

THE PECULIARITIES OF THE LEGAL REGIME OF INFORMATION IN THE E-DECLARATIONS OF PERSONS AUTHORIZED TO PERFORM THE FUNCTIONS OF STATE OR LOCAL SELF-GOVERNMENT

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ABSTRACT

The article is devoted to the study of the peculiarities of the legal regime of information, which is indicated in the e-declarations of persons authorized to perform the functions of state or local self-government. In particular, the European experience of providing information by civil servants in e-declarations regarding conflict of interest and income is highlighted drawing on the example of the UK. It is defined what legal document regulates the issues of combating corruption in the European community in general, and what state level regulations in Ukraine regulate the peculiarities of the legal regime of information in e-declarations of civil servants. The content of the provisions of the current Ukrainian legislation, which defines the legal regime of information in e-declarations of persons authorized to perform the functions of state or local self-government, is disclosed. A distinction is made between the system of e-declaring in most European countries and Ukraine in the context of the difference in information provided by civil servants in e-declarations.

Keywords: E-Declaring, E-Declaration, Open Information, Restricted Information.

INTRODUCTION

The implementation of European Union law on the fight against corruption was the result of the creation in Ukraine of an appropriate regulatory framework to regulate this issue. The introduction of electronic declaring (e-declaring) of property and income of persons authorized to perform the functions of state or local self-government through submission by them of corresponding electronic declarations (e-declarations) was no exception.

Art. 45 of the Law of Ukraine "On Prevention of Corruption" obliges the persons authorized to perform the functions of state or local self-government to submit e-declarations, which are filled in on the official website of the National Agency for the Prevention of Corruption. State control in this area provides for the monitoring of the way of life of declaring

entities, with the purpose of establishing the conformity of their standard of living with their property and that of their family members and their income according to the declaration of a person authorized to perform the functions of state or local self-government. (Law of Ukraine on Prevention of Corruption, 2014).

The introduction of e-declaring system in Ukraine, taking into account the global experience of the leading European countries, made it possible for the public to access information about property and income of persons authorized to perform the functions of state or local self-government. This is confirmed by the fact that the current Ukrainian legislation provides for access to the information stated in the e-declarations of civil servants on the official website of the National Agency for the Prevention of Corruption. At the same time, the law provides for restrictions on access to certain information contained in e-declarations. Such a restriction is caused by the need to protect a declarant by the state against threats from persons that may arise from the use of certain information by the latter for malicious purposes. Thus, it is important to study the peculiarities of the legal regime of information contained in the e-declarations of persons authorized to perform the functions of state or local self-government.

LITERATURE REVIEW

Studying the peculiarities of e-declaring, Reznik et al. (2019) define it as an effective tool to prevent corruption in the country. This conclusion is justified by the fact that in connection with the European integration processes in Ukraine the introduction of e-declaring procedure by persons authorized to perform the functions of state or local self-government gave the population access to information about the declarants.

While defining the peculiarities of the information stated in the e-declarations of persons authorized to perform the functions of state or local self-government, the position of Didenko (2017) regarding this issue deserves special attention. The scientist notes that, in accordance with current Ukrainian legislation, the e-declaration is aimed at declaring not the interests of the declaring entity but their property. At that, civil servants are obliged to disclose information about their family members if such information may cause conflict (Drobyazko et al., 2019).

As Daniltseva & Karpov (2018) point out, the creation in Ukraine of the necessary legal framework for the introduction of e-declarations system demonstrates the systematic implementation by the state of measures aimed at overcoming corruption. Thus, the information stated in the e-declarations of persons authorized to perform the functions of state or local self-government allows the public to have an idea of the financial situation of the declarant. This in turn means that information on the property of declarants is in the public domain and therefore can be easily accessed by any person.

