists in exchange for introducing additional financial reporting for CSOs that receive over \$18,500 from international technical assistance (this was proposed after extensive criticism from civil society and international partners and envisaged a very detailed reporting about CSO funding, expenditures, management bodies, and contractors etc.);

1 http://www.ccu.gov.ua/novyna/ksu-vyznav-e-deklaruvannya-antikorupciynyh-gromadskiyh-aktivistiv-takym-shcho-superechyt?fbclid=IwAR24iy0s2ln9PMNsd7ZXwOSYqMnlU_srIASOgLzFoCm0Qm-VRPjHjsL7mEQ

2 http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?id=&pf3511=61478

3 http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=62214

- Draft Law No. 8120⁴ and 8120-1⁵ to postpone the deadline for filing e-declarations for anti-corruption activists until 2019 or July 1, 2018;
- draft laws to cancel administrative and criminal liability for non-filing e-declarations by activists and repealing of e-declarations for activists (Draft Laws No. 8209 and No. 8209-1).

Moreover, the UCIPR team also prepared a Draft Law on Amendments to the Laws of Ukraine regarding Repealing E-Declarations for CSOs and submitted it to the Presidential Administration with official request from the RPR coalition to consider this draft law and to submit it to the Parliament⁶. The Draft Law aimed to repeal discriminatory provisions that required public disclosure of information about property and assets from individuals that engaged in anti-corruption activities. This draft was not submitted to the Parliament in the end.

To strengthen advocacy efforts, Ukrainian CSOs built coalitions with the MPs, CSOs and media. Also, they set up a Coalition to Protect Civil Society and repealing the asset declarations for activists became number one on its agenda. Moreover, UCIPR requested the International Center for Not-for-Profit Law (ICNL) to prepare the analysis of the Law on asset declarations for activists and the two Draft Laws initiated by the President to use it as an argument in communications with public authorities and politicians explaining that such initiatives contradict the international law, international best practices and Ukraine's commitments.

In addition, due to the very efficient cooperation of the Ukrainian civil society with international partners, the asset declarations for activists was severely criticized by the international community.⁷

4 http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=63620

5 http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=63693

6 https://drive.google.com/drive/folders/0B8u_pYIkoApyay1aRWI2d-Vlkdmc

7 <https://ec.europa.eu/commission/commissioners/2014-2019/hahn/announcements/statement-commissioner-hahn-extension-e-declaration->

UCIPR and its local and international partners, including RPR, Human Right Agenda, Coalition to Protect Civil Society, held numerous meetings and public discussions to discuss future strategy. They developed proposals to the presidential draft laws for eliminating major risks for civil society and discussed it with members of the Parliament. They issued a number of statements⁸ demanding to revoke asset declarations for activists and withdrawal of the presidential draft laws⁹, and organized a protest campaign near the parliament "Activists are Not Targets" (March 19, 2018). There were a number of statements and appeals from international partners, including the Appeal for Decisive Action in Ukraine's Fight Against Corruption of Washington-based Friends of Ukraine Network¹⁰. This issue was also discussed during the meeting of the Coordination Council for Civil Society Development under the President of Ukraine and with the representatives of Ministry of Finance and State Fiscal Service of Ukraine. Finally, on March 16, 2018, the Venice Commission and OSCE/ODIHR adopted a Joint Opinion regarding the new financial disclosure requirements for CSOs and concluded that stringent financial reporting and disclosure requirements for public activists, if introduced, would conflict with freedom of association and emphasized that e-declaration requirements for anti-corruption activists have to be cancelled before April 1, 2018¹¹.

Despite all these efforts, the requirement was not repealed as of March 31, 2018 and accordingly, all activists involved in anticorruption activities had to

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8 <http://rpr.org.ua/en/news/joint-position-of-the-representatives-of-the-civil-society-e-declaration-for-activists-shall-be-urgently-withdrawn-and-provisions-concerning-the-reporting-of-civil-society-organizations-shall-be-revi/>

9 https://humanrights.org.ua/material/pravozahisnij_porjadok_den-nij_vimagaje_abi_prezident_ukrajini_ta_verkhovna_rada_ukrajini_pripinili_nastup_na_gromadski_objednannja/

10 <http://www.usukraine.org/an-appeal-for-decisive-action-in-ukraines-fight-against-corruption-from-the-friends-of-ukraine-net-work/>

11 <https://www.legislationline.org/documents/id/21937>

file asset declarations (the same as the ones filed by public officials) by April 1, 2018. At the same time, because of the very visible advocacy campaign, which included media attention and support from the international community, the additional financial reporting for CSOs was not introduced.

As a last resort, the RPR turned to the Constitutional Court of Ukraine, and prepared Draft Appeal on recognition of unconstitutionality of the provisions of the Article 3 of the Law on Corruption Prevention (asset declarations for activists). The Appeal was submitted to the Court by 66 MPs, representatives of the Reanimation Package of Reforms (RPR) and Coalition to Protect Civil Society on July 20, 2018¹². The Court put the Appeal on its agenda in December 2018. UCIPR and PRP were among the CSOs which provided legal opinions to the Constitutional Court explaining why such provisions are against the Constitution of Ukraine and international law. The Court relied on these arguments in its decision.

On June 6, 2019, after the new Chairperson of the Constitutional Court was appointed, the Constitutional Court of Ukraine recognized asset declarations for activists as unconstitutional. The Court Decision came into force since its adoption and it allows civil society activists who filed asset declarations to demand from the National Bureau on Corruption Prevention to remove all personal data from the e-declaration system. In its Decision, the Court ruled out that “measures of financial control over the activities of associations of citizens and their members who do not exercise public authority or are not financed at the expense of the State Budget of Ukraine or local budgets may not be excessive and such, which disproportionately restrict freedom of political and public activity, undermine the essence of the right of citizens to freedom of association”.

This civil society victory showed that in case of any

attempt of public authorities to restrict civil society space it is important to use all mechanisms to protect civil society, to learn from best practices and to engage all important parties and stakeholders for improving and defending civil society environment.



¹² http://www.ccu.gov.ua/sites/default/files/3_3728.pdf