METHODOLOGY

Methodological basis for the study of the peculiarities of the legal regime of the information in the e-declarations of persons authorized to perform the functions of state or local self-government are functional, comparative-legal and formal-legal methods. The functional method is used to highlight the European experience of providing by civil servants information in e-declarations on conflict of interest and income (drawing on the example of the UK). The comparative-legal method allowed to establish what legal document regulates issues of

combating corruption in the European community in general, and what state-level regulations in Ukraine regulate the peculiarities of the legal regime of information in e-declarations of civil servants. The formal-legal method contributed to the disclosure of the content of the provisions of the current Ukrainian legislation defining the legal regime of the information in the e-declarations of persons authorized to perform the functions of state or local self-government.

FINDINGS AND DISCUSSIONS

The introduction of e-declaration system in Ukraine, in particular, the submission of e-declarations by persons authorized to perform the functions of state or local self-government, was caused by the urgent need to create an effective mechanism for combating corruption in the state, which must meet the requirements of modern European integration processes. One of the first comprehensive, European-wide instruments for preventing and combating corruption is the United Nations Convention against Corruption of 2004. It was the adoption of this document that influenced the formation of a relevant regulatory framework in several countries in combating such negative phenomena as corruption. The implementation of European law into Ukrainian law is no exception, confirming the signing on behalf of Ukraine of the said Convention in 2003 and ratification by the Verkhovna Rada (Supreme Council) of Ukraine in 2006 (Law and Regulation, 2006).

Art. 8 of the UN Convention against Corruption provides for the obligation of public officials to provide declarations to the relevant authorities, inter alia, on out-of-office activities, occupations, investments, assets and material gifts or income, which may give rise to a conflict of interest regarding their functions as public officials (United Nations Convention against Corruption, 2004).

It is important to emphasize that there is a difference between declaring assets (income) and declaring interests. However, in symbiosis, these types of property declarations are common in many European countries. For example, in the UK, members of the House of Commons and House of Lords are required to register their interests and provide information on external employment in the form of e-declarations. The latter are public and are placed in the Register of Interests of the House of Commons and the House of Lords, access to which is considered open (The Register of Members' Financial Interests; Register of Lords' Interests). In turn, Ukraine has a system of filing e-declarations regarding the property and income of persons authorized to perform the functions of state and local self-government, as well as those of their family members, related persons.

The study of the peculiarities of the legal regime of information, which is indicated in the e-declarations of persons authorized to perform the functions of state or local self-government, first of all requires the identification of existing varieties of the legal regime of information established by the current Ukrainian legislation. Thus, in accordance with Part 1 of Art. 20 of the Law of Ukraine "On Information", information is divided into open information and restricted information by the criterion of access procedure. At the same time, Part 2 of the same article establishes that any information is considered to be open, except that which is classified by law as restricted information. In accordance with Part 1 of Art. 21 of the said law, restricted information is confidential, classified and proprietary information (Law of Ukraine on Information, 1992).

From the analysis of Part 2 of Art. 1 of the Law of Ukraine "On Public Information" we can conclude that public information is a type of open information. In particular, the legislator provides the definition of public information as displayed and documented by any means and on any media that has been received or created by public bodies in the course of performing their powers provided for by the current legislation or is in the possession of public bodies, other managers of public information specified by the Law (Law of Ukraine on Access to Public Information, 2011).

The list of data specified in the e-declarations of persons authorized to perform the functions of state or local self-government, is established by Art. 46 of the Law of Ukraine "On Prevention of Corruption". In particular, these include:

1. Surname, first name, patronymic, registration number of the taxpayer accounting card of the declaring entity and those of his/her family members, their registered place of residence, their place of actual residence or postal address, place of work (service) or place of future work (service), position, or position for which he/she is applying;
2. Real estate owned by the declaring entity and his/her family members as private property, including joint ownership, or rented or otherwise owned;
3. Construction projects in progress, objects not put into operation or which ownership is not registered in the order established by law;
4. Valuable movable property valued at more than 100 subsistence wages established for able-bodied persons on January 1 of the reporting year;
5. Securities;
6. Other corporate rights;
7. Legal entities the ultimate beneficiary owner of which is the declarant or his/her family members;
8. Intangible assets;
9. Received (accrued) income;
10. Available cash assets;
11. Financial liabilities;
12. Expenditures and all transactions made during the reporting period on the basis of which the declaring entity arises or terminates ownership, possession or use;
13. A position or job performed or performed concurrently;
14. Membership of a declaring entity in the governing, audit or supervisory bodies of a public association, charitable organizations, self-regulatory or self-governing professional associations (Law of Ukraine on Prevention of Corruption, 2014).

In Part 5 of Art. 6 of the Law of Ukraine "On Access to Public Information" it is prohibited to restrict access to information on the disposition of budgetary funds, possession, use or disposal of state, communal property, including copies of relevant documents, conditions for receiving these funds or property, surnames, names, patronymic of the private persons and the names of the legal entities who received these funds or property (Law of Ukraine on Access to Public Information, 2011).

In accordance with the requirements of Art. 47 of the Law of Ukraine "On Prevention of Corruption" the right of access to the information specified in the e-declarations of persons authorized to perform the functions of state or local self-government is granted on the official website of the National Agency for the Prevention of Corruption. The right of such access provides for the ability to view, copy and print the information contained in e-declarations, as well as to provide information in the form of a data set (electronic document) organized in a format that allows its automated processing by electronic means (machine reading) for the purpose of reuse (Law of Ukraine on Prevention of Corruption, 2014).

At the same time, in addition to the information to be displayed in the public domain, the e-declarations of persons authorized to perform the functions of state or local self-government contain restricted information. It is important to note that the legal regime of restricted information is aimed at the protection of information, the free circulation of which may violate the rights and interests of the state, society and/or an individual person, provision of informational independence of private law entities in relations with the state and among themselves etc. (Cherniei & Shapovalov, 2016).

To the restricted information the legislator includes information regarding the registration number of the taxpayer accounting card or passport series and number of the citizen of Ukraine, place of residence, date of birth of the individuals, who are stated in the declaration, location of the objects mentioned in the declaration (except the region, district, location where the objects are located) (Law of Ukraine on Prevention of Corruption, 2014).

Access to information under Part 2 of Art. 6 of the Law of Ukraine "On Access to Public Information" is limited in accordance with the law and subject to a set of certain requirements, which include the following: (1) solely in the interests of national security, territorial integrity or public order to prevent disturbance or crime, to protect public health, to protect the reputation or rights of others, to prevent the disclosure of information obtained in a confidential manner, or to maintain authority and impartiality of justice; (2) the disclosure of information may cause significant harm to those interests; (3) the harm of disclosing such information outweighs the public interest in obtaining it (Law of Ukraine on Access to Public Information, 2011).

RECOMMENDATIONS

In Ukraine, the legal regime of information specified in the e-declarations of persons authorized to perform the functions of state or local self-government is reduced to the existence of two varieties providing for open information as well as restricted information.

However, the availability of limited access to certain information regarding the relevant categories of civil servants is explained by the need to protect these persons by the state in order to avoid possible unlawful actions by other persons using such information. At the same time, the issue of restricting access to information is resolved in each case in accordance with the law and subject to a set of relevant requirements.

CONCLUSION

Therefore, taking into account the analysis of the regulations of the current Ukrainian legislation, in particular, in the aggregate of separate provisions of the Laws of Ukraine "On Information", "On Access to Public Information" and "On Prevention of Corruption", we can draw the following conclusion. If in most European countries, e-declaring of assets (income) and e-declaring of interests exist in symbiosis, Ukraine is characterized by a system of e-declarations regarding the property and income of persons authorized to perform the functions of state and local self-government, as well as those of their family members, related persons. Provision of information on property and assets by persons authorized to perform the functions of state or local government by submitting e-declarations is an effective tool in the fight against corruption, both internally and supranationally.

